

# NORTHWEST

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By E-mail

**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  
Registrar of Securities, Yukon Territory  
Registrar of Securities, Nunavut**

Dear Sirs:

**RE: Proposed National Instrument 31-103 *Registration Requirements* (“NI 31-103”)**

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I am writing in respect of your request for comments on NI 31-103. My comments on the proposed amendments are limited to those provisions which affect Mortgage Investment Companies (“MICs”) and are as follows:

### **Nature of a MIC**

The Commissions have stated that the ‘general nature of an Investment Fund is that the money invested in it is professionally managed on the basis of a stated investment policy, usually expressed in terms of investment objectives and strategies, and is invested in a portfolio of securities. The fund has the discretion to buy and sell investments within the constraints of its investment policy. Investment decisions are made by a manager or portfolio adviser acting on behalf of the fund. An Investment Fund provides a means whereby investors can have their money professionally managed rather than making their own decisions about investing in individual securities.’

Unlike most Investment Funds, which deal in a myriad of securities ranging from common shares to complex derivatives, MICs deal in only two securities. Firstly, they acquire mortgages on land as security for the loans which they make. And secondly, they sell their shares to raise the necessary funds by which to make such loans.

To deal in mortgages does not require any training in respect of securities. Instead, it requires extensive training in respect of mortgages. In British Columbia, a MIC must be registered with the Financial Institutions Commission of BC ("FICOM") and be operated by a Mortgage Broker who also has been registered with FICOM. To become registered as a Mortgage Broker requires taking prescribed courses and successfully passing comprehensive examinations.

In my experience, the securities which are sold by MICs consist of common shares and very simple preferred shares that simply provide for the payment of dividends when declared by the Board of Directors of the MIC and permit redemption by the holder, subject to redemption not affecting the MIC's solvency.

Requiring the manager of a MIC to take the Canadian Securities Course, the vast majority of which is completely unrelated to the business carried on by a MIC, is an unnecessary and unreasonable cost to impose. The MIC's manager will not acquire any expertise necessary for the successful operation of a MIC from the Canadian Securities Course. That expertise is provided from their training as a mortgage broker.

Requiring the MIC to have a Chief Compliance Officer with five years of securities industry experience is similarly unnecessary and unreasonable. The manager of the MIC must currently be a registered Mortgage Broker, a profession that, unlike that of a registered securities dealer or advisor, is directly related to a MIC's business.

In light of the foregoing, MICs should be exempted from the Investment Fund and Exempt Market Dealer categories. The businesses carried on by MICs are already subject to significant scrutiny and well regulated. Imposing additional registration requirements will not provide any greater protection to the investing public than that which currently exists.

### **Financial Institution Bonds**

Under proposed NI 31-103, a MIC would be required to obtain a Financial Institution Bond. Since a MIC's loan portfolio is secured by mortgages on real property and each loan is only advanced to a reasonable percentage of the value of the property, there is less risk of the security becoming worthless as might be the case for other Investment Funds. Accordingly, there is little, if any, protection afforded to the MIC's investors from requiring a bond over and above the value of the real property security.

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**Is a MIC an Exempt Market Dealer or an Investment Fund?**

While it is my view that MICs are Investment Funds and do not meet the 'business trigger' test to qualify as an Exempt Market Dealer, statements were made by representatives of the OSC and ASC at a recent seminar regarding NI 31-103 which lead me to believe that even the Commissions may be unclear whether MICs are Investment Funds or Exempt Market Dealers. If MICs are Investment Funds, the amount of working capital required will be twice that required if they are considered to be Exempt Market Dealers.

If the Commissions proceed to require MICs to become registered, clarification and guidance of this issue should be provided.

Yours truly,

(signed) Michael F. Provenzano

MFP

Enclosure

cc: VWR Mortgage Corp.  
Attn: Dougal Shewan