MEMBER REGULATION

notice

INVESTMENT DEALERS ASSOCIATION OF CANADA

ASSOCIATION CANADIENNE DES COURTIERS EN VALEURS MOBILIÈRES

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MR0211

May 8, 2003

ATTENTION:
Ultimate Designated Persons
Chief Financial Officers
Panel Auditors

Distribute internally to:

- ❑ Corporate Finance
- ❑ Credit
- ■ Institutional
- ❑ Internal Audit
- ■ Legal & Compliance
- ❑ Operations
- ❑ Registration
- ❑ Regulatory Accounting
- ❑ Research
- ■ Retail
- ■ Senior Management
- ❑ Trading desk
- ❑ Training

Dealings with U.S. Residents

On November 13, 2001, Members were notified in Member Regulation Notice MR0114 that:

> Effective March 1, 2002, the Member and individual registered representative must either be registered in the Canadian or United States jurisdiction in which the client resides or be eligible for an exemption under all securities legislation applicable within that jurisdiction. Members must take reasonable steps to ensure that they and their registered representatives are eligible for an exemption, including the filing of any documents required under the relevant exemption provision.

Use of Legal Opinions to Support Dealings with U.S. Resident Clients

Some Members have provided letters or opinions from U.S. lawyers, often acting on behalf of the client, in support of exempt status in dealing with the client. Some of these have been little more than an attestation that the client is wealthy and sophisticated.

Members are not required to obtain a legal opinion regarding each and every U.S. client, but must be able to identify the exemption under which they are permitted to deal with the client. If, as in the case of dealings with institutional clients under SEC Rule 15a-6, the exemption is based on the client's qualification by virtue of its size or the nature of its business, Members must use due diligence to ensure that the client qualifies.

Where a Member relies on a legal opinion to support its dealings with a U.S. resident client, the opinion must meet the following standards:

1. It should state that the opinion is provided to the member firm.

2. For each client or category of clients, it should state (a) the basis for exemption of the member from Section 15 (a) of the Securities Exchange Act of 1934 and (b) the basis for each exemption from broker-dealer registration under applicable state securities laws.

The only permissible qualifications should be the following for the state exemption:

A. that the exemptions are subject to the power of state commissioners to exercise discretion to remove or limit exemptions,

B. that the opinion is based on standard compilations of state securities laws as in effect at the time of the opinion, and

C. that the law firm is not admitted to practice in expressly identified states covered by the opinion.

No qualification is permitted on the federal exemption other than to the effect that a person will be considered temporarily present in the United States for purposes of SEC Rule 15a-6 if they are resident in the United States fewer than 183 days in a given year.

3. The opinion should acknowledge that the availability of a securities transactional exemption under the Securities Act of 1933 and applicable state securities laws must also be considered on a case-by-case basis and that the opinion does not address this issue.

4. The opinion should state the law firm's understanding that a copy of the opinion may be provided to the IDA and relied upon by the IDA.

5. The opinion should state which bar the firm is admitted to and the state laws in which they are qualified to render an opinion or advice.

6. The opinion should not be based on securities or transactional registration exemptions such as the private placement exemption to accredited investors.

7. The opinion should not be based on a power of attorney having been granted to the firm or representatives of the firm based in Canada who will effect discretionary trades on behalf of the US resident. If the POA is granted to an outside party the opinion should state that it is based on the member firm's representation that it did not arrange for this POA to be granted.

8. The opinion should not be based on NAFTA or jurisdictional arguments that deny the ability of US regulators to regulate conduct in Canada involving US residents.

9. The opinion should not be based on the place of organization of a corporation, partnership or other entity where instructions or orders originate in the United States.

10. The opinion should not be based on the clients waiving or limiting his or her rights under the US federal or state securities laws.

Opinions relying on a federal unsolicited transaction exemption are unlikely to be adequate. The actual facts usually do not support this federal exemption and such an exemption is rarely, if ever, available at the state level.

Please note that is customary for law firms to provide state securities advice involving states in which a the firm is not admitted to practice in the form of a Blue Sky memorandum separate from the formal opinion. This would be acceptable provided that the formal opinion covers the availability of federal exemptions and exemptions in the states in which they are admitted to practice.

Trading through Canadian Corporations or Trusts

As noted in Item 9 above, it is not acceptable to deal with a U.S. resident client placing orders through a corporation, partnership, trust or other entity organized outside the United States, including in Canada. Members can deal with Canadian or foreign corporations or other entities having operating businesses in Canada through their authorized Canadian representatives regardless of where their owners may reside, but not with personal holding or investment companies established in Canada in an attempt to circumvent U.S. dealer registration requirements.