INVESTMENT ADVISER ASSOCIATION

June 20, 2007

By electronic mail

British Columbia Securities Commission
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

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and

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Re: National Instrument 31-103 Registration Requirements

Dear Mr. Stevenson and Madame Beaudoin:

The Investment Adviser Association[1] (IAA) welcomes the opportunity to comment on the proposed National Instrument 31-103 "Registration Requirements" (the Rule) together with its companion policy 31-103 (the Companion Policy)(together, the Proposed Instrument) issued by the Canadian Securities Administrators (CSA) regarding the registration of investment advisers in Canada.[2]

We commend the CSA for considering these important issues and appreciate the opportunity to provide input regarding the Proposed Instrument. The IAA supports the effort to harmonize registration requirements across all CSA jurisdictions. We support the modernization of the registration process in Canada for investment advisers. However, we have several concerns and recommendations regarding the proposal, particularly as to the effect of the proposal on foreign investment advisers with clients in Canada. More specifically, we submit the following comments and recommendations:

1. The IAA supports a uniform approach to investment adviser registration in Canada.
2. The IAA recommends additional clarifications or revisions with respect to the exemptions for international advisers, including:
    - Provide a clear *de minimis* standard;
    - Expand the list of permitted clients; and
    - Eliminate the condition prohibiting solicitation of new permitted clients, or, at a minimum, clarify that certain types of conduct do not constitute solicitation for purposes of the exemption.
3. The IAA recommends clarification that international sub-advisers may have "contacts" with clients without losing their exemption from registration.
4. The IAA urges the CSA to revise the Proposed Instrument to:
    - Expand the transition process and implementing time period of the proposed law;
    - Enable the entire registration process to be accomplished electronically;

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[1] The Investment Adviser Association (formerly the Investment Counsel Association of America) is a not-for-profit association based in Washington DC that represents the interests of investment advisers registered with the Securities and Exchange Commission. Founded in 1937, the Association's membership consists of about 500 firms that collectively manage in excess of US$8 trillion in assets for a wide variety of individual and institutional clients. The IAA's membership includes a number of Canadian-based investment advisory firms as well as U.S.-based firms that conduct investment advisory activities in Canada, as international advisers or through affiliates providing investment management services to Canadian clients. For more information about the IAA, please visit our web site: www.investmentadviser.org.

[2] This letter highlights the interests of our members who are all SEC-registered investment advisers, in the United States and elsewhere, including several headquartered in Canada or licensed in various Canadian provinces.

- Clarify permitted practices involving transfers of licenses, changes of ownership, and newly-exempted advisers; and
- Clarify the establishment and residency limitations for the categories of international portfolio manager and international investment fund manager.

Background

The Proposed Instrument is the latest in a series of initiatives to streamline and modernize the regulation of securities in Canada. Commendably, the most recent effort has attempted to address the interests of the CSA, self-regulatory organizations, and industry. The Proposed Instrument is intended for implementation by each of the CSA members following introduction and passage of enabling legislation by the provincial legislative body in each of the 13 Canadian jurisdictions. While this format is intended to lead to increased uniformity, harmony, and consistency, the Proposed Instrument would still involve 13 separate sets of laws, registrations, and administrative bodies. We believe this effort would fall short of the expected efficiencies of a pan-Canadian federal legislative solution that would transcend the provinces and territories and create one national registration applicable to all of Canada.

1. The IAA supports a uniform approach to investment adviser registration in Canada.

The IAA commends the CSA for undertaking such a comprehensive effort to streamline and modernize the investment adviser laws in Canada. Creating a single registration form for investment advisers that would apply to each jurisdiction is a significant step forward. We applaud the proposed arrangement whereby an adviser registered in multiple provinces could effectively deal with a "principal regulator" instead of interfacing with agencies in all 13 jurisdictions with respect to varying forms, time periods, details, and distinctive legal characteristics. Further, we would encourage the appropriate legislators and regulators to adopt the whole measure as presented at the appropriate time and to resist the temptation to retain any distinctive local rules or variations.

Given the increasing globalization of the asset management industry, we cannot overstate the need for consistency with respect to the regulatory frameworks for the registration of investment advisers in Canada, the United States, the United Kingdom, and the European Union. Many investment advisers are subject to regulation in each jurisdiction and are subject to inconsistent and potentially conflicting regulatory standards. It is increasingly difficult, time-consuming, and expensive for advisers to address the compliance requirements of disparate regulatory regimes. The IAA has long emphasized that securities regulators should work together to encourage uniformity in the approach to rules relating to investment advisers with clients in several different countries so they can better operate under consistent regulatory frameworks.

