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October 5, 2016

VIA E-MAIL

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

Attention:

Robert Blair, Secretary (Acting)
Ontario Securities Commission
20 Queen Street West, Suite 2200
Toronto, Ontario M5H 3S8
comments@osc.gov.on.ca

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
consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

Re: Exempt Market Dealer Amendments, International Adviser Amendments and Other Drafting Comments - CSA Notice and Request for Comment – Proposed Amendments to National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registration Obligations, *Requirements* ("NI 31-103"), Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations, NI 33-109 Registration Information and Related Forms ("31-103CP") (collectively, the "Proposed Amendments")

We are writing in response to the request for comments on the Proposed Amendments dated July 7, 2016. We appreciate the opportunity to comment on the Proposed Amendments.

Invesco Canada Ltd. ("Invesco") is a wholly-owned subsidiary of Invesco Ltd. Invesco Ltd. is a leading independent global investment management company, dedicated to helping people worldwide build their financial security. As of August 31, 2016, Invesco Ltd. and its operating subsidiaries had assets under management of approximately US$821 billion. Invesco Ltd. and its operating subsidiaries operate in more than 20 countries in North America, Europe and Asia. Invesco is registered as an investment fund manager, an adviser and a dealer (in the categories of mutual fund dealer and exempt market dealer) in Ontario and is also registered in one or more of these categories in certain other jurisdictions.

Capitalized terms in this letter that are not defined in this letter have the meanings ascribed to them in the Proposed Amendments. Page references are to the Ontario Securities Commission Bulletin ((2016), 39 OSCB (Supp-2)) in which the Proposed Amendments were published.

Exempt Market Dealer Amendments

We were disappointed to see that Proposed Amendments would restrict the scope of investment fund trades in which an exempt market dealer ("EMD") may participate. The Canadian Securities Administrators ("CSA") have now decided that "Exempt market dealers are not permitted to...participate in a distribution of securities offered under a prospectus in any capacity..." (pages 148-149), and the CSA has proposed, once again, the removal of the words "whether or not a prospectus was filed in respect of the distribution" from subparagraph 7.1(2)(d)(i).

The removal of this phrase was previously proposed by the CSA as part of proposed amendments to NI 31-103 published for comment in December 2013. The CSA decided not to proceed with this deletion as part of the amendments published October 16, 2014. We and other industry participants took this decision by the CSA as an indication that the CSA recognized that the proposal was unnecessarily broad, and expected to see a more focused approach to the issue of the EMD registration in the Proposed Amendment.

We were surprised and disappointed to see that the Proposed Amendments continue to represent an overly broad approach to the policy concerns arising from the use of the EMD registration, and do not provide for an appropriate exemption for prospectus-qualified investment funds that are not exchange-traded.

We understand the CSA's policy concerns with respect to the uses that may be made of the EMD registration. We agree that the EMD registration should not be used to facilitate the raising of capital by corporate issuers, and that it should not be used for purposes of underwriting prospectus-qualified securities of corporate issuers or for purposes of trading in listed securities. However, we are of the view that securities of investment funds are inherently different from securities of corporate issuers. Investment funds are investment solutions, and are not used for purposes of raising capital. Accordingly, we believe that the EMDs should be permitted to use their registration to trade in securities of non-exchange-traded mutual funds, regardless of whether these mutual funds are prospectus-qualified or not.

The existence of section 8.6 is evidence, we believe, that the CSA recognizes that investment funds are different. Section 8.6 currently provides for an exemption from the dealer registration requirement where an adviser makes a trade for a managed account in a security of an investment fund for which it is the adviser and investment fund manager. As part of the Proposed Amendments, the CSA has proposed to expand this provision to also include investments funds for which an affiliate of the adviser is the investment fund manager. The CSA has asked specifically for comments on the proposed amendments to section 8.6, and we provide our thoughts further on in this letter on why we believe the amendments to section 8.6 are not, in themselves, sufficient to address the impact of the proposed EMD amendments.

Without a carve out that permits the use of the EMD registration for trades in securities of prospectus-qualified investment funds that are not exchange-traded, the Proposed Amendment to subparagraph 7.1(2)(d)(i) will have far-reaching implications to certain investment managers with institutional clients, with no offsetting benefits in terms of investor protection and market efficiency. If the Proposed Amendments relating to the use of the EMD registration are implemented, we end up with the following results: if an accredited investor wishes to purchase securities of a non-prospectus-qualified investment fund, an EMD (often the adviser of the fund or an affiliate of the adviser) may act as the dealer of record in that transaction; however, if that same client wishes to purchase securities of a prospectus-qualified mutual fund from that same adviser, the adviser (or its affiliate) would not be permitted to rely on its EMD, and could not act as the dealer of record in that transaction. This accredited client would need to find a registered investment dealer or a mutual fund dealer (MFD) in order to purchase the prospectus-qualified mutual fund securities, and the adviser presumably would need to compensate that dealer for its role in the transaction. We can see no reason why

different dealer registrations should be required for these two transactions. Furthermore, the CSA's stated goals of investor protection and market efficiency are not promoted in any way by this result.

Under the Proposed Amendments, if the impacted adviser in our example above wishes to continue distributing prospectus-qualified investment funds, and does not wish to make use of a third party investment dealer or MFD, the adviser could register as an MFD and ensure that the appropriate personnel obtain the required proficiencies and become registered as dealing representatives. But this is not the end of the road. Even if an adviser is willing to obtain a registration as an MFD, we note that under NI 31-103, except in Quebec, an MFD must be a member of the Mutual Fund Dealer Association or obtain an exemption from that requirement.

