



INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

Ian Russell
President & CEO

November 17, 2010

VIA REGULAR MAIL

Ms. Rachel Grasham
Chief, Financial Crimes – Domestic, Financial Sector Division
Financial Sector Policy Branch
Department of Finance
104 O'Connor Street
Ottawa, Ontario
Canada
K1A 0G5

Dear: Ms. Grasham

Re: Request for amendments to Section 62(2) of the Regulations

We are writing to you on behalf of the Investment Industry Association of Canada (“IIAC”). The IIAC is the professional association representing approximately 200 securities dealers. Our mandate is to promote efficient, fair and competitive capital markets in Canada. To this end, the IIAC supports the objectives of the *Proceeds of Crime (Money Laundering) and Terrorist’s Financing Regulations* (the “Regulations”). A robust and effective anti-money laundering (“AML”) regulatory regime acts to deter criminal activities and to enhance the overall credibility of our Canadian capital markets.

On behalf of our members, we are requesting relief from certain provisions of the Regulations relating to record-keeping and ascertaining identity that, in our view, place our members at a significant competitive disadvantage to other securities dealers operating in the global capital markets. We respectfully request amendments to Section 62(2) of the Regulations, as set out in Schedule “A” attached, in order to address current disparities in our Canadian AML regime that impede the ability of our members to attract foreign investments from institutional investors that are regulated entities in their home jurisdictions (collectively, “foreign regulated entities”). The foreign regulated entities for which we seek relief include foreign financial entities (including central banks), securities dealers, life insurance companies, investment funds, pension funds and public bodies that operate in an FATF country. We seek similar relief for companies that are

listed on a stock exchange designated under subsection 262(1) of the *Income Tax Act* (“designated listed companies”) but do not meet the minimum net assets threshold of \$75 million. AML risks related to identity and record-keeping requirements in the Regulations are largely mitigated for foreign regulated entities and designated listed companies where they are subject to registration or listing requirements and regulatory oversight in their home jurisdiction.

The proposed amendments that we seek are necessary in order to “level the playing field” and to permit our members to compete for foreign investments from these foreign regulated entities and listed companies on an equal footing as other securities dealers in the global capital markets.

Even if the requested amendments to Section 62(2) of the Regulations are granted, our members will still be required to comply fully with the requirements set by the Investment Industry Regulatory Organization of Canada (“IIROC”). IIROC rules impose minimum net asset thresholds for certain types of regulated entities and a minimum net asset threshold of \$10 million for all institutional accounts, as well as “know-your-client” due diligence requirements.

Section 62(2) Exemptive Relief

Section 62(2) of the Regulations currently provides exemptive relief from certain provisions of the Regulations relating to record-keeping and ascertaining identity where an account is being opened by a securities dealer for federally or provincially regulated entities, including financial entities, securities dealers, life insurance companies, investment funds, pension funds and public bodies, and for companies with minimum net assets of \$75 million that are listed on a Canadian or designated stock exchange and operates in an FATF member country (collectively, “Canadian regulated entities”). The proposed amendments that we seek would extend the exemptive relief provided in Section 62(2) to equivalent foreign regulated entities that are subject to a comparable regulatory regime in their home jurisdiction or through the stock exchanges on which they are listed.

The underlying rationale for the exemptive relief currently provided in Section 62(2) for Canadian regulated entities is, at least in part, due to the regulatory oversight of these entities provided by a government regulatory body or an industry-specific self-regulatory organization. Regulated entities are less likely to pose AML risks relating to identity, identity verification of its authorized officers and record-keeping because they are already subject to registration requirements, disclosure, audit and reporting obligations and enhanced regulatory scrutiny over their business conduct and operations. Foreign regulated entities that are subject to similar regulatory regimes in their home jurisdictions and operating in an FATF member country should be eligible for comparable exemptive relief under the Regulations.

With respect to designated listed companies, we understand that the current \$75 million minimum net asset threshold for exemptive relief was originally based on a similar monetary threshold set out in Section 2.2 of National Instrument 44-101 (“NI 44-101”) for issuers to be eligible to issue securities via a short form prospectus. In 2005, the

monetary threshold in NI 44-101 was repealed and replaced with substantive requirements for the issuer to be a reporting issuer and an electronic filer on SEDAR (“System for Electronic Document Analysis and Retrieval”). All listed companies whose shares trade on a Canadian stock exchange or a stock exchange designated under subsection 262(1) of the *Income Tax Act* are subject to similar listing, reporting, transparency and other regulatory requirements. Disclosure regarding listed companies is readily available through SEDAR, EDGAR or equivalent regulatory sources, stock exchanges, news wires and other public media sources. As a result, the current \$75 million monetary threshold has little or no relevance and should be removed from the exemption for designated listed companies set out in Section 62(2)(m) of the Regulations.