2. The IAA recommends additional clarifications or revisions with respect to exemptions for international advisers.

De minimis standard. We recommend that the CSA establish a clear threshold below which foreign advisers with a certain number of Canadian clients need not register as investment advisers in Canada. The newly proposed categories and standards provide certain exemptions from the registration requirements, but an additional objective *de minimis* exemption would be helpful so that an adviser with, for example, fewer than six Canadian clients, would not need to register in Canada provided that adviser is duly registered in the United States, United Kingdom, European Union, or other jurisdictions with comparable regulatory regimes. This exemption would cover the relatively common situation where an existing client of a U.S.-based and regulated investment adviser moves to Canada and the client would like to leave unchanged their asset management relationship. Such a *de minimis* exemption for foreign advisers could be applied similar to the present Ontario *de minimis* exemption,[3] although, as discussed further below, the list of "permitted clients" associated with such an exemption should track in its entirety the current list in the existing Ontario *de minimis* exemption. The Proposed Instrument, taken as a whole, should have this uniform provision and not resort to a patchwork of various *de minimis* standards applied separately in each province.

Permitted clients. We recommend that the list of permitted (exempt) clients for a foreign investment adviser mirror, at a minimum, the permitted clients under current Ontario rules, which allow for 14 different types of exempt clients. The Proposed Instrument unnecessarily restricts the list of types of permitted clients to seven. Some U.S-based investment advisers presently conduct certain activities for Canadian registered investment advisers, registered fund managers, and other "permitted clients" without the need for registration in Canada. *See* Ontario Securities Commission *Rule 35-502 Non-Resident Advisers*, Definitions Part 1.1. These activities include managing portions of clients' portfolios, making securities selection recommendations, and performing other advisory functions for registered Canadian investment advisers and other exempt clients. We encourage the CSA to retain such exemptions for foreign investment advisers, especially those that are registered and already regulated in jurisdictions such as the United States, the United Kingdom, and the European Union. We strongly suggest the CSA add to the list of "permitted clients" to match the list currently used in Ontario.[4] We understand that the Ontario exemption has worked well with relatively few problems.

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[3] *See Ontario Securities Commission Rule 35-502, Non-Resident Advisers*, Part 7, subpart 7.1 permitting a non-resident adviser an exemption from registration if the adviser, among other things, has not more than five clients in Canada (not counting exempted or permitted clients).

[4] Some of the categories omitted under the Proposed Instrument include (1) registered charities; (2) individuals with net worth exceeding $5 million; (3) companies owned only by individuals whose net worth exceed $5 million; and (4) corporations with at least $100 million of shareholders' equity. If the Proposed

Solicitation. The Proposed Instrument should eliminate the condition in the exemption for international portfolio managers that the manager not solicit new clients in Canada.[5] At a minimum, we recommend clarification in the Companion Policy that informal (*i.e.* non-compensated) referrals of potential clients by existing clients or others do not constitute "solicitation" of clients in Canada. If a non-resident foreign-registered firm qualifies for a registration exception in Canada and advises only exempt clients, that firm's exempt filing status should not be jeopardized merely because the firm may enter into an advisory relationship with a new exempt client referred by an existing client or others. Similarly, if the adviser responds to a request for proposal (RFP) from a permitted investor or their representative or other inquiry from a consultant or prospective client, such response should not be deemed a solicitation in Canada. There appears to be some disharmony between the philosophy of exemptions based on permitted clients and the concept of not allowing firms to obtain new permitted clients. The Proposed Instrument should be clarified or amended to either permit solicitation of additional permitted clients or clearly explain that non-compensated referrals or responses to RFPs or similar types of contacts do not constitute solicitations.

3. The IAA recommends clarification that international sub-advisers may have "contacts" with clients without losing their exemption from registration.

The Proposed Instrument should be clarified to provide that sub-advisers would not violate section 9.17(e) by making routine client servicing contacts. Section 9.17(e) provides that for a sub-adviser to be exempt from registration, … "the person or company so acting as an adviser has *no direct contact* with the registrant's client unless the *registrant is present*" (emphasis added).

The Companion Policy should confirm that if an advisory firm is responding to any questions from its clients (or their consultants), including clients of a Canadian fund or Canadian adviser that may be sub-advised, those responses and answers should be permitted without being considered direct contacts by the adviser. The foreign adviser should be able to respond to questions from Canadian investors without the requirement of the Canadian registrant being "present." Any written responses could be copied to the Canadian advisory firm, if Canadian authorities deem that important, but additional impediments to contacting the sub-adviser might be disadvantageous to Canadian investors in getting prompt answers to questions they may seek.

