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Submitted via email

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

**Attention**:

The Secretary
Ontario Securities Commission
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22nd Floor, Box 55
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comments@osc.gov.on.ca

Me Philippe Lebel
Corporate Secretary and Executive
Director, Legal Affairs
Autorité des marchés financiers
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Dear Sirs and Mesdames:

**Re: Proposed Amendments to National Instrument 33-109 ("NI 33-109") and Related Instruments: Modernizing Registration Information Requirements, Clarifying Outside Activity Reporting & Updating Filing Deadlines ("the Proposed Revisions")**

The Investment Industry Association of Canada (the "IIAC" or "we") appreciate the opportunity to provide comments to the Canadian Securities Administrators (the "CSA") with respect to the Proposed Revisions. The IIAC is the national association representing the investment industry's position on securities regulation, public policy and industry issues on behalf of our IIROC-regulated investment dealer members in the Canadian securities industry[1].

Outlined below are our responses to the questions posed by the CSA as well as our identification of some issues and concerns regarding aspects of the Proposed Revisions and where we believe additional clarification and guidance may be required.

**1. Are there other categories of Outside Activities that should be reportable to regulators? If so, please describe what categories of Outside Activities should be reportable to regulators.**

The IIAC supports the introduction of a new reporting framework for Outside Activities and the new guidance included in Companion Policy 31-103CP *Registration Requirements, Exemption and Ongoing Registrant Obligations* ("31-103CP").

The various categories of Outside Activities set out by the CSA are relatively clear; however, there may be situations that do not clearly fall within any one of the categories. For instance, the IIAC requests clarification as to whether a registrant who is engaged with an affiliate company of his or her registered firm would be required to report that as an Outside Activity. It could also be the case that the individual may be working for that affiliate company as an employee rather than a registrant. Category 1 clearly addresses activities with another registered firm but is silent as to activities with an affiliated entity.

Similarly, further clarification is required regarding an individual who may sit on one or more Boards of Directors of affiliates or various connected entities of the registered firm. In such a situation the individual is not usually sitting on the Board as a registerable person, so it is unclear if serving on a Board of Directors of an affiliate would constitute an Outside Activity. This is a common situation in large firms, and requiring firms to make numerous entries for all these positions would be quite onerous.

**2. Considering the proposed framework for reporting of Outside Activities, are there categories of Outside Activities that should not be reportable to regulators? If so, please describe what categories of Outside Activities should not be reportable to regulators.**

The IIAC believes that involvement with entities with non-active operations, such as being the owner of a holding company or acting as a landlord for numerous rental properties should be exempt, similar to volunteer or community work, given that it could be quite onerous for firms to track the amount of time

[1] For more information visit, http://www.iiac.ca

involved and input it into the National Registration Database ("NRD"). We do not believe such activities would impede an individual's ability to properly service clients or result in insufficient time to effectively carry out their registerable activities.

**3. Are there any challenges that Regulated Persons may face to administer the proposed reporting regime for Outside Activities? If so, please explain the challenges.**

While we acknowledge that the Proposed Revisions will likely lead to a reduction in the number of Outside Activities reported to the CSA, it is important to point out that the administrative workload for firms has not been similarly reduced. The need to aggregate and track activities will continue and may result in increased obligations on firms. It would significantly reduce the regulatory burden for both individual registrants and firms if the CSA clarifies that activities outside of the proposed six categories would not have to be reported by the individual registrants to their sponsoring firms.

It would also greatly reduce the regulatory burden for registered firms if the information requested in each field be made more explicit. Oftentimes, regulators request additional information because the field heading does not provide enough context in term of requests for additional information from the regulators. It is also important that the CSA and IIROC are consistent with respect to the information required.

In order to increase the clarity of reporting, in Form 33-109F4, the following text should be moved to the instructions for item 10 OBA Category 4 (instead of at the bottom where it can be missed):

> *"Also complete a separate Schedule G for each activity, as applicable, if you are a director or officer, or hold any other equivalent position with or for, or are a major shareholder or active partner of, an entity that provides one or more of the services in the above list."*

Where the registered individual is transitioning from another registered firm and the outside activities were approved at the previous firm, clarity is needed as to what should be included as the "start date" in Schedule G.

It also appears that the Proposed Revisions will require separate Schedule Gs to be completed per activity, which would mean in instances where the individual is engaged with a firm and where several activities are in scope, the individual would have to report these activities independently. We would suggest that the CSA clarify that where the activities are related to one firm, multiple activities can be completed on one Schedule G.

**4. Is 7 years an appropriate amount of time to report on past Outside Activities that involved raising money for an entity through the issuance of securities or derivatives or promoting the sale of an entity's securities or derivatives? Please explain your view.**

The IIAC is of the view that 7 years is an appropriate time frame, given the similar timeline required for records management and retention under securities legislation.

