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June 19, 2007

By electronic mail
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Alberta Securities Commission
Saskatchewan Securities Commission
Manitoba Securities Commission
Ontario Securities Commission
Authorité des marchés financiers
New Brunswick Securities Commission
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Nunavut
Registrar of Securities, Yukon Territory

c/o John Stevenson, Secretary
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and

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Re: National Instrument 31-103 Registration Requirements

Dear Mr. Stevenson and Madame Beaudoin:

The Investment Counsel Association of Canada ("ICAC") welcomes the opportunity to comment on the proposed National Instrument 31-103 "Registration Requirements" (the "Rule") together with its companion policy 31-103 (together, the "Proposed Instrument") issued by the Canadian Securities Administrators ("CSA").

The ICAC is the representative organization for Investment Counsel and Portfolio Managers in Canada. The Association was founded in 1952 and its current membership is responsible for managing in excess of $500 billion in client assets. A list of our member firms is attached as Schedule A.

The mission of the ICAC is to advocate the highest standards of unbiased portfolio management in the interest of investors served by its member firms.

The comments that follow represent the consensus views of member firms and follow a series of internal discussions relating to the Proposed Instrument. Rather than systematically addressing perceived deficiencies in the Proposed Instrument, we have categorized various issues within larger principles identified below. We have also provided constructive recommendations to the proposals that were identified as problematic.

As a starting point, and from a macro perspective, we wish to commend the efforts of the CSA in attempting to harmonize, streamline and level the playing field across the Canadian registration regime. Much progress has been made in the last decade on a number of initiatives (e.g. Mutual Review and Reliance System, National Registration System, SEDAR, SEDI, various National Instruments, etc.) which, when viewed in the aggregate are making real and positive progress in synergizing our regulatory landscape. While the "Uniform Securities Project" and the debate over a national securities regulator vs. a full "Passport System" remain ahead of the Canadian financial market participants, , we acknowledge the proactive progress made to date.

Proposed National Instrument 31-103 is a collection of new rule changes that goes well beyond registration reform at the firm and/or individual registrant level. There are, as are widely acknowledged, provisions relating to conduct and compliance rules, conflict mitigation and information sharing, all of which have unique implications on registrants and/or those who will be operating under exemptions thereto.

The ICAC wishes to address the comments on the following principles:

1. **Global Harmonization** - The global marketplace and the need to develop regulation that is effective and harmonious with the other international regulatory regimes.

2. **Levelling the Playing Field within Canada** - The importance of harmonizing and/or levelling the playing field among market participants within Canada:

   (i) Vis-à-vis the various provinces;

   (ii) Vis-à-vis IDA and/or MFDA/CSF (Quebec domiciled mutual fund dealers) member firms with those directly regulated by the CSA members; and

   (iii) Vis-à-vis regulated registrants and those in the private equity/real estate securities business who are not subject to a full and comprehensive regulatory regime.

3. **Cost Effectiveness** - The importance of balancing the additional costs that will be imposed on market registrants and ultimately on the end users, the Canadian public by the Proposed Instrument against the real and/or perceived benefits in some of the proposed new provisions. This principle inevitably requires an analysis of the impact of some of the proposals on the continuing operation of smaller member firms and on the obstacles/difficulties of fostering a regulatory environment where new and innovative member firms can add to the landscape and enhance the general market competitiveness.

4. **Compliance Proficiency** - Recognizing the value of practical market experience, regulatory knowledge and ethical awareness in the incumbent Chief Compliance Officer community and the need to assess these tangible assets in exemption applications triggered by newly crafted rules around eligibility.

5. **Litigation and Privacy** - The importance of orderly regulation that does not impose obligations on registrants that could trigger civil litigation and/or privacy breaches vis-à-vis former employees.

6. **Transition and Timing Issues** - The importance of an orderly transitional schedule so as to (i) provide time for the regulators to assess the anticipated plethora of industry comments and to propose a revised and refined National Instrument proposal and (ii) to permit existing registrants to adapt to the new requirements that ultimately emerge.

1. Global Harmonization

It is without debate that the world is increasingly becoming one global marketplace. In this light, the various securities regulatory regimes comprising this marketplace, must adapt and evolve accordingly.