Instrument does not mirror the Ontario exemption, the CSA should provide clarity regarding any grandfathering or transition provisions for those advisers presently relying on Ontario's more expanded list of permitted clients.

[5] Proposed Instrument; Rule section 9.14(2)(b).

4. **The IAA suggests the following additional modifications to enhance the Proposed Instrument.**

- **The CSA should expand the transition process and implementing time period of the proposed law.**

The IAA encourages the CSA to provide additional information about the process of transitioning from the current arrangement to the new model under the proposed new registration regime. It is unclear how registrants under the old scheme should proceed in the various jurisdictions while the new regime is put in place or how advisory firms would either migrate their registration, let their old registration lapse upon a new filing, or transition from relying on a registration exemption to registering. The Proposed Instrument does not explain what firms that will no longer be required to register must file, such as a Proposed Notice of Termination on Form 33-109F1, or whether some other action would be required. In addition, advisers currently relying on an exemption but required to register under the new regime should be given assurance of being promptly registered or provided sufficient time to accommodate any transition or registration issues.

In this regard, the proposed 120-day transition period for the Proposed Instrument appears inadequate. We would suggest a one-year period (or more, such as 15 months) to better accommodate varying fiscal year-ends, reporting periods, changing literature, obtaining amended agreements, and other logistical considerations.

- **The CSA should enable the entire registration process to be accomplished electronically.**

The registration process in the Proposed Instrument provides a sound start for enabling and permitting registration of advisers through an electronic medium. We encourage the CSA to work further to enable and permit the entire filing process to take place electronically over the Internet for all those eligible to register, including foreign-based investment advisers. Under the Canadian National Registration System (NRS) a firm filer "*may elect*" to use the NRS system *if* the firm filer has a business office in Canada and is registered in at least one other jurisdiction. (Emphasis added). *See Ontario Securities Commission, National Instrument 31-101*, Part 2.1. Data for all filers, however, are collected as part of the National Registration Database (NRD). We recommend that the electronic registration process permit the registration of all advisers, including foreign advisers, to occur simultaneously in all selected provinces in one electronic filing session from whatever location the applicant applies. Paper supplements should be totally eliminated, or at the least minimized, and checks for fees should be replaced with an electronic equivalent.

We recommend reducing paperwork to the extent possible. The CSA should carefully consider some of the requirements in the proposal that mandate a registering

investment adviser to provide voluminous and ever-changing materials (in paper copy presumably) such as Policies and Procedures Manuals, copies of all investment advisory agreements, and originally signed letters of direction to auditors authorizing future audits. Perhaps requiring an appropriate box-selection for affirming that the adviser has such records or agrees to provide such documents if requested in accordance with Canadian requirements would be sufficient for registration purposes. Documents could be required by the regulators upon the occasion of an inspection or examination at the adviser's premises. We do note positively the recommended change in the Proposed Instrument that would remove the "Canadian incorporation requirements" that needlessly complicate the registration process for foreign advisers.

- **The CSA should clarify permitted practices involving transfers of licenses, changes of ownership, and newly-exempted advisers.**

We note with favor that Canadian adviser registrations will be more "mobile" under the Proposed Instrument. Under the Proposed Instrument, registrations are perpetual and the transfer of a registration from one province to another can be made without affecting the adviser's registered status. Similarly, the adviser's registration may continue uninterrupted despite a change in name, change in ownership of the adviser firm, or change of principal Canadian regulator. These features are commendable, but the details relating to changes of control are not clearly defined. In regulatory schemes, the subject of change-of-control is often a carefully crafted concept that would typically include such items as what percent of ownership can change without triggering a change of control for registration purposes (*e.g.* 25 percent or less). This area warrants further consideration. The CSA should address questions such as

- Do the new owners or former owners have any filing responsibilities?
- What time periods apply for effectiveness of changes in control or registration?
- Is a simple notice of change in control sufficient?

- **The CSA should clarify the establishment and residency limitations for the categories of international portfolio manager and international investment fund manager.**

The Rule includes registration exemptions for international portfolio managers and international investment fund managers. To utilize the exemption, the international entity may not have an "establishment in Canada or officers, employees or agents resident in Canada." We suggest the CSA provide guidance clarifying what type of activity meets this requirement. For example, an adviser contracting with a consultant to market services on a part-time basis should not disqualify an entity from utilizing this exemption.

Conclusion

We appreciate the opportunity to provide our views on these important issues and would be pleased to provide any additional information the Canadian securities authorities or its staff may request. Please contact the undersigned with any questions regarding these matters at (202) 293-4222 or paul.glenn@investmentadviser.org.

Respectfully submitted,

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