INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

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June 20, 2007

John Stevenson, Secretary
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Dear Sirs/Mesdames:

Re: Proposed National Instrument 31-103 and Companion Policy 31-103 – *Registration Requirements* (the "Instrument")

The Investment Industry Association of Canada commends the CSA in its efforts to consolidate, harmonize and streamline the complex and currently fragmented Canadian registration regime. The Canadian marketplace benefits from initiatives that rationalize disparate provincial securities regulations, and provide a more principles based framework for compliance. We also support initiatives that level the regulatory playing field between market participants.

General Comments

To the extent that the Instrument achieves the above noted objectives, we support it. However, despite the significant regulatory advancements contained in the Instrument, there remain areas of concern. Certain of these concerns result from the structure of the industry, as provisions do not apply consistently to participants under CSA and SRO jurisdiction. Where such inconsistencies arise, we strongly recommend that the SROs work with the CSA to create a regulatory framework that is consistent, and does not create opportunities for regulatory arbitrage. The regulators should use the valuable feedback provided through this comment process to determine which standards are most appropriate, and to implement those consistent standards.

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Similarly, with respect to the compliance and enforcement of the provisions applicable to non-SRO firms, we would expect the CSA to undertake audits and impose equivalent standards on such firms.

The comments in this letter are based on IIAC member feedback, and highlights the registration provisions that our members have indicated are most important to them.

Specific Concerns/Comments

Business trigger for registration

The IIAC supports the replacement of the trade trigger for registration with the more principles-based business trigger. Requiring registration for all persons who engage "in the business" of dealing in securities will reduce the complexities and inconsistencies in the exemption based regime. It will also ensure that market participants are subject to a more level playing field in respect of registration requirements.

The principles based business trigger will also significantly reduce the number of registration exemptions, resulting in a more streamlined and simple basis for registration. Although the remaining exemptions from registration are appropriate, we believe that existing securities regulatory exemptions for dealing with "exempt purchasers" should be maintained. It is appropriate for the regulatory regime to recognize that entities and individuals who restrict their activities to dealing with large, sophisticated organizations should be exempt from registration. Governments, financial institutions, money managers and other institutional-type clients do not require the protections afforded to investors by a registration regime. To be clear, there would be no exemption for those dealing with individual "sophisticated or accredited investors", but only to institutions with the resources and expertise sufficient to protect themselves in the market. Registration requirements should continue to apply where retail investors are involved.

Exempt Market Dealers Category

We applaud the addition of the new registration category of Exempt Market Dealer. That parties could deal in prospectus exempt securities without registration has been a hole in the net of investor protection, particularly in jurisdictions without the Limited Market Dealer category. The creation of this category will ensure investors obtain adequate and consistent protection when making their investment decisions. It will also align investor expectations of Limited Market Dealers' proficiency and capital coverage (they are not currently subject to such proficiency or capital requirements) with reality.

The market for exempt securities has been treated as a sophisticated market, and as such, the required information and protection provided to investors is limited. It is not clear that all of the investors using the "accredited investor" exemption are indeed sophisticated, as the defined income and asset thresholds are not necessarily an appropriate proxy for investor sophistication. In addition, it is not clear that many of those investors relying on the exemption actually meet the accredited investor criteria, as

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regulators rely largely on client complaints to identify possible infractions. Registration, with mandatory record keeping and oversight, will shed needed light on exempt market activity.

The IIAC recognizes that the proposal to require registration in the exempt market has triggered objections from small issuers that rely on non-registrants and Limited Market Dealers to distribute their securities in private placements. Such concerns must be carefully balanced against better safeguards for investors.

We are extremely concerned that the BCSC is proposing not to adopt this important registration category. According to the statistics published by the Canadian Financing Bulletin, non brokered private placements accounted for approximately 29% ($9,745,664,280 of $33,541,272,205) of the private placements conducted in the Mining, Technology and Oil and Gas sectors in 2006. Many of these private placements were facilitated by non-registered individuals who are not subject to any competency standards or obligations to investors. The issuers undertaking private placements without registrants are more likely to be in the venture market, which is concentrated in BC and Alberta. Given the higher risk profile of these securities, it is critical that investors be properly qualified and screened to ensure that they not only are eligible to purchase exempt securities, but that such securities are suitable investments for them. The Alberta Securities Commission indicated that it opened 133 files in 2006 in respect of exempt market trading (excluding general complaint or inquiries).

