INVESTMENT ADVISER
ASSOCIATION

May 29, 2008

By electronic mail

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

Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
Tour de la Bourse
800, square Victoria,
C.P. 246, 22 étage
Montreal, Québec
H4Z 1G3
Canada
Email: consultation-en-cours@lautorite.qc.ca

John Stevenson
Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario
M5H 3S8
Canada
Email: jstevenson@osc.gov.on.ca

Re: National Instrument 31-103 Registration Requirements

Dear Madame Beaudoin and Mr. Stevenson:

The Investment Adviser Association[1] (IAA) welcomes the opportunity to comment on the re-proposed National Instrument 31-103 ***Registration Requirements*** (Rule), the Companion Policy 31-103CP (Companion Policy), and the Consequential Amendments (together, the Re-proposed Instrument) issued by the Canadian Securities Administrators (CSA) regarding the registration, among others, of investment advisers in Canada.

The Re-proposed Instrument represents a significant step towards harmonization and modernization of the registration process and requirements across all Canadian jurisdictions, and we commend the CSA for advancing this important undertaking. We appreciate the many revisions reflected in the Re-proposed Instrument that are consistent with views we expressed in our comment letter on the original proposal.[2] In particular, the IAA applauds the CSA's determination in the Re-proposed Instrument to expand the list of permitted clients for international advisers, to eliminate the condition prohibiting the solicitation of new permitted clients by international advisers, and to provide appropriate transition periods for new registration categories.

The IAA suggests, however, that further improvements be made to the proposal that will increase the efficiency of the registration process and benefit Canadian clients.

Specifically, we recommend the CSA:

- Continue to strive for a harmonized and streamlined national regulatory framework for investment advisers in Canada by imposing uniform requirements for investment advisers and by creating a uniform filing process (including the use of an electronic filing system) for firm registration in Canada.

- Modify the conditions for the international adviser exemption to allow international advisers to provide investment management services to a de

[1] The Investment Adviser Association (formerly the Investment Counsel Association of America) is a not-for-profit association based in Washington D.C. that represents the interests of investment advisers registered with the U.S. Securities and Exchange Commission. Founded in 1937, the Association's membership consists of over 500 firms that collectively manage in excess of US$9 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] Letter regarding National Instrument 31-103 Registration Requirements from Paul D. Glenn, Counsel, Investment Adviser Association, to the Canadian Securities Administrators (June 20, 2007) available at http://www.investmentadviser.org/public/letters/comment062007.pdf.

minimis number of clients who would not fall within the definition of "permitted clients."

- Revise the definition of "permitted client" to include an investment fund that is managed by an investment fund manager and an investment fund that distributes its securities in Canada only to other permitted clients.

- Permit sub-advisers to contact the ultimate clients without the presence of the registered adviser so that sub-advisers may more effectively carry out their mandate.

- For advisers registered in Canada, modify or clarify several provisions of the fit and proper requirements and the rules on conduct and conflicts of interest to further enhance the regulatory regime.

We discuss each of these items in more detail below. Our comments are based on the experience of our members, many of whom currently advise clients under the "foreign adviser" or "international adviser" registrations in several of the provinces and others of whom are dually registered as advisers in the United States and Canada.

1. The CSA Should Continue To Work Towards a Uniform National Approach To Investment Adviser Registration in Canada.

We strongly support the CSA's efforts to harmonize and streamline the Canadian regulatory framework for investment advisers. We are sensitive to the significant role of the provincial and territorial securities regulators in regulating investment advisers in Canada and recognize that the Canadian provincial government structure differs from the federal system of government in the United States. We would, however, encourage the CSA to take proactive steps toward investment adviser registration at the national level, which would make the registration process in Canada more efficient and facilitate compliance with the regulatory framework. To this end, we offer two recommendations.

First, we respectfully suggest that individual provincial/territorial securities commissions refrain from imposing additional or differing requirements for registration of investment advisers. Significant differences among Canadian jurisdictions will only serve to undermine the purpose of the Re-proposed Instrument to harmonize and streamline the Canadian registration process and result in disjointed and disparate regulation of investment advisers.

Second, we also recommend that the CSA permit firms to register as investment advisers and to submit regulatory filings through a single, national electronic system.