Some investment fund managers or their affiliates currently do have mutual fund dealer registration in some of the jurisdictions. In the case of Invesco, we have a mutual fund dealer registration that is used for very limited purposes and, accordingly, we are not registered across all of Canada. We obtained relief from the requirement to become a member of the MFDA. If the Proposed Amendments come into effect, the terms and conditions attached to our MFD registration would not permit us to use our MFD registration in place of our EMD registration for trades in prospectus-qualified investment funds to exempt market clients. If an exempt market client wishes to purchase securities of a prospectus-qualified mutual fund managed by us, we would have the following options: 1) register as an MFD in additional jurisdictions and apply for (and pay for) amended relief that expands the terms and conditions attaching to our MFD registration to permit us to use our MFD registration for trades in prospectus-qualified funds to exempt market clients; 2) if we were not able to obtain modified terms and conditions attaching to our MFD registration, we would need to become a member of the MFDA (which we do not believe is a reasonable outcome, given the extremely limited manner in which we would be using our mutual fund registration); or 3) require our exempt market clients who wish to purchase prospectus-qualified mutual funds to retain the services of third party dealer (which we do not believe is a reasonable outcome given the sophistication of the clients in question). It is clear that the Proposed Amendments in respect of the EMD registration could result in additional financial and administrative burdens on advisers of prospectus-qualified investment funds who wish to transact with sophisticated accredited investors. Given the sophistication of this type of investor, we see no offsetting benefits to justify this burden.

For the above reasons, we would ask that the CSA allow the use of the EMD registration for trades in securities of non-exchange-traded mutual funds (whether prospectus-qualified or not) where the trade is to an accredited investor. If the CSA is concerned that accredited investors who are individuals need more protection, this use could be restricted to accredited clients who are not individuals.

If the CSA decides to proceed with these Proposed Amendments, we would note that the Proposed Amendments do not provide for a transition period. Given that some advisers may need to put additional registrations in place for themselves, and for their representatives, and either obtain MFDA membership or exemption from such membership, we are of the view that a transition period of six months would be appropriate.

The CSA sought feedback on the following two issues in respect of the EMD amendments:

(2) If you are an adviser that is also registered as an exempt market dealer, are you currently using your dealer registration to distribute securities of reporting issuers, either to managed accounts or to other client accounts? If so, please indicate the types of securities (i.e., securities of investment funds or non-investment funds, whether listed or otherwise).

Invesco is registered as an adviser and as an EMD in certain jurisdictions, and is currently using its EMD registration to distribute securities of both prospectus-qualified and non-prospectus-qualified non-exchange-traded investment funds to clients with managed accounts and to other clients. If the Proposed Amendments limiting the use of the EMD registrations come into effect, Invesco will, of course, cease to distribute securities of prospectus-qualified non-exchange-traded investment funds using its EMD registration.

(3) Will advisers use the proposed section 8.6 to distribute prospectus-qualified securities of investment funds, including mutual funds, directly? Are the conditions of this exemption appropriate? If not, why not?

In response to your specific questions, while some advisers may be able to use proposed section 8.6 to directly distribute prospectus-qualified securities of investment funds, including mutual funds, because this exemption is only available where there is a managed account, we believe it will have limited application, even with the proposed modification to include investment funds for which affiliates are investment fund managers. We do not believe the requirement that there be a managed account is appropriate as an investment fund is already a managed investment solution.

Section 8.6 currently provides for an exemption from the dealer registration requirement where an adviser makes a trade for a managed account in a security of an investment fund for which it is the adviser and investment fund manager (a "proprietary fund"). As part of the Proposed Amendments, the CSA has proposed to expand this provision to also include investments funds for which an affiliate of the adviser is the investment fund manager ("affiliated funds").

While we appreciate the fact that this Proposed Amendment is intended to mitigate some of the impact of the Proposed Amendments regarding the use of the EMD registration on advisers of prospectus-qualified investment funds, the adviser can only rely on this exemption if the client in question has a managed account. In our experience, it is often the case that institutional clients merely wish to buy securities of investment funds from an adviser, and do not wish to have a managed account with that adviser. For many sophisticated investors, purchasing investment funds is often a more desirable investment solution than a managed account as they often do not wish to pay the additional fees that would be associated with advisory services for a managed account, nor do they wish to cede control of the management of their assets to an adviser, having made their own decisions about what investment exposure they want.

Furthermore, we see no principled basis for restricting this exemption only to trades involving proprietary funds and affiliated funds. Given the nature of investment funds, we are of the view that trades to third party-managed funds should also be permitted under this exemption. Accordingly, we are suggesting that the CSA permit the use of the EMD registration for trades in securities of non-exchange-traded mutual funds (whether prospectus-qualified or not, and whether proprietary funds or affiliated funds or not) where the trade is to an accredited investor.

Regardless of whether or not the CSA accepts our suggestion that it permit the use of the EMD registration for trades in securities of non-exchange-traded mutual funds (whether prospectus-qualified or not and whether proprietary funds or affiliated funds or not) where the trade is to an accredited investor, we would suggest that paragraph 8.6(1)(a) be amended so that it reads "the adviser or an affiliate of the adviser acts as the fund's adviser". We believe that this is the logical extension of the Proposed Amendments which already contemplate that an affiliate may be the investment fund manager.

International Adviser Amendments

As part of the group of changes that it described as "housekeeping" amendments, the CSA proposed to modify subsection 8.26(3) so that it reads:

> "The adviser registration requirement does not apply to a person or company in respect of its acting as an adviser to a permitted client in relation to a foreign security, other than a permitted client that is a person or company registered under the securities legislation of a jurisdiction of Canada as an adviser or dealer, if the adviser does not advise that client on securities ~~of Canadian issuers~~ that are not foreign securities, unless providing that advice is incidental to its providing advice on a foreign security."

