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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 of 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 (together, the "CSA")	c/o John Stevenson, Secretary Ontario Securities Commission 20 Queen Street West, Suite 1903, Box 55 Toronto, ON M5H 3S8 Canada Fax: 416-593-2318 E-mail: jstevenson@osc.gov.on.ca c/o 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 Canada Fax : 514-864-6381 E-mail: consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

Re: Canadian Securities Administrators' Notice of and Request for Comment on Proposed Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* dated December 5, 2013 (the "CSA Notice")

I. INTRODUCTION

The Securities Industry and Financial Markets Association ("SIFMA") is submitting this letter to the CSA in response to the request for comments contained within the CSA Notice.

SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association.

SIFMA members have a direct interest in the proposed amendments contained in the CSA Notice, as many SIFMA members are actively engaged in the Canadian markets. In particular, SIFMA members are, variously, registered as Restricted Dealers ("RD"), Exempt Market Dealers ("EMD") and Portfolio Managers, and rely on a variety of exemptions from the requirement to register, including the International Dealer Exemption, the International Adviser Exemption and the Specified Debt Exemption under Part 8 of NI 31-103 and the sub adviser exemptions currently available under securities legislation in Ontario and Quebec. Also, a number of SIFMA members have Canadian affiliates that are registered as Investment Dealers and Dealer Members of the Investment Industry Regulatory Organization of Canada ("IIROC").

II. BACKGROUND

SIFMA commented on National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103") when the national instrument was first proposed, and met with the CSA prior to its implementation. After the implementation of NI 31-103, SIFMA also commented on CSA Staff Notice 31-327 *Broker-Dealer Registration in the Exempt Market Dealer Category* ("SN 31-327") in 2011 and on the IIROC Concept Proposal – Restricted Dealer Member Proposal in 2012. SIFMA met with IIROC and with the Ontario Securities Commission ("OSC") during 2012 to discuss its concerns regarding the regulation of non-resident EMDs and the Restricted Dealer Member Proposal.

III. GENERAL

The purpose of this letter is to comment on certain of the proposed amendments to NI 31-103. In particular:

(i) the significant limitations being proposed for the permitted activities of EMDs and RDs;

(ii) the regulatory status of prime brokerage activities provided by Broker-Dealers registered under the EMD category;

(iii) the regulatory status of inter-listed securities in the context of the definition of "foreign security" in sections 8.18 and 8.26 of NI 31-103; and

(iv) the regulatory consequences of new sections 8.0.1 and 8.22.2 of NI 31-103 for firms that are concurrently registered as dealers and/or advisers and relying on exemptions from the dealer and/or adviser registration requirements.

SIFMA is disappointed in the restrictions being placed on the firms that have invested significant time and resources to be registered as EMDs and RDs in Canada. As noted in SIFMA's comment letter in response to SN 31-327, the changes proposed via amendments to section 7.1 of NI 31-103 will significantly impact the ability of non-Canadian firms to participate in Canada's capital markets and could be detrimental to many Canadian clients who have relied on these services for some time. Furthermore, SIFMA believes that the proposed amendments will discourage many U.S. and international firms from participating in the Canadian marketplace, which will result in fewer options for Canadian investors. In particular, SIFMA believes that highly sophisticated Canadian institutional investors value the breadth of services currently available via the active participation of U.S. and international firms in the Canadian marketplace.

For the reasons stated in our previous comment letters, SIFMA is not in favor of the proposed amendments set forth in the CSA Notice. Nonetheless, if the proposed amendments are implemented, SIFMA believes that there are changes that should be made in the context of certain activities and inter-listed securities.

SIFMA believes that it would be beneficial to Canadian investors and the Canadian marketplace for the CSA to permit certain activities relating to international "prime brokerage" services. SIFMA submits that the core of such activities may not constitute trading or acts in furtherance of a trade and should therefore not give rise to dealer registration requirements or, where there might be regulatory uncertainty regarding the classification of certain prime brokerage activities, should be permissible activities under an exemption.

