British Columbia Securities Commission

BC Policy 31-601

The British Columbia Securities Commission, considering that to do so would not be prejudicial to the public interest, orders that effective September 28, 2009, BC Policy 31-601 entitled *Registration Requirements* dated January 22, 2008, is revoked and the attached BC Policy 31-601 *Registration Requirements* is made.

September 21, 2009

Brent W. Aitken
Acting Chair

(This part for administrative purposes only and is not part of the Order)

Authority under which Order is made:
Act and sections:- *Securities Act*, sections 171 and 188
Other (specify):-

BC Policy 31-601

Registration Requirements

PART 1 INTERPRETATION

1.1 Purpose of this policy

Securities legislation is designed to ensure that investors receive competent advice and ethical treatment from persons trading in, underwriting or advising on securities and exchange contracts (referred to collectively as securities). The registration system is the legal framework for regulating persons who trade in, underwrite or advise on securities. This policy provides guidance about the registration system requirements in Part 5 of the Act and Rules. It also provides information about how the Executive Director is likely to exercise discretion.

1.2 Refer to the Act and Rules

National Instrument 31-103 *Registration Requirements and Exemptions* (NI 31-103) sets out most of the requirements for registration under Part 5 of the Act. The balance of the requirements are found in Part 5 of the Rules and in other national instruments, forms and policies in the 30- series. For convenience, we refer to section numbers of the Act, Rules and NI 31-103 in this policy.

You can view the Act, Rules and NI 31-103 at www.bcsc.bc.ca.

1.3 Guidance on certain rules during NI 31-103 transition periods

This policy is a combination of guidance that will remain in effect permanently and guidance that will fall away after the transition periods applicable to certain sections expire.

Persons that were registered on the effective date of NI 31-103 (September 28, 2009) are exempt from certain requirements in that instrument during a transition period (see CSA Staff Notice 31-311 – *Proposed National Instrument 31-103 Registration Requirements and Exemptions Transition into the New Registration Regime* and BC Notice – *Notice of National Instrument 31-103* for information about the transition periods).

During the transition period, those registrants must comply with certain sections in Part 5 of the Rules and with this policy. In particular:

- the bonding requirements (sections 21 and 22) and requirements related to referral arrangements (section 53) in the Rules will continue to apply for six months after September 28, 2009; and

- the capital requirements (sections 19, 20, 24 and 25) and the relationship disclosure requirements (sections 49, 50, 52(1)and 54) in the Rules will continue to apply for 12 months after September 28, 2009.

The guidance in Part 2 of this policy, relating to capital and bonding requirements, applies only during the transition periods. We will remove this part of the guidance once those periods expire.

Those persons registered after September 28, 2009 are subject only to the requirements in NI 31-103.

1.4 Defined terms

Terms defined in the Act, Rules, and NI 14-101 *Definitions,* and used in this policy, have the same meaning as in the Act, Rules or NI 14-101.

PART 2 BONDING AND CAPITAL REQUIREMENTS DURING TRANSITION PERIODS

This Part provides guidance on the bonding and capital requirements in the Rules that will remain in effect during the transition periods set out in NI 31-103 (see CSA Staff Notice 31-311 for information about the transition periods). During that time, these requirements will continue to apply to those persons that were registered in the relevant categories on the effective date of NI 31-103, September 28, 2009.

We have retained the historical section references relating to capital and bonding requirements in this policy because Appendices E and F of NI 31-103 cross-reference those section numbers.

2.1 Dealers

Bonding requirements – effective until 6 months after September 28, 2009

(h) A person registered in the category of securities dealer, exchange contracts dealer, mutual fund dealer, real estate securities dealer or scholarship plan dealer before the effective date of NI 31-103 must have a financial institution bond for a minimum of $200,000 coverage. A person registered in the category of investment dealer before the effective date of NI 31-103 must have a financial institution bond for coverage in the amount that the Investment Industry Regulatory Organization of Canada (IIROC) requires. Subject to the paragraph that follows, the bond must cover the registrant, its partners, directors, officers, salespersons (including dependent and independent contractors and other employees) for a minimum of:

- fidelity
- on-premises loss of property

- in-transit loss of property
- forgery or alteration
- loss resulting from forged, altered, lost or stolen securities, and
- counterfeit currency

[Rules s. 21(1)(a)].

