Alan W. McFarlane Associates
Independent Investment Counsel & Portfolio Manager

807 - 835 View Street
Victoria BC V8W 3W8

(250) 995 9356
email:alanmc@alanmcinvest.ca

19th June, 2007

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers (Quebec)
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, Yukon Territory
Registrar of Securities, Nunavut

Reference: COMMENT on proposed NI 31-103 *Registration Requirements*

Ladies and Gentlemen:-

My comments will commence with the philosophical and move to the detailed:-

- Is this journey really necessary?
- Preserve the registration category of Investment Counsel.
- Do all registrant firms really need minimum capital requirements and Financial Institution bonds?
- Some answers to specific questions posed.

IS THIS JOURNEY REALLY NECESSARY?

In recent years, Financial Regulation, worldwide, has been moving from a detailed Rules based regime to a Principles based regime. A notable example is Britain whose financial intermediation industry is sharply expanding, and gaining share over the Euro and Dollar investment spheres. Exceptions include the United States, even though they have a dominant federal regulator, the Securities and Exchange Commission. The particular

legislation, Sarbanes-Oxley, has clearly had a detrimental effect on financial services and intermediation. Most independent observers in and outside Canada, from the International Monetary Fund, federal royal commissions, the recent federal budget, the Investment Industry Association of Canada, the Investment Counsel Association of Canada and my own professional association, CFA Institute, have first urged the provinces to get onside with a National Securities Regulator for Canada, and second to move to a Principles based regime. My own province and regulator, with the British Columbia Securities Act 2004, did propose a radical reform of regulation to Principles based. After a one year comment period from April 2003, the legislation completed 1st, 2nd and 3rd Readings in the Legislative Assembly, and received Royal Assent on 13th May, 2004. Proclamation had been planned for 30th November, 2004, but at the last minute (18th November, 2004) proclamation was "delayed" sine die.

Since my sole proprietorship was first registered as a Portfolio Manager (and, subsequently, Investment Counsel) on 1st December, 1998, the regulatory burden of time and costs has increased steadily, with no concurrent apparent improvement in the ability of the regulators to regulate (in Victoria, the notorious 2005, yet still unresolved, case of Ian G. Thow of Berkshire Investment Group Inc. has tarred us all).

Now with the Charge of the Light Brigade, the Registration Reform Project attempts to Rule on everything with 31-103.

In parallel discussions, the proposed Passport System NI 11-102 is clearly emasculated with the lack of participation of Ontario.

Finally, in particular, with respect to Investment Counsel/Portfolio Managers (IC/PMs), what abuses is this Rules regime intended to stop? Registered IC/PMs are seldom censured by the Securities Commissions and, that I am aware, not recently, for outright fraud or theft of client's funds. The IDA and MFDA, as SROs, are more likely to be dealing with *that* type of activity. It might be more worthwhile to pursue those who are operating with "trading authority" over brokerage accounts for recompense, without registration as IC/PMs. Are these individuals qualified and bound by the same high ethical standards which characterizes most IC/PMs who concern themselves with their fiduciary obligations to their clients? (Perhaps hedge fund managers with their 2/20 or 3/30 fees would be considered less bound by fiduciary obligations, but that is a whole other debate!) Another under-regulated area is mortgage pools, which, to some, are investments, but are they securities? Are the Advisers of these pools subject to the scrutiny of the securities commissions? Should they be?

Is this journey to more detailed Rules for *existing* registrants really necessary? Should more effort not be put into bringing the less regulated others (such as mutual fund and hedge fund managers) into the "tent" of regulation?