**5. Is 30 hours per month (based upon 7.5 hours per week for four weeks) an appropriate cumulative minimum time threshold for reporting all Outside Activities? Please explain your view.**

We do not believe that 30 hours per month is an appropriate cumulative reporting threshold. Many registrants may engage in activities full time on the weekend or evenings and therefore, would easily exceed 30 hours a month without any negative effect on their ability to appropriately serve their clients. Furthermore, the need to track, accumulate and enter into NRD activities at the 30 hour threshold will be quite burdensome for firms.

The IIAC suggests that 80 hours per month would be a more appropriate threshold for specified activities if they do not give rise to a material conflict of interest. We do not feel that this increased threshold would have an adverse impact on serving clients, impede client access or risk client confusion.

**6. Will Regulated Persons have sufficient time to report Outside Activities given the Proposed Revisions? If not, please explain the challenge in reporting Outside Activities within the proposed revised deadline.**

The IIAC supports the extended deadline for reporting Outside Activities or changes in Outside Activities from 10 days to 30 days.

**7. Are there other positions that should be considered positions of influence? If so, please describe these positions and explain why they should be positions of influence.**

Given the list of positions of influence is non-exhaustive under proposed subsection 13.4.3(2) of NI 31-103, we believe that there are no additional positions that need to be specifically set out.

**8. Is "susceptibility" the appropriate term to describe the impact of the influence on the individual subject to the influence? If not, please explain why not and propose alternative language.**

We believe the use of the term "susceptibility" supports the CSA's intent to move towards a principles-based approach to reporting Outside Activities, and identifies the nature of the relationships of concern.

**9. Are there any aspects of the new rule on positions of influence that you expect will be difficult to administer? If so, please describe the difficulty.**

It is our view that the list of individuals that a registered individual who is in a position of influence and therefore prohibited from purchasing or selling securities to is too broad. Proposed paragraph 13.4.3(4)(b) of NI 31-103 includes a "spouse, parent, brother, sister, grandparent or child." We submit that the definition should mirror that of related persons under the Income Tax Act, which would result in the removal of grandparent from the list. Doing so would be more manageable for firms and give them more comfort that they are properly complying with the prohibition. We also question the inclusion of brothers and sisters, as siblings are often not in relationships where they share information, or would be susceptible to influences from persons that may be in a position of influence over their sibling.

**10. Do you see any challenges in reporting updates to registration information by the proposed deadlines? If so, please identify the registration information that this would be challenging for and explain the challenges.**

Although we support the extension of the filing deadlines, we are concerned that having a 3-tiered system of 10, 15 and 30 days adds complexity and confusion to the process, and ultimately increases the administrative burden. We recommend that with the exception of a Notice of Termination (which should be filed within 15 days) all deadlines be extended to 30 days. A consistent deadline will increase efficiency and reduce the burden of managing different deadlines. It will also result in increased compliance and fewer late filings for regulators to track down.

**11. Are there any other thresholds where a change in percentage ownership in the ownership chart should be reported or any thresholds where changes should not be reported? If so, please explain what other thresholds should be included or what thresholds should not be reported.**

We support the Proposed Revisions and do not recommend further changes to the proposed thresholds.

**12. Do you see any legal, operational or other challenges for a registered firm to delegate to another affiliated registered firm the requirement to notify the regulator of changes in certain registration information? If so, please explain the challenges.**

It would be helpful to clarify whether it would be permitted for a firm to select one registered firm to file all notices on litigation of all registered affiliates and the firm, even if such filing firm is not named in the litigation.

**13. Are there circumstances where a notice of change in registration information should not be delegated to an affiliate? Please describe.**

We believe that decisions related to the appropriateness of delegation are internal process decisions, best left to the discretion of the firms.

**14. Are there other circumstances where a notice of change in registration information may be delegated to an affiliate? Please describe.**

These are matters that may differ between firms, based on their structure and reporting requirements, and, as such, should be left to the discretion of the firms to determine the appropriateness of delegation.

**15. In a legal action, are there changes other than documentary discovery and adjournments that could significantly affect the firm, its business or the outcome of the legal action but should not be reported for other reasons or would be captured in reporting elsewhere?**

In certain legal actions, there may be changes, the reporting of which could compromise private or confidential information, which may in turn significantly affect the outcome of the action, and ultimately the firm. These matters are likely to be specific to the firm and the actual issue being litigated, so it is important to provide an element of discretion or allowance for confidential reporting in the reporting

requirements to ensure the firm, or individuals involved in litigation are not compromised by this reporting requirement. It also may be helpful to more clearly articulate what is meant by "significantly affect the firm."