In addition to the investor protection concern, the CSA must also ensure that it provides a level playing field for market participants. Non registrants can sell exempt securities to clients with no particular training or education and without the potential for enforcement action should the transaction end badly for the client. Registrants selling the same securities to the same investor are subject to a wide range of rules, including those governing client interaction, conduct, education, and capital requirements. The implications for registrants undertaking a transaction that is not consistent with the regulatory requirements are significant. Registrants may be subject to fines, suspension, dismissal, or market bans. The inconsistency in treatment for different individuals undertaking the same activity defies logic.

The BCSC has justified its position by indicating that they are not convinced there is a market problem in this area. We question whether the BCSC has undertaken any research to determine whether the investors purchasing securities through non registrants are legally eligible to do so, and if the securities are appropriate for their portfolio. If the BCSC maintains that investors do not require the protection of a registrant for these transactions, the requirements imposed on registrants dealing in these securities should be alleviated to level the playing field.

We suggest that before the BCSC elects to opt out of the exempt market dealer registration category, it should undertake a comprehensive cost-benefit analysis that takes into account the benefits of improved scrutiny of exempt market activity, augmented investor protection and market confidence.

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In addition, the BCSC must consider the over-arching objective of regulatory uniformity in exempt markets and progress toward an effective passport system and more efficient markets in Canada.

Categories of Registration and Permitted Activities

We applaud the CSA's efforts to harmonize the firm and individual categories across all of the CSA jurisdictions. We urge the IDA to simplify and rationalize its individual registration categories accordingly.

Fund Manager Registration

The IIAC supports the proposed registration requirement applicable to fund managers, and the individual registrations required for those in supervisory roles.

Individual Categories

UDP and CCO

The Instrument creates new individual categories for the Ultimate Designated Person (UDP) and the Chief Compliance Officer (CCO). We agree that their should be specific registration of UDPs and CCOs, as it provides a more targeted means of preventing unfit persons from managing a firm, rather than putting conditions on the firm itself. We believe, however, that the CSA and IDA should work to make the registration categories consistent. For instance, under IDA By-law 38, the UDP may be either the Chief Financial Officer (CFO) or the Chief Operating Officer (COO). This provides more flexibility than is available in the Instrument. In addition, the definition of "officer in charge of a division" is not consistent as between IDA rules and the Instrument. Either there should be an exemption for IDA members for this provision, or the inconsistency should be corrected. In addition, consistent with IDA regulation, we believe it is appropriate to require the Alternate Designated Person (ADP) and the CFO to also be registered.

Associate Advising Representative

It is not entirely clear from the Instrument which business activities are intended to be captured under this category. It appears to be somewhat similar to the IDA category of Associate Portfolio Manager, but with fewer educational requirements.

As a result of our discussions with CSA representatives, we understand that this position covers client relationship representatives who undertake activities such as completing Know Your Client documentation, providing limited advice and slotting clients into model portfolios (with all such activities supervised by a portfolio manager). It is designed to capture the existing practice in some jurisdictions of providing a registration with conditions, to allow individuals to gain the requisite experience and education needed to become a Portfolio Manager. We support this apprenticeship category, as it

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may assist market entrants and firms. However, if the activities undertaken by the individual are purely administrative, we do not believe a category is warranted. The Instrument should more clearly define the permitted activities and limitations of this category. It would also be helpful if the CSA and IDA would harmonize the individual registration categories for consistency and to avoid market confusion.

Registration of Senior Executives and Directors

In response to the question of whether senior executives and directors should be registered, it is our members' view that it is appropriate to register certain, but not all of these individuals. Individuals that comprise the mind and management of the firm, and those with job functions that are connected to registrable activity, even if they do not undertake that role directly, should be registered. The registration is important to maintain industry credibility and to ensure those connected with the firms' core functions meet regulatory standards. Executives and directors responsible for administrative functions that are not connected to the core firm activities (for example VPs of Physical Facilities or Human Resources) should not be required to be registered. Those with honorific titles should not require registration, except to the extent that they are involved in trading. As such, they would not be required to complete the PDO Qualifying Examination.

Permitted Advising Activities for Dealers

The exemptions from the advisor registration requirement for a registered dealer that provides non-discretionary advice necessary to support its dealing activities appears consistent with the exemption for IDA members who give discretionary advice to fully managed accounts. We support this provision to the extent that it applies only where the dealer does not have discretionary management authority over the client's portfolio. We believe that this recognizes business realities and creates a level playing field.

