

September 30, 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

John Stevenson, Secretary  
Ontario Securities Commission  
20 Queen Street West, Suite 1903, Box 55  
Toronto, Ontario M5H 3S8  
Fax: 416-593-2318  
Email: [jstevenson@osc.gov.on.ca](mailto:jstevenson@osc.gov.on.ca)

and

M<sup>e</sup> Anne-Marie Beaudoin  
Corporate Secretary  
Autorité des marchés financiers  
800, square Victoria, 22<sup>e</sup> étage  
C.P. 246, tour de la Bourse  
Montréal, Québec H4Z 1G3  
Fax: 514-864-6381  
E-mail: [consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)

**Re: Proposed Amendments to National Instrument 31-103 *Registration Requirements and Exemptions*, National Instrument 33-109 *Registration Information and Related Forms and Policies***

Dear Sirs and Mesdames:

The Canadian Bankers Association (“**CBA**”) works on behalf of 51 domestic chartered banks, foreign bank subsidiaries and foreign bank branches operating in Canada and their 263,400 employees to advocate for efficient and effective public policies governing banks and to promote an understanding of the banking industry and its importance to Canadians and the Canadian economy.

The CBA appreciates the opportunity to provide the Canadian Securities Administrators (“**CSA**”) with our comments on the CSA’s proposed amendments to National Instrument 31-103 *Registration Requirements and Exemptions* (“**NI 31-103**”), National Instrument 33-109 *Registration Information* and related policies and forms that were published for comment on June 25, 2010 (the “**Proposed Amendments**”).

In addition to general comments set out below, our members have provided comments on some concerns they have with respect to the Proposed Amendments, as well as their views on certain of the specific requests for comments outlined by the CSA.

### **General Comments**

Our members generally support the CSA’s effort to enhance investor protection and improve day-to-day operation of NI 31-103 for both industry and the regulators. That being said, our members are concerned about certain of the proposed changes, some of which are discussed below. In particular, our members have serious concerns about the proposed introduction of a “fair value” approach for valuation of illiquid securities and the possibility that client name securities may be required to be included in client account statements in the future.

### **Members’ Concerns**

#### Proposed Introduction of “Fair Value” Approach for Valuation of Illiquid Securities

As a result of the proposed replacement of the term “market value” with the term “fair value” in NI 31-103 and NI 33-109, when a person or company is required to determine the “fair value” in NI 31-103 or NI 33-109, as the case may be, the fair value would have to be determined in accordance with the international financial reporting standards (“**IFRS**”). Our members understand that the assignment of no value to a security position would also be allowed in limited circumstances, but it is not clear from the CSA’s proposal what these limited circumstances are at this time. Our members further understand that the expectation is that a registrant would need to attempt to value positions by each of the possible IFRS valuation approaches, and conclude that a value could not be determined, before the assignment of no value could be considered.

Our members have serious concerns about the proposed introduction of IFRS “fair value” approach for valuation of illiquid securities on client statements. It is our members’ view that IFRS valuation rules were designed for entity financial statements, not retail client account statements. Since retail clients are less interested in the “intrinsic” value of a security, and more in the “realizable” value of a security, if a security is not readily marketable, retail clients will likely not be interested in what a valuator believes that their security is worth.

The CSA proposes that additional disclosure should be provided regarding the valuation methodology, including an explanation that “fair value” is not “market value” and that it is not necessarily representative of the “realizable value” of a security. Our members are concerned that this may be too confusing for clients and may even have a misleading effect as clients may develop a false sense of value of a security, which would become obvious when they try to sell it.

This proposed amendment would also place a significant burden on the dealer community, given that the number of member inventory and client account holdings for which a reliable price is currently unavailable is possibly material.

Our members submit that where an active market or reliable sources for pricing do not exist (such as in the case of redeemable investment funds), assignment of a zero-value to securities should be allowed where such assignment is reasonable and appropriate, without the requirement to first exhaust all possible IFRS valuation methods.

Should the CSA decide to proceed with the proposed amendment, our members recommend a minimum two-year transition period.