As a nation representing just over just 3% of the world market capitalization, it is in the interests of all Canadians (the public and our businesses/institutions) that we work in tandem with the other sovereign bodies and regulators to develop regulation in a coordinated fashion in all aspects of regulation (e.g. disclosure obligations, trading rules re: best execution and trade through protection, enforcement practices, registration requirements, soft dollars, etc.). This global convergence of the regulatory environment is seemingly an unstoppable evolution, at least not without potentially detrimental consequences for any nation state or/or territorial regulator that may choose to buck these trends. Indeed the move towards global uniformity is being seen across all aspects of business and commerce from the harmonization of GAAP standards, to WHO trading rules, to environmental policies and to rules regulating money laundering and terrorist financing.

This International regulatory convergence was affirmed by the G7 Finance Ministers and Central Bank Governors in an official proclamation associated with the April 13, 2007 Summit held in Washington D.C.

> "We discussed recent developments in global financial markets...We discussed the issue of mutual recognition of comparable regimes and look forward to further progress being made on cross-border access by investors to our securities markets." [Source: see (http://www.g7.utoronto.ca/finance/fm070413.htm)

Beyond this unequivocal policy consensus by the G7/G8 member states, there is a plethora of pragmatic and evolving synergistic and/or mutual recognition occurring between and among the various securities regulators. Some of the many examples of these trends include the Markets in Financial Instruments Directive (MiFID) which comes into force in Europe in November 2007, the UCITS Directives which originated back in the 1980's and continues to evolve, the Multi-Jurisdictional Disclosure System (MJDS) which exists between the Canadian provincial securities commissions and the SEC, and the SEC 's current signal that it may allow non-US dealers access to US clients without dealer registration in foreign securities.

In short, the ICAC supports the principle of harmonization and the need of the Canadian regulators to move in coordinated and uniform fashion with the rest of the world. The failure to do so impairs the interests of the Canadian public in getting access to the global market and the interests of our domestic registrants in seeking reciprocity rights so as to achieve a fair and level playing field with

competitors abroad. It is simply a fact that many investment advisers operate in multiple jurisdictions beyond those in Canada and it is increasingly onerous and expensive to comply with disparate regulatory regimes.

In light of the above principle, the ICAC is concerned about the restrictive provisions on international advisers and/or dealers dealing with Canadians flying in the face of the international trend and likely leading to many detrimental consequences. Some of our material concerns in this regard include:

i. the potential limitation on the access to foreign securities and foreign market expertise by Canadian investors if many foreign advisers are precluded or restricted from dealing with Canadian clients under the Proposed Instrument. With the elimination of the "foreign property" restrictions for Canadian pension plans and retirement plans in 2005, many members of the public and/or institutional community have been expanding their holdings in the international/global markets and the increase in choices and/or products by non-Canadian dealer/advisers has been a benefit to these same investors; and

ii. The potential lack of reciprocity that may be granted to Canadian registrants (advisers and dealers) by other jurisdictions in response to the CSA's proposals.

The ICAC recommends the following proposals be considered by the CSA members:

a. That International Advisers be granted the same *de minimus* rights that the SEC grants Canadian and other non-U.S. investment advisers who have fewer than 15 US clients, (i.e. the SEC exemption from the registration requirements of the *Investment Advisers Act of 1940 (see* s.203(b)(3)(i) thereunder). This *de minimus* concept is already currently recognized in OSC Rule 35-502. Coincident with this recommendation, the proposed restriction in section 9.14(2)(b) that international advisers not be able to "solicit new clients in Canada" should be removed. Furthermore (and consistent with the current discussions regarding the mutual repeal of certain withholding taxes between Canadian and U.S. securities) should the SEC move forward with a liberalization in rights to non-US advisers to service US clients in non-US securities, then the CSA regulators should respond in kind and grant more flexible rights to US based advisers in return. This additional concession could also be granted to registrants in other regimes where the CSA acknowledges comparable regulatory rules and which grant reciprocal treatment to our local registrants. The public and our member firms will benefit from a more open and free marketplace.

b. The CSA should expand the list of permitted clients under the international advisor exemption to those currently recognized under the Ontario Rule 35-502. There is simply no justifiable reason why the established rules need to change in this regard.

c. The CSA should not impose the requirement and costs in s. 9.15 that an exempt dealer be added to any trade involving privately placed funds offered primarily abroad. This is particularly frustrating for large and sophisticated pension plans that are trying to reduce costs to provide retirement benefits for their members.