The CSA said in its notice at page 8 that:

"The proposed amendment to the adviser registration exemption in subsection 8.26(3) [*international adviser*] of NI 31-103 will clarify that the relevant advice to a permitted client must be in relation to a foreign security, and cannot be in relation to securities that are not foreign securities (unless providing that advice is incidental to providing advice on a foreign security)"

With respect, the wording of proposed subsection 8.26(3) and the description of the intention on page 8 do not seem to match. The wording of the commentary suggests that the advice for which the international adviser is relying on the exemption can be in relation to securities that are not foreign securities, provided that advice is incidental to providing advice on a foreign security; however, the actual wording of proposed subsection 8.26(3) seems narrower due to the placement of the new words "in relation to a foreign security". On its face, proposed subsection 8.26(3) appears to say, in effect, if you are an adviser advising the right sort of client (*i.e.* a permitted client who is not a registered adviser or dealer), you do not need to be registered as an adviser to give advice in relation to a foreign security to that client, provided you only advise that client on foreign securities, and, you are not disqualified from using this exemption if you provided advice on a non-foreign security to that client if that advice on the non-foreign security was incidental to providing advice on a foreign security. (Presumably this international adviser would have had to get itself comfortable that the incidental advice on the non-foreign security did not itself require registration since it could not rely on proposed subsection 8.26(3) for an exemption.)

We would ask the CSA to resolve the inconsistency between subsection 8.26(3) and its commentary on page 8, and clarify the intended scope of this exemption.

If, in fact, the CSA did intend that an adviser could never provide advice on Canadian securities, even in an incidental manner, and rely on this exemption, we believe that such an outcome is unnecessarily restrictive and highly undesirable. We refer you to page 3 of our comment letter dated March 5, 2014 which was submitted in response to the request of the CSA dated December 5, 2015 for comments on previously proposed amendments to NI 31-103. A copy of this letter is attached as Schedule A. In this previous comment letter, we expressed our disappointment with the current language in subsection 8.26(3) of NI 31-103 as it permits an international adviser to advise on Canadian securities only if that advice is incidental to its acting as an adviser for foreign securities.

We outlined in our previous comment letter why we believe the current text should be altered. Unfortunately, the current wording of proposed subsection 8.26(3) represents a step backwards from the already undesirable current state, as it would permit the international adviser to advise only on foreign securities in reliance on this exemption. This would be to the detriment of permitted clients, rather than for their benefit. Permitted clients who wish to

retain the services of an international adviser who relies on subsection 8.26(3) for a global mandate would have to agree to the exclusion of Canadian securities from that mandate. We do not think it was the CSA's intention to encourage the exclusion of Canadian issuers from global mandates managed by international advisers for permitted clients, but we believe that it is a possible, even likely, outcome.

The concerns we expressed in our March 5, 2014 letter apply even more so to these Proposed Amendments, and we see no principled basis for restricting the availability of this exemption to advisers only where they advise in relation to a foreign security.

All of the above, is, of course, contingent on an international adviser understanding what is "incidental" and permitted, and what is not incidental, and therefore not permitted. The CSA has previously provided guidance on what it considers to be incidental activities in the context of the registration trigger and trading or advising activities in 31-103CP. In addition to our request discussed above that the CSA resolve the inconsistency between its commentary and the proposed wording of subsection 8.26(3), we would ask for similar guidance on what the CSA would consider to be incidental in the context of the Proposed Amendments to subsection 8.26(3). Was it the CSA's intention that an international adviser could not avail itself of proposed subsection 8.26(3) in order to advise on a global mandate with 2% Canadian exposure? Should the 2% Canadian exposure be considered "incidental" and therefore permitted? We do not know at this point, and would request clarity on this point.

Other Issues for Comment: Section 14.17 [report on charges and other compensation]

We have comments on the following specific questions posed by the CSA:

The annual report on charges and other compensation requires disclosure of the amounts paid to the registered dealer or registered adviser that provides the report. This disclosure shows the client the costs and incentives related to their investment account.

(4) Non-cash incentives

The report does not extend to non-cash incentives that may be paid to the dealer or adviser and its representatives, such as promotions or other employment benefits, for sales of certain products. We are considering ways of making clients aware of these kinds of incentives.

We invite specific comments on the potential usefulness of adding a new requirement that, where a firm or its representatives received or may receive incentives not captured by the existing provisions, the annual report must specifically list all additional sales incentives and

must include prescribed text to the following effect: "In addition to the payments specified in this report, [the firm] or its representatives may also receive other sales incentives related to the securities that you have purchased through us. These incentives can influence representatives to recommend one investment over another".

We assume that the basis for this proposal arises from the conflict of interest inherent in the payment of cash or non-cash incentives to a dealer, adviser or its representatives relating to the sale of certain products. We question the utility of disclosure in this instance, and refer the reader to CSA Consultation Paper 33-404 in which the CSA acknowledges that disclosure is generally an ineffective mitigation strategy for conflicts of interest. More so, when a client receives a report with numbers and large blocks of text, the client tends to read only the numbers. Therefore, we would expect that this disclosure proposal will not achieve any regulatory goals and, on that basis, we question the wisdom of this proposal. It is not an overstatement to say that it has been an ordeal to comply with the CRM2 statement requirements to date and, as such, we would expect to incur not insignificant costs to re-program systems to provide this information, yet the benefit is not clear. As we stated in our comment letter on CSA Consultation Paper 33-404, the CSA must consider the strategy of avoidance of conflicts when faced with conflicts that cannot be controlled, given the ineffectiveness of disclosure.

The reality is that the list of non-cash incentives is lengthy and would obscure other information in the report. We also note that the report, in its current form, is about compensation received by the dealer, not the representative. As most non-cash incentives are paid to the representative, there is no place currently for this disclosure. If the entire provision were to be revised to provide for this information, we would question why the direct and indirect cash compensation is not disclosed at the representative level, *i.e.* how much of the trailing commission do they actually keep? We believe that what is relevant to an investor from a conflict perspective is the extent to which the representative – the individual with whom they have a relationship of trust – receives compensation because of the investor's investment. While it is nice to know what the dealer gets, it is not terribly helpful.

(5) Embedded fee disclosure

The report does not extend to the ongoing costs of owning securities with embedded fees paid to issuers, such as mutual fund management fees. We are considering ways of making clients more aware of such fees.