SIFMA also believes it would be beneficial to the Canadian marketplace and Canadian investors to allow dealers relying on the International Dealer Exemption to trade in securities of Canadian issuers that are inter-listed securities (*i.e.* securities of Canadian issuers trading on a Canadian exchange and a non-Canadian exchange), where the trades are executed on marketplaces located outside Canada. Since the implementation of NI 31-103 many firms have registered as EMDs or RDs specifically to maintain compliance with Canadian requirements related to trading inter-listed securities.

Finally, SIFMA does not believe that the regulatory rationale articulated for prohibiting a registered firm from also relying on available exemptions from being registered serve to enhance investor protection. In addition, SIFMA is of the view that such prohibition will lead to inconsistent regulatory results.

IV. INTERNATIONAL PRIME BROKERAGE SERVICES

As described above, SIFMA believes that it would be beneficial to Canadian investors for the CSA to permit non-resident firms to provide international prime brokerage services to Canadian investors under the EMD category. Prime brokerage refers to a bundle of services offered primarily to institutional investors who are active market participants, including clearance and settlement of securities trades and back office functions. A prime broker acts as a clearing facility and a source of financing for a customer's securities transactions wherever executed, as well as a central custodian for a customer's securities and funds.

More specifically, a prime broker may engage in some or all of the following activities that may not constitute trading or acting in furtherance of a trade:

(i) Clearing;
(ii) Custody;
(iii) Settlement;
(iv) Book-keeping;
(v) Margin financing; and
(vi) Securities borrowing and lending.

International prime brokerage services are important to Canadian institutional investors. In prime brokerage transactions, executing brokers are selected by clients independently of, and separate from, the prime broker. Execution and prime brokerage functions exist contemporaneously with each other. If the offering of international prime brokerage services by non-IIROC members registered under the EMD category is restricted, Canadian institutional investors will be limited in their ability to consolidate their global holdings with major international firms that offer the capability of comprehensive custody and financing services and the favorable pricing that may pertain to broad and substantial holdings. Further, holdings and financings would be bifurcated in a manner that does not favor investors' effective use of economies of scale.

Prime brokers provide a single point of contact for a client and provide consolidated reporting, financing and custody which benefits clients. These services are provided either directly by the prime broker or through local service providers in foreign jurisdictions. However, the end result is that the client faces only the prime broker. In the Canadian marketplace, for example, despite the fact that a firm acting as an international prime broker would be required to use an IIROC Dealer Member in the local market to clear and settle trades in CDS, the international prime broker would be client facing in providing the consolidated prime brokerage services to Canadian clients.

Under the relevant legislation of each Canadian jurisdiction the requirement to register as a dealer is based upon whether the person or company in question is "in the business of trading" in securities. The concept of "trading" is generally broadly defined and includes not only any sale or disposition of a security for valuable consideration, but also any act, advertisement, solicitation, conduct or negotiation directly or indirectly *in furtherance* [emphasis added] of a trade.

There has been historical regulatory uncertainty regarding the regulation of prime brokerage activities as it relates to Canadian securities in the absence of clear regulatory guidance on the topic. It is for this reason that certain SIFMA members applied for registration as EMDs under NI 31-103 and, in connection with such registration, applied for relief from section 13.12 *Restriction on lending to clients* of NI 31-103. Applications for relief from section 13.12 were submitted by non-resident EMDs and RDs on the basis of discussions SIFMA had with the OSC where SIFMA members were assured that such relief would be available.

Registration as an EMD provided the CSA with meaningful jurisdiction over such firms' activities in Canada, while providing added protection to Canadian investors. These regulatory steps were taken to resolve the uncertainty regarding the regulation of prime brokerage activities relating to Canadian securities despite the fact that SIFMA submits that it is reasonable to take the position that prime brokerage services may not in fact constitute activities "in furtherance" of a trade.