2. Levelling the Playing Field within Canada

The ICAC supports the harmonization and streamlining of rules and regulations within Canada.

i. *Between and Among the Provinces:* The gradual harmonization of rules and SRO's within Canada continues to be a positive development serving the public and the registrant community well. Where differences continue to exist, we continue to urge the provincial regulators to be cognizant of the reality that the costs imposed on additional and unique rules and/or differences are ultimately passed on to the investing public.

ii. *Between and Among Direct CSA Registrants and IDA or MFDA/CSF (Chambre de la securitie financiere) Governed Registrants:* It is simply a fact that many ICPM firms offer their clients both discretionary advisory services and non-discretionary advisory services. Many clients insist on remaining involved in investment decisions relating to their portfolios. This market reality is also present in the IDA world where registered representatives offer discretionary and non-discretionary services. We respectfully submit that the proficiency requirements and supervision requirements for associate advising representatives of ICPM firms and registered representatives of full-service firms should be aligned in relation to non-discretionary advisory services. The drafting of the proposals would appear to place ICPM firms at a competitive disadvantage as (i) the registration requirements for associate advising representatives are more onerous than for registered representatives of full-service IDA member firms (less accreditation and work experience) and (ii) the supervision requirements of associate advising representatives of ICPM firms (signoff required by supervisor on each advisory task) will be greater than the provisions currently imposed by the IDA (where a more practical periodic supervision is permitted). Similarly, the provision in *Section 4.14 (3)* would requires that the calculation of excess working capital (using prescribed Form 33-103F1) be completed within 20 days of the month end for investment advisers. The corresponding rule for IDA member firms is 20 business days, and it is our view that these conditions be made equivalent. In addition to these two examples, the wide exemptions granted to SRO governed registrants from a variety of the Proposed Instrument provisions in section 3.3 (e.g. relationship disclosure document, dispute resolution

provision, etc.) needs to be addressed so that the rules are fair and apply equally to all market participants when NI 31-103 is proclaimed in the various jurisdictions and from that point on. There is simply no defendable and/or discernable value from facilitating an un-level playing field within Canada. We would therefore recommend that section 3.3 be amended to clarify that the exemption for SRO entities apply where such SRO's have by-laws, regulations and policies "dealing with the same subject matter and which are substantively similar". Furthermore, we would request that the CSA members alter their existing SRO rule approval process to permit other industry groups competing with SRO members to comment on whether the proposed rules are equivalent to the provisions which they are required to operate under.

iii. *Between and Among Adviser/Dealer registrants and those offering similar services (e.g. private equity/real estate) but who are not covered or directly regulated under the Proposed Instrument:* The ICAC has concerns that the expressed intention to continue to accommodate non-registrant entities (e.g. General Partners and Limited Partners in the private equity and/or real estate business) from having to register as an adviser in the discussion in section 1.4 of the Companion Policy (i.e. no need to register as an adviser or dealer even if advising or dealing if the advising/dealing activities are "incidental" to the operational business activity of the General or Limited Partner be it investing in venture capital firms, managing existing companies (private equity or making real estate investments, etc.)) will continue to create an un-level playing field to the detriment of the investing public. In short, the regulators can't have it both ways – if advising and dealing activity requires a registration, it should be imposed across the board. The failure to do so places our members at a competitive disadvantage in getting into this business and leaves the public open to a situation where the entities selling or advising in securities to them are not subject to regulatory oversight. We respectfully recommend that the CSA regulators, cognizant of the need to foster fairness and a level playing field among industry participants remove any existing exemptions from registration (trading or advising) where these business triggers would be invoked, even if in an incidental fashion to a particular group's overall business function(s). If the regulators are not willing to remove existing exemptions, they should define with greater specificity what is included in the current "incidental" exemption. This exercise would clarify whether a private equity/real estate group engaged in continuous syndications (raising capital pools to invest in management of targeted businesses and/or real estate) should continue to be exempt from regulatory overview or whether these exemptions from the securities regime re: the dealing in their securities should only be granted in situations where there is no public financing via solicited investments (debt or equity) (i.e. just investing their own pre-existing capital). At the end of the day, if the securities associated with these groups are sold to Canadians, even if

accredited-investor Canadians, it seems illogical to exempt these specific group and not others.

3. Cost Effectiveness

The ICAC is very much in support of all efforts to reduce the administrative burden on registrants (e.g. permanent registration process vs. annual renewal, automatic re-instatement of registrations on leave of absences, increased mobility rights for advisers servicing clients, less registration categories from current 239). These efficiencies become even more important when looked at holistically against the increasingly expanding scope of regulation imposed on registrants in the securities, accounting/tax, privacy and other regulatory contexts.

