Scotia Securities™

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité 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, Yukon Territory
Registrar of Securities, Nunavut

June 29, 2007

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario
M5H 3S8

Anne-Marie Beaudoin
Directrice du secretariat
Autorité du marchés financiers
Tour de la Bourse
800, square Victoria
C.P. 246, 22eme étage
Montréal, Québec
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Dear Mr. Stevenson and Ms. Beaudoin:

RE: Response to Request for Comments on Proposed National Instrument 31-103 and Companion Policy 31-103 – Registration Requirements

Scotia Securities Inc. (SSI) is pleased to respond to the Canadian Securities Administrators' Request for Comment on proposed National Instrument 31-103 – Registration Requirements and Proposed Companion Policy 31-103CP.

SSI is a subsidiary of The Bank of Nova Scotia and is a member of the Mutual Fund Dealers Association of Canada (MFDA). SSI also acts as the fund manager of a family of no-load mutual funds offered in all jurisdictions of Canada. Accordingly, if and when Proposed NI 31-103 is implemented, SSI expects that it will be required to register in the categories of Mutual Fund Dealer and Investment Fund Manager. It is less clear whether The Bank of Nova Scotia would be required to register under Proposed NI 31-103 in order to carry on some its current activities. SSI does not support the imposition of such a requirement on Canadian banks regulated by the Office of the Superintendent of Financial Institutions.

SSI applauds the CSA on its continuing efforts to consolidate and harmonize the complex web of Canadian securities laws and regulations. To the extent that the Proposed NI 31-103 harmonizes and simplifies existing registration laws and regulations, SSI supports it.

SSI participated in various industry initiatives to formulate responses to the CSA's Request for Comment on Proposed NI 31-103 and generally supports the comments being made by the Investment Funds Institute of Canada, Canadian Bankers Association and the Investment Industry Association of Canada. In addition to the comments made in those submissions, SSI wishes to draw the following issues to the attention of the CSA:

<u>Repeal of Exemptions for Capital-Raising and Safe Securities</u>:

The Request for Comment contains some indication that the CSA proposes to eliminate registration exemptions for capital-raising and safe securities, but does not identify which exemptions are proposed to be eliminated. Consequently, there has been much confusion as to whether financial institutions, such as banks, who sell bonds, principal-protected notes, t-bills, commercial paper, money market and other instruments, will become subject to registration under Proposed NI 31-103. Since there is not currently sufficient information about what registration exemptions will be eliminated, SSI is unable to offer insightful comment on the issue. With the expectation that the CSA will publish for comment any proposal to eliminate existing registration exemptions, SSI looks forward to the opportunity to offer its comments at that time.

The Role of the Ultimate Designated Person and the Chief Compliance Officer:

Under section 2.8 and 2.9, an ultimate designated person is responsible for ensuring that a registered firm develops and implements policies and procedures for the discharge of the firm's obligations under securities laws, while the chief compliance officer is responsible for discharging the firm's obligations under securities laws. While SSI agrees that these are the responsibilities of the UDP and CCO, respectively, under current Ontario and other provincial securities laws, SSI believes that since the UDP must be an executive officer of the registered firm, the UDP is better situated than the CCO to be responsible for the discharge of the registered firm's obligations under securities laws. The CCO would be more suited to ensuring that the firm develops policies and procedures reasonably designed to ensure that the firm discharges its obligations under securities laws. Since these are the roles currently ascribed to the UDP and CCO of registered advisers under current Ontario securities laws, SSI recommends that this adviser standard be applied universally to all registered firms.

Account Opening Documentation:

Under section 5.3, a mutual fund dealer would be required to take reasonable steps to ascertain whether a client is an insider of a reporting issuer. Given that mutual fund dealers are only authorized under proposed NI 31-103 to deal in mutual fund securities and an insider of a reporting issuer could not, in ordinary circumstances, cause a mutual fund to trade securities of the reporting issuer, should mutual fund dealers be required to identify insiders of reporting issuers? Requiring mutual fund dealers to ascertain which clients are insiders of reporting issuers would only cause mutual fund dealers to incur significant costs to change account opening forms and enhance technology systems to capture which clients are insiders of reporting issuers, without any obvious corresponding benefit to the securities marketplace.

