April 6, 2004

Canadian Securities Administrators
c/o Mr. John Stevenson
Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario
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and

Ms. Denise Brousseau,
Secretary
Commission des valeurs mobilieres du Quebec
800 Victoria Square
P.O. box 246, 22nd Floor
Montreal, Quebec
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Dear Mr. Stevenson and Ms. Brousseau,

Re: Proposed National Instrument 81-107

We appreciate the opportunity to comment on Proposed National Instrument 81-107 (the "Instrument") and to respond to a number of the "Issues for Comment", as published in the January 9th, 2004 issue of the OSC Bulletin. We have participated in the preparation of the comment letters submitted by the Investment Funds Institute of Canada and the Canadian Bankers Association and wish to express our general support for the positions taken by both these organizations.

The Instrument represents an effective and efficient evolution in the development of policies that address conflicts of interest that are inherent in the mutual fund industry (and common in similar investment products). We believe that it would be best to adopt the Instrument with a minimal number of changes as opposed to accepting a lengthy delay in the hope of satisfying all interested parties. There is, to our mind, near universal agreement that the current conflict of interest provisions in National Instrument 81-102 and in provincial securities legislation often fail to meet the legitimate needs of mutual fund managers and, more importantly, the funds they manage. That being said, we

believe that there are a few significant issues that need to be addressed before the Instrument is implemented.

Section 3.2 of the Instrument requires that each of the matters described in sub-clauses 3.2 (1) 1 and 3 be referred to the IRC for consideration prior to being approved by securityholders at a meeting called for such purpose. While we do not question the obligation to obtain securityholder approval for any change to the fundamental investment objective of a fund as the investment objective is a fundamental term of the "commercial bargain" between investors and mutual funds, we question what value can be derived from the IRC's involvement. It is widely accepted that meetings of securityholders of mutual funds are ineffective in terms of level of participation and entail significant attendant expense. We question whether the recommendation of the IRC, whether in support of or in opposition to any proposed change, would have any impact on securityholder participation in the voting exercise. Those who oppose the proposed change could vote both at the meeting and, as always, with their feet. Fund managers would be constrained by the possibility of mass redemptions from taking steps that would be contrary to the interests of most securityholders.

The IRC's role is to represent the interests of securityholders with regard to fundamental conflict of interest issues that cannot be readily discerned by securityholders. Despite the fact that the resolution or management of these conflicts can have an immediate and direct impact on performance of their mutual funds, securityholders need not ratify the actions of the IRC or the manager. In our view, it is paradoxical that the IRC cannot, without ratification by securityholders, represent the interests of securityholders with regard to changes in fees and charges, despite the fact that changes will have a direct, immediate and fully disclosed impact on securityholders.

Even more troubling is the disadvantage that mutual fund managers face in terms of adjusting the pricing of their services when compared to the ease with which many direct competitors can do so. Investment counselors and portfolio managers (including those who operate under exemptions from adviser registration requirements) typically can change their fees on 60 or 90 days notice. Wrap programs fees (including mutual fund wrap programs) are subject to change on notice. Issuers of segregated fund contracts have similar rights to unilaterally change pricing by providing advance notice in writing. The providers of these alternative investment services, which are direct substitutes of those offered by fund managers, need not obtain their customers' consent to raise their prices. Customers who are not agreeable to a price increase or do not feel that they are getting appropriate value for their money are free to pursue alternative investment options.

There is no obvious compelling argument that a change in the calculation of a fee or expenses, or the introduction of a fee or expense, that is charged to the mutual fund or directly to securityholders by the mutual fund or its manager is so fundamental to the "commercial bargain" between securityholders and managers that it necessitates obtaining securityholder approval at a meeting called for such purpose. If the concern is that securityholders are somehow bound to maintain their investments because the cost of

exit is excessive, this issue can be addressed by allowing changes on 60 or 90 days notice provided that those securityholders who choose to redeem within the notice period can do so without facing a redemption fee as per sub-clause 3.2 (3) (c) of the Instrument. This approach is consistent with the provisions of section 5.3 of National Instrument 81-102, which exempts a "no load" fund from obtaining securityholder approval prior to a change of a fee or expense that would result in an increase in the charges to the mutual fund. The Instrument should be amended to provide that IRC approval is sufficient. If not, we would expect, at a minimum, that the Instrument would be amended to track the exemption found in section 5.3 of National Instrument 81-102 for "no load" funds.

We are pleased that inter-fund transfers will be permitted under the Instrument, but are concerned that the language in clause 3.3 (1) could easily be be interpreted to require the IRC to review and make a recommendation with regard to each trade. We do not believe this is intended, and would suggest language be included stating that the IRC must review and make a recommendation with regard to the policies and procedures to be implemented prior to the commencement of inter-fund transfers. The prescriptive nature of sub-clauses 3.3 (1) (a) through (d) should not be mandated, but rather should simply provide guidance as to the content of appropriate policies and procedures. As the IRC has responsibility to consider whether policies and procedures satisfactorily address conflicts of interest arising from inter-fund transfers, we believe that the IRC should be given the scope to consider whether a policy or procedure proposed by a manager to address conflicts is equivalent to the requirements of the subject sub-clauses. We would anticipate that such policies and procedures would require the manager to certify compliance with such policies and procedures on a periodic basis and provide a discussion of instances where there were breaches. Such discussion would include actions taken to address the impact of any breach and those taken to ensure they do not re-occur.

Although we are supportive of the adoption of the Instrument with minimum delay, we believe that a few of the "Issues for Comment" should be addressed.

Consistent with the discussion above regarding fees and charges, we believe that like investment products should be subject to similar regimes, unless there is a legitimate and significant reason to support different treatment. There is no basis for not capturing a number of alternative mutual fund vehicles, such as labour sponsored investment funds, pooled funds and exchange traded funds, within the Instrument. The same types of conflicts of interests are prevalent in all mutual fund type structures.

Given the importance of the IRC, it is somewhat surprising that there are no stipulated minimum qualifications for members. We would suggest that the statutory requirements for directors of incorporated companies should apply to members of the IRC.

It is unfortunate that the CSA members do not have the power to place a statutory cap on the potential liability of IRC members. We urge that steps be taken as quickly as possible to address this issue, as we believe that many highly qualified individuals will not be willing to act as members in the absence of such a cap. Without a means of estimating

potential liability, one cannot have confidence that the amount of any insurance coverage obtained is sufficient.

The Scotiabank Group is appreciative of the efforts of members of the CSA and their staff in balancing the needs of investors in mutual funds with the legitimate interests of the fund industry in the development of the Instrument. We would be pleased to expand on any points raised in this letter or to answer any questions you may have regarding our comments. Please contact Richard E. Austin, Vice President, Legal & Regulatory Affairs, at 416-866-2019 in such regard.

Yours truly,

Karen J. Fisher
President & CEO, Scotia Securities Inc.
Managing Director, Managed Assets Group, Scotia Capital Inc.