The ICAC has a number of material concerns that certain provisions in the proposed National Instrument represent a significant reversal of recent positive developments in the Canadian markets and will result in detrimental consequences in the form of higher costs to the public, the impairment of existing registrant viability and create obstacles to new and inherently smaller prospective registrants wishing to enter into the marketplace.

At the outset, the ICAC's position on the matters below is that CSA should be forthcoming in its subsequent release of the proposed National Instrument to disclose and/or justify, from a cost benefit basis, some of the proposals noted in its first release. This exercise may be avoided in part, (as the projected additional costs would be mitigated) to the extent that the CSA members (i) incorporate a materiality threshold into many of their proposed new provisions and/or (ii) implement some of the ICAC's recommendations that follow.

(i) Investment Adviser Registration Category – Adjustments to Excess Working Capital and Insurance Requirements

(a) Excess Working Capital – Adviser: The Proposed Instrument in section 4.14 would require advisers to calculate and maintain excess working capital using Form 33-103F1 Calculation of Excess Working Capital. Line 9 of the calculation requires a deduction for the "market risk" of securities owned by the firm, in accordance with IDA margin rules. As the rules currently stand, an adviser that invests in its own non-prospectus based funds would face a 100% deduction. Given the reality that many institutional investors look to have investment advisers invest side by side with them, and the frequent need for advisers to provide seed money for new strategies to remain competitive with other domestic and/or foreign advisers, the ICAC is concerned that the provisions would discourage such initiatives to the detriment of the industry. We recommend that the deduction required by Line 9 for market risk should either be 0% where an advisers invests in its proprietary funds over which it manages and can control liquidity or that the deduction should be based on the underlying instruments in which the fund invests (e.g. if the advisers funds are managed in a money market fund, it should not be required to exclude these assets).

(b) Insurance – Adviser – The ICAC has concerns relating to the requirement for firms to carry a financial institution bond as set out in section 4.17(2) of the Proposed Instrument. While we agree that a financial institution bond may be appropriate, the proposed rule would represent a significant increase from current bonding requirements as established by the members of the CSA. We query whether the proposed amounts of such coverage is necessary, particularly in the case of advisers who do not custody client assets but rely on third party trustees and custodians. In our discussions with insurance and bonding providers, the Proposed Instrument would result in significant increases in bond premiums for ICAC members, without there being any evident benefit to investors. Most, if not all, ICAC members carry errors and omissions insurance which may be available in the event of a client claim against the ICAC member, but for firms that do not handle client assets, we would ask that more clarification be provided as to why such increased levels in the bonding amount is being required. Without any analysis to indicate which types of claims have gone unfulfilled in the past or to indicate what harm the increased levels of bonding are attempting to address, we worry that the Proposed Instrument may be imposing a very real and substantial cost on ICAC members in order to guard against circumstances that are remote where a firm does not handle client assets.

(ii) **Investment Fund Manager Registration Category - Higher Capital Requirements and NAV Correction Report Requirements -** The ICAC has a number of concerns related to this new registration category. We are interested in the risk analysis justifying the arbitrary threshold increase in excess working capital for Investment Fund Manager registrants. The requirement to file quarterly financials within 30 days (potentially at odds with the 45 days under 81-106) along with onerous NAV Correction Reports adds a lot of additional administrative burden and cost on registrants without any tangible benefit in return. While the ICAC's position is that the higher capital is not justified, it recommends as an alternative that the CSA consider a staggered capital requirement based on assets under management so as not to act as a bar to new entrants or impair the business of existing firms. We also recommend that the regulators should consider a lower capital requirement for managers that outsource the key functions of the Investment Fund Manager role (i.e. NAV calculation, etc.) to a credible third party service provider(s) who are already being regulated (e.g. custodians by OSFI) and who maintain robust internal controls which are often assessed by auditors in CICA 5970 Reports. The key argument is if there is still a perceived need for greater protection, this can be addressed through proficiency rules not arbitrary monetary requirements. As a final recommendation, the ICAC strongly urges the regulators to incorporate a

material concept (utilizing the current industry practice of 50 basis points) into the NAV Correction Report.