Permitted Dealing Activities for Advisors

The Instrument proposes an exemption from the dealer registration requirements for those dealing in units of its in-house pooled funds with bona fide fully managed accounts managed by the advisor as part of its portfolio management for those accounts. The exemption must have clear restrictions preventing the advisors from dealing with individual retail investors. In respect to the question posed as to whether the exemption should be expanded to other third parties, we believe this would only be appropriate if such parties were institutional entities.

Fit and Proper Requirements

Proficiency

To the extent that the Instrument harmonizes proficiency requirements as between SRO and non-SRO members, we support the provisions. Consistent standards are essential

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from an investor protection and market integrity perspective, regardless of whether the registrant operates primarily under SRO or CSA jurisdiction. In particular, we support the application of the fit and proper requirements to Exempt Market Dealers. This is a significant improvement in respect of investor protection for those provinces currently operating without a similar category, and for those operating with a Limited Market Dealer category.

Solvency Requirements

We support the modernized approach to capital requirements, which reflects a more risk-based perspective, consistent with the approach taken by the SROs.

Conduct Rules

Account opening and know-your-client

It is critical to have consistency as between SRO and non-SRO registrants in this area. Investors should not be prejudiced in respect of the KYC and suitability obligations of their registrant, based on the registrant's oversight jurisdiction. Such inconsistency creates confusion for investors, and detracts from market integrity.

We note that there is a new KYC provision that requires registrants to ascertain if the client is an insider of a reporting issuer. The Instrument should clarify if this applies to all reporting issuers in all jurisdictions, including foreign jurisdictions. Is the CSA primarily concerned with publicly traded issuers? The provision should be targeted and clarified accordingly.

In order to ensure consistency and adequate investor protection, the client account opening requirements should apply to accredited investors. The standards for accredited investors do not ensure the investor has a base level of knowledge and sophistication. Given the divergent types of investors that may qualify for this category, it would not be advisable to exempt them from such requirements.

Relationship Disclosure

The proposed requirements are not entirely consistent with existing or proposed SRO rules in this area. We note that the provisions do not apply to an investment fund manager or a registered firm when it is dealing with an accredited investor.

We believe that the standards should be consistent in its application to investors, and in its content. In terms of content, we have made a number of submissions to the IDA in respect of its proposed Client Relationship Model. We do not intend to reproduce those submissions in this letter, however, they can be accessed on our website at [http://iac-ca.sitepreview.ca/Upload/IIAC_crm%20letter%20apr23.pdf] and we would be pleased to discuss this in more detail at your convenience.

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Client assets

To the extent that the safekeeping and segregation requirements have been harmonized, and are consistent with the approach taken by the SROs, we support them. We believe that the prohibition on non-SRO registered firms providing margin to clients is appropriate due to the recognition that the capital and insurance requirements do not take into account the risks of providing margin.

Record keeping

The replacement of prescriptive lists with a general obligation to maintain an effective record keeping system is an appropriate application of principles based regulation. It recognizes that firms have different businesses and as such, records that are relevant for one firm may not be for another.

We are, however, concerned with the categorization of communications on an "activity" and "relationship" basis. There is room for significant overlap between the two categories, for instance where emails and verbal communications deal solely with a specific transaction. The administrative burden of categorizing and storing such communications on this basis, and according to different retention requirements, is significant. The retention requirement for relationship records means that firms will effectively have to keep such records for long term clients in perpetuity. We question the usefulness of this requirement, particularly given the difficulty in creating a useable archive and retrieval system for all electronic communications. The volume of information required to be archived is potentially staggering. The cost of storage and the difficulties in developing a reliable and effective retrieval system will create problems for firms and for third parties seeking access to historical documents. We suggest that the CSA focus on the specific type of records of concern, and provide a more reasonable time frame in respect of the record retention period.

Account activity reporting / Streamlined statements of account and portfolio

We support the concept of harmonization and recognition of the commonly granted discretionary relief. The ability for firms to aggregate information and reduce the frequency of delivery of account statements is a positive step and the IDA should match these new provisions.

Compliance

We support the move to a more principles-based regime as set out in the proposed Instrument. The obligation of firms to establish, enforce and document a system of controls and supervision to ensure a firm's compliance with all applicable requirements of securities legislation is appropriate.

We are concerned however, with the proposed removal of the currently prescribed requirement applicable to branch offices and branch managers. We believe that the

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responsibilities inherent in managing branches necessitate specific registration and designated supervisory requirements. In addition to ensuring that the branch managers have the requisite skills and regulatory obligations to perform this function, we also believe that registration contributes to investor confidence in the general integrity of the market.