A person registered in the category of mutual fund dealer before the effective date of NI 31-103 that does not hold client funds or securities and that is permitted by the Executive Director to maintain the lower level of working capital set out in section 10.3 of this policy must, as a minimum, maintain coverage relating to the first three bullets above [Rules ss. 19(5), 21(1)(a)].

A person registered in the category of exchange contracts dealer before the effective date of NI 31-103 that does not hold client funds or securities and that is permitted by the Executive Director to maintain the lower level of risk adjusted capital set out in section 9.4 of this policy must, as a minimum, maintain coverage relating to the first three bullets above [Rules ss. 19(4), 21(1)(a)].

In each case, the partners or directors of the registrant must state, by certified resolution, that they consider the amount of bonding adequate to cover insurable business risks [Rules s. 21(1)(b)].

Capital requirements – effective until 12 months after September 28, 2009

(i) For the purpose of determining compliance by a person registered before the effective date of NI 31-103 in the categories of mutual fund dealer, scholarship plan dealer or real estate securities dealer with minimum working capital requirements, the Executive Director will consider amounts owing to non-arm's length parties (within the meaning of that term in the *Income Tax Act*, R.S.C. 1985 (5^{th} Supp.), c. 1) to be current liabilities of the dealer (regardless of repayment terms) unless an unconditional subordination agreement is executed in the required form and filed with the Executive Director [Rules s. 25, BC Forms 33-904F and 33-905F].

2.3 Advisers

Bonding requirements – effective until 6 months after September 28, 2009

(h) A person registered in the category of portfolio manager or investment counsel before the effective date of NI 31-103 must have a financial institution bond for a minimum of $200,000 coverage. Subject to the paragraph that follows, the bond must cover the registrant, its partners, directors, officers, advising employees and other employees for a minimum of:

- fidelity
- on-premises loss of property
- in-transit loss of property

- forgery or alteration
- loss resulting from forged, altered, lost or stolen securities, and
- counterfeit currency

[Rules s. 21(1)(a)].

A person registered in the category of investment counsel before the effective date of NI 31-103 that does not hold client funds or securities and that is permitted by the Executive Director to maintain the lower level of working capital set out in section 16.3 of this policy must, as a minimum, maintain coverage relating to the first three bullets above [Rules ss. 20(2), 21(1)(a)].

In each case, the partners or directors of the adviser must, by certified resolution, state that they consider the amount of bonding adequate to cover insurable business risks [Rules s. 21(1)(b)].

Capital Requirements – effective until 12 months after September 28, 2009

(i) For the purpose of determining compliance with minimum working capital requirements, the Executive Director will consider amounts owing to non-arm's length parties (within the meaning of that term in the Income Tax Act, R.S.C. 1985 (5^{th} Supp.), c.1) to be current liabilities of the adviser (regardless of repayment terms) unless an unconditional subordination agreement is executed, in the required form, and filed with the Executive Director [Rules s. 25, BC Forms 33-904F and 33-905F].

Capital requirements – effective until 12 months after September 28, 2009

9.4 Exchange Contracts Dealer - Positive Risk Adjusted Capital

A person registered as an exchange contracts dealer before the effective date of NI 31-103 must maintain positive risk adjusted capital, but may calculate risk adjusted capital based on a minimum capital requirement of $100,000 instead of the minimum of $250,000 required by the Joint Regulatory Financial Questionnaire and Report [Rules s. 19(2), BC Form 33-902F].

If a person registered as an exchange contracts dealer before the effective date of NI 31-103 does not hold client funds or securities and is recognized by the Executive Director as an "introducing broker", it may calculate risk adjusted capital based on a minimum capital requirement of $75,000. [Rules s. 19(4)].

10.3 Mutual Fund Dealer – Working Capital

Subject to the paragraph that follows, a person registered in the category of mutual fund dealer before the effective date of NI 31-103 must maintain working capital, calculated in accordance with the Report of Working Capital, of at least $75,000 plus the maximum amount deductible under the registrant's financial institution bond [Rules 2. 19(3)].