(iii) **Exempt Market Dealer – Lack of an Exemption for Advisors dealing with their own Funds.** The simple fact of the matter is that pooled and mutual funds are simply efficient vehicles to carry out investment mandates. In light of this, we would respectfully recommend that a corresponding Exempt Market Exemption for a portfolio advisor dealing with non-fully managed accounts with their own funds be granted as there is with discretionary clients. Unlike the situation that existed for years where Ontario had a litany of Limited Market Dealers who had no proficiency requirements and who were not adviser entities and who were not regulated effectively by the OSC, it seems perverse that adviser entities, already subject to the full rigors of the regulatory regime which increases in order of magnitude each year, would have to file for a separate registration status where it deals with its own pooled funds in non-discretionary functions while having an exemption where it is acting in discretionary functions. As noted previously in this letter, the ICAC also is of the view that sophisticated institutional investors like the large pension plans should not be mandated to have an unnecessary local dealer on a trade where they independently source an offshore fund.

(iv) **Client Relationship Disclosure Document (CRD) (for Advisors dealing with non-accredited investors) -** In addition to the potentially un-level playing field with the exemption granted to IDA and MFDA (or CSA regulated registrants in Quebec) from the Client Relationship Disclosure (CRD) document, the ICAC is concerned that the proposed document is overly prescriptive and will require significant client specific tailoring and cost. We respectfully request that the CSA regulators should holistically look at the aggregate of disclosures already being or that will soon be made to clients from our member firms, (e.g. (a) statement of policies, (b) policies re: fairness in allocation of investment opportunities, (c) pending disclosures re: soft dollars, (d) IRC reports to be forthcoming under NI 81-107, (e) new referral disclosure contemplated by this instrument; (f) pending point of sale document, (g) Prospectus/Offering Memorandums on various investments/proposed investments along wrappers if off-shore funds, (h) one-off disclosures re: utilization/risks of derivatives, leverage, etc. At some point it does seem inevitable that many clients will no longer appreciate or be able to review all these disclosures. It is our member's view that the CSA should restrain its impulse to impose prescriptive disclosure measures on every facet of the adviser/dealer and client relationship recognizing the fiduciary obligations that exist in law, the prospect of regulatory enforcement for violations of proper conduct, and as noted above, the totality of what is currently being provided along with the costs and effectiveness of layering on another document. While we recognize that this provision has its origins in the "Fair Dealing Initiative" that the Ontario Securities Commission and

other provinces independently considered in the earlier part of the decade, we don't see the value add of having thousands of varying CRD's floating around. If the regulators are not receptive to the arguments above, we would propose, as an alternative, that the CSA work with the IDA and other SROs to develop a single industry prescribed CRD form (thereby avoiding hundreds of variations) and which could have precedent provisions for mutual funds, advisory accounts, etc. added on where necessary. All clients would get the same document and disclosure would be uniform and effective.

(v) Recordkeeping Requirements - The recordkeeping rules and commentary incorporated with the proposed National Instrument appears to expand the scope and requirements of client records (pertaining to correspondence with clients) that must be kept. The proposals, in section 5.19(4)(b) would suggest that "relationship records" be maintained for seven years from the date the client ceases to be a client of the registered firm. What is problematic about this is that the regulators expressly state in the Companion Policy (see s. 5.7) that relationship records include all communication between the registrant and its clients including "all e-mail, regular mail, fax and other written communication to clients". There is also a reference to notes of verbal communications and this potentially raises the additional burden and/or expectation of having to store all voicemail messages, particularly as these can now be stored, albeit with additional cost, electronically. We respectfully request that the regulators to impose a materiality threshold on the relationship records that registrants should preserve and/or tweak the definition of "relationship records" such that it applies to matters related to the suitability of investments or material changes to the client relationship. Reference could be made to the recordkeeping standards recommended by the CFA Institute or to general principles of law. This would be consistent with the principled approach taken in other arrears of the Proposed Instrument, e.g. the compliance system in s. 5.26.