Complaint Handling

The new requirement for registered firms to implement policies and procedures to address client complaints is important from an investor protection and level playing field perspective. The definition and scope of complaints should be consistent between firms under CSA and SRO jurisdiction.

In order to maintain market integrity, clients must have similar recourse regardless of whether a firm is overseen by the CSA or an SRO.

Non-resident registrants

We support the provisions that level the playing field with respect to non-resident registrants, recognizing that it is appropriate to impose some additional requirements on non-residents. It is appropriate to harmonize the approaches taken by different CSA jurisdictions. However, we are concerned that the there does not appear to be a definition of non-resident. This could result in a disclosure requirement for any client whose registrant is out of the province, even if the firm has an office in that province.

Conflicts

Consolidation

The IIAC supports the move to a more principles-based Instrument, with the accompanying detailed guidance in the Companion Policy provided for clarity. We are concerned however, that there is not a materiality concept included in the Instrument itself, rather than in the Companion Policy, to ensure that it cannot be ignored or minimized. Without a materiality concept, and more focused guidance as to what the regulators are concerned about, the conflicts net is cast far too widely. We are concerned that the existing definition in the Companion Policy is far too broad, and without some clear parameters, the definition of conflicts could be interpreted to encompass many of the competing interests in the industry which arise in a market with buyers and sellers. We have seen evidence of this regulatory approach in the recent IOSCO paper dealing with conflicts facing market intermediaries. The CSA should re-examine the conflict provisions in light of the myriad of other regulatory provisions that deal with conflicts and focus the provisions more specifically on the areas of concern.

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As with any principles-based regulation, it will be very important to ensure that CSA and SRO staff are trained to operate with less prescription. Firms' staff must be able to make appropriate judgments as to their firm's compliance with the high level principles, rather than focusing on each step the firm takes to achieve such compliance.

Advisor fees no longer restricted

We believe it is appropriate to remove the prohibition on advisors charging transaction based fees. It is not an appropriate function of securities regulations to determine how firms charge for their services. Any concerns regarding investor protection can be dealt with in the expanded disclosure requirements in the Instrument.

Referral arrangements

The Instrument deals with the concerns related to client awareness, client confusion, referrer performing activities requiring registration and supervision and oversight in a reasonable manner. However, the types of activities that are intended to be covered should be more clearly defined. For example, it is unclear whether this section is intended to apply to the payment of finders' fees for non brokered private placements or to soft dollar arrangements.

In addition, as noted above, the CSA must be careful not to cast the net too widely in respect of conflict of interest requirements. This area should be focused to address the specific concerns that the CSA intends to specifically address. It is also not clear whether the referrer must be registered to undertake referral activities.

We believe the most important aspect in respect of referral arrangements is disclosure, but that the parameters of disclosure should be well defined. In particular, items (c) and (g) of section 6.13(1) are too open ended to provide certainty as to the limits of disclosure.

It should also be clearly stated that transactions undertaken as a result of a referral should be conducted on an on-book basis.

Suspension and Revocation of Registration

Permanent registration / Automatic re-instatement

The IIAC commends the CSA on the proposed implementation of permanent registration and automatic re-instatement in all CSA jurisdictions. This important initiative will significantly improve the efficiency of the registration system. The ability of registrants to maintain their registration status without re-registering, and to move between firms in a more seamless manner serves not only the registrant and the firms, but also the public.

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Investors wishing to retain their broker or advisor will no longer be subject to the potential disruptive break in service that exists in the current system.

We are concerned, however, that a suspension will not be automatically lifted where a hearing concerning the individual has been commenced. This treatment is questionable as it imposes suspension on an individual before the regulator has found that a sanction is warranted. The provision should provide for a suspension (or imposition of terms of registration) only in circumstances where the public is at risk, and the onus should be on the regulator to make this case. The suspension or imposition of terms and conditions on registration should also be subject to the registrant's right to an opportunity to be heard and right of appeal to the securities regulatory authority.

We also believe that in order to provide certainty, the effect of a disciplinary proceeding by a non-principal regulator should be clearly addressed in the Instrument.

Terminations

We support measures designed to promote market integrity by keeping unfit persons from being registered. We are concerned, however, that firms be protected from legal and other regulatory action as a result of providing frank answers to the questions in the prescribed form. In particular, we are concerned with the open ended nature of Question 10 on the form which reads: *Is there any other matter relating to the individual's termination or conduct leading up to it that the firm is aware of, and believes is relevant to his or her suitability for registration?*

An appropriate balance must be struck to ensure that regulators obtain the required information without exposing the firms to risk by providing such information.