SIFMA submits that activities with respect to clearing, settlement and custody are not "in furtherance" of a trade because such activities occur only after a trade has been executed. SIFMA further submits that activities in respect of margin financing and securities borrowing and lending are not "in furtherance" of a trade because such activities occur either contemporaneously with or only after a trade has been executed, but in either case are not services provided to further trade execution. SIFMA believes it is reasonable to take the position that activities in respect of margin financing and securities borrowing and lending can both be viewed as conceptually different from trading or acting in furtherance of a trade as margin financing is intended to cover counterparty credit risk, and securities borrowing and lending occurs between existing security holders**.**

Furthermore, SIFMA notes that the CSA Notice states that the proposed amendments to Section 7.1 of NI 31-103 are intended to prohibit EMDs from conducting brokerage activities, which the notice describes as, "trading securities listed on an exchange in foreign or Canadian markets". SIFMA submits that prime brokerage services do not constitute "trading securities listed on an exchange in foreign or Canadian markets" and therefore do not fall under the umbrella of activities that are intended to be prohibited by the proposed amendments to NI 31-103. As such, even where the CSA is of the view that the provision of prime brokerage services constitutes trading in securities, the proposed amendments to NI 31-103 should not prohibit firms registered under the EMD category from providing certain prime brokerage services to Canadian clients.

As such, SIFMA respectfully requests that the CSA issue guidance in respect of the regulation of the provision of international prime brokerage services to Canadian clients in order to confirm whether firms currently registered as EMDs and RDs may continue to provide prime brokerage services should the proposed amendments to Section 7.1 of NI 31-103 be implemented.

V. TRADING IN INTER-LISTED SECURITIES

Under NI 31-103 the activities permitted of dealers relying on the International Dealer Exemption and advisers relying on the International Adviser Exemption are limited, generally, to activities in respect of "foreign securities". The technical definition of a "foreign security" is a security issued by an issuer

incorporated, formed or created under the laws of a foreign jurisdiction, or a security issued by a government of a foreign jurisdiction, where a "foreign jurisdiction" refers to a jurisdiction outside of Canada.

As a result, such dealers and advisers are generally prohibited from dealing in and advising on securities of Canadian issuers, even where such securities are listed on U.S. or other exchanges outside of Canada. A number of firms are registered as EMDs or RDs to address inter-listed securities.

SIFMA submits that, as a compliance matter, it is difficult for dealers and advisers to track securities which are not considered "foreign securities" but which trade on U.S. or other foreign exchanges. For example, under the International Dealer Exemption a U.S. dealer can trade a South African mining company trading on the TSX with a Canadian client, but cannot trade a Canadian company listed on the NYSE or NASDAQ with a Canadian client. SIFMA submits that it would be preferable to regulate permissible trading activity based on where a security trades, which is a much simpler method of tracking a security, rather than based solely on where an issuer may be incorporated, organized or formed.

Furthermore, the inability to trade in or advise on such securities interferes with client account services with Canadian resident customers because such securities are required to be monitored and removed from any trade or advisory product on which a dealer relying on the International Dealer Exemption or adviser relying on the International Adviser Exemption, respectively, is providing services. This is a particular concern in the context of trading global baskets of securities that may include some Canadian incorporated issuers.

It should also be noted that the best execution obligations to which SIFMA members are subject would ensure that Canadian clients would not be disadvantaged if a trade were to occur on a non-Canadian exchange.

As such, SIFMA respectfully submits that the definition of a "foreign security" should be amended such that dealers relying on the International Dealer Exemption and advisers relying on the International Adviser Exemption may trade in or advise on securities of Canadian issuers that are listed on U.S. or other exchanges outside of Canada.

VI. CONCURRENT REGISTRATION AND RELIANCE ON EXEMPTIONS

The CSA Notice states that new sections are being added to NI 31-103 which would "prohibit registrants from relying on exemptions in Part 8 of NI 31-103". The stated policy rationale for these new sections is "concerns relating to client confusion and the firm applying different conduct and oversight rules to the activities". The CSA Notice goes on to specifically address the example of firms registered as EMDs that also rely on the International Dealer Exemption, and references such activity as presenting concerns "with respect to client confusion, oversight issues, maintenance of books and records, or know-your-client obligations".

Prior to 2009 and the implementation of NI 31-103 SIFMA is not aware of any Canadian jurisdiction having taken the view that a person or company could not be registered in a dealing or advising category and simultaneously rely on an exemption. SIFMA understands that since the implementation of NI 31-103 certain jurisdictions no longer take this same view.