(vi) Client Complaints - Mandatory Arbitration Service - We are concerned that the present drafting does not exempt certain complaints (e.g. minor complaints and/or non-regulatory complaints relating to investment performance and/or client servicing) from the proposed new requirement in sections 5.29-5.31 that clients be notified about the option of referring any complaint to a dispute resolution service to mediate the alleged issue. In light of the new annual filing requirements that are also being imposed on advisors (outside of Quebec which already has these policies) in section 5.32 (i.e. disclosing the registrant's policies in dealing with complaints and the nature and number of complaints received in the year), it is our view that the mandatory arbitration requirement presents costs that outweigh any meaningful benefit. The tendency to want to impose the "highest common standard" (i.e. the fact that some Canadian SRO's impose an arbitration

service requirement – albeit with tighter rules around its application) should be resisted without a full and fair assessment of the benefits to be gleaned therefrom. We have heard from the regulators that the merits of a dispute resolution service were heard from the public in earlier "Townhall Session(s)" that were held at some earlier point in the past few years. We query whether the call for mandatory arbitration was a representative comment from the broader/majority public who will ultimately be bearing the costs. We also query whether there may be the opportunity for clients to seek to extract unreasonable concessions from advisers in relationship to smaller/less material complaints because of this proposed mandatory right. As such, to the extent that the CSA members do not agree with our view that the status quo (no mandatory arbitration) should be maintained, we would respectfully recommend that the requirement to use dispute resolution services should (i) be clarified so that the reference to "participate" in a dispute resolution service would not automatically require registrants to pay an annual retainer to a dispute resolution service provider every year notwithstanding that no claims were made, (ii) that the obligation to use dispute resolution services would be limited to regulatory/material complaints; (iii) that the obligation to use dispute resolution services be made mandatory for any potential claim under $100,000 in value with the results being binding on the parties without any opt out rights or ability to file additional actions relating to the same subject matter; and (iv) preclude a client wishing to utilize the arbitration service with a claim(s) in excess of the $100,000 limit from later opting out or commencing a civil action .

(vii) **Referral Agreements** - The ICAC recognize that the new referral provisions in sections 6.11-6.15 represent an attempt to update the principles articulated in the previous "Distributions Structures Paper" that was published almost 10 years ago and respond to some of the concerns about the dangers of unduly high referral fees that was evident in the Portus scandal. Our only material issues, which we perceive as generating additional cost without benefit, is the inclusion of 6.13(e) which requires disclosure of the "category of registration of each registrant that is a party to the agreement with a description of the activities that the registrant is authorized to engage under that category and, giving consideration to the nature of the referral, the activities that the registrant is not permitted to engage in." Our position is that in light of section 6.13(f) (requiring that if a referral is made to a registrant, that a statement be provided that all activity regarding registration resulting from the referral activity will be provided by the registrant receiving the referral), that section 6.13(e) is an unnecessary and overly prescriptive requirement. Furthermore, it will require those registrants who previously papered referrals to best industry practices (disclosing parties and disclosing the quantum of fees) to have to go back and amend these at the cost and expense to the client. In short, we propose the elimination of s. 6.13(e) or an exemption from having to repaper any pre-existing referral if the only deficiency relates to this particular provision.

As a final comment on referral arrangements, we do urge the CSA members to recognize that Canada is, when compared to its OECD counterpart nations, an extremely concentrated market re: distribution channels, and the regulators should consider the potentially detrimental impact of onerous referral disclosure documents on smaller and/or independent advisors trying to get their products on the proprietary distribution channels of the larger banks and/or registrants with the disclosure of precise fee splits.

(viii) Account Activity Reporting – Monthly Confirmation of Trades: The ICAC questions the merit of imposing a monthly trade confirmation filing requirement (see section 5.21 and section 5.25(4)) on clients who have elected to have this material flow through their adviser. It is our recommendation that the provision should be tweaked to facilitate the inclusion of trade confirmations in the quarterly statement of account and portfolio as exists currently and which is prescribed in section 5.25(1)-(3).

4. Compliance Proficiency

The ICAC supports the objective of ensuring that only qualified firms and individuals are providing trading and advisory services to Canadians. We are concerned that the inclusion of specialized requirements on the Chief Compliance Officer (CCO) and Ultimate Designated Person (UDP) functions is problematic in that (a) it excludes otherwise qualified people because they do not have the designed professional accreditations and (b) that it does not recognize the experience of existing holders of these offices in our member firms. We would therefore strongly and respectfully recommend that there be a principled approach adopted by the regulators recognizing the vast practical market experience, backgrounds, regulatory knowledge and ethical awareness in the incumbent Chief Compliance Officer community and the need to assess these tangible assets in exemption applications triggered by newly crafted rules around eligibility.

