

January 5, 2011

To:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
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

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Dear Me Beaudoin and Mr. Stevenson

Re: Proposed NI 31-103 Registration Requirements and Exemptions: Registration of International and Certain Domestic Investment Fund Managers

The Canadian Advocacy Council of CFA Institute Canadian Societies (CAC)¹ is pleased to respond to the Request for Comments in which the Canadian Securities Administrators (CSA) invited interested parties to submit comments on a Proposed National Instrument **31-103 Registration Requirements and Exemptions: Registration of International and Certain Domestic Investment Fund Managers**.

¹ The CAC represents the 12 Canadian member societies of the CFA Institute constituting over 11,000 members who are active in Canada's capital markets. Members of the CAC consist of portfolio managers, investment analysts, corporate finance professionals, and other capital markets participants. The CAC's has been charged by Canada's CFA Institute member societies to review Canadian regulatory, legislative and standard setting activities.

General comments:

The CAC endorses the concept of facilitating access to markets as investors should be given wide choice in their professional advisors and investment selections. But the facilitation of access must be balanced with the need for suitable Investor Protection, which is provided through regulatory oversight of the markets and its participants. Care needs to be taken to ensure that exempting an investment fund manager from registration in a jurisdiction does not put investors at risk. In addition, we are concerned that the proposals may inadvertently give an exempt fund manager an economic advantage over those who have to fulfill regulatory requirements in a particular jurisdiction.

Specific comments:

While the proposed exemption thresholds would reduce the burden registration requirements impose on firms that are carrying on a relatively small amount of business in the exempting jurisdiction, we are concerned that it may put investors at risk. Making this exemption available to international fund managers just dealing with 'permitted client' in Canada, is not a full answer to our investor protection concern. The CAC has stated in several prior comment letters that the definition of what constitutes an exempt investor assumes a level of sophistication that may not be present. For example, an uninformed, inexperienced lottery winner suddenly is deemed to be a sophisticated investor by virtue of a significant increase in net worth, even though the person has acquired no additional investment knowledge. Risk disclosures concerning no recourse or regulatory protection may not be fully understood by these investors or can be dismissed by a high pressure sales pitch. Investors can be reached easily through internet advertising so that the fund manager is able to comply with restrictions on direct solicitation or advertising.

The CAC is also concerned about the size threshold of firms providing investment management. By stipulating an assets under management threshold, the proposed rule change puts in place one set of rules for small investment fund managers and a different set of rules for large investment fund managers. We do not believe that a two-tier registration system is in the best interests of investors, nor fair to investment fund managers based in Canada.

The **NI 31-103** proposal would exempt both foreign and domestic firms from registration requirements. Canadian firms are required to register and follow regulatory mandates in the province of their head office. Allowing them to operate in other jurisdictions without the cost of registration and compliance could give them a competitive advantage over smaller firms in the other jurisdictions. Investors may still have some risk in dealing with a non registered firm. A fully harmonized registration system, including reciprocity agreements between the relevant jurisdictions, might serve all participants better.

Foreign firms would definitely be in a competitive position if they aren't required to register. How will Canadian regulators be sure that the foreign firms are as well regulated as Canadian firms? In addition there is no indication of a reciprocity arrangement, why should a foreign firm be allowed to operate in Canada if Canadian firms can't do so in the other firm's country on the same basis.

Asset size alone does not determine the risk to investors posed by an investment fund. Firms with few staff managing asset levels above the exemption level may have the same risk profile as those that qualify for exemption. The larger firm would be subject to registration and regulatory oversight in two jurisdictions, while the smaller one would not. We believe that all investors should be provided with similar levels of investor protection and all firms dealing with clients in a particular Canadian jurisdiction be subject to the same regulatory requirements, including registration.

Concluding remarks

We thank you for the opportunity to provide the foregoing comments. We would be happy to address any questions you may have and we appreciate the time you are taking to consider our point of view. Please feel welcome to contact us at chair@cfaadvocacy.ca.

Yours respectfully,

(signed 'Ross Hallett')

(signed 'Claude Reny')

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