Currently, subsection 8.3(a) of Form 33-109F6, requires registered firms to report any outstanding legal actions. This could result in a disproportionate regulatory burden due for firms with larger litigation portfolios, particularly where litigation is not material. In addition to limiting reporting of litigation matters based on their materiality, the IIAC recommends that this subsection include the caveats in subsection 8.3(b), which states, "any outstanding legal action that involves fraud, theft or securities related activities, or that could significantly affect the firm's business."

In addition, we propose that a materiality threshold be introduced, such that only legal actions that are considered significant to a firm need be reported. Large firms are frequently named in legal actions that range from claims in Small Claims Court to multi-jurisdiction class actions. It is a strain on internal resources for firms to report all claims and their developments. We would propose that only class actions and claims over a certain claim amount that is considered material to the firm and/or its parent be reported.

We also recommend that the only trigger points for reporting through the OSC/NRD be significant developments such as: (1) service of the claim, and (2) final resolution of the claim, whether by judgment or dismissal. Requiring all claims and developments to be reported is overly burdensome, vague and introduces more opportunity for error and missed filings.

**16. Do the Proposed Revisions offer sufficient clarity to the registration information requirements? If not, please explain which registration information requirement remains unclear and why.**

The Proposed Revisions are clear in respect of the information requirements; however, we request some clarity with respect to Form 33-109F7 *Reinstatement of Registered Individuals and Permitted Individuals*. This Form may only be used if, among other requirements, the individuals' registration information was up-to-date at the time the individual previously ceased to be registered to be a permitted individuals. For certain registrants, their NRD record will show "*there is no response to this question"* as opposed to a Yes or No answer. As such, the IIAC is seeking clarification as to whether or not the Form can be used in these situations.

**17. Are there any circumstances where the certification standard may not be met or be applicable? If so, please describe the circumstances.**

We are not aware of any such circumstances at this time.

**18. Do you see any challenges in reporting the title(s) used by Individual Registrants? If so, please explain.**

If the objective of this reporting is to understand what titles are being used by individual registrants, this information could be more easily collected via an industry survey, which can gather more contextual and relevant information. Imposing ongoing title reporting obligations on the industry is unlikely to provide

useful information, particularly in respect of non-client facing positions. This requirement is potentially burdensome, adding another field to complete, and is likely to result in reporting deficiencies over time, as individuals are promoted and change their job responsibilities, and titles may change, necessitating new filings.

Specifically, if the title reporting is required, we seek clarification on the following points. In respect of collecting information on professional titles, for active registrants, will there be an expectation to update item 10 for sponsoring firm to include professional titles? For new applications, is it necessary to indicate the current title used and proposed title to be used upon regulatory approval? (Specifically, for IIROC – e.g. Licensed Assistant/Sales Assistant and Marketing Assistant/Client Services Assistant (unlicensed).)

**19. Registered firms are required to keep accurate records, including copies of forms submitted to the regulators. Are there any circumstances where an Individual Registrant will need to request a copy of their Individual Registration Form from the regulator to update information that is not complete or accurate? If so, please describe these circumstances.**

There are no such circumstances of which we are currently aware.

**20. What are your views on the transition plan for the proposed amendments to NI 31-103 relating to positions of influence?**

Members did not express any views on this item.

**21. Are there any significant operational changes that you need to make in order to implement the Proposed Revisions? If so, please describe these operational changes.**

The proposed effective date of the Proposed Revisions runs concurrent with the effective dates of the Client Focused Reforms and IIROC's Plain Language Rules, which also impose significant strain on the same resources of registrant firms (e.g. registrations and compliance teams) and successful implementation of these initiatives also rely heavily on a thoughtful socialization process for individual registrants. While the Proposed Revisions provide registrants with several burden reducing reforms, some components of this proposal require revisions to procedures and extensive socialization (i.e. outside activities) that will be difficult for larger firms to implement.

We recognize that the Proposed Revisions will ultimately reduce the regulatory burden; as such, we propose that firms that are able to meet the proposed transition period be permitted to take advantage of amendments that provide immediate relief, such as the reduced filing requirements, delegation of regulatory reporting by affiliates, etc. while providing an additional 6-month period for those firms with more complex requirements, including implementation of the outside activities categories as opposed to only the position of influences element as currently drafted.

**Item 8.4 of 33-109F4 – Relevant securities experience**

There is some ambiguity with respect to this new item. It appears to not only apply to Associate Portfolio Managers and Portfolio Managers (associate advising representatives and advising representatives under securities legislation) but Supervisors as well, however, greater clarity would be helpful.

Thank you for considering our comments. We would welcome an opportunity to discuss this submission further should you have any questions.

Yours sincerely,

*"Michelle Alexander"* *"Susan Copland"*