5. Litigation and Privacy

The ICAC has concerns related to a potential violation of privacy rights of former staff and the potential litigation exposures (i.e. vis-à-vis former staff for defamation and/or inappropriate disclosures of personal/private information and/or from new employers claiming a lack of disclosure) that may be triggered by the new mandatory information sharing requirements in section 8 of the Proposed Instrument. The provisions are too open-ended in what are considered relevant to the assessment of suitability and/or conduct. This new requirement to disclose should be balanced against the aforementioned risks of disclosure. It does seem inevitable that each registrant will have differing standards of disclosure and perhaps differing standards at differing times. It is difficult to see what benefit this anticipated development of disparate disclosure practices will ultimately have. It is our recommendation, that the CSA members should add additional questions to the Universal Termination Notice (UTN) Form which could be made available via the

registration departments of the CSA members to prospective employers seeking to hire a former employee of a registrant. This would foster uniformity in this area. To the extent that these additional questions would trigger some of the litigation and/or privacy issues noted above, the CSA members should grant a statutory immunity (to the extent feasible) against defamation actions and/or other civil liability exposures within certain prescribed situations (i.e. where a former employee was acting in good faith), along with an exemption to the relevant provisions of applicable privacy legislation to registrants and their officers, directors and employees with the new requirements. In the alternative that the CSA members do not want to prescribe the specific additional questions/disclosures in the existing UTN, they should provide registrants with a similar statutory immunity to that recommended above.

6. Timing and Transition Issues

Proposed National Instrument 31-103 is a collection of new rule changes that goes well beyond registration reform at the firm and individual registrant level. There are provisions relating to conduct and compliance rules, conflict mitigation, disclosure and information sharing, all of which have unique implications on registrants and/or those who will be operating under exemptions thereto.

While the entire industry is anticipating that the CSA members will release a second and revised proposal of National Instrument 31-103 (clarifying some of the ambiguities, incorporating some of the plethora of comments filed by the industry, drafting the prescriptive rules required to implement the principles in the proposals, etc.) we would like to state for the record that we do believe a second draft is appropriate and necessary.

Furthermore, NI 31-103 does not currently contain any transition provisions other than in a few sections (e.g. referral arrangement where a short 120 day period is prescribed). We believe that in addition to a revised draft, that the National Instrument include ample transition provisions to permit existing registrants to implement the new procedures/requirements and for those not currently registered to implement the necessary procedures and/or to allow time for prospective registrants to meet the fit and proper/proficiency requirements to permit them to become registered. Lastly, the transition provisions should also accommodate the exemptive relief applications provided under the current regulatory regime and which are inevitably likely to result from some of the proposed measures.

We would propose the following transition periods after NI 31-103 has been enacted for registrants:

1. 2 years for fit and proper requirements/proficiency

2. 1 year for capital and insurance requirements (as often these are set one year in advance) .

CONCLUSION:

The ICAC fully supports the efforts of the CSA to achieve the policy goals of NI 31-103. We appreciate the opportunity to provide the CSA with our views on the proposed national instrument. We hope that you consider our arguments and recommended alternatives to some of the prescriptive measures noted therein. Please do not hesitate to contact us with any comments or questions you might have. We would appreciate the opportunity to meet with you in order to discuss our comments.

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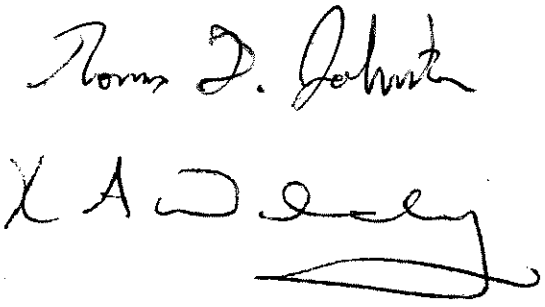
Yours truly,