We understand that the Canadian National Registration Database (NRD) system was originally designed to facilitate the electronic submission and storage of registration information relating to individuals. As currently drafted, the Re-proposed Instrument and

the CSA's proposed amendments to the instruments relating to NRD (NRD Proposed Amendments) would not allow electronic registration or submission of regulatory filings by investment advisers.[3] Investment advisers would continue to be required to register in paper format separately in each jurisdiction in which they provide advisory services. Similarly, exempt advisers would be required to submit required paper documents (such as the form for the submission to jurisdiction and appointment of agent for service) to individual jurisdictions of their permitted clients.

We recommend the CSA modify the Re-proposed Instrument and the NRD Proposed Amendments as necessary to accommodate electronic filings by investment advisory firms through the NRD system. We believe that permitting regulatory filings to be submitted electronically via the Internet would eliminate unnecessary burdens of filing paper in multiple jurisdictions and would reduce costs. Operating a Canadian-wide system that allows for one-stop registration for all advisers will be a significant step towards building a truly national regulatory system for investment advisers. We strongly urge the CSA to move forward to make the NRD system operational for this purpose.

2. The CSA Should Add a De Minimis Standard for International Advisers.

We believe the exemption proposed for international advisers would be extremely helpful to foreign advisers, such as U.S. advisers, that provide services to "permitted clients" under the Re-proposed Instrument. We continue to believe, however, that a de minimis standard should be added for international advisers so that they can advise a limited number of clients, for example, an executive of a permitted client as an accommodation to the permitted client. Moreover, a limited de minimis exemption would prevent an international adviser from losing its exemption if a few of its non-Canadian clients move to Canada. This exemption would cover the situation in which an existing client of a U.S.-based and regulated investment adviser relocates to Canada and the client would like to maintain his or her asset management relationship with the adviser.

For registered Canadian advisers, the Re-proposed Instrument contemplates and accommodates the relocation of a client to a different jurisdiction within Canada through the proposed mobility exemption.[4] Similarly, we believe international advisers should not lose their exemption if a limited number of non-permitted clients decide to relocate to

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[3] National Instrument 31-102 *National Registration Database* (NI 31-102) and Companion Policy 31-102CP, and National Instrument 33-109 *Registration Requirements* (NI 33-109) and Companion Policy 33-109CP.

[4] Under the mobility exemption provided for in sections 8.20-8.25 of the Rule, a registered firm in one Canadian jurisdiction need not register with another jurisdiction if, among other things, it has 10 or fewer clients who were clients (or spouses or children of clients) of the adviser before becoming residents of the second jurisdiction.

Canada. We recommend that international advisers be allowed to advise at least ten non-permitted clients in Canada analogous to the mobility exemption in the Re-proposed Instrument.

Providing a de minimis exemption is consistent with regulations of other countries. For example, in the United States, foreign investment advisers with fewer than 15 U.S. clients do not have to register with the U.S. Securities and Exchange Commission.[5]

3. The CSA Should Revise the Definition of "Permitted Client" to Include Investment Funds Managed by Investment Fund Managers and Investment Funds That Only Distribute Their Securities to Other Permitted Clients.

Under the Re-proposed Instrument, a permitted client would include an investment fund that is "advised by a person or company registered as a portfolio manager under the securities legislation of a jurisdiction of Canada."[6] We understand that this provision regarding investment funds is similar to (and may be based on) current provisions in Ontario securities laws. We seek two changes to this provision.

First, under current Ontario provision 1.1(14) of 35-502, an investment fund is a permitted client if the "manager of the fund" is registered under the Act in some relevant capacity. The Re-proposed Instrument takes a slightly different approach by requiring that the investment fund be "advised" by a person or company registered as a "portfolio manager." The Re-proposed Instrument would condition whether an investment fund is a permitted client on the involvement of a Canadian-registered portfolio manager.

The IAA does not believe the CSA should require an investment fund to have a registered portfolio manager to qualify as a permitted client. The current proposed provision would, in effect, prohibit international advisers (under the new exemption) from advising a fund that does not have a Canadian-registered portfolio manager. International advisers would instead be forced to act as a sub-adviser rather than the primary adviser. This structure would mandate an unnecessary additional layer in the advisory relationship and unduly increase costs. We suggest that the CSA revise Re-proposed Instrument section 1.1(1)(k) to include an investment fund that is "managed by a person or company registered as an investment fund manager under the securities legislation of a jurisdiction of Canada."

