Federation of
Mutual Fund Dealers

May 29, 2008

Via Email

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

Delivered to:

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

Anne-Marie Beaudoin
Directrice du secrétariat
Autorité des marchés financiers
Tour de la Bourse, 800, square Victoria
C.P. 246, 22e étage
Montréal, Québec H4Z 1G3
consultations-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

Re: Proposed National Instrument 31-103 *Registration Requirements,* Companion Policy and Related Forms Published for Comment on February 29, 2008

On behalf of the members of the Federation of Mutual Fund Dealers, we are pleased to provide the Canadian securities administrators (CSA) with comments on the above-noted proposed instruments (the Proposed Rule, the Proposed Policy and collectively, the Proposals).

Sandra L. Kegie, Executive Director
Federation of Mutual Fund Dealers
Tel: 416-621-8857 Cell: 647-409-8369
skegie@sympatico.ca

About the Federation

The Federation of Mutual Fund Dealers was established in 1996 and presently has 30 registered mutual fund dealers as members and 12 industry affiliate members. More than 14,000 licenced advisors work with our members and provide financial services to over 3.5 million Canadians in every province and territory of Canada. Our members collectively have over $75 billion in assets under administration. Our mission is to ensure that the interests and views of mutual dealers are clearly represented in our industry, with a focus on sustainability issues.

We provided the CSA with our members' comments on the first version of the Proposals that was published for comment in February 2007 and note that the CSA favourably responded to certain of those comments in this second version of the Proposals. We appreciate the CSA's careful consideration of our earlier comment letter. To the extent that we repeat our earlier comments, we have provided additional explanation as to the importance and significance of the comment, so that the CSA can fully appreciate the reasons for raising the comment a second time.

For your information, we have also provided the Ontario government with comments on the draft amendments to the Ontario Securities Act that were published for comment on April 25, 2008 and are attaching a copy of that letter.

We urge the CSA and the Ontario government to consider our comments in light of the demonstrated benefits that our members provide to Canadian investors, many of whom are average Canadians saving for their family's well-being, education and/or retirement. The distribution network exhibited by our members is unique in the Canadian financial services marketplace and our focus is to ensure that average Canadians continue to have access to mutual funds and other financial products, along with expert advice and service. We aim to press for reforms that will allow our industry to thrive so that we can continue to allow average Canadians to save for their futures.

Support for the CSA's General Direction

We fully support the goal of the CSA with the overall Registration Reform Project: to harmonize, streamline and modernize the registration regime across Canada and to create a flexible and administratively efficient regime with reduced regulatory burden.

To the extent that the Proposals will create a nationally uniform set of rules that would govern the "fit and proper" requirements and conduct rules for mutual fund

Sandra L. Kegie, Executive Director
Federation of Mutual Fund Dealers
Tel: 416-621-8857 Cell: 647-409-8369
skegie@sympatico.ca

dealers, as well as any applicable exemptions for specified industry participants, we believe that the Proposals are a very positive regulatory development. Today's regulatory regime creates inefficiencies, regulatory burdens and increased costs for our members that are unjustified in the context of the Canadian capital markets.

1. Concerns about the Process and the Lack of Uniformity in Approach

We urge the CSA and each provincial government to move forward with the Proposals with a view to ensuring that each jurisdiction passes uniform legislation and rules, and, even more importantly, that staff in each jurisdiction administer and interpret the legislation and rules in a uniform and consistent fashion. As mutual fund dealers, our members operate in all provinces and territories of Canada and must comply with differing rules, legislation and administrative positions, of provincial securities regulators and also of the Mutual Fund Dealers Association of Canada, all of which contribute to a strong sense of regulatory overload by our members.

While we are providing our comments on the Proposals and on the draft Ontario securities legislative amendments, we wish to voice our strong concerns about the process that has been followed to date by the CSA and by the various provincial governments. Reviewing draft regulations and legislation and providing written comments to regulators and political staff is time-consuming, costly and unduly burdensome from all perspectives. A much better approach would be for securities regulators to actually meet directly with the different segments of the financial services industry that will be affected by the Proposals in order to achieve a more solid understanding of the implications of the Proposals for the various business models and obtain feedback directly from the firms and individuals that will be affected. Our members appreciate the time that has been taken to date by the securities regulators in broadcasting their various positions, but we are not aware that any of our members were given the opportunity to actually voice their views on the issues other than through the formal written comment process.

Given the significant changes being proposed in the Proposals and the draft legislation, our members believe that a 90-day comment period simply is not sufficient for industry participants to truly understand all of the various implications to their businesses. We note that the Ontario government released the draft Ontario legislative changes for a comment period that is only a little over 30 days long, while the other provincial governments have not published any draft legislation for comment.

Sandra L. Kegie, Executive Director
Federation of Mutual Fund Dealers
Tel: 416-621-8857 Cell: 647-409-8369
skegie@sympatico.ca

The Proposals represent significant changes to the status quo and industry participants deserve more time to completely comprehend the implications of the Proposals.

