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September 27, 2010

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

Care of:

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

And

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 Sir or Madam,

**Re: CSA Notice and Request for Comments – National Instrument 31-103  
Registration Requirements and Exemptions, National Instrument 33-109  
Registration Information and Related Policies and Forms**

We are writing in response to the Canadian Securities Administrators' (CSA's) Request for Comment concerning Proposed Amendments to National Instrument 31-103, National Instrument 33-109 and Ontario Securities Commission Rule 33-506. Our

comments address concerns regarding the requirements in NI 31-103 relating to referral arrangements, and the potential impact of those requirements on dually-licensed individuals who enter into commission-splitting arrangements with other insurance licensees.

## **Who we are**

Advocis is the largest and oldest voluntary professional membership association of financial advisors in Canada. Our members are owners and operators of small businesses and financial advisors and financial planners who are sales representatives of medium and large-size financial services companies, who provide comprehensive financial planning and investment advice, retirement and estate planning, and employee benefit plans. Our members offer clients a prudent long-term perspective on managing a wide array of financial risks and meeting their long-term financial goals. Our members are typically dually-licensed to provide life and health insurance as well as mutual funds and securities.

Advocis strongly supports consumer protection including regulatory initiatives that benefit investors by helping them make more informed decisions, and that allow financial advisors to continue to conduct their businesses in a professional and efficient manner without undue regulatory burdens.

## **Referral arrangements**

NI 31-103 includes provisions that apply to referral arrangements that Approved Persons enter into, outside the Member they are associated with.

Many Approved Persons of Mutual Fund Dealers Association of Canada (MFDA) dealer members are also licensed insurance agents. Many of these dually-licensed individuals are members of Advocis. As insurance agents, these individuals operate as independent businesspersons, outside the relationship with their mutual fund dealer.

We are concerned that the provisions in NI 31-103 relating to referral arrangements and the rules made by self-regulatory organizations ( the SROs, e.g., IIROC, MFDA) in order to conform to NI 31-103 could result in inappropriate encroachment on business arrangements of Approved Persons outside their dealer, that do not involve referral arrangements.

A prime example of potential encroachment concerns situations where a commission on sale of insurance is shared between an Approved Person who is licensed as an insurance agent, and another insurance agent (“commission splitting”). We believe there is a risk that MFDA or member dealers could lead them to incorrectly identify instances of commission splitting as payments of referral fees, and to interpret their obligations under the referral arrangements rules as requiring that all commission-splitting arrangements between Approved Persons and other insurance registrants be treated as referral arrangements.

We also are concerned that the requirement to enter into a referral *agreement* that includes the dealer, the dually-licensed Approved Person and the party that is paying a referral fee, could result in dealers appropriating a share of the Approved Person's insurance commission income.

Another concern that arises from the referral arrangements rules is that some dealers may interpret the rules that require referral fees to be recorded on the records of a registered firm or MFDA member firm (as the case may be), as requiring that the referral fees actually be paid through the firm.

Some firms might seek to rely on NI 31-103 of MFDA Rule 2.4.2 as a basis (or a pretext) for requiring that insurance commissions that are payable to a dually-licensed dealer representative or Approved Person, be paid through an insurance registrant that is affiliated with the dealer. (An insurance commission could not be paid to an entity that is not itself an insurance registrant.) This would result in some portion of the commission that the Approved Person would otherwise be entitled to, being diverted to the dealer-affiliated insurance registrant.

We note that s. 13.8 of NI 31-103 and MFDA Rule 2.4.2 require that referral fees be *recorded* by the registered firm or MFDA member firm (as the case may be). These provisions do not expressly require that such fees actually be paid through the firm.

We submit that s. 13.8 of NI 31-103 and MFDA Rule 2.4.2 do not apply to require insurance commissions for a duly licensed person to be paid through the member firm or through an entity that is affiliated with the member firm, even if the commissions are referral fees that must be recorded on the dealer's books and records.

We believe the CSA and the SROs that it oversees should be concerned about the potential impact of regulation on dealer representatives such as Approved Persons. It would not be consistent with the CSA and the MFDA's mandate to regulate in the public interest, to make referral arrangements rules that seriously impede the legitimate business arrangements of dually-licensed Approved Persons.

We believe it would be helpful if CSA were to provide harmonized guidance, and also were to encourage the SROs to issue guidance, so that the referral arrangements rules do not lead to inappropriate interference by mutual fund dealers with the insurance activities of their Approved Persons, and do not result in dealers effectively appropriating a share of the Approved Person's commission income.

We accordingly would ask the CSA to issue guidance, and to encourage the MFDA to issue guidance, to clarify:

1. that the purpose of the referral arrangements rules is to promote transparency regarding referral arrangements, and it is not intended that the referral arrangements rules should require Approved Persons who also are licensed as

insurance agents to alter their insurance-related business arrangements and relationships;

2. that where a dually-licensed Approved Person receives a commission split from another insurance licensee, it should only be considered to be a referral fee for the purposes of the referral arrangements rules, if there is evidence that it was compensation for a referral;
3. that the requirements in s. 13.8 of NI 31-103 and in MFDA Rule 2.4.2, for referral fees to be *recorded* on the records of a registered firm or MFDA member firm (as the case may be), do not require that the referral fees actually be paid through the firm; and
4. that the purpose of referral agreements pursuant to s. 13.8 of NI 31-103 and in MFDA Rule 2.4.2 is to document the referral arrangement, and such agreements should not be used for the purpose of altering the referral arrangement or securing pecuniary benefits for the dealer.

We would be pleased to meet with you to further discuss our issues and concerns.

Sincerely,



Greg Pollock  
President and CEO



Terry Zavitz  
Chair, National Board of Directors

cc: Mr. Jason Bennett, Corporate Secretary and Director, Regional Councils, Mutual Fund Dealers Association of Canada