Record-Keeping Requirements:

Section 5.20(4) requires a registered firm to keep client activity records for seven years from the date of the activity and relationship records for seven years from the date the person or company ceases to be a client of the registered firm. The Companion Policy 31-103CP defines relationship records very broadly to include, among other things "all e-mail, fax and other written communications to clients."

The requirement to preserve e-mail communications will be especially onerous for mutual fund dealers, since there is no current requirement to preserve all such records. Almost universally, mutual fund dealers' e-mail retention systems are designed to preserve records by user name rather than by client. To comply with the requirement to preserve all e-mail communications with clients for seven years after a client's relationship with the firm has ended, mutual fund dealers will have to build e-mail retention systems at exorbitant expense or store all of their representatives' e-mail communications in perpetuity (also at exorbitant cost). Ultimately, those costs will be passed on to clients.

SSI therefore asks the CSA to reconsider the requirement to treat all e-mail communications as relationship records that must be preserved for such a lengthy period of time. The Investment Dealers Association's (IDA) By-law 29.7 requires securities dealers to retain e-mails that are either sales literature or correspondence (as those terms are defined in By-law 29.7) for a period of either two years or five years from the date of their creation. As well, several Canadian provinces have recently decreased their statutory limitation periods to two years. Given this trend, SSI submits that a retention period of between two years and five years from the date of creation is appropriate for relationship records.

Account Activity Reporting:

Section 5.23 enables mutual fund dealers to send clients semi-annual confirmations for monthly or more frequent trades in automatic payment plans or automatic withdrawal plans, if certain conditions are satisfied. SSI respectfully requests that the CSA consider broadening the applicability of this provision to all systematic purchases or redemptions in a mutual fund account, as long as such transactions have been pre-authorized by the client.

Section 5.25 reduces the frequency in which account statements must be sent to clients to once each quarter, unless the client requests more frequent account statements. Enabling clients to request more frequent account statements than a standard monthly or quarterly frequency would require registered firms to change account opening documentation and build systems to track the frequency with which clients wish to receive require account statements. The costs of building such systems could potentially outweigh the cost savings to registered firms of having to deliver statements on a quarterly rather than monthly basis. SSI therefore urges the CSA to revise the provision to require registered firms to deliver accounts statements quarterly but allow them to satisfy clients who wish to be able to monitor account activity more frequently through electronic Internet account access.

Complaint Handling:

With respect to the requirement in section 5.32 to report complaints annually, SSI notes that beginning this July, it will be required to report the complaints that it has received to the MFDA using the METS system. Securities dealers are already required to report complaints to the IDA using the IDA's Comset system. To avoid registered firms having duplicate reporting obligations and having to build separate policies, systems and procedures to report the same complaint to different regulators, SSI urges the CSA to exempt registered firms who are obliged to report complaints to a Canadian securities self-regulatory organization from the complaint reporting obligations of section 5.32.

Conflicts Management:

Section 6.2 requires a registered firm to identify each potential and actual conflict of interest and resolve the conflict in a fair, equitable and transparent manner while "exercising responsible business judgment influenced only by the best interest of the client or clients." The provision is so broadly worded that it applies to all actual and potential conflicts of interests, whether such conflicts are material to clients or not. Furthermore, since many conflicts will be resolved by disclosure to clients, there is a risk that the conflicts disclosure to clients will be so voluminous that it becomes meaningless. SSI therefore recommends that the CSA consider importing a materiality test into the provisions dealing with conflicts of interest management. Alternatively, perhaps the CSA could identify what conflicts of interests it believes are not being appropriately resolved. That would assist registered firms to improve their conflicts management policies and procedures to address those conflicts.

As well, the conflicts of interest provisions raise an additional question: How does a firm show that it exercises responsible business judgment influenced only by the best interest of the client or clients?