We are also increasingly concerned that the above-noted goals of the CSA will not be met. We described our concerns with the draft Ontario legislation in the attached comment letter. We know that many of the other provincial governments are considering bringing into force different legislation and certain of the CSA members are "opting out" or proposing different rules for their province. In most cases, the policy rationale behind the perceived need for such differences are not explained in any great detail, so that we are left to essentially guess at the reasons why the "problems" the different rules are designed to solve differ from one province to another. We fundamentally do not agree that any inherent different problems exist in the securities industry in one province from another that would justify those differences. As we note above, any differences between provinces only serves to increase the costs of doing business in Canada, which we submit is not a positive development, particularly when these differences are based solely on philosophical opinions as to the particular issue at hand held by different regulatory staff in the applicable provinces.

2. Registration of Mutual Fund Dealers (section 2.1)

Section 2.1 as drafted allows a mutual fund dealer to trade in "mutual funds" and labour sponsored investment funds. In most provinces and territories, the reference to LSIFs will be redundant, since LSIFs are clearly considered to be "mutual funds" by most members of the CSA.

Under this section a mutual fund dealer would be permitted to trade in a security of any issuer that falls within the definition of "mutual fund" as defined in securities legislation. This would allow mutual fund dealers to trade in securities of the following issuers:

- Mutual funds that comply with both National Instrument 81-101 and National Instrument 81-102 (so-called "conventional mutual funds");
- Commodity pools governed by National Instrument 81-102 and National Instrument 81-104;
- Labour sponsored investment funds in those provinces that consider them to be mutual funds (the other provinces would specifically permit this trading via the Proposed Rule);

Sandra L. Kegie, Executive Director
Federation of Mutual Fund Dealers
Tel: 416-621-8857 Cell: 647-409-8369
skegie@sympatico.ca

- Mutual funds that are distributed pursuant to a prospectus exemption (i.e. the mutual fund issuing the securities would need to ensure that a prospectus exemption existed in respect of the trade by the mutual fund dealer); and

- Exchange-traded funds to the extent they are considered "mutual funds" under securities legislation.

A mutual fund dealer would need no other registration and its representatives would need no other proficiency (than that required for mutual fund representatives) in order to carry out the above-noted trades.

However, according to the Proposals, a mutual fund dealer would need to be also registered as a scholarship plan dealer to trade in securities of a scholarship plan and also as an exempt market dealer to trade in any other securities that are being distributed pursuant to a prospectus exemption.

The Proposals are silent on whether the securities regulators would prohibit a mutual fund dealer from dealing in financial instruments that are not considered 'securities" under securities legislation, including deposit instruments such as GICs and principal protected notes and specialized financial products such as high interest bank accounts, provided that the dealer complied with the rules of the MFDA.

We urge the CSA to:

(a) Clarify the ability of mutual fund dealers and their representatives to trade in securities of any issuer that is a "mutual fund" under securities legislation. This would include mutual funds that are distributed pursuant to prospectus exemptions ("pooled funds"). No additional registration as an exempt market dealer would be necessary. We recommend this clarification be provided in the Proposed Policy. This comment was made in conjunction with the first version of the Proposals and the CSA appeared to agree with it – please see comment 173 of the Summary of Comments.

(b) Permit, via the Proposed Rule, mutual fund dealers and their representatives to trade in securities of scholarship plans without being also registered as scholarship plan dealers. We agree with the approach of the British Columbia Securities Commission and l'Autorité des marchés financiers, given the similarities between mutual funds and scholarship plans.

Sandra L. Kegie, Executive Director
Federation of Mutual Fund Dealers
Tel: 416-621-8857 Cell: 647-409-8369
skegie@sympatico.ca

(c) Clarify, in the Proposed Policy, that mutual fund dealers and their representatives are permitted to deal in the financial instruments that are not considered securities under securities legislation that we note above, provided they comply with the rules of the MFDA. No additional registration as an exempt market dealer would be required to deal in these financial products, which is consistent with the fact that these financial products are not "securities" and accordingly securities regulators have no jurisdiction over them.

(d) Remove any impediment to the above in any local regulation of any province and territory and remove any reference to additional proficiency requirements to distribute the above-noted products that may be found in any CSA rule (including local rules) – this would include revising National Instrument 81-104 to remove the specific additional proficiency requirements for mutual fund dealers to distribute commodity pools.

In our view, the mutual fund dealer registration category should permit registered firms to distribute securities of mutual funds and scholarship plans, whether on a public or exempt basis and financial products that do not fall within the purview of securities regulators, such as, deposit instruments and PPNs. In all cases, we believe that the regulatory oversight of mutual fund dealers, when coupled with the proficiency required of mutual fund dealer representatives, is sufficient to cover the securities noted above and no additional registration or proficiency is necessary. We see no investor protection or regulatory need to require mutual fund dealers and their representatives to seek additional registration – in some cases in two additional dealer categories (scholarship plan dealers and exempt market dealers). Requiring this additional registration will only serve to increase the costs to our already overburdened, but essential, segment of the Canadian securities industry.