#### Contemplated Inclusion of Client Name Securities in Account Statements

The CSA is considering amending section 14.1 4 of NI 31-103 to provide that account statements need to include client name securities in addition to securities held or controlled by a firm. The CSA notes that including client name securities in account statements would place a burden on registered firms to collect and send information about securities that they do not hold or control. For the reasons set out below, our members believe that the anticipated cost to the industry with requiring client name securities to be included in account statements and operational difficulties in this regard far outweigh the potential benefit to investors.

Imposing an obligation on firms to report on something they may not be aware of and/or have control over would not only be too burdensome for the industry, but it would also likely result in increased client dissatisfaction. Given the operational challenges of collecting information on client name securities, the only way to obtain this information would often be to request it from investors. A great majority of our members' clients are already frustrated with the annual reporting obligation on their holdings. Requiring them to report on a quarterly basis, so that firms can report back to them, would likely result in even higher levels of client dissatisfaction. Also, it cannot be ruled out that this new reporting obligation would result in a significant number of recalcitrant holders, which would in turn prevent firms from complying with this new requirement in the first place.

As firms may not be aware what client name securities investors hold, it is difficult to say with certainty whether including such securities would ensure that account statements would provide investors with a significantly more complete picture of their portfolios. That being said, our members' view is that such holdings generally do not form a significant portion of their clients' holdings and, as such, would not result in a significant benefit to investors. Even so, the proposed introduction of the IFRS "fair value" approach for valuation of illiquid securities would likely add a significant layer of complexity in this regard.

Our members agree that including client name securities in account statements would be difficult and costly. As suggested above, firms would often have to go back to clients on a quarterly basis, which would, as discussed, likely result in increased client dissatisfaction. Other than entering into an arrangement with the issuer to collect information on what client name securities a client owns, for securities held through intermediaries, firms would presumably be able to obtain the required information from intermediaries, but this would be subject to the client's authorization of intermediaries to release it. Except with respect to mutual fund holdings, for which it would be possible to obtain regular updates on client holdings, our members do not think that registered firms would otherwise have the required information to update client name securities holdings. Our members would welcome the CSA's suggestions and recommendations on ways to deal with these operational challenges.

Importantly, our members point out that requiring registrant firms to include client name securities in account statements would also complicate the client relationship. Normally, a client relationship with a registered firm starts and ends with the opening and closing of an investment account. This contemplated change would appear to have the unintended consequence of requiring a firm to

report on client name securities to investors after their account with the firm has been closed, which might suggest that they may still be considered to be the firm's client.

The CSA notes that mutual fund dealers and scholarship plan dealers typically provide statements to clients that include all securities sold to them, regardless of how the securities are held, and that this is also the common practice for portfolio managers. For mutual funds held in client name, the fund manager sends client statements directly to the client, whether the selling dealer is a mutual fund dealer or an investment dealer. However, similar arrangements are not available from the issuers of securities other than mutual funds.

Given the imbalance of a burden that the new requirement would place on the industry on the one hand, and its likely benefits to investors on the other hand, our members believe that registered firms should not be required to include client name securities in account statements. Should this become a requirement in the future, our members submit that the regulators should ensure that such new requirement would only apply to securities for which registered firms are paid and for which they acted in a purchase or sale transaction, and that there should be a minimum three-year transition period to allow firms sufficient time to deal with operational challenges they would face.

#### Conflicts of Interest

The CSA is proposing deleting the word "registered" before the word "adviser" in section 13.5 of NI 31-103 in order for this section to apply to all advisers, including registered dealers that are members of the Investment Industry Regulatory Organization of Canada ("**IIROC**") and that conduct advising activities. The CSA notes that IIROC advisers are not necessarily registered in the adviser category, but the CSA is of the view that they should be held to the same standards and restrictions on managed account transactions. As a result of the proposed change, section 13.5 of NI 31-103 would apply to both registered advisers and IIROC advisers. Our members are very concerned about this proposed change for the reasons set out below.