Second, the Ontario securities laws also include as a permitted client an investment fund that distributes its shares only to other permitted clients.[7] We do not

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[5] *See* Investment Advisers Act Rule 203(b)(3)-1(b)(5).

[6] Section 1.1(1)(k) of the Rule.

[7] *See* 1.1(15) of Ontario Securities Commission Rule 35-502.

believe that there is any reason to exclude investment funds distributed only to other permitted clients from being a "permitted client" in the Re-proposed Instrument. Including this type of investment fund within the definition of "permitted client" has allowed international advisers in Ontario to provide services to these funds. We urge the CSA to amend the investment fund provision to be consistent with Ontario's definition of "permitted client."

4. The CSA Should Clarify that Sub-advisers May Have Certain "Contacts" with Clients without Losing Their Exemption from Registration.

The CSA should modify the condition in the Re-proposed Instrument that the sub-adviser may not have direct contact with the registrant's (primary adviser's) clients unless the registrant is present.[8] The Re-proposed Instrument should be amended to provide that sub-advisers would not violate section 8.17(e) by making routine client servicing contacts or responding to inquiries from clients.

During the course of managing a client portfolio, situations often arise in which a client has a question or an adviser otherwise needs to communicate with the client to perform advisory services. In certain of these situations, a sub-adviser may be in the best position to answer a client inquiry or communicate directly with the ultimate client to fulfill a mandate. The Re-proposed Instrument, however, proposes a flat prohibition on sub-advisers having any client contact without the presence of the registered adviser.

Mandating the presence of the registered adviser may, in many circumstances, cause delays that adversely affect the advisory clients and the services they receive and impose an unnecessary burden on sub-advisers and registered advisers. Moreover, this provision would work as a disservice to Canadian investors who would be precluded from direct contact with the sub-advisers actually managing the clients' assets. Finally, because the Re-proposed Instrument would require the registered adviser to be contractually responsible for any loss that arises out of the failure of the sub-adviser, there is no reason to require the registered adviser to be present during communications between the sub-adviser and the ultimate client.[9] We do not believe "presence" of the registered adviser would provide any additional protection to the ultimate client.

We suggest revising the Re-proposed Instrument to provide that, if an advisory firm acting as a sub-adviser is responding to any questions from an ultimate client (or its consultants) or needs to communicate with the ultimate client about a matter related to

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[8] Section 8.17(e) of the Rule 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).

[9] *See* section 8.17(b) of the Rule regarding the registered adviser's obligation to contractually agree with its clients to be responsible for any loss arising out of the failure of the sub-adviser.

the portfolio, the sub-adviser may do so without the presence of the primary registered adviser.

5. The CSA Should Consider Revising Several Requirements for Canadian Registered Advisers.

We believe that several provisions of the fit and proper requirements and the rules on conduct and conflicts of interest should be modified or clarified to further enhance the regulatory regime. We request that the CSA modify or clarify these requirements as discussed below.

Clarify That Advisers That Only Have Limited and Temporary Access to Checks Are Not Considered To Be Handling, Holding Or Having Access to Client Assets.

The Re-proposed Instrument would require advisers that do not handle, hold or have access to client assets to maintain bonding or insurance with a single loss limit of $50,000.[10] Advisers that handle, hold or have access to client assets, including checks and other similar instruments, would be required to maintain bonding or insurance in the highest of the following amounts: (1) one percent of assets under management that the adviser handles, holds or has access to, as calculated using the adviser's most recent financial records, or $25,000,000, whichever is less; (2) one percent of the adviser's total assets, as calculated using the adviser's most recent financial records, or $25,000,000, whichever is less; (3) $200,000; or (4) the amount determined by the adviser's board.[11] The CSA, in effect, would require a minimum of $200,000 for all advisers with access to client assets (including those with limited access to checks), and up to $25,000,000 for larger advisers. The IAA believes that these insurance requirements are unreasonably high for advisers who may only occasionally or inadvertently have access to checks.