Level Playing Field

Where a securities dealer outside of Canada opens an institutional account for a Canadian regulated entity, it is not required to obtain copies of corporate documents and identity information regarding authorized officers, nor is it required to verify such identity information through face-to-face meetings with its employees or agents or other means. Foreign dealers are permitted to rely on information posted on SEDAR, EDGAR, and other government and regulatory sources and public databases in conducting due diligence in order to satisfy AML concerns relating to identity and record-keeping. As a result, when our members ask a foreign regulated entity for its corporate documents and detailed information, and for a face-to-face verification meeting, many of these entities balk at the request, electing instead to take their business elsewhere because of the inconvenience to them. They can easily open an institutional account with a SEC or FSA registered securities dealer, for example, without similar onerous requirements.

Our purpose in seeking the proposed amendments to Section 62(2) is to address this disparity and to enable our members to compete more effectively and on an equal footing as other securities dealers in the global capital markets for foreign investments from foreign regulated entities.

National Instrument 31-103 (“NI 31-103”)

On September 28, 2009, significant securities registration reforms were introduced in Canada through National Instrument 31-103 (“NI 31-103”). Significantly, the requirement for foreign securities dealers and advisors to register with a Canadian securities regulator as an international dealer or advisor, respectively, was eliminated and replaced with an annual notice and fee requirement. Foreign dealers and advisors do not have to submit any corporate documents to a Canadian regulator, nor meet face-to-face with anyone to verify the identities of its authorized officers, traders or dealing representatives as a part of the notification process before they can deal directly with Canadian permitted clients. Canadian securities regulators implicitly rely on, and take comfort that, the foreign dealer or advisor is registered “in good standing” and is subject to the regulatory oversight of the securities regulator in their home jurisdiction. We are seeking amendments to Section 62(2) that would enable our members to similarly take comfort and rely on the registration and regulatory oversight of a foreign regulated entity in an FATF country for AML purposes.

We respectfully request that appropriate consideration be given to the amendments to Section 62(2) that we have proposed, and we would be pleased to meet with you and your colleagues to discuss this further.

Yours sincerely,

cc. Derek Ramm, Regional Officer, Central, Financial Transactions & Reports Analysis
Centre of Canada

Schedule “A”

Section 62(2) Exceptions to Record-Keeping and Ascertaining Identity	Proposed Revisions
<p>Sections 14, 14.1, 19, 20.1, subsection 33.2(1), section 33.4, subsections 36(1) and 39.7(1), sections 43, 49, 54, 54.1 54.2, 55, 56, 56.1, 57, 57.1 and 59.1, subsection 59.2(1) and sections 59.3, 59.4, 59.5, 60 and 61 do not apply in respect of</p> <p>(k) the opening of an account where the account holder or settlor is a pension fund that is regulated by or under an Act of Parliament or of the legislature of a province;</p> <p>(l) the opening of an account in the name of, or in respect of which instructions are authorized to be given by, a financial entity, a securities dealer or a life insurance company or by an investment fund that is regulated under provincial securities legislation;</p> <p>(m) instances where the entity in respect of which a record is otherwise required to be kept is a public body, or a corporation that has minimum net assets of \$75 million on its last audited balance sheet and whose shares are traded on a Canadian stock exchange or a stock exchange designated under subsection 262(1) of the <i>Income Tax Act</i>, and operates in a country that is a member of the Financial Action Task Force;</p> <p>(n) instances where the entity in respect of which a record is otherwise required to be kept is a subsidiary of a public body or a corporation referred to in paragraph (m) and the financial statements of that entity are consolidated with the financial statements of that public body or corporation;</p>	<p>Sections 14, 14.1, 19, 20.1, subsection 33.2(1), section 33.4, subsections 36(1) and 39.7(1), sections 43, 49, 54, 54.1 54.2, 55, 56, 56.1, 57, 57.1 and 59.1, subsection 59.2(1) and sections 59.3, 59.4, 59.5, 60 and 61 do not apply in respect of</p> <p>(k) the opening of an account where the account holder or settlor is a pension fund that is regulated by or under an Act of Parliament or of the legislature of a province; or a foreign pension fund that operates in an FATF country and is regulated by or under similar legislation or a similar regulatory regime in its home jurisdiction;</p> <p>(l) the opening of an account in the name of, or in respect of which instructions are authorized to be given by, a financial entity, a securities dealer or a life insurance company or by an investment fund that is regulated under provincial securities legislation; or a foreign financial entity, securities dealer, life insurance company or investment fund that operates in an FATF country and is regulated under similar securities legislation or a similar regulatory regime in its home jurisdiction;</p> <p>(m) instances where the entity in respect of which a record is otherwise required to be kept is a public body, including a foreign public body, or a corporation whose shares are traded on a Canadian stock exchange or a stock exchange designated under subsection 262(1) of the <i>Income Tax Act</i>, and operates in a country that is a member of the Financial Action Task Force;</p> <p>(n) instances where the entity in respect of which a record is otherwise required to be kept is a subsidiary of a public body or a corporation referred to in paragraph (m) and the financial statements of that entity are consolidated with the financial statements of that public body or corporation;</p>