PRESERVE THE REGISTRATION CATEGORY OF INVESTMENT COUNSEL

The extant British Columbia Securities Act (and the 2004 Act discussed earlier) uses the term Adviser when talking about Portfolio Managers and Investment Counsel. This starts a chain a misunderstanding. Almost every stock brokerage and mutual funds dealer firm representative (regulated by the SROs, the IDA and/or the MFDA), however registered on the National Registration Database (NRD), will have on her business card Investment Adviser, since that is her principal activity. She will *advise* the client on a suggested investment and obtain the client's consent. The decision whether or not to make a specific investment rests with the client, based upon *advice*. Principals and staff of a Portfolio Manager/Investment Counsel firm *manage*, usually under broad discretion, the clients' assets in accordance with a pre-determined and pre-agreed Investment Objective or Investment Policy Statement. Thus, I submit that the name Adviser in the Securities Act *has* to be changed. The term Portfolio Manager has become much more widespread in recent years, particularly among IDA registered employees. Thus, I conclude that in the Securities Act the term "Investment Counsel" be substituted for "Adviser", which would clearly indicate the different regulatory regime of that category (regulated at a superior level to superior standards directly by Securities Commissions and not by delegated SROs). Investment Counsel (sometimes Investment Counsellor (Counselor, in US usage)) is a term broadly understood by the general public, and widely used in the industry in Canada. The broadest industry group, noted above, is the "Investment Counsel" Association of Canada (whose website is www.investmentcounsel.org), many firms have "Investment Counsel" in their Firm name, RBC Action Direct had special arrangements for Registered "Investment Counsellors" and TD Waterhouse Institutional Services has an "Investment Counsellor" platform. Lawyers might lay claim to special use of the word Counsel, but in that case the implicit phrase is "Legal Counsel" (Counselor-at law, in US usage). In British Columbia, many Wills and Trusts are drawn by competent legal counsel giving investment powers to Executors/Trustees to "retain the services of professional Investment Counsel, with delegation to that counsel to act with investment discretion".

Let us preserve the registration category of Investment Counsel and, in fact, make *it* the Securities Act defined term, instead of the ambiguous and confusing term, Adviser.

CAPITAL REQUIREMENTS & FINANCIAL INSTITUTION BONDS

The proposed Principles based BC Securities Act of 2004 (discussed above) proposed *no* minimum capital requirements for Advisers, unlike the present *and* proposed registration regime. The BC Examiners, in presenting the proposed changes to IC/PMs in BC, indicated that their practical *policy* would be to require a minimum capital of 1.5 times Firm Liabilities. The then existing and now proposed Rule has a Standard Minimum Capital Requirement of $25,000 for all Portfolio Managers, indifferent to and regardless of assets under management. I suggest that the Examiners, who see inside the bowels of operating IC/PMs, had it *correct*. The Regulators' intent seems to be to have sufficient funds on hand for an orderly shutdown of the Firm, if that becomes necessary. A very large Firm, such as Phillips, Hagar & North would require significantly more assets to close down than would the small sole proprietorships or small (one or two Principals) companies, yet the Rule does not discriminate. A significant part of the culture and training of professional investment counsel is to minimise unnecessary cash *transaction* balances, and have all assets earning an appropriate risk/return reward. Requiring Minimum Capital Requirements is appropriate for Chartered Banks, but not for IC/PMs who do *not* hold client assets! [I *do* recognize that IC/PMs acting as custodian for funds may need a different standard.] I suggest that the proposed Rule is hugely discriminatory to newer and smaller firms, and merely entrenches the larger existing Chartered Bank owned firms without allowing for investment counsel innovation and specialization by new entrants to the industry. I suggest that the public good of the investing public would be better served by a larger number of smaller and more diverse Investment Counsel.
The Rule attempts to differentiate the Firm size risk in the Financial Institution Bond requirements, but I do not believe this differentiated Financial Institution Bond Market will be offered by insurers. In fact, I suspect that the Financial Institution Bond market is extremely lucrative for the Insurers, since anecdotal evidence suggests nobody claims! I suggest that the Financial Institution Bond requirement be dropped entirely, as irrelevant, inconsequential and contributes nothing to ultimate investors, who are what this whole exercise is supposed to be all about!
[There appears to be a technical error in BC Notice 2007/04 in the Table explaining the Current and Proposed capital requirement. The Table uses, in the "Proposed capital requirement" column the term "excess working capital", where, I believe, and the CSA Presentation panel in Vancouver in May agreed, that the intent was "minimum working capital". Excess working capital is the *excess over* the minimum working capital (see, for example, BC FORM 33-905F). If $25,000 "excess" was required that would imply a requirement of $50,000 ($25,000 minimum *plus* $25,000 excess) for an IC/PM.