Typically, investment advisers do not hold client assets; most client funds and assets are held by a qualified or regulated custodian, such as a bank or broker-dealer. An adviser, however, may have contact with a client's check under certain circumstances. For example, an adviser may be the unintentional recipient of a check belonging to or for the benefit of a client (such as in the case of a class action settlement) or an adviser may receive a check from a client to be forwarded pursuant to the client's directions. In either case, the adviser acts as a conduit and, consistent with the adviser's fiduciary duty, forwards the check to the client or the client's custodian. We do not believe, under these circumstances, that an adviser should be required to maintain additional bonding or insurance solely because of occasional handling of client checks. We, therefore, strongly urge the CSA to clarify that advisers with limited and temporary contacts with checks

[10] Section 4.22(1) of the Rule.

[11] Section 4.22(2) of the Rule.

would not be required to maintain the same level of bonding or insurance as advisers that regularly handle, hold, or have access to client assets.

U.S. Equivalency for Advising Representatives Should Be Included

Under the Re-proposed Instrument, an advising representative of an investment adviser must not act on behalf of the adviser unless he or she has satisfied certain specified proficiency requirements. The advising representative either would have to earn a CFA Charter or the Canadian Investment Manager designation and have a minimum period of investment management experience.[12] The IAA believes that other designations and professional examinations are equally relevant and should be considered for this purpose.

In the Re-proposed Instrument, the CSA would allow an individual to act as a dealing representative without passing the Canadian Securities Exam if the individual passed the Series 7 Exam and the New Entrants Exam.[13] We recommend that the CSA adopt a similar requirement for investment advisers by permitting an adviser representative to have satisfied the proficiency requirement if the representative has passed the Series 65 Exam or the Series 7 Exam in combination with the Series 66 Exam, and has a minimum period of investment management experience. Virtually all the state securities regulators in the United States that regulate investment adviser representatives require representatives to have received a passing score on either the Series 65 Exam or the Series 7 Exam and the Series 66 Exam.[14]

The CSA Should Develop General Relationship Information for Advisory Clients

Under the Re-proposed Instrument, the CSA would require investment advisers to provide clients with relationship disclosure information.[15] The CSA would define relationship disclosure information as information that a reasonable client would consider important with respect to the client's relationship with the adviser. In addition, the CSA provides a list of information that should be provided to clients, including a description of how the adviser will ensure that investments made are suitable for the client based on the information provided by the client, a statement that there is no guarantee that the

[12] Section 4.11 of the Rule.

[13] Section 4.2 of the Rule. The "Series 7 Exam" is defined as the program prepared and administered by the Financial Industry Regulatory Authority in the United States. The "New Entrants Exam" is defined as the examination prepared and administered by CSI Global Education Inc.

[14] *See* Sample North American Securities Administrators Association (NASAA) Rule at http://www.nasaa.org/Industry___Regulatory_Resources/Exams/1088.cfm, which has been adopted by most of the states in the United States.

[15] Section 5.4 of the Rule.

investment made will be successful, and a discussion of investment risk factors and types of risk that should be considered by the client when deciding to invest using an adviser.[16]

Many of these disclosures would not provide any information specific to a particular adviser nor describe any unique characteristics of the adviser's relationship with the client. It might be more useful for advisers to provide information regarding their advisory services and how they manage conflicts that arise as a result of these relationships rather than providing boilerplate risk and suitability disclosure that appears to be more appropriate for an offering document than a relationship disclosure document. To educate investors about investment advisers and the risks associated with investing generally, the IAA urges the CSA to work with the industry to provide investor education rather than require each adviser to provide boilerplate disclosures to all of its clients.

Dispute Resolution Services Should Be Optional

The IAA recommends that the CSA make participation in an independent dispute resolution service optional for registered advisers. The Re-proposed Instrument would require a registered firm to participate in an independent dispute resolution service unless required by securities legislation to use the dispute resolution service provided by the securities regulatory authority.[17]

We recommend that advisers and their clients be permitted to choose whether to participate in dispute resolution services. A mandatory requirement can cause an issue that could have been resolved informally through client servicing practices to be submitted to a more formal process. Conversely, if a dispute involves a more serious matter, litigation may be appropriate. We believe advisers and their clients should be free to negotiate the way disputes are resolved in their advisory contract.