The proposed new sections do not take into account that a firm may carry out a variety of lines of business in many different jurisdictions, and therefore may justifiably need to rely on a registration or a particular exemption for different activities and services. Further, the restriction proposes to make any type of registration exemption unavailable. SIFMA is of the view that such a blanket restriction is too broad because it ignores the wide variety of services and activities underlying a registration and reliance on a variety of exemptions.

SIFMA members that are registered as EMDs routinely rely on the International Dealer Exemption in the context of cross-border distributions because the size and scope of their cross-border activities are such that it is impractical to channel this business through registered EMD dealing representatives. As another example, many firms also rely on the Specified Debt Exemption or the Trades Through or To a Registered Dealer Exemption under Part 8 of NI 31-103 and do not use registered representatives for such trades for the same reason. SIFMA submits that in effect requiring all individual employees at a registered EMD and/or Portfolio Manager to register as dealing representatives and/or advising representatives in order to conduct any type of business with Canadian clients is unduly burdensome given the size of such registered firms and the scope of such registered firms' business globally**.**

SIFMA notes that reliance on the International Dealer Exemption and International Adviser Exemption is predicated on a person or company being regulated in its home jurisdiction in a manner substantially similar to the manner in which it would be regulated in Canada. Furthermore, reliance on both exemptions requires that clients meet the definition of a "permitted client" under NI 31-103 and that client notices be provided indicating reliance on the International Dealer Exemption or International Adviser Exemption. Therefore, the investor base that deals with firms relying on the International Dealer Exemption and/or International Adviser Exemption is by definition highly sophisticated, and is being given express notice when certain exemptions are being relied upon in connection with such activity.

In addition, the remaining available dealer and adviser registration exemptions have presumably been enacted on the basis that the activities for which they provide exemptions from registration are of a nature that do not trigger investor protection concerns.

As such, SIFMA submits that concerns with respect to "client confusion, oversight issues, maintenance of books and records, [and] know-your-client obligations" are already being addressed.

Finally, the proposed new sections would permit firms that are unregulated in Canada to engage in activities in which firms registered in Canada would be prohibited from engaging in. SIFMA submits that there is a logical inconsistency in preventing firms registered under Canadian securities legislation (and therefore subject to oversight by the CSA) from relying on exemptions from registration that may be relied on by firms over which the CSA has no oversight.

VII. TRANSITION

SIFMA members have spent a significant amount of time, effort, energy and resources in applying for and becoming registered as EMDs and RDs. If the proposed amendments are implemented as currently drafted this will result in the requirement for registered EMDs and RDs to make significant changes from both a business and operational perspective. Furthermore, registered EMDs and RDs engaging in traditional brokerage activities will need the opportunity to review final amendments from a business and legal perspective to determine the appropriate regulatory steps to be taken in order to adjust the business models of such firms.

As a result, SIFMA respectfully requests that a minimum 12 to 18 month transitional period from the implementation of final amendments be granted in order to comply with the final amendments. SIFMA submits that the CSA should also take into consideration the period of time required to obtain any new registrations that may be applied for.

VIII. CONCLUSION

Based on the above, SIFMA respectfully submits that the CSA should:

(i) not implement the proposed amendments to the EMD and RD categories of registration contained in the CSA Notice;

(ii) clarify its position on the regulatory status of international prime brokerage activities in Canada and either (a) confirm that international firms are not required to register as dealers in order to engage in such activities with Canadian clients, (b) confirm that firms currently registered as EMDs or RDs engaging in such activities will be permitted to continue to engage in such activities with the implementation of the proposed amendments to Section 7.1 of NI 31-103, or (c) grant specific exemptions permitting the activities;

(iii) change the definition of "foreign securities" to include securities of Canadian issuers that are listed on U.S. or other exchanges located outside Canada; and

(iv) continue to allow firms to concurrently be registered and rely on exemptions from the requirement to be registered as a dealer and/or adviser.

SIFMA welcomes the opportunity to comment on the CSA Notice and would be pleased to meet with the CSA to discuss any of the issues addressed in this comment letter in further detail. Robert Toomey may be reached at (212) 313-1124 or at rtoomey@sifma.org.

Sincerely

Robert Toomey
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