We invite specific comment on the potential usefulness of adding a general notification in the annual report that would remind clients invested in mutual funds, or other securities with embedded fees about the following:

- *management fees are paid to the issuer, whether or not the dealer or adviser receives any trailing commissions or other payments tied to those fees, and*
- *these fees may reduce the client's investment returns.*

In the past we have expressed support for disclosure to be included in the Report on Charges and Other Compensation at the product level; as such, we believe adding this would be useful and we encourage the CSA to proceed with this initiative; however, we object to the inclusion of the words "these fees may reduce the client's investment returns" for two reasons. First, any fees or expenses or charges – not just these ones – reduce client returns and singling out management fees over and above all other charges is unfair, misleading and contrary to the public interest. Second, while technically a fee does reduce a return, the theory of managed investments is that without paying the fee, you would not get the return in the first place, i.e. the concept is that you are getting something for that fee. The disclosure proposed makes it sound like you are getting "ripped off" by paying a fee, and that is incredibly objectionable.

Other Drafting Comments

Dividends and Distributions

The Proposed Amendments propose the addition of the words "dividend or interest payment" to subsection 14.14(4). If the CSA determines to proceed with this change, we would request that the text be revised to read "dividend, distribution or interest payment" instead, and that the CSA review the other occurrences of the terms "dividend" and "distribution" in NI 31-103 and 31-103CP to ensure clarity and consistency.

Position Cost Disclosure Requirements

The Proposed Amendments include additional text in section 14.14.2 of 31-103CP that states that the definition of book cost or original cost must be included in the client statement. Given that the position cost can be delivered in a separate document, we would suggest stating adding after the words "client statement" the words "or in the separate document accompanying the statement or delivered after the statement".

Conclusion

Thank you for providing us with the opportunity to comment on the Proposed Amendments. We would be pleased to discuss our comments further should you so desire.

Yours very truly,

Invesco Canada Ltd.

(signed) "Julianna Ahn"

Julianna Ahn
Vice President, Legal and Associate General Counsel

SCHEDULE A

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March 5, 2014

VIA E-MAIL

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

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Corporate Secretary
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Dear Sirs/Mesdames:

Re: Proposed Amendments to

- **National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103")**
- **National Instrument 33-109 *Registration Information***
- **National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards***
- **and to Related Policies and Forms (collectively, the "Proposed Amendments")**

We are writing in response to the request dated December 5, 2013 for comments on the Proposed Amendments. We appreciate the opportunity to comment. Invesco Canada Ltd. is a wholly-owned subsidiary of Invesco Ltd. Invesco is a leading independent global investment management company, dedicated to helping people worldwide build their financial security. As of January 31, 2014, Invesco and its operating subsidiaries had assets under management of approximately US$765 billion. Invesco operates in more than 20 countries in North America, Europe and Asia. Invesco Canada is registered as an Investment Fund Manager, an Adviser and a Dealer in Ontario and certain other provinces.

The Canadian Securities Administrators ("CSA") state at page 2 that the "objective of the amendments is to promote stronger investor protection by resolving ambiguities and clarifying our intentions". While we are in agreement with the goals motivating the Proposed Amendments, we believe that the goals of stronger investor protection and clarifying ambiguities are not furthered by certain of the proposed amendments.

1. Proposed Section 8.26.1 [International Adviser]

We support the proposal to harmonize the approach to providing relief from the adviser registration requirement for non-resident sub-advisers. This harmonization has long been waited for by industry participants. However, proposed clause 8.26.1(1)(c) of NI 31-103 as drafted would prevent direct contact between the sub-adviser and the registered adviser's or registered dealer's clients unless the registered adviser or registered dealer is present either in person or by telephone or other technology that gives an opportunity for a live discussion. We do not believe that this is necessary or appropriate where the client meets the definition of "permitted client" and would propose a carve-out for permitted clients in clause 8.26.1(1)(c) as follows:

8.26.1 International sub-adviser

(1) The adviser registration requirement does not apply to a sub-adviser if all of the following apply:

(a) the obligations and duties of the sub-adviser are set out in a written agreement with the registered adviser or registered dealer;

(b) the registered adviser or registered dealer has entered into a written agreement with its clients on whose behalf investment advice is or portfolio management services are to be provided, agreeing to be responsible for any loss that arises out of the failure of the sub-adviser

(i) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the registrant and each client of the registrant for whose benefit the advice is or portfolio management services are to be provided, or

(ii) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances;

(c) if the registered adviser's client or registered dealer's client is not a permitted client, the sub-adviser has no direct contact with ~~the registered adviser's clients or registered dealer's clients~~ that client unless the registered adviser or registered dealer is present either in person or by telephone or other real-time communications technology, in which there is an opportunity for a live discussion between all parties.

(2) The exemption under subsection (1) is not available unless all of the following apply

(a) the sub-adviser's head office or principal place of business is in a foreign jurisdiction;

(b) the sub-adviser is registered or operates under an exemption from registration, under the securities legislation of the foreign jurisdiction in which its head office or principal place of business is located, that permits it to carry on the activities in that jurisdiction that registration as an adviser would permit it to carry on in the local jurisdiction;

(c) the sub-adviser engages in the business of an adviser in the foreign jurisdiction in which its head office or principal place of business is located.

The requirement to have the adviser present for all communications between a client and a sub-adviser ignores the reality that when a permitted client has hired an adviser who then hires a sub- adviser, in many instances, the client has actually sought out the services of the sub-adviser. The adviser often becomes the contracting party with the client for the sole purpose of allowing the sub-adviser to provide services to the client in a way that meets Canadian regulatory requirements.

An adviser who retains a sub-adviser remains responsible for the actions of the sub-adviser. Where the client is a permitted client, the adviser should have the choice to permit the sub-adviser to communicate directly with the client without the adviser being present or to require that the sub-adviser only communicate when the adviser is present. This choice should be a business decision, left to the adviser.

