



Pacific Spirit | Investment Management Inc

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British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
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

Robert Blair, Secretary (Acting)
Ontario Securities Commission
20 Queen Street West, Suite 2200
Toronto, ON M5H 3S8

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 Friends:

Re: CSA Notice and Request for Comment - Custodial

We thank you for this opportunity to submit our thoughts on CSA Notice and Request for Comment - Custodial.

Pacific Spirit Investment Management Inc. is licensed as a Portfolio Manager in the Provinces of British Columbia, Saskatchewan, and Ontario. Our firm works exclusively with individual investors and we do not manage funds for institutional

investors. We manage approximately \$170 million for approximately 170 client families.

Foreign Custodian Rules

We manage US cited assets on behalf of clients who are resident in Canada. In most instances these assets are tax advantaged assets such as IRAs or pension plans. These assets were accumulated by our clients during periods when they were working in the USA or they were inherited by our clients upon the death of a US-resident relative. Attempting to transfer these assets to a Canadian custodian would result in negative tax consequences for our clients.

Our experience has been that many US custodians will either refuse to custodial assets for non-residents or they will restrict the accounts to sell transactions only (resulting in a build up of cash over time), or they will not allow non-resident managers to manage the accounts. Given these restrictions it is extremely difficult to find a US custodian who is prepared to accept Canadian-managed accounts for Canadian-resident clients. The problem is so significant that we solicited the aid of TD Waterhouse (a Canadian firm) to facilitate introductions and use their influence with TD Ameritrade to open IRAs for our clients. This relationship with TD Ameritrade has served our clients well compared to the alternatives.

We doubt that TD Ameritrade would meet the criteria of an acceptable foreign custodian. Although TD Bank has a significant ownership position in TD Ameritrade, it does not guarantee TD Ameritrade accounts. TD Ameritrade is a member of the Securities Investor Protection Corporation (“SIPC”), which protects securities customers of its members up to \$500,000 (including \$250,000 for claims for cash). An explanatory brochure is available on request at www.sipc.org. Additionally, TD Ameritrade provides each client \$149.5 million worth of protection for securities and \$2 million of protection for cash through supplemental coverage provided by London insurers. In the event of a brokerage insolvency, a client may receive amounts due from the trustee in bankruptcy and then SIPC. Supplemental coverage is paid out after the trustee and SIPC payouts and under such coverage each client is limited to a combined return of \$152 million from a trustee, SIPC and London insurers. The TD Ameritrade supplemental coverage has an aggregate limit of \$500 million over all customers (source: TD Ameritrade website).

The definition of foreign custodian is too restrictive. We recommend that the definition of foreign custodian include a brokerage firm regulated by the SEC and which is a member of the Securities Investor Protection Corporation.

The proposals do not consider the situation where a foreign custodian meets the requirements under the Act at a given point in time, but no longer meets the requirement at a future time – as for example, its equity temporarily declines below \$100 million, or a Canadian custodian no longer assumes responsibility for the custodial obligations (perhaps because the entities are no longer affiliated).

We would submit that many of the US brokerage firms are in better financial shape than some IIROC members, yet the proposals do not reflect this reality.

Many of our client's US assets are held in employer-sponsored plans. The employer-sponsored plans offer low cost investment alternatives, access to funds that an individual investor would not be able to invest in on their own, and corporate matching programs of employee contributions. These accounts likely would not be custodied with a firm that meets the definition of a foreign custodian. Clients should be allowed to have their money managed in employer-sponsored plans where the employer controls the selection of custodian. This exemption should continue even after the end of the employer-employee relationship.

Canadian Custodians

Our firm manages funds with a number of Canadian custodians. We offer our clients a choice as to where their assets are held – IIROC members or trust companies. Once the client has made their decision as to the custodian to use, we will assist the client, as a service, with the preparation of the new account documentation for the client-selected custodian. Where a registrant offers a choice of custodian and merely provides a service in preparing the necessary paperwork, we recommend that this be exempt from the “directs or arranges which custodian will hold” requirements, or in the alternative if the account is opened with an IIROC member that the registrant be allowed to rely upon IIROC to ensure that the IIROC member is properly custodizing client assets. Custodians should be allowed to rely on IIROC firms to properly hold securities.

Other

We recommend that the Canadian Securities Regulators engage in discussions with their US counterparts for the purpose of ensuring that Canadians are able to

have Canadian managed solutions on their US domiciled assets – particularly tax advantaged retirement assets.

Thank you for this opportunity to submit our thoughts.

Sincerely,

PACIFIC SPIRIT INVESTMENT MANAGEMENT INC.

John S Clark

John S Clark CPA, CA, CFA, CFP
President