

April , 2004

DRAFT

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
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Toronto, Ontario M5H 3S8

Denise Brousseau, Secretary
Commission des valeurs mobilières du Québec
800 Square Victoria, 22nd Floor
Tour de la Bourse, P.O. Box 246
Montreal, Quebec H4Z 1G3

Dear Sirs:

Subject: Proposed National Instrument 31-101 – Requirements Under the National Registration System and Proposed National Policy 31-210 – National Registration System

This letter is in response to your request for comments on Proposed National Instrument 31-101 – Requirements Under the National Registration System and Proposed National Policy 31-201 – National Registration System.

Who Are We?

We are Senior Registration Officers with the Ontario Securities Commission. We review fit and proper requirements for firms seeking registration to trade or advise in Ontario and for individuals seeking registration with new or existing registrant firms in Ontario. As a result, we feel that our practical experience places us in a unique position to comment on the proposed National Instrument and Policy.

We Support a National Registration System

We believe that it is necessary to harmonize or standardize the fit and proper requirements across the provinces and territories of Canada. This would ease the burden on both market participants, who would no longer have to try to figure out the similarities and differences among their provincial and territorial regulators. It would also remove the duplication of having a regulator in one province or territory devote time and effort to reviewing information that has already received a detailed review by a regulator in a different province or territory. Investors, could be confident that their dealers or adviser meet similar or standard criteria for assessing whether they are fit and proper for registration, regardless of the home jurisdiction of the firm or individual. A National Registration System has the potential to reduce the regulatory burden while at the same time increasing investor confidence.

Mutual Fund Dealer and Investment Dealer Registration

We have confidence that the proposed National Instrument and National Policy will be effective in reducing the regulatory burden while maintaining our standards of review of the fit and proper requirements for mutual fund dealers and investment dealers. We have not found there to be serious differences in the fit and proper requirements among the provinces and territories for mutual fund dealers and investment dealers. Firms registered in these categories are required to be members of a recognized self-regulatory organization (SRO). Firms registered as investment dealers are members of the Investment Dealers Association of Canada (IDA) and firms registered as mutual fund dealers are members of the Mutual Fund Dealers Association of Canada (MFDA) or have been restricted in their business by terms and conditions. The SROs establish additional minimal fit and proper requirements for their members and provide an additional layer of supervision of their members and protection for clients of their members.

Unrestricted Advisers

The Senior Registration Officers have found that there are very significant differences in fit and proper requirements for unrestricted advisers throughout the provinces and territories. Implementation of the National Registration Database (NRD) has recently given us a greater appreciation of these differences since it has resulted in greater transparency in both the information going from the applicants to the regulators and in the decisions that the regulators make about whether an applicant meets the fit and proper requirements. We have had a number of applications recently for individuals who were registered one or more jurisdictions who applied for registration in Ontario. Despite these individuals' meeting fit and proper requirements in the other jurisdictions, there was still a significant gap in their abilities to meet the fit and proper requirements established by the Ontario Securities Commission. As a result, we were unable to register these individuals. We feel we can speak only as to our own experiences so we do not want to speak as to whether other jurisdictions have had similar experiences.

If we were to apply the National Registration System to unrestricted advisers at this time, Ontario would either be in a position where we would, in some circumstances, have to ignore our own fit and proper requirements or opt out. We understand that opting out of a decision, is considered a very serious matter, which, is expected only on rare occasions. Opting out of decisions on a regular basis can undermine the efficiency and harmonization that the system was intended to achieve. On the other hand, failure to opt out, where there are substantial differences in fit and proper requirements, may lead to unfairness for advisers and uncertainty among the public. For illustrative purposes, we use the example below for an Associate Adviser (an adviser requiring supervision by his or her firm because they do not meet the proficiency requirements to be a full adviser):

Jurisdiction A

Course requirements: completion of all three CFA (Charter Financial Analyst exams offered by AIMR)

Experience requirements: 2 years experience performing research and analysis of investments

Jurisdiction B

Course requirements: completion in the CSC and enrolment in the Investment Management Techniques Course (IMT) offered by the Canadian Securities Institute (CSI)

Experience: None required

Mr. Brown: Home Jurisdiction: A

Has completed the first two CFA exams and 1 year experience performing the research and analysis of investments

Mr. Gree : Home Jurisdiction: B

Has completed the CSC and has enrolled the IMT and no experience performing research and analysis of investments.

If Mr. Brown were to apply for registration under the proposed passport system, the lead regulator would be his home jurisdiction, Jurisdiction A. Since Mr. Brown, does not meet the requirements of Jurisdiction A, he would not be registered in either Jurisdiction A or Jurisdiction B, unless Jurisdiction B opted out. Conversely, Mr. Green, would be approved in Both Jurisdiction A and B, since the fit and proper requirements of Jurisdiction B would apply, unless Jurisdiction A opted out. Therefore, assuming no opt outs, Mr. Brown, who is clearly more qualified than Mr. Green, would be permitted to advise clients in Jurisdiction A and B whereas Mr. Green who is clearly more qualified than Mr. Green, would not be permitted to advise in either jurisdiction. Not only is the result unfair, but it will result in investors in the jurisdiction with the more stringent requirements, receiving a lesser level of protection. Investors in each jurisdiction will need to understand that we are applying the fit and proper requirements of the home jurisdiction of the individual adviser and determine whether they are happy with the fit and proper requirements of that jurisdiction. Registrant firms will still be required to understand the fit and proper requirements of each jurisdiction in which they are registered.

Conclusion

While the Senior Registration Officers at the Ontario Securities Commission support, in principal, the National Registration System, we do not feel it is appropriate to apply the National Registration System to unrestricted advisers until the proficiency requirements for unrestricted advisers maintained by the different jurisdictions have been harmonized. We are, however, more than willing to work with the other jurisdictions in harmonizing our proficiency requirements for unrestricted advisers, in order that the National Registration System can apply to all categories of registration as originally intended.

Yours very truly,

Cynthia Huerto
Dan Kelley
Allison McBain
Selina Mohammed
Pamela Woodall
Pranvera Zhuta