When the CSA introduced the concept of "permitted client" in its Notice and Request for Comments on Proposed National Instrument 31-103 Registration Requirements, Proposed Companion Policy 31-103CP and Proposed Consequential Amendments on February 29, 2008, the CSA said at (2008) 31 OSCB 2286:

> In responses to the comments received, we have introduced a new category of investor: the "permitted client". Permitted clients form a subset of "accredited investor" (as that term is defined in NI 45-106) consisting primarily of institutional, corporate and very high net worth individuals. Prospectus exemptions under NI 45-106 are not affected by the introduction of the permitted client concept in the Rule.
>
> We believe that, at the upper end of the accredited investor spectrum, there are investors who are sufficiently sophisticated, or have sufficient resources to obtain expert advice, that they may neither need nor wish for the same level of protection as that which the registration regime extends to other investors.

Similarly, in the case of a permitted client with a sub-adviser, where the client is a highly sophisticated permitted client, it does not need the additional safeguard of the mandatory presence of the adviser in such communications, and we do not believe that requiring the adviser's presence furthers the cause of investor protection.

As an alternative to our suggestion above, the CSA could state in the Companion Policy that it would be willing to grant relief from proposed clause 8.26.1(1)(c) where the client is a permitted client and the sub-adviser is an affiliate of the registrant. As a matter of firm-wide policy, Invesco does not engage unrelated sub-advisers and permitted clients typically meet with the affiliated sub-adviser prior to awarding Invesco the mandate. Throughout that process, the sub-adviser develops its own relationship with the client. Except for the firm-wide policy of not using unrelated sub-advisers, we believe the foregoing applies to many advisers who deal with permitted clients and note that this level of engagement by permitted clients is one of the reasons that NI 31-103 distinguishes "permitted clients" from "accredited investors" and general retail clients.

Invesco Canada has lived for many years with the equivalent to clause 8.26.1(1)(c) through its reliance on OSC Rule 35-502 and exemptive relief granted in other provinces. In our

experience, the presence of an Invesco Canada registered individual at meetings between the sub-adviser and the permitted client has accomplished nothing other than wasting the time of the Invesco Canada registered individual. As such, Invesco Canada and any other adviser, any of which would remain liable for the actions of the sub-adviser relative to the permitted client, should be permitted to take on any business risk associated with not being present at such meetings.

2. Section 8.26(3) - Incidental Advice on Canadian Securities

We are disappointed that the Proposed Amendments do not address the requirement in subsection 8.26(3) of NI 31-103 that permits an international adviser to rely on the exemption in subsection 8.26(3) to advise in Canada on securities of Canadian issuers only if the advice is incidental to its acting as an adviser for foreign securities. We see no connection between these restrictions and the goal of enhancing investor protection. There are no borders when it comes to investment management competence. No one would suggest that Canadian investment advisers are not qualified to advise on non-Canadian securities. Similarly, it is not reasonable to suggest that foreign investment advisers are not qualified to advise on Canadian securities by imposing these limits on the availability of the exemption from the registration requirement. There is no reasonable basis for precluding international advisers who otherwise meet the requirements for reliance on the exemption in section 8.26 from availing themselves of this exemption, merely because they provide advice on Canadian securities.

The Companion Policy offers no guidance on the rationale for this distinction and we can think of no legal reason for it. We believe that the purpose of the exemption is to enable non-resident advisers to serve the Canadian market without being registered on the basis that registration is unnecessary because (a) the adviser is subject to registration in its home jurisdiction and (b) the adviser has submitted to the jurisdiction of a Canadian securities regulatory authority. Beyond protectionism of Canadian-resident advisers, which is beyond the mandate of the *Securities Act* (Ontario) and similar statutes in every other province, there is no rationale for distinctions based on the geography of the issuers in respect of whose securities advice is provided to clients. Arguably, the restriction relating to Canadian securities is *ultra vires* the jurisdiction of any CSA member.

3. Registered Sub-advisers Exempted from Certain Requirements

The CSA invited specific comment on whether a registered sub-adviser should be exempted from each of the requirements listed in proposed subsection 13.17(1).

We support the new proposed section 13.17 of NI 31-103 that exempts registered sub-advisers from certain requirements. We believe that the specified exemptions are appropriate because these types of obligations should reside with the adviser who has the direct contractual relationship with the advisory client.

For the same reasons we expressed above in our comments regarding proposed clause 8.26.1(1)(c) of NI 31-103, where the client is a permitted client, we believe that it is not necessary or appropriate to make the exemption conditional upon there being no direct contact between the sub-adviser and the registered adviser's or registered dealer's clients unless the registered adviser or registered dealer is present either in person or by telephone or other technology that gives an opportunity for a live discussion. We would suggest that the following changes be made to clause 13.17(2)(c):

(c) if the registered adviser's client or registered dealer's client is not a permitted client, the sub-adviser has no direct contact with ~~the registered adviser's clients or registered dealer's clients~~ that client unless the registered adviser or registered dealer is present either in person or by telephone or other real-time communications technology, in which there is an opportunity for a live discussion between all parties.

4. Restrictions on Activities of Exempt Market Dealers

We understand and share the concerns that the CSA expressed in CSA Notice 31-333 *Follow-up to Broker-Dealer Registration on the Exempt Market Dealer Category* with firms registered as exempt market dealers ("EMDs") using those registrations as the basis for conducting brokerage activities (trading in securities listed on an exchange in foreign or Canadian markets). Unfortunately, while we share the concerns, we believe that the Proposed Amendments go too far as they would have the effect of preventing exempt market dealers from dealing in all prospectus-qualified products, regardless of whether such activities are part of brokerage activities or not.