INVESTMENT COUNSEL ASSOCIATION OF CANADA



SCHEDULE A

ICAC Members
June 2007

ACUITY INVESTMENT MANAGEMENT INC.
AEGON CAPITAL MANAGEMENT INC.
AGF
ALDERSLEY SECURITIES INC.
AMG CANADA (Holding Company)
    BEUTEL, GOODMAN & COMPANY LTD.
AURION CAPITAL MANAGEMENT INC.
AVENUE INVESTMENT MANAGEMENT INC.
BARCLAYS GLOBAL INVESTORS CANADA LIMITED
BARRANTAGH INVESTMENT MANAGEMENT INC.
BASKIN FINANCIAL SERVICES. INC *NEW (4)
BEAUJOLAIS PRIVATE INVESTMENT MANAGEMENT
BLOOM INVESTMENT COUNSEL INC.
BMO HARRIS INVESTMENT MANAGEMENT INC.
BURGUNDY ASSET MANAGEMENT HOLD CO
C.A. DELANEY CAPITAL MANAGEMENT LTD.
CANSO INVESTMENT COUNSEL LTD.
CARDINAL CAPITAL MANAGEMENT INC.
CFG HEWARD INVESTMENT MANAGEMENT LTD.
CIBC GLOBAL (FORMERLY TAL GLOBAL ASSET MANAGEMENT
COCKFIELD PORRETTI CUNNINGHAM INVESTMENT COUNSEL
COLEFORD INVESTMENT MANAGEMENT LTD.
CONNER, CLARK & LUNN INVESTMENT MGT. LTD.
COUGAR GLOBAL INVESTMENTS LTD.
CRANSTON, GASKIN, O'REILLY & VERNON INVESTMENT COUNSEL
CRYSTAL WEALTH
CYPRESS CAPITAL MANAGEMENT LTD.
DAVIS-REA LTD.
DE LUCA VEALE INVESTMENT COUNSEL
FRANK RUSSELL CANADA LIMITED
GENUS CAPITAL MANAGEMENT INC.
GREYSTONE MANAGED INVESTMENTS INC.
GROUNDLAYER CAPITAL INC.
GRYPHON INVESTMENT COUNSEL INC.
GUARDIAN CAPITAL INC.
GWL INVESTMENT MANAGEMENT LTD.
HEATHBRIDGE CAPITAL MANAGEMENT
HESPERIAN CAPITAL MANAGEMENT LTD.
HIGHSTREET ASSET MANAGEMENT INC.
HILLSDALE INVESTMENT MANAGEMENT INC.
HOWARD, BARCLAY & ASSOCIATES LIMITED
HSBC ASSET MANAGEMENT (CANADA) LIMITED

HUTTON INVESTMENT COUNSEL INC.
JONES COLLOMBIN INVESTMENT COUNSEL INC.
JONES HEWARD INVESTMENT COUNSEL INC.
KBSH CAPITAL MANAGEMENT INC.
LAZARD INVESTMENT MANAGEMENT
LEGG MASON CANADA INC.
LEITH WHEELER INVESTMENT COUNSEL
LEON FRAZER & ASSOCIATES LTD.
MACKENZIE CUNDILL INVESTMENT RESEARCH LTD.
MANITOU INVESTMENT MANAGEMENT LIMITED
MARQUEST INVESTMENT COUNSEL INC.
MARTIN, LUCAS & SEAGRAM LTD.
MAWER INVESTMENT MANAGEMENT
McELVAINE INVESTMENT COUNSEL
MCLEAN BUDDEN LIMITED
MD PRIVATE MANAGEMENT
MFC GLOBAL INVESTMENT MANAGEMENT(ELLIOTT & PAGE)
MILESTONE INVESTMENT COUNSEL INC.
MORGAN MIEGHEN & ASSOCIATES LIMITED
MULVIHILL CAPITAL MANAGEMENT
NEXUS INVESTMENT MANAGEMENT INC.
NORTHWOOD PRIVATE COUNSEL
PHILLIPS, HAGER & NORTH INVESTMENT MANAGEMENT LTD.
PORTFOLIO MANAGEMENT CORPORATION
RAE & LIPSKIE INVESTMENT COUNSEL INC.
RBC PRIVATE COUNSEL INC.
ROBERT EVANS INVESTMENT COUNSEL LTD.
ROBITAILLE ASSET MANAGEMENT
ROGAN INVESTMENT MANAGEMENT LIMITED*
SCEPTRE INVESTMENT COUNSEL LTD.
SCOTIA CASSELS INVESTMENT COUNSEL LIMITED
SIONNA INVESTMENT MANAGERS INC.
SPRUNG & CO. INVESTMENT COUNSEL INC. *New Member
SUCCCESSFUL INVESTOR WEALTH* NEW (4)
SUMMERHILL CAPITAL MANAGEMENT
TD ASSET MANAGEMENT
TFP INVESTMENT COUNSEL
THORNMARK ASSET MANAGEMENT
UBS GLOBAL ASSET MANAGEMENT (CANADA)
VAN ARBOR ASSET MANAGEMENT LTD.
VENABLE PARK INVESTMENT COUNSEL
VESTCAP INVESTMENT MANAGEMENT INC.
WA ROBINSON
WATSON DI PRIMIO STEEL