IIROC Rule 1300.19 has similar prohibitions, except that the IIROC rule allows the dealer to make the types of trade referred to in 13.5(2)(b) of NI 31-103, provided that the client consents to it. It is arguable that this proposed change will have the unintended effect of prohibiting fixed income trades in accounts that are managed with discretion by an IIROC dealer.

The definition of a "responsible person" in section 13.5(1) of NI 31-103 presumably will include the dealer itself (although this is not clear from the definition section of 13.5 since a dealer is not an "adviser"). Most fixed income securities that are sold to retail clients in Canada come from the inventory account of their dealer. If the dealer's proprietary inventory account is considered to be an "investment portfolio" for the purposes of section 13.5(2)(b) of NI 31-103, then the amended section 13.5 of NI 31-103 will prohibit a dealer from selling fixed income securities from its inventory account to its discretionary managed account clients. The dealer would be limited to exchange-traded fixed income securities only, which is a relatively small portion of the universe of fixed income products.

As a result, our members submit that this proposed amendment goes beyond holding a dealer to the same standard as a registered adviser, and limits the types of investments that a discretionary dealer may invest in for a managed account client.

Also, our members wish to point out that a dealer still has a "best execution" obligation to its clients, so prohibiting this kind of trade where the client consents to such trade (under the IIROC rules) and the client is receiving "best execution" for the fixed income security from the dealer, is in our members' view unnecessary. Given that no rationale is given for the proposed amendment other than to "level the playing field" with registered advisers, and, in particular, that no evidence of dealers abusing these types of trades has been provided, our members submit that the proposed amendment is unnecessarily harmful to IIROC dealers.

### Proficiency

The CSA proposes to add in section 3.4 of NI 31-103 a requirement that the registered representative understand the structure, features and risks of each security the individual recommends to the client. The CSA notes that this proposed change reflects the CSA's view that in depth knowledge of all securities a registrant recommends is a fundamental component of the proficiency requirement.

Our members are of the view that the proposed requirement that a registered representative understand the structure, features and risks of securities a registrant recommends to a client is more appropriately characterized as a suitability requirement, and that it appears to be already incorporated as such in section 13.3 of NI 31-103. Our members believe that product knowledge is more nuanced and not conducive to an objective assessment which is normally associated with a proficiency requirement. Our members have also voiced the concern that the proposed requirement is currently drafted too broadly and that it would appear to apply to all registered representatives, and not only those who recommend securities to clients. Our members also point out that this proposed change may have the unintended effect of requiring registrants that are otherwise exempt from the suitability obligations in section 13.3 of NI 31-103 to nevertheless comply with the new section 3.4 of NI 31-103.

### Dispute Resolution

The CSA is proposing an amendment to section 13.16 of NI 31-103 which would change the obligation of the registered firm to ensure independent resolution or mediation services with respect to complaints relating to (i) a breach of client confidentiality, (ii) theft, fraud, misappropriation or forgery, (iii) misrepresentation, (iv) an undisclosed or prohibited conflict of interest and (v) personal financial dealings with a client, in addition to a trading or advising activity, which is currently covered by section 13.16 of NI 31-103.

Our members are concerned about the addition of a number of matters for which independent resolution or mediation services are required as they may be seen to apply to regulatory matters which are handled by IIROC. Given this possible overlap and the fact that it may not be easily determinable which of the additional categories the conduct in question relates to, this proposed change would, in our members' view, create unnecessary duplication and confusion.

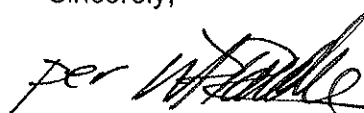
### Account Statements

The CSA proposes to require, by adding subsection 14.14(3.1) to NI 31-103, that the investment fund manager send an account statement to the securityholder at least once every twelve months if there is no dealer of record for the securityholder on the records of the investment fund manager.

It is not clear to our members what this proposed change is designed to capture. If there is no dealer of record for the securityholder on the records of the investment manager, and if such securities are held through an intermediary, then the intermediary should presumably be required to report.

We appreciate the opportunity to express our views regarding the Proposed Amendments. We would be pleased to answer any questions that you may have about our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "per [unclear]".