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British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Registrar of Securities, Nunavut

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West, Suite 1903, Box 55
Toronto, ON M5H 3S8

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3

Dear Sirs and Mesdames:

RE: Response to CSA Notice and Request for Comment: Proposed Amendments to National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations published December 5, 2013 (“Proposed Amendments”)

We are writing to provide you with comments on behalf of the Members of The Investment Funds Institute of Canada (“IFIC”) with respect to the Proposed Amendments. We appreciate the opportunity to participate in this discussion.

Our Members have been active participants in the consultation processes with respect to *National Instrument 31-103: Registration Requirements, Exemptions and Ongoing Registrant Obligations* (“NI 31-103”) by providing comments to further the objective of developing a registration regime that meets the CSA’s investor protection goals while promoting efficiency in the capital markets. We support the CSA’s practice of periodically seeking comments on the registration regime to address areas that require attention and to provide clarification and answers to questions to stakeholders working with NI 31-103. We have comments on three areas of the Proposed Amendments.

Activities of Exempt Market Dealers Require Clarification

In our view the revisions to permitted activities of an exempt market dealer (“EMD”) creates the possibility of confusion regarding permitted distribution activities of exempt market dealers when dealing with investment funds. We understand that the changes to the EMD portions of NI 31-103 are to address the policy objectives of restricting the activities of EMDs to not providing brokerage activities (i.e., trading securities listed on an exchange in foreign or Canadian markets) that are commonly provided by investment dealers. However, the Proposed Amendments delete the portion of s. 7.1 (2)(d)(i) which stated “whether or not a prospectus was filed in respect of the distribution”. The now deleted section gave clarity to our Members that investment funds were permitted to be distributed by exempt market dealers only under an exemption from the prospectus requirement (i.e., to exempt clients) but regardless of whether the investment funds were prospectus-qualified.

In addition, the CSA has proposed new wording in Section 7.1 of the Companion Policy 31-103CP (the “Companion Policy”) that “Exempt market dealers are not permitted to participate in a distribution of securities offered under a prospectus ...”. Was it the CSA’s intention to permit an investment fund manager to rely on its EMD registration to participate in a distribution to its exempt clients of its non-prospectus qualified investment funds, but *not* its prospectus-qualified investment funds? We request that the CSA clarify in a response to comments, and make appropriate changes to NI 31-103 and/or in the Companion Policy that investment funds - whether or not they are qualified under a prospectus - are permitted to be distributed by exempt market dealers when they rely on an exemption from the prospectus requirement (i.e., when they participate in a distribution of these securities to exempt clients).

Companion Policy Guidance on Outside Business Activity

We have concerns with the guidance in the Companion Policy concerning outside business activity and suggest the CSA re-consider the scope of this proposal and engage in more public consultation in this area before proposing guidance that will in effect operate as a rule. What began as a restriction on outside *business* (emphasis added) activity has now migrated to a compliance regime in relation to all outside activities, volunteer or paid, *that may result in a business transaction that may in turn* create a conflict situation.

We appreciate the CSA is seeking to minimize affinity fraud and other abuses on investors, and we support all appropriate measures to further that objective. However, in our view the proposal is too broad as it covers all activities of a registrant or potential registrant. There is a clear societal benefit to encouraging individuals to participate in charitable, social and religious activities, whether they are employed as physicians, teachers, financial advisors or otherwise. We would submit that many registrants participate in public and community service activities but many such activities will never generate any business relationship between the registrant and other participants in the activity.

We would agree there is the possibility of a conflict of interest if the registrant chooses to engage in business activities with another participant in the activity. However, just as disclosure and client consent effectively manages conflicts of interest when they arise in other business contexts, we would argue there is no reason this procedure will not function adequately in the context of financial advisors who engage in business activities with other participant in their outside activity.

The CSA has stated that the legislative intent of its proposed amendments to section 4.1 *Restriction on acting for another registered firm* is “to put the onus on firms, which often operate in multiple jurisdictions, to bring to the regulators’ attention circumstances where conflicts of interest are potentially generated by dual registration.” We submit the same onus should apply to firms in relation to conflicts of interest that are generated by registrants’ outside activities becoming outside business activities.

Finally we are concerned that some of the proposed disclosure requirements, and certainly some of the registration restrictions that our members have reported CSA staff imposing on registrants, are not in compliance with privacy and human rights legislation. Requiring a registrant to obtain confirmations from potential clients as to whether they are members or participants of a group with which the registrant has an outside activity, does not appear to us to be appropriate. We wonder whether the CSA has sought opinions from the privacy and human rights commissions on the propriety of the proposal and the requirements it seeks to impose on registrants.

This is clearly an area that requires more consideration and research and we would be pleased to participate in dialogue to find an appropriate process to meet the regulators' objectives without dampening the spirit of social service and without offending privacy and human rights standards.

Reporting NAV Adjustments

The development of the new form NI 31-103F4 will provide additional disclosures on NAV adjustments in a prescribed manner. We question whether this degree of detail is required. If the OSC is concerned with standardizing the NAV disclosure, we suggest streamlining the requested information on form NI 31-103F4 to focus solely on the key elements of the NAV adjustment. The OSC has outlined in its *Staff Notice 33-742* that a number of investment fund managers have not been providing the required information to them. The corollary is many investment fund managers are providing the required disclosures and reports to the regulator. We also suggest that a materiality threshold be included in the reporting requirements in line with the standards outlined in IFIC guidance which is being used by many industry members.

Conclusion

Thank you for providing us with an opportunity to comment on the Proposed Amendments. Should you have any questions or desire to discuss these comments, please contact me directly by phone at 416-309-2314 or by email at rhensel@ifc.ca.

Yours truly,

THE INVESTMENT FUNDS INSTITUTE OF CANADA



By: Ralf Hensel
General Counsel, Corporate Secretary and Director of Policy