Actionable Complaints Should Be in Writing

In the Re-proposed Instrument, section 5.12.2 of the Companion Policy currently states that a complaint could be made against a firm "orally or in writing." For the protection of firms and for clarity of complaints, the IAA believes that a firm should be free to require a "complaint" to be in writing before triggering any complaint resolution procedures. A written complaint serves to clarify the issues involved, separate servicing inquiries from actual complaints, and provide adequate notice to a firm of the substance of a complaint.

We also seek clarification that for a matter to qualify as a "complaint," all three elements of the definition described in the Companion Policy must be satisfied. Therefore, a matter would be considered a complaint if it: (1) is a reproach against a

[16] Section 5.4 (6) (b), (c), and (d) of the Rule.

[17] Section 5.29(1) of the Rule.

registered firm; (2) identifies a real or potential harm that a person or company has experienced, or may experience, because of the actions of a registered firm or its representatives; and (3) is a request for the registered firm to take remedial action.

Clarification of Conflicts of Interest

The term "conflicts of interest" in the CSA's Re-proposed Instrument appears to be used somewhat inconsistently in requiring disclosure of "all conflicts of interest" while at the same time the CSA states that the definition is not intended "to capture inconsequential matters."[18] The IAA urges the CSA to clarify that disclosure is required of material conflicts of interest.

Clarification of What Constitutes Records of Oral Communication for Purposes of the Recordkeeping Rule

In section 5.16(5) of the Rule, the CSA defines an activity or relationship "record" that must be maintained to include "a record of an oral communication" between the firm and the client. We seek clarification that this definition would not require investment advisers to maintain voicemail messages. We believe requiring retention of voicemails would be extremely burdensome and costly to investment advisers. For example, developing a system to organize voicemails in a manner that would allow for easy retrieval would be difficult. The Rule should be modified to include "a written record of an oral communication." These records could be maintained in the same manner as other written records and likely would not require the creation of a new electronic storage system.

Threshold for Change of Control Should be Raised

We appreciate that the CSA has responded favorably to suggestions from the IAA and others permitting transfers of licenses and providing for changes of control without affecting the registered status of the registrant. The Re-proposed Instrument provides for changes in control to be pre-approved by the regulator; we are of the view that the 10-percent threshold[19] for change of control pre-approval is too restrictive and should be raised to 25 percent or when there is actual change of control. We do not believe a 10-percent threshold approximates actual changes of control and would impose an unnecessary impediment to commerce. [20]

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[18] Section 6.1.1 of the Companion Policy.

[19] Section 6.8(1)(a) of the Rule.

[20] For example, in the United States, any person that has the right to vote 25 percent or more of the voting securities or is entitled to 25 percent or more of the profits is presumed to have "control" over an investment adviser. Investment Advisers Act Rule 203A-2(c). *See also* section 2(a)(9) of the Investment Company Act (any person who owns more than 25% of the voting securities of a company shall be presumed to control such company). 15 USC 80a-2(a)(9). We understand that, in Ontario, 20 percent is the change of control threshold for general securities law purposes, including tender offer regulations

We request that the CSA amend the Re-proposed Instrument to require pre-approval when a person or company proposes to acquire 25 percent or more of the securities of a registered firm, a substantial part of the assets of a registered firm, or there will be an actual change of control at the registered firm after the proposed acquisition. In the alternative, the CSA should require only a submission of a notice of increase in ownership, rather than requiring approval of the acquisition, when a person or company proposes to acquire 10 percent or more of the securities of a registered firm.

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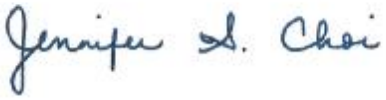
We appreciate the opportunity to provide our views on these important issues and would be pleased to provide any additional information the Canadian securities authorities or their staff may request. Please contact Paul Glenn, Counsel, at (202) 293-4222 or paul.glenn@investmentadviser.org or Jennifer Choi, Assistant General Counsel, at (202) 507-7200 or jennifer.choi@investmentadviser.org with any questions regarding these matters.

Respectfully submitted,

Paul D. Glenn
Counsel



Jennifer S. Choi
Assistant General Counsel

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and control block distribution restrictions. Section 1.(1) of the Ontario Securities Act ("if a person or company holds more than 20 per cent of the voting rights attached to all outstanding voting securities of an issuer, the person or company is deemed . . . to affect materially the control of the issuer . . . .").