In its current form, subsection 7.1(2) of NI 31-103 reads:

> "(d) exempt market dealer may
>
> (i) act as a dealer by trading a security that is distributed under an exemption from the prospectus requirement, whether or not a prospectus was filed in respect of the distribution" [emphasis added]

The Proposed Amendment would remove the underlined words from subsection 7.1(2). It would also alter the Companion Policy to NI 31-103 to read: "Exempt market dealers are not permitted to participate in a distribution of securities under a prospectus". We would urge the CSA to remove these proposed changes.

The exempt market dealer registration when introduced focused on the type of client and the existence of this registration category recognized that certain types of clients need less protection than other clients. Provided that there is no trading in securities listed on an exchange (i.e. no brokerage activities), an exempt market dealer should be able to act as a dealer for a client in the exempt market by trading in securities of prospectus qualified products.

In its summary of comments and responses on the 2008 proposals that led to NI 31-103 (July 17, 2009 32 OSCB Supp-2 at page 19), the CSA previously stated:

> "We received comments that EMDs should not be permitted to sell prospectus qualified mutual funds without mutual fund dealer registration. The EMD category contemplates sales of a wide range of securities to qualified purchasers and we can see no investor protection reason why this should not include sales of prospectus qualified mutual funds." [emphasis added]

We believe that this previous statement represents the better view of the appropriate use of the exempt market dealer registration. We would urge the CSA to deal with its concerns about possible brokerage activities conducted by exempt market dealers in a more focused way, and to modify the Proposed Amendments to permit exempt market dealers to continue to sell prospectus qualified products to exempt market clients. If there are concerns about permitting exempt market dealers to sell a broad range of prospectus qualified products, at

the very least, there should be a carve out for prospectus qualified mutual funds (which do not trade on an exchange and therefore do not involve brokerage activities).

5. Removal of Concept of Canadian Permitted Client

We support the proposed reversion back to the concept of "permitted client" and the removal of the more restrictive concept of " Canadian permitted client" in sections 8.18 [*international dealer*] and 8.26 [*international adviser*].

6. Relevant Investment Management Experience

The Proposed Amendments include proposals to incorporate into the Companion Policy some of the guidance currently contained in CSA Staff Notice 31-332 *Relevant Investment Management Experience for Advising Representatives and Associate Advising Representatives of Portfolio Managers.*

The Proposed Amendments state (at page 5):

> 'We propose to include guidance in NI 31-103CP about what we may consider to be relevant investment management experience to provide industry with greater clarity and information. This guidance should be considered by registered firms when making hiring decisions, deciding whether an individual should apply for registration as an advising representative or an associate advising representative, and when preparing and reviewing applications to be submitted."

While we commend and support the goal of greater clarity, we believe that the Proposed Amendments fall short, and contribute to the lack of clarity. An individual's ability (or inability) to become registered affects his or her ability to obtain employment with a registered firm in a position that requires registration. Given that an individual's livelihood will be directly impacted, basic fairness requires that individuals and their prospective employers have a clear understanding of what constitutes "relevant investment management experience". The repeated use of the word "may" in the draft Companion Policy amendments nullifies the stated goal of clarity and only adds to the present state of uncertainty.

Examples of the repeated use of "may" in the Proposed Amendment to the Companion Policy on page 132 to 133:

- "We will assess whether an individual has acquired relevant investment management experience on a case-by-case basis. This section describes factors we *may* [emphasis added] consider in assessing certain types of experience."
- "Relevant investment management experience under sections 3.11 and 3.12 may [emphasis added] vary according to the level of specialization of the individual. It *may* [emphasis added] include
    - securities research and analysis experience, demonstrating an ability in, and understanding of, portfolio analysis or portfolio security selection, or
    - management of investment portfolios on a discretionary basis, including investment decision making, rebalancing and evaluating performance
- "This section sets out specific examples of experience that *may* [emphasis added] satisfy the relevant investment management experience requirement for advising representatives."
- "We may [emphasis added] consider experience performing discretionary portfolio management in a professional capacity to be sufficient to meet the relevant investment management experience requirement for registration as an advising representative. Such experience may [emphasis added] include working at:
    - an adviser registered or operating under an exemption from registration in a foreign jurisdiction
    - an insurance company

- a pension fund
    - a government, corporate, bank or trust company treasury
    - an IIROC member firm."
- "We *may* [emphasis added] consider experience supporting registered portfolio managers or other professional discretionary asset managers to be sufficient to meet the relevant investment management experience requirement for registration as an advising representative. Such experience may [emphasis added] include..."
- "We *may* [emphasis added] consider experience performing research and analysis of individual securities with recommendations for the purpose of determining their suitability for inclusion in investment portfolios to be sufficient to meet the relevant investment management experience requirement for registration as an advising representative

With respect to the fourth bullet point - if an individual has indeed been performing "discretionary portfolio management activities", under what circumstances would the "discretionary portfolio management activities" not be sufficient to meet the relevant investment management experience requirements for registration as an advising representative?

Fairness to employers and prospective employees requires that there be more certainty given as to what would be sufficient to be regarded as relevant investment management experience. Accordingly, we request that the word "may" in the cited provisions above be replaced with the word "will".

7. Consultants

We believe that a consultant who provides portfolio manager selection and monitoring services are no different than dealing representatives who help clients select investments for their investment accounts. Consultant clients have varying levels of sophistication and, depending on the services offered by the consultant, we agree that it is appropriate for the CSA to regulate consultant activities and to require registration

That being said, we believe that the proposed amendments to 31-103CP (at page 134) regarding portfolio management selection and monitoring services offered by consultants do not create clarity, and, instead, create more uncertainty. We respectfully request that the CSA provide better guidance to industry participants on this issue.

8. Associate Advising Representative

The Companion Policy currently describes the category of associate advising representative as being "primarily meant to be an apprentice category for individuals who intend to become an advising representative but who do not meet the education or experience requirements for that category when they apply for registration". The Proposed Amendments include proposed amendments (at page 135) to the Companion Policy that would remove these words and would also add to the Companion Policy: "Experience gained as an associate advising representative does not automatically qualify an individual to be registered as an advising representative" (page 132).

