



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels
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June 20, 2007

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

c/o John Stevenson
Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8

-and-

c/o Anne-Marie Beaudoin
Directrice du secrétariat
Autorité des marchés financiers
Tour de la Bourse
800, square Victoria
C.P. 246, 22 étage
Montreal, Québec H4Z 1G3

Dear: Sirs/Mesdames:

**Re: National Instrument 31-103 *Registration Requirements*
Public Comment**

The Mutual Fund Dealers Association of Canada (“MFDA”) is the national self-regulatory organization (“SRO”) for mutual fund dealers. We are writing in response to your invitation to provide comments on proposed National Instrument 31-103 *Registration Requirements* (“NI 31-

103”) published by the Canadian Securities Administrators (“CSA”) on February 23, 2007.

As a national SRO, the MFDA fully supports the efforts of the CSA to harmonize, streamline and modernize the registration regime across Canada. We are pleased that this important project has been made a priority by CSA staff and has been the focus of an extensive amount of work to date. We are also pleased to have been invited to participate in the process of developing the proposed national instrument.

MFDA staff is very supportive of the efforts made under the project to reduce the cost and burden of regulation, without compromising investor protection. We also fully support the recognition within the proposed rule for the important role that SROs play in the regulatory regime, the relief available to registrants subject to existing SRO standards of conduct, as well as the concept of SRO proficiency requirements for SRO Members and Approved Persons.

We do, however, have some concerns regarding a potential lack of uniformity in interpretation of the requirements under NI 31-103. In discussions with our Member firms, we are frequently reminded of the challenges that industry participants face whenever regulatory requirements are not applied consistently between the various jurisdictions in which our Members do business. We would suggest that it would be useful to develop a process to facilitate discussion between the regulators beyond the rule drafting stage to address issues of consistency of interpretation going forward. In our experience working with the drafting group on the project, discussions regarding harmonization of approaches have been particularly helpful in the development process and we feel it would be worthwhile to carry this forward.

Below we have provided some additional comments of MFDA staff regarding the proposed NI 31-103.

Registration Hierarchy

MFDA staff supports the concept of a registration hierarchy that would allow mutual fund dealers to sell exempt securities and scholarship plans without requiring additional exempt market dealer (“EMD”) or scholarship plan dealer (“SPD”) registration. Staff’s concern is that the imposition of additional registration requirements for mutual fund dealers wishing to sell these products works against the objective of streamlining the registration process. Further the proposed additional requirements do not make the registration system more effective or efficient and add to the regulatory burden for mutual fund dealer registrants.

We believe that mutual fund dealers that are regulated by the MFDA are subject to substantial regulatory requirements and oversight standards higher than those to be required for EMDs and SPDs. The MFDA presently regulates all securities related business of its Members, regardless of specific securities products being sold. This includes monitoring compliance with basic proficiency requirements, as well as any additional proficiency requirements to sell securities other than mutual funds. The MFDA believes that the current system has worked well and that the registration hierarchy outlined above can be effectively implemented.

Staff has been advised that there may be practical issues arising out of the National Registration

Database system (“NRD”) that may constrain the ability to allow for the registration hierarchy described above. We understand that the intent under the proposed new regime would be to provide mutual fund dealers with relief from many of the duplicative requirements to obtain the other registrations. In that event, staff submits that the relief must be harmonized and consistent across the country and must, in fact, minimize the regulatory burden of mutual fund dealers.

Fund Manager Regulation

The MFDA is supportive of the proposed registration requirements for fund managers in NI 31-103. However, MFDA staff has in the past noted some potential gaps with respect to other aspects of fund manager regulation and is of the view that additional guidance should be included in the Companion Policy with respect to internal control and compliance requirements for fund managers.

MFDA staff are of the view that fund companies are vulnerable to the same investor protection concerns that underlie the SRO oversight models, and should therefore be subject to similar standards. We believe that a close examination of the risks associated with fund management should be conducted and that consideration should be given to alternatives for prudential regulation of the funds, including the creation of an investor protection fund for assets managed by the fund companies.

Exempt Market Dealers

In general, MFDA staff supports the registration of Exempt Market Dealers. However, under NI 31-103, it is proposed that EMDs be able to sell prospectus-qualified mutual funds to accredited investors. MFDA Members currently sell exempt market products and mutual funds to the same segment of the retail market, but are subject to detailed SRO Rules and Policies regarding business conduct and prudential requirements, as noted in the previous section. From an investor protection perspective, MFDA staff is concerned clients of EMDs will not be provided a similar level of protection. In the view of staff, the function that EMDs are designed to perform in the marketplace is to raise capital for the purpose of funding specific projects or enterprises by marketing to a relatively narrow segment of the investor population. This rationale does not apply to the sale of mutual fund products. We believe that the sale of prospectus-based mutual funds should be restricted to registered mutual fund dealers or investment dealers.

Disclosure for Accredited Investors

MFDA Staff notes a number of issues with respect to disclosure requirements for accredited investors, as follows:

- Section 5.6(2)(c) imposes leverage disclosure obligations on registrants but makes an exception for accredited investors;
- Section 5.7(4) regarding disclosure for activities in a financial institution also makes an exception for accredited investors;
- Section 5.8(2) exempts registrants from the requirement to provide a relationship disclosure document to accredited investors.

While staff acknowledge that there may be differences in the extent of disclosure provided to accredited investors, we do not believe it is appropriate from a policy perspective to eliminate the requirement to provide some form of disclosure in the cases noted above.

