

June 21, 2007

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Dear Sir/Madam :

**Re: Proposed National Instrument 31-103 & Companion Policy 31-103CP  
Registration Requirements**

The Manitoba Securities Commission sponsored a series of consultation meetings with Manitoba industry participants to discuss the proposed registration rule. Four separate meetings were held with the following groups:

- Investment Dealers
- Mutual Fund Dealers
- Investment Counsel & Portfolio Managers
- Securities Law Subsection of Manitoba Bar Association (discussion of the exempt market)

Each group was provided with the portion of the rule that applied to their category of registration prior to the meeting to enable the participants to actively participate in the discussions. A copy of the CSA presentation and published materials were also provided to each participant. The role of Manitoba Commission staff at each meeting was to facilitate discussion by directing the participants to each topic in the rule and inviting questions, comments and discussion.

*This letter summarizes the comments made by the participants at the consultation meetings.*

There was overall positive support for the rule. Each group expressed the view there would be positive benefits by harmonizing the registration requirements across the country. Another comment that was consistently expressed by each group was the need to ensure the requirements do not create multiple layers of regulation. New requirements should not be imposed in situations where regulatory safeguards already exist.

While the meetings generated discussion about many registration matters, the following is a summary of the comments made by participants at the meetings. The comments and headings have been organized to follow the format of the draft rule. The end of each comment identifies the specific group that made the comment.

#### Fit & Proper

1. There needs to be specific courses developed to provide training for carrying out the compliance function (*investment dealers*)
2. Insurance costs associated with the new requirements are not clear. It is not clear whether insurance carriers will provide coverage for the risks in the rule, as well as the costs associated with obtaining coverage. There was concern expressed excessive insurance requirements will be a barrier to entry for small and new businesses (*mutual fund dealers & ICPM*).
3. Regulators need to exercise flexibility in determining what experience will be acceptable to become registered as a Chief Compliance Officer (*mutual fund dealers*). As an example industry experience should be given greater consideration. A candidate with a degree may still not have the required skills to carry out the compliance function.
4. Regulators need to show flexibility in interpreting what will qualify as 12 months experience when reviewing an individual application for registration (*ICPM*).
5. A Chief Compliance Officer is limited to an individual qualified as a Chartered Accountant. Certified General Accountants and Certified Management Accountants should also be included as qualifications as each of these professions has training and oversight that would satisfy the requirements to carry out a compliance function (*ICPM*). We also note CGA has submitted a comment letter with this request to CSA.

#### Conduct

6. The rule places emphasis on know your client obligations without setting standards requiring a registrant to know the product being sold (*investment dealers*).
7. There should be some flexibility built into the rule to permit a client to opt out of at least some of the account reporting requirements (*investment dealers*).
8. Consideration should be given to consolidate and simplify relationship disclosure documents provided to a client. The forms are increasingly complex and concern was raised that the proposed requirements will result in dealers being required to use complex documentation to comply with all potential liabilities established by the rule (*mutual fund dealers*).
9. There was support for permitting commissions to be paid to a corporation incorporated and controlled by a salesperson (*mutual fund dealers*).
10. The requirement to have audited financial statements completed and filed within 90 days of year end is problematic for many smaller firms and should be extended (*ICPM*).
11. The requirement for complaint resolution services will require additional resources to address complaints that have no merit (*investment dealers*). Concern was also expressed that this requirement does not fit well with the

business conducted by an advisor, especially when the business of an advisor is limited to providing advice to institutional clients or regulated entities such as mutual funds (*ICPM*).

12. The rule should better delineate between firms that conduct a retail business with the public and those firms that conduct business with sophisticated or institutional clients. Many of the client and conduct requirements do not fit well with a non-retail business. There is also a risk of duplication of regulatory requirements in areas such as conflicts where other regulations apply. An example raised was an advisor that provides advice to a mutual fund. The conflict rules proposed in the rule for the advisor would duplicate regulations that govern the operation of mutual funds. The duplication is costly and does not enhance investor protection (*ICPM*).

### Conflicts

13. Dealers are in the best position to identify and resolve conflicts and potential conflicts. A general requirement to identify and respond to conflicts is sufficient for the rule. There is no benefit to including a materiality test in the conflict portion of the rule (*investment dealers, mutual fund dealers, ICPM*).
14. There is a need for some regulators to more efficiently review and determine whether a merger or amalgamation involving a registered firm should be approved. Delays in approving proposed business transactions can be damaging to the parties involved (*mutual fund dealers*).
15. The transition period for the new referral requirements should be lengthened. There is no single form of referral arrangement in use and as a result it will take a significant period of time for a registered firm to identify each referral arrangement, review the existing arrangements, take steps to amend the arrangement to comply with the rule and communicate the changes to individual registrants. The transition is even more complex in a larger firm. It was suggested the transition period be extended to no less than 6 months and preferably 12 months (*mutual fund dealers and ICPM*).
16. There needs to be clearer guidance to confirm that the conflict requirements imposed on an advisor do not require the advisor to understand the inner workings and corporate structures of a particular client. In many cases an advisor is retained to provide advice in a specific subject matter. The advisor with a limited role presently has no need to have knowledge of the inner workings, decision making and corporate structure of the client (*ICPM*).