We do not believe that these changes are appropriate, and would request that these proposed amendments not be made.

If the CSA were to go ahead with these changes, and this registration category is to no longer be considered a period of apprenticeship that ultimately leads to registration in the advising representative category, what would be the point of requiring an associate advising

representative to register? Under section 4.2 of NI 31-103, advice provided by an associate advising representative must always be preapproved by an advising representative. Without the apprenticeship component, what purpose would this registration category serve? Why would a registration category (with associated fees) be necessary?

These types of changes affect people's career paths and employability, and we do not think the proposed change is necessary or appropriate.

9. Consideration by the CSA of Proficiencies

We support and are encouraged by the CSA's intent to expand existing proficiency requirements and recognize additional examinations and other proficiency requirements as alternatives. However, coupled with our comments above regarding the use of the word "may", saying that the CSA will assess alternative experiences and proficiencies on a "case-by-case basis does little to resolve ambiguities and provide greater clarity on what the CSA will consider acceptable alternatives to current proficiencies. Through our own experience of applying for registration of some of our own individual registrants, we are aware that the CSA has and will make exceptions to the current proficiency requirements. We can only assume that there is an existing list of alternate education, which is used when granting these exceptions, that the CSA considers relevant and sufficient enough to replace current proficiency requirements. We suggest that rather than say that other proficiencies will be assessed on a "case-by-case basis", the CSA formalize this criteria as acceptable proficiency alternatives. This level of transparency by the CSA clarifies what other examinations it considers to be relevant and sufficient, thereby furthering one of the overarching goals of the amendments of resolving uncertainty. We note that formalizing the list of alternate courses would not preclude CSA members from continuing to grant relief on a case-by-case basis.

The CSA might also consider creating various consultation groups for each category of registration. In addition to including CSA members and investor advocates in each such group, the remaining member of such group should consist of representatives of firms registered in the particular category. (We note that fund managers may be reluctant to comment on proficiency requirements for dealers, since that is not their area of expertise and dealers may be reluctant to comment on proficiency requirements for fund managers, since that is not their area of expertise.) The CSA might want to consider expanding upon the concept of proficiency requirements for specific activities within a registration category. In the category of adviser, this is the case today. All advisers can provide advice on equity investments, for example, but special proficiency requirements apply for those dealing with derivatives. In taking this approach, the CSA would be able to better focus on what proficiency is the best proxy for determining qualification to engage in a particular registerable activity.

10. Outside Business Activities

The Proposed Amendments include proposals to incorporate into the Companion Policy some of the guidance currently contained in CSA Staff Notice 31-326 *Outside Business Activities*. While we acknowledge the appropriateness of an individual disclosing outside business activities so that the regulator can assess the individual's application for registration or continuing fitness for registration, we believe that the Proposed Amendments to 31-103CP (and CSA Staff Notice 31-326) go too far. They impose responsibility on a registered firm for monitoring and supervising the individual's outside business activities, and provides that failure to discharge this obligation may be relevant to the firm's continued fitness for registration.

In our view, many of the items cited in the Proposed Amendments are overly vague, broad or unreasonable. Under NI 31-103, a registered firm is clearly required to have policies and procedures relating to outside business activities. In our case, and we suspect in the case of most registered firms, there is an internal approval process for engaging in outside business activities. The process begins with the individual's supervisor and the supervisor considers whether the activity will impair the ability of the registered individual to meet their job requirements, including client service (where applicable), continuing education and keeping up to date on product knowledge. From a business perspective, individuals who are unable to meet these requirements simply do not remain employed. A regulatory policy addressing such is not required. If the supervisor determines that the individual will be able to meet the foregoing responsibilities, the next step is to determine whether or not the proposed activity could constitute a real or perceived conflict of interest with the firm, both from a regulatory perspective and a reputational perspective. If the result of either of these two inquiries is negative, the activity is not approved and the individual is not permitted to engage in the activity. In our view, this policy, which is strictly enforced, provides good protection for the firm, its clients and the registered individual. As a registered firm, we would expect that our outside business activities policy would be reviewed by our regulator from time to time for both content and efficacy. If the regulator is not satisfied with the content, we would expect the regulator to so state and require changes thereto, whether as a condition of the firm's registration or otherwise. Similarly, we would expect a regulatory response if our regulator is not satisfied with the efficacy of the policy. We note that most of the items listed in the Proposed Amendments are covered by our Policy, but the manner in which the Companion Policy has been written raises a serious level of uncertainty and will have the effect of vastly reducing the amount of outside business activities engaged in by individuals. We note that most outside business activities relate to involvement in the local community of the registered individual and are done in a not-for-profit capacity. The CSA must consider the effect on communities of reducing this participation.

In terms of the specific points raised by the Proposed Amendments relating to disclosures, we are concerned with the requirement to disclose "paid or unpaid roles with charitable, social or religious organizations where the individual is in a position of power or influence and where the activity places the registered individual in contact with clients or potential clients, including positions where the registrant handles investments or monies of the organization": Absent an understanding of an organization's structure, it is not always ascertainable whether an individual is in a position of power or influence and, as such, a chief compliance officer ("CCO") might find it difficult to ensure the disclosure is correct. To the extent this is a concern of the CSA, we recommend that an attestation from the organization's president or board of directors be sufficient to determine whether the registered individual is in a position of power or influence over the organization. If the CSA agrees, then this should be written into the Companion Policy. We note that the construction of this requirement is that the disclosure of power/influence is required only when the individual is in contact, through the activity, with clients or potential clients. While it may be simple to determine who is a client and thus, whether or not disclosure is required, from a sales perspective, anyone who is not currently a client is a potential client. It seems unlikely that this is the interpretation intended by the CSA and, therefore, we request that the CSA clarify who is a "potential client".