I suggest that the Rule, if it has to come to pass, delete any explicit minimum capital requirements, for those Investment Counsel who do *not* hold client assets, and any explicit need for an Financial Institution bond, as not contributing to the public good of investors.

SPECIFIC ANSWERS TO QUESTIONS POSED

The CSA detailed Notice and Request for Comment poses a number of specific questions, and, to the extent possible, I am giving answers, in my situation, as a sole proprietorship IC/PM:-

1. No comment.
2. No comment.
3. Agree that Investment Fund Managers should be registered.
4. In my size of Firm, one person, this would be a further *extra* burden of regulation.
5. So long as the qualifications for full "advising representative" is not degraded, that could be appropriate.
6. I consider that registration of "mind and management' would be beneficial to the public interest.
7. I am shocked and appalled that that a specific SRO, the IDA, the former nationwide lobby group for the investment dealer community with their bias toward transaction based advice, be permitted to grant the designation "Portfolio Manager" to registered representatives of investment brokers. I consider that the exemption should be ended, now!
8. I suggested earlier that the requirement for Financial Institution Bonds for IC/PMs, *not* holding client assets, be abandoned.
9. I do not think that it is appropriate to exclude high net worth clients from basic existing requirements to open an account. On balance, rich investors are no smarter than poor investors (e.g. the Victoria clients of Ian G. Thow of Berkshire Investment Group Inc., discussed above).
10. No issues.
11. No issues.
12. A materiality concept *would* be appropriate.
13. No issues.
14. If we *have* to have a Rule, then I consider that exemptions *should* be contained in the Rule, to avoid having to jump around between regulatory documents.
15. Yes.
16. 31st December is just fine. 31st May is too close after Income Tax payment deadline of 30th April.

Not asked as a question, but a matter which would be significant to my Firm is the item in Division 7: Complaint Handling *requiring* non-SRO Firms to participate in a dispute resolution service. I do not believe that this is a viable proposal and again ask what abuses by IC/PMs is this trying to address? The CSA presentation panel in Vancouver in May could cite no reasons for this requirement, nor available dispute resolution services, nor likely costs. This would clearly be a significant added regulatory burden to my small Firm.

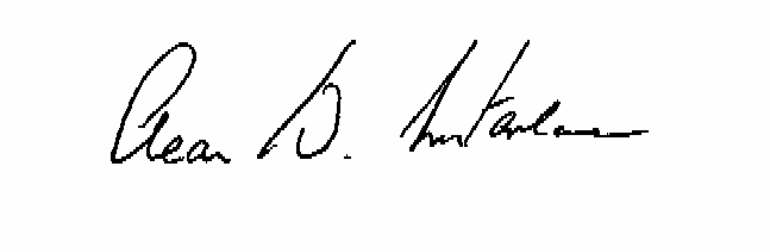
The following are my Firm's answers with regard to the unnumbered questions posed in the BC Notice 2007/04:-

- With regard to investment fund managers minimum capital requirements, I return to my theme earlier that it should be a function of whether the fund manager acts

purely as a fund manager or *also* acts as securities custodian and/or responsible to investors for fund reporting/accounting.

- With regard to the requirement to send statements of account, I have no position, since my custodian deals with those issues.

Respectfully,



Alan W. McFarlane CFA

The writer was first registered with the Ontario Securities Commission in 1968, and has been involved in the Canadian investment industry from then until now, in various capacities, some registered and some under various exemptions (e.g. Trust Company officers). He gained his Chartered Financial Analyst designation in 1978, and has been principally practicing portfolio management and investment counsel to large pension funds, insurance companies and individuals. He was one of the two founding directors of CFA Victoria in 1996/7 and was previously an active member of CFA Vancouver and the Toronto CFA Society. He founded and registered his sole proprietorship in British Columbia in 1998 as an Independent Investment Counsel and Portfolio Manager, and principally manages assets for individual investors.