Information Sharing

We have similar concerns to those expressed about terminations. The requirement to disclose information must be measured against the risks of liability flowing from such disclosure. The provision is also too open ended in that what is considered relevant to the assessment of suitability is somewhat subjective insofar as non disciplinary behaviour is concerned. Also, the relevance of certain information may only be apparent in hindsight. Applying such a standard puts firms in the difficult position of speculating what may be relevant, and perhaps violating employment and privacy laws and inviting libel or slander suits, on one hand, and being in violation of the regulations on the other. We are also concerned about the wording of the provision in that it appears to apply when a firm indicates that it is considering hiring an individual. There is no requirement for the individual to confirm that this is the case. This could result in significant privacy legislation concerns.

If the provisions as proposed are retained, the Instrument should grant absolute or qualified immunity against a defamation action and an exemption to the relevant

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provisions of the applicable privacy legislation to a registrant who complies with this requirement in good faith.

Mobility exemption

The decision to retain the limits on the broker mobility exemption which is currently contained in the Passport System (subsequently to be moved into the Instrument) is problematic and inconsistent with the purpose of a national registration system. The exemption permits individual brokers to service only five inter-provincial clients, and restricts an entire firm to ten such clients. These limits on the exemption are far too low to deal with the issue of client mobility, and therefore strip it of any real utility. The rationale for the limit is unclear, as the exemption does not diminish any of the protections currently afforded to clients regardless of the number of clients involved. As long as the firm and the individual registrant meet the criteria required by their principal jurisdiction, there is no clear reason to establish limits. Given that the provinces do not have materially different registration requirements, the decision to effectively exclude broker mobility from the Registration Reform System is questionable.

From a practical point of view, the cost and time required for firms to develop and monitor compliance with the exemption more than offset the benefits, due to the extremely limited number of clients that can be served. The result has been, and will continue to be that dealers serving any number of inter-provincial clients will choose to register rather than use the exemption.

Exemptions for International Dealers and Advisors

In respect of the elimination of the registration categories for international dealers and advisors, we note that the restrictions in the proposed exemption may cause a number of unintended negative consequences. Specifically, the requirements that the dealer not have an establishment, officers, employees or agents in Canada will significantly alter the way in which US and other foreign firms operate in Canada. The Instrument would prevent foreign firms from having registrants in Canada which has been common practice for US/Canada cross border trading and research. In order for them to take advantage of this exemption from full registration they would have to deregister these dually registered employees. The unintended consequence would be to limit these Canadian affiliates from effectively servicing US institutional account investments in Canadian securities. The current practice of dual registration facilitates sharing of information, research and expertise, and provides clients with valuable access to foreign markets on a timely and direct basis where time zone issues arise.

Another problem with the proposed exemption is the narrow scope of the permitted international dealer client. We suggest that large corporate plans be included in this category, as their sophistication and size precludes the need for the same protections afforded to retail clients. In crafting a useful exemption or registration category we

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suggest that the CSA look to the structure of SEC Rule 15a-6 which allows foreign broker-dealers to facilitate limited contacts with certain US institutional investors.

It is important for the CSA to be mindful of the movement to more free trade in securities, particularly in the institutional market. The exemptions provided in the Instrument are too narrow to serve any practical function. In crafting an exemption, the CSA must balance the movement to free trade with the concept of reciprocity, so that international dealers and advisors are subject to similar restrictions as Canadians seeking to do business abroad.

Transition

In respect of the exemption process, the Instrument does not refer to the treatment of persons who are currently carrying on business without registration pursuant to an exemption from registration that was previously granted by a securities regulatory authority. Such exemption orders apply only to the person who makes an application; they are based on the individual circumstances of the applicant and a conclusion by the SRO or commission granting the exemption that the public interest does not require that person to be registered. There is no reason why this regulatory conclusion should change under the new regime, as "business" issues would have been taken into account when the exemption was granted. The Instrument should make clear that any such exemptions will continue in force and not be affected by the new registration regime.

Incorporated salespersons

The IIAC looks forward to continuing to work with the CSA and the IDA to develop a suitable regulatory framework that will allow for the incorporation of salespersons. Ideally such a solution will be developed on a timeline that is consistent with the implementation of the Instrument.

Annual fee payment date

Our members have indicated that in general, a May 31 fee payment date is preferable from an administrative standpoint.

Conclusion

The IIAC appreciates the opportunity to comment on this important initiative. We thank you for taking our comments into consideration. If you have any questions relating to this submission, please do not hesitate to contact me.

Yours sincerely,

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