In terms of the specific points raised by the Proposed Amendments relating to what the regulator will take into account in assessing an individual's application for registration or continuing fitness for registration, we are concerned with the following items the regulator would consider:

- "whether the individual will have sufficient time to properly carry out their registerable activities, including remaining current on securities law and product knowledge": This is a difficult determination for a regulator to make without having an in-depth understanding of the registered fiirm's business and the role of the registered individual within it. Furthermore, it is inappropriate for the regulator to make such determination as this is the proper role of management of the registered firm. The registered firm must meet its regulatory obligation, part of which is ensuring that registered individuals devote sufficient time to their roles and responsibilities, including continuing education. Ultimately, if the registered firm is wrong about the individual, one would expect that regulatory scrutiny and or sanctions would befall the firm and few firms would be willing to take such risk.

- "whether the individual will be able to properly service clients": Consideration of this matter is simply beyond the scope of a regulator's competence. Regulators are not required to run businesses and make the everyday decisions that come with that. By including this in the Companion Policy, the CSA effectively mandates its members to second guess very basic management decisions by firms they have already been deemed competent to do so (otherwise, the firm's registration would not have been granted).

- "whether the outside business activity places the individual in a position of power or influence over clients or potential clients, in particular clients or potential clients that may be vulnerable": As discussed in the previous paragraph, the phrase "potential client" is extremely vague. Clarity is required as to what the CSA intends to capture with this phrase.

- "ensuring the firm's chief compliance officer is able to properly supervise and monitor the outside business activities": It is not clear how a CCO is supposed to supervise and monitor such an activity as such is beyond the typical authority and practicality of a CCO role. For example, if the activity is participation on the board of a charity, is the CCO expected to attend board meetings of the charity? What if the charity is opposed to that? Is the individual required to file a report with the CCO after each engagement of the outside activity? Further, having a CCO have this type of supervisory authority over non-compliance personnel would then put the CCO in a conflict of interest position and severely weaken the effectiveness of that role. This consideration must be clarified.

- "ensuring outside business activities do not impair the ability to provide adequate client service, including, where necessary, having an alternate representative available for the client": it is unclear how this differs from the 1st two bullet points in this list and it would be helpful if the CSA could clarify its expectations regarding this consideration. It seems to us that if the first part of this phrase is not met, in the context of our own policy as set out above, the activity would not be permitted. Furthermore, it is inconceivable to us that any registered firm would not have an alternate available for any registered individual who could not fulfill his or her duties, which could include meeting with clients.

- "assessing whether the individual's lifestyle is commensurate with the firm's knowledge of the individual's business activities and stay alert to other indicators of possible fraudulent activity": We understand the CSA's purpose for enumerating this as a consideration – for example, if an employee who earns $25,000 a year is living in a $2 million home that would certainly raise red flags – but we read this as placing

a positive obligation on the registrant to monitor their registered individual's lifestyles, as opposed to an obligation to raise the issue with the regulator upon discovery. That is, we read this as requiring the registrant to engage someone to surveil registered individuals who are engaged in outside business activities (and even those who are not) to ensure that their lifestyle appears to be consistent with the compensation received by the individual from the registrant. This is a patently unreasonable requirement and would likely put an end to all outside business activities. As noted above, such a ban would have societal implications at the local community level and we do not believe that is consistent with any public policy pronouncement by any provincial government in Canada. If this is not the CSA's expectation, then this must be stated clearly in the Companion Policy. If such is the case, it seems to us there are two possible interpretations: (a) that the registered firm must bring lifestyle anomalies to the attention of the regulator if those anomalies come to the attention of the registered firm; and/or (b) that the regulator will engage its own investigators to assist it with this assessment. If either of those interpretations is correct, then the CSA should state as such in the Companion Policy to ensure there is no "chill" on community involvement and, especially in the case of (b), to put potential wrongdoers on notice so they can avoid the behavior entirely (which ultimately ought to be the goal of good regulation).

11. Automatic Reinstatement under NI 33-109

Where a registered individual changes sponsoring firms, automatic reinstatement of that individual's registration is permitted under clause 2.3(2)(a) of NI 33-109 only if the new sponsoring firm submits the Form 33-109F7 on or before the 90th day after the date the individual ceased to have authority to act on behalf of the previously sponsoring firm. We ask that the CSA extend the current 90 day period. We believe it would be more appropriate to have a minimum period of 180 days, and that there should be a sliding scale, with the maximum period being one year for individuals who were registered for 10 or more years.

The current period of 90 days is not workable in most instances. It is our experience that many investment professionals have contractual restrictions that require them to allow a period of time to elapse after the end of their employment with their previous sponsoring firm before they are permitted to join their new sponsoring firm (this period is sometimes colloquially known as "gardening leave" or "garden leave"). These garden leaves are typically a minimum of 3 months, and preclude the use of the automatic reinstatement process under NI 33-109. Even where there is no garden leave period or the garden leave period is less than 90 days, many individuals wish to take some personal time before taking on a new position with a new sponsoring firm.

The existence of the automatic reinstatement process recognizes that under certain circumstances, the resources (time and money) required for a new application for registration are not justified by the minimal benefits that arise if a person was recently a registrant. An extension of the current 90 day period to a minimum of 180 days would recognize the fact that the effort involved in completing a new application for registration merely because more than 90 days have elapsed is not justified by any additional benefit to investors.

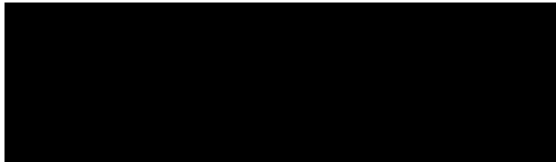
We are suggesting a maximum period of up to a year for individuals who were registered for 10 years or more because a person with that much experience would not suffer a diminishment of their skills and knowledge, even with a year off.

Conclusion

Thank you for providing us with the opportunity to comment on this important initiative. We would be pleased to discuss our comments further should you so desire.

Yours very truly,

Invesco Canada Ltd.



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