Phase 2 Issues to Address

As CSA staff will be aware, MFDA Rule 2.4.1 (Payment of Commissions to Non-Registered Entities) has been suspended since March, 2001. We look forward to a final harmonized resolution of the issue of payments to non-registered entities and hope that this issue will be suitably addressed as part of Phase 2 of the Registration Reform Project.

Division 2 of Part 9 (Mobility Exemptions) of proposed NI 31-103 provides for mobility exemptions similar to those contemplated under Multilateral Instrument 11-101 *Principal Regulator System*. MFDA staff believes that the proposed exemptions can be made more useful and effective by eliminating some of the limitations required to qualify for the exemption, such as limitations on the number of eligible clients and account size. While staff supports completely the need for limitations where registrants intend to engage in solicitation of new clients in other jurisdictions, in our view the requirement to track the passive movement of existing clients is burdensome and impractical to monitor and enforce and provides little added investor protection.

The MFDA notes that there are a number of outstanding issues with respect to Part 11 of National Instrument 81-102 *Mutual Funds*. This would include the commingling, segregation and interest provisions relating to trust accounts. We are of the view that the MFDA should be responsible for regulating our Members with respect to these requirements. Further, we point out that IDA firms are exempt from these requirements and MFDA staff believes that the same logic for the exemption of IDA members from the provisions applies to our Membership. We believe that the Registration Reform Project could provide an excellent opportunity to address these issues.

One issue that MFDA staff encounters on a regular basis relates to the lack of uniformity between provinces on the issue of exceptions to the full time employment requirements under the various Securities Acts. The development of a standard list of acceptable (or non-acceptable) forms of other employment would assist in this regard. On a related issue, we believe that registrants would also benefit from clear guidance with respect to principal protected notes determined not to be securities and whether these can be sold outside of the registrant. Again, staff believes that these issues should be addressed in proposed NI 31-103.

MFDA staff continues to work with CSA and IDA staff on the Client Relationship Model (“CRM”) Project, which addresses some of the same points contained in NI 31-103. While the CRM rule proposals have not yet been finalized, we look forward to continue this work in developing a harmonized approach to these issues.

Record Keeping

Under section 5.20 of NI 31-103, registrants are required to maintain activity records for seven

years from the date of a specific act and relationship records for seven years from the date the person or company ceases to be a client of the firm. The MFDA is of the opinion that the definition of "relationship records" in section 5.7 of the Companion Policy (which include disclosures, notes of verbal communication and all emails, faxes or other written communication to clients) is overly broad and should be restricted to certain key documents, such as account opening forms.

Complaint Handling

Section 5.12 of the Companion Policy imposes a three-month requirement to resolve most complaints. It is not clear what is meant by resolution in this case, or what is meant by "most" cases. In our view, it is perhaps unrealistic to expect that a very large percentage of complaints be resolved within three months. Under proposed amended MFDA Policy 3, we will require Members to take all reasonable steps to resolve that matter as quickly as possible, but in any case to provide complainants with a substantive response within six months.

In addition, in our experience, firms want to receive clear direction with respect to the definition of a complaint as opposed to a service issue. We believe that registrants would benefit from more guidance on this point in the Companion Policy.

Complaints Reporting

Section 5.32 requires all firms to provide an annual summary of complaints to the regulator within two months of the year-end. Staff would support an exception for SRO Members with respect to matters reported to the CSA by the SROs on behalf of Members. We acknowledge that this may require some further co-ordination with respect to the types of complaints reported under SRO requirements, but we understand a similar regime is already in place between the IDA and Autorité des marchés financiers.

Ultimate Designated Person / Chief Compliance Officer

Staff notes that there are some apparent inconsistencies between the definition of Ultimate Designated Person ("UDP") and Chief Compliance Officer ("CCO") contained in the proposed national instrument and the provisions of the Companion Policy. Staff is of the view that the CP properly reflects reasonable expectations regarding the role of the CCO and UDP. However, the definition of CCO as contained in the proposed NI 31-103 would expand the responsibilities of the CCO far beyond current expectations. Staff takes the position that the responsibilities of the CCO should be limited to the day-to-day operation of the compliance function and reporting to senior management. The distinction between monitoring and reporting and responsibility for overall compliance should be clear.

Additional MFDA Exceptions

The requirements under section 6.12 (Permitted Referral Arrangements), the Know-Your-Client requirements under section 5.3, the account statement requirements under section 5.25 and the record keeping requirements under s. 5.20 are addressed in MFDA Rules and are substantially similar, or could be easily conformed. We would therefore request that the SRO exceptions

noted in section 3.3 should be expanded to include these sections.

Other Comments

Staff notes that the guidance provided in the proposed rule and companion policy with respect to certain fundamental business conduct issues, such as know-your-client and suitability, is very limited. We believe that much more detailed guidance as to what is expected in collecting know-your-client information and performing suitability reviews should be provided. MFDA staff has observed that these issues go to the root of a number of serious investor protection concerns and should continue to be a focal point for regulators and registrants.

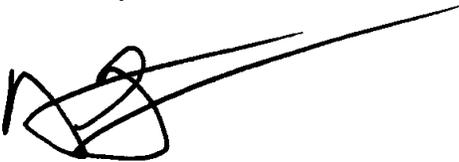
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In closing, we would like to express our support for the efforts and achievements of the CSA in its work on NI 31-103, and our appreciation for being given this opportunity to comment on the proposal.

We would be pleased to discuss our comments with you and provide such further particulars as might be helpful in your work going forward.

Thank you for considering our remarks.

Yours truly,

A handwritten signature in black ink, appearing to be 'Mark T. Gordon', with a long horizontal line extending to the right.

Mark T. Gordon
Executive Vice-President

(docs#113562)