### Information Sharing

17. Information sharing requirement between firms is unworkable. In most cases a dealer will not know that an individual registrant is considering a change of dealer. The existing dealer will also be reluctant to speak with another dealer as they face legal liability to the individual registrant if the comments are too negative; as well as liability to the new dealer if the comments were too positive and fail to disclose a problem with the individual representative (*all groups*).

Participants also noted that the CSA Notice discusses the potential for a defamation action against a dealer. This demonstrates that the proposed requirement goes too far in imposing obligations on the dealer.

### Exemptions

18. There is support for changes to the mobility exemption. However, some dealers report they do not use the exemption because it can be difficult to track how it is being used (*investment dealers, mutual fund dealers, ICPM*).

19. Mutual fund dealers in Manitoba are required to obtain an amendment to registration to trade in specified exempt market products. Mutual fund dealers expressed the view they do not require access to all exempt securities products. Many exempt products are inconsistent with what would be permitted to be sold under the business model used by most mutual fund dealers. If one or more of the CSA jurisdictions choose not to adopt an exempt market category of registration there would still be a benefit to having consistency with respect to what securities can be traded by a mutual fund dealer (*mutual fund dealers*).
20. The registration exemption proposed in section 9.12 of the rule is too wide and poses a risk to the public. It would permit the marketing of products and provision of advice as long as it was not tailored to a specific client. This would permit aggressive promotional activities such as unrestricted newsletters and email campaigns to promote products to the public. The existing registration exemption permitting publications of general circulation provides a realistic balance and should be retained (*ICPM*).

#### Business Trigger

21. There was opposition expressed to the adoption of a business trigger for registration. The existing trade trigger is well established and provides a level of consistency and predictability. Introduction of a business test will introduce a level of complexity for legal counsel providing an opinion to clients with respect to whether a particular securities transaction attracts the registration requirements.

Participants also expressed concern that the published materials fail to point out existing case law where a single trade has been found to be sufficient to constitute being in the business for the purpose of a prosecution for unregistered trading.

The trade trigger combined with an open system of securities regulation (which provides for less restrictive regulation of secondary trading) has had a positive impact in Manitoba capital markets and should be retained (*Securities Law Subsection*).

#### Exempt Market Dealer registration

23. The proposal to create an exempt market dealer category of registration was discussed at a meeting of the Securities Law Subsection of the Manitoba Bar Association, representing lawyers who have worked for both issuers and purchasers in the exempt markets.

There was strong and unified opposition to the proposal to establish this category of registration in Manitoba.

There is extensive use in Manitoba of registration and prospectus exemptions by small and medium size businesses. While most of these offerings are now made under National Instrument 45-106, similar registration and prospectus exemptions contained in the regulations to the Manitoba Act have been in use for several decades.

In most cases securities sold in the exempt market represent transactions that do not involve any ongoing client dealer relationship. The purchaser of a

security offered under an offering memorandum or through the use of an exemption has no expectation of an ongoing dealer client relationship. The “dealer” does not hold any client assets. Imposing client relationship requirements, proficiency and other dealer requirements is inconsistent with the nature of these transactions and the expectation of the parties.

Comment was also made that the addition of a new category of registration was not being proposed because of abuses in the market. There is no evidence to suggest there have been a pattern of abuse of investors trading in the exempt market. In cases where exemptions are being abused, the Commission has enforcement tools to stop the trading and deny market participants the right to use exemptions. The existence of a limited market dealer category of registration elsewhere is not sufficient justification to establish the exempt market dealer category of registration in Manitoba.

There was unified agreement that creation of an exempt market dealer category of registration would have a damaging effect on Manitoba capital markets. The practical effect of the proposal would be that persons involved in this activity would stop their activities and not register, resulting in fewer opportunities for issuers to raise capital, and fewer investment opportunities for persons who do not require the protection of securities legislation.

There was also opposition expressed to amending and reducing the number of registration and prospectus exemptions contained in 45-106. The harmonization and modernization of requirements across jurisdictions has had a positive effect on capital raising. Eliminating the registration exemption will make it more difficult and costly to raise capital. Instead of applying a single rule, a market participant will be required to do two separate analyses to determine whether each of the prospectus and registration requirements will apply to a proposed transaction.

The members of the Securities Law Subsection have requested that each of their names be listed in this submission. These names are attached as an appendix to this letter.

### Conclusion

Each of the groups expressed support for the objectives of harmonizing and streamlining the registration system and the work of the committee in bringing the rule to publication.

Yours truly,

Douglas R. Brown  
Secretary  
The Manitoba Securities Commission

DRB/kd

Appendix

Members of Securities Law Subsection of Manitoba Bar Association who participated in exempt market discussion.

Richmond Bayes  
Aikins, MacAulay & Thorvaldson LLP (Past Chair)

Wesley Burrows  
Fillmore Riley LLP

Nichole Cyr-Hiebert  
Aikins, MacAulay & Thorvaldson LLP

Peter Davey  
Fillmore Riley LLP

Barre Hall  
Thompson, Dorfman, Sweatman LLP

Thomas Kormylo  
Pitblado LLP

Norman Snyder  
Taylor, McCaffrey LLP

Dayna Spiring  
Canadian Wheat Board

W. Douglas Stewart  
Aikins, MacAulay & Thorvaldson LLP

Bruce Thompson  
Thompson, Dorfman, Sweatman LLP

Richard Yaffe  
Aikins, MacAulay & Thorvaldson LLP