A person registered in the category of mutual fund dealer before the effective date of NI 31-103 that does not hold client funds or securities and is recognized by the Executive Director must maintain working capital, calculated in accordance with the Report of Working Capital, of at least $25,000 plus the maximum amount deductible under the registrant's financial institution bond [Rules s. 19(5), BC Form 33-905F].

13.3 Scholarship Plan Dealer - Working Capital

A person registered in the category of scholarship plan dealer before the effective date of NI 31-103 must maintain working capital, calculated in accordance with the *Report of Working Capital*, of at least $75,000 plus the maximum amount deductible under the registrant's financial institution bond [Rules s. 19(3)].

15.4 Portfolio Manager - Working Capital

A person registered in the category of portfolio manager before the effective date of NI 31-103 must maintain working capital, calculated in accordance with the *Report of Working Capital*, of at least $25,000 plus the maximum amount deductible under the registrant's financial institution bond [Rules s. 20(1), BC Form 33-905F].

16.3 Investment Counsel - Working Capital

Subject to the paragraph that follows, a person registered in the category of investment counsel before the effective date of NI 31-103 must maintain working capital, calculated in accordance with the *Report of Working Capital*, of at least $25,000 plus the maximum amount deductible under the registrant's financial institution bond [Rules s. 20(1), BC Form 33-905F].

A person registered in the category of investment counsel before the effective date of NI 31-103 that does not hold client funds or securities and is recognized by the Executive Director must maintain working capital, calculated in accordance with the *Report of Working Capital*, of at least $5,000 plus the maximum amount deductible under the registrant's financial institution bond [Rules s. 20(2), BC Form 33-905F].

PART 3 CONDITIONS OF REGISTRATION

3.1 Duty to deal fairly, honestly and in good faith - general

(a) A registrant must deal fairly, honestly and in good faith with clients. Individual registrants must deal fairly, honestly and in good faith with the registered firm's clients [Rules s. 14].

(b) As part of this duty, registrants must make certain disclosures to their clients [see, for example, the disclosure requirements in NI 31-103]. Beyond the particular disclosures prescribed in securities legislation, this principles-based requirement calls for registrants to consider what other information might be of interest or

concern to a reasonable client. Registrants should put themselves in the shoes of their clients to understand what information a reasonable client needs in order to be treated fairly, honestly and in good faith.

All communications, including disclosures, should be made so that they are clear and understandable to clients. For example, if you are selling a product to your client that is structured so that most costs are imposed on the client at the time of the investment or in which costs will be imposed over time, you should make this clear to clients. This fair treatment allows the client to assess whether or not, in light of the cost structure, to invest.

(c) It is also important that registrants consider this duty when they are referring clients to other registrants or non-registrants. They should make it clear to the clients which party the clients are dealing with for each service the client receives and which party is responsible for each of those services.

(d) When there is more than one equally suitable product available to a client, but one product will provide greater remuneration to the registrant (particularly if there is a direct cost to the client for the product that is more remunerative), the registrant should disclose that information to the client. This is fair, honest and good faith treatment that allows the client to make an informed investment decision.

(e) The duty to act fairly, honestly and in good faith also comes into play when registrants hold themselves out as "financial planners" or by similar titles. For this reason, the Executive Director will not normally register a dealing representative if the individual intends to hold herself or himself out as a "financial planner" or by similar title, or as having proficiency in financial planning, unless the individual satisfies the Executive Director that the individual

- is licensed by the Financial Planners Standards Council of Canada to use the designation "Certified Financial Planner" or "CFP", or

- has similar qualifications and, where appropriate, is subject to similar continuing education requirements.

Individual registrants who hold themselves out as financial planners without appropriate qualifications after they are registered are not dealing fairly, honestly or in good faith with their clients. Clients attach importance to representations of expertise and registrants should be meticulous about honestly representing their qualifications to investors.