The requirement in section 6.1(3) for registered firms to provide prior written disclosure of a conflict of interest to a client when there is a reasonable likelihood that the client would consider the conflict important when entering into a proposed transaction is problematic. In SSI's view, this provision effectively creates a litigation minefield because it requires registered firms to assess conflicts of interest and their potential impact on each individual client before a client makes a proposed investment, while clients will have the opportunity to assess the importance of the conflict after having made the investment and with the benefit of knowing how the investment performed.

Issuer Disclosure Statement:

Section 6.4 requires firms that act as an advisor or dealer in respect of securities of related issuers or, in the course of a distribution, connected issuers, to deliver a current issuer disclosure statement before the registered firm first trades a security for or advises a client to trade in a security whose issuer is listed in the issuer disclosure statement.

SSI believes that the costs of building systems to ensure that current issuer disclosure statements are delivered to clients before they actually trade or are advised with respect to related issuers will be exorbitant. For that reason, SSI recommends that the CSA consider an alternate model whereby registered firms are: (a) required to deliver a statement of their policies respecting their activities dealing or advising in securities of related or, in the course of distribution, connected issuers at account opening and thereafter, at least annually. Such a statement would contain the address of an accessible website on which current issuer disclosure statements are posted; and (b) permitted to deliver current issuer disclosure statements by posting the statements on an accessible website. Such a regime would enable registered firms to effectively and on a timely basis advise clients of related or connected issuers, while avoiding the costly mechanisms necessary to supervise and track delivery of the statements, in the manner currently contemplated by section 6.4.

Information Sharing:

As currently drafted, section 8.1 would require registered firms to disclose to another registered firm information about "a person" that is relevant to that "person's" conduct or suitability as a registered person. SSI understands that the CSA intended that the information sharing provisions only apply to a registered dealer's employees and therefore recommends that all references to "person" in the provision be replaced by the term "employee".

Furthermore, the requirement for a registered firm to disclose all the information in its possession or of which it is aware is overly broad; it significantly raises the spectre of defamation litigation since a firm could be required to disclose information in response to a query when it has not yet had sufficient time to ascertain its accuracy.

There are other concerns that the CSA should consider before implementing information sharing: How does a registered firm substantiate that another registered firm is considering employing or retaining an individual as an employee, agent or partner? When is it appropriate for a registered firm considering a candidate to make the inquiry, given that such an inquiry could put the candidate in a tenuous position with the registered firm to which the inquiry is being made? How soon must the firm receiving the inquiry respond? Is it appropriate that registered firms be automatically obliged to disclose information to any foreign financial services regulator pursuant to section 8.1(3)(d), when a foreign regulator requiring information from a Canadian registered firm has the option of making their request through a Canadian regulator or by obtaining a Canadian court order? Has the CSA obtained an opinion from the federal Privacy Commissioner confirming that registered firms who comply with the proposed information sharing provisions in NI 31-103 will not be in breach of *The Personal Information Protection and Electronic Documents Act*?

SSI strongly believes that if these provisions are implemented, the implementing statute must grant registered firms absolute or qualified privilege as a protection against defamation lawsuits and urges the CSA to explicitly cause such a privilege to be granted.

<u>Investment Fund Manager Category</u>:

SSI looks forward to the opportunity to review and comment on any proposed implementation mechanisms concerning the registration of investment fund managers.

With respect to the proficiency requirements for investment fund managers' Chief Compliance Officer stipulated in section 4.13, SSI asks the CSA to reconsider whether it is necessary for a lawyer or Chartered Accountant with the requisite employment or professional experience to have passed the Canadian Securities Exam.

In closing, SSI thanks the CSA for its consideration of its comments on Proposed NI 31-103 and the Companion Policy. Please do not hesitate to contact Susan Eapen at (416) 862-5840, Lino Cambone at (416) 933-7459 or myself at (416) 933-7440, if you have any questions or wish to discuss these comments further.

Yours truly,
Scotia Securities Inc.

Glen B. Gowland
President & Chief Executive Officer