3.2 Communications with the public

(a) It is important to realize that the definitions of "trade" and "adviser" in the Securities Act are broad [Act, section 1(1)]. "Trade" includes advertising or other solicitations made in furtherance of trading in securities. "Adviser" is any person engaging in, or holding himself, herself or itself out as engaging in, the business

of advising another with respect to investment in or the purchase or sale of securities. Registration is required for these activities [Act s. 34].

Dealers, advisers and their representatives should clearly make all communications with the public under the dealer's or adviser's registered name. Communications should leave no uncertainty in the mind of the reader about which dealer or adviser is proposing to provide a prospective client with trading or advising services.

(b) Dealers and advisers should make all communications in the name of the dealer or adviser even if there is an agreement between the dealer or adviser and a registered individual that suggests that the latter is something other than an employee of the dealer or adviser. This applies even if the individual is, with the consent of the dealer or adviser and the permission of the Executive Director, conducting activities ancillary to the individual's registrable activities through a personal company that the individual has established for that purpose.

(c) To prevent misunderstanding on the part of members of the public, a dealer's or adviser's signs should be displayed prominently at each location in British Columbia where the dealer or adviser regularly conducts business. Signs, telephone greetings, letterhead, business cards, Internet websites, advertising and other communications with the public should include information a reasonable prospective client would consider important to making an informed decision about entering into a relationship with the registrant or a particular transaction with or through a registrant. For example, a reasonable prospective client would likely consider these features important:

- the registered dealer name or adviser name, appearing prominently;

- if two or more business names are being used in a communication, the registered dealer or adviser name appearing in at least equal size and prominence (including location on a page) as other business names in the communication; and

- if two or more business names are being used in a communication, clear disclosure of the differing products or services offered by each business, where such information in not evident from the names of the businesses.

(d) Business names other than those of the registrant should be used only in the following circumstances:

- if a registrant is also licensed to sell insurance products - in which case the business name or trademark registered with the Insurance Council of British Columbia may be used;

- if the registrant's relationship to the division name or trademark is clearly disclosed in the communication – in which case a name representing an unincorporated division or registered trademark of the registered dealer or adviser may be used;

- if a registrant is meets the requirements of subsection 3.1(e) of this policy - in which case the financial planning business name registered with the Registrar of Companies may be used.

- if a registrant is dually employed by a financial institution and a registered dealer, or where a networking arrangement exists between a financial institution and a registered dealer – in which case the name of the financial institution may be used.

(e) Individual registrants should avoid references in public communication inferring independence from the registered dealer or adviser. Individual registrants are only able to conduct registrable activity through and on behalf of registered firms. If an individual uses two or more business names in a public communication, phrases such as "associated with" or "licensed through" may mislead the public into believing that the individual is independent from the registered firm.

(f) Certain titles, if used by individuals or companies in communication without appropriate proficiency and registration, may mislead the public [Act, s. 34]. For certainty, a registrant should contact the Director, Capital Markets Regulation prior to using any title other than that appearing with its registration.

3.3 Advising

(a) Advising is offering an opinion about the investment merits of, or recommending the purchase or sale of, securities or exchange contracts. It includes making investment decisions for another person. A person that engages in, or holds himself or herself out as engaging in, the business of advising is an adviser and must be registered [Act, s. 34]or exempt from registration.

(b) The provision of factual information about an issuer is not advising, as long as it is not accompanied by a recommendation regarding, or an opinion about the merits of, the issuer's securities.

3.4 Underwriter registration

There is no separate registration category for underwriters in NI 31-103. A person who engages in underwriting activity must register as an investment dealer, exempt market dealer or restricted dealer, all of whose authority includes underwriting.

3.5 Registered dealer acting as principal

A registered dealer that intends to trade as principal in a security with a person who is not a registered dealer, and that communicates with that person in order to effect the trade, must disclose that it is acting as principal (Act, s. 51). This requirement complements the requirements in NI 31-103 relating to conflicts of interest (s.13.4) and trade confirmations [s.14.12(1)(d)]. These require registrants to take reasonable steps to identify existing material conflicts of interest between the firm and a client and to disclose the nature and extent of such conflicts to clients in a timely manner, as well as to disclose in trade confirmations whether the dealer acted as principal or agent on the trade.

Amended September 28, 2009