We acknowledge the response of the CSA to variations of this comment, which we (and many others) made in our 2007 letter commenting on the first version of the Proposals (comments 170–178 of the CSA's Summary of Comments), but we urge the CSA to consider our comments again, given the importance of this comment to the Canadian mutual fund distribution industry, and in particular to our members.

We do not understand the responses of the CSA to the effect that the distribution of these securities are different in substance to mutual funds and that registration categories and terms are tailored to specific purposes. With respect to the latter response of the CSA, in virtually all respects the "fit and proper" and "conduct" rules that apply to mutual fund dealers is higher than for exempt market dealers

Sandra L. Kegie, Executive Director
Federation of Mutual Fund Dealers
Tel: 416-621-8857 Cell: 647-409-8369
skegie@sympatico.ca

and scholarship plan dealers; additionally, mutual fund dealers must be members of the MFDA and subject to its considerable regulation and regulatory influence.

3. Registration of Mutual Fund Dealers (section 2.1) – Trading in Exempt Securities

In addition to the submissions we make in our comment 2, we strongly urge the CSA to permit our members, being mutual fund dealers that are members of the MFDA, to trade in securities that are distributed under prospectus exemptions without the necessity of requiring these firms to become registered as exempt market dealers. As we outline in comment 2, our members are subject to self-regulatory oversight and a regulatory regime that is more than sufficient, in our view, to monitor exempt market activities. Any additional registration requirement is an additional regulatory burden, since additional personnel, compliance efforts, legal and audit costs and management time will have to be expended to obtain and maintain this registration. In our view, given that most, if not all, of the fit and proper requirements and conduct rules that apply to mutual fund dealers are higher and more substantive than for exempt market dealers, requiring mutual fund dealers to also be registered as an EMD, adds absolutely no additional investor protection, but merely imposes yet another "regulatory hoop" for mutual fund dealers to jump through.

4. Registration of Mutual Fund Dealers (section 2.1) – Trading in Exempt Mutual Funds (Pooled Funds)

If, notwithstanding our comment 2 above, the CSA is of the view that pooled funds cannot be traded by mutual fund dealers, then clarification of this position should be included in the Companion Policy (although as noted above, we strongly disagree with that approach). Also if this latter position is taken by the CSA, then we are of the view that it is essential for the CSA to provide transitional guidance to our members in respect of the current investments in pooled funds held by clients who have accounts with our members. Similarly, if the CSA intends to restrict the ability of mutual fund dealers to deal in financial products that are not securities (PPNs, GICs and other deposit instruments) (again, we strongly urge the CSA to NOT take this position for the reasons outlined above), then it will be incumbent on the CSA to provide transitional guidance on their expectations for our members who have clients with these financial products in their accounts.

***5.* Exempt Market Dealer Registration –(section 2.1)**

The CSA propose to allow exempt market dealers to trade in prospectus qualified mutual funds under (B) and (C) of section 2.1(1)(d) of the Proposed Rule on a

Sandra L. Kegie, Executive Director
Federation of Mutual Fund Dealers
Tel: 416-621-8857 Cell: 647-409-8369
skegie@sympatico.ca

prospectus exempt basis. We strongly oppose this very significant change in policy direction by the CSA for reasons that are based on the decreased investor protection, and the threats to the continued viability of our members, as well as other mutual fund dealers that will surely follow this change if this rule is implemented. We believe that this change will result in regulatory arbitrage which is not a positive step for the distribution of mutual funds.

In our view, there is a strong probability that some registered firms will decide to stop servicing average Canadians and decide to only service "permitted clients" or other accredited investors so that they can change their registration to "exempt market dealer" and drop their mutual fund dealer license, which will take them out of the MFDA. Similarly, some advisors may decide that they will break off from their mutual fund dealer firm, and establish their own firm to be an exempt market dealer to service only permitted clients and accredited investors – again withdrawing from the MFDA sphere of regulation.

We view this change as raising significant public policy issues that must be considered further by the CSA. We do not see where Canadian investors will be well-served by the foreseeable results of this proposal and we urge the CSA to not allow EMDs to trade in prospectus qualified mutual funds pursuant to prospectus exemptions.

6. Comment on Asset Allocation

The CSA have removed references from the Proposed Policy that were in the 2007 version of the Proposed Policy that gave the CSA's views on when "asset allocation" would cross the line into being "in the business of advising" in securities, requiring an entity that purported to provide asset allocation advice to a client to be registered as an adviser. In our view, the CSA's views should be provided so that our members and other industry participants can fully understand when they will be subject to securities regulation. We strongly recommend that the CSA continue to consult with industry participants about this issue. We would be pleased to meet with the CSA to discuss this issue as it applies to our members and other industry participants providing financial planning services.

7. Individual categories – Dealing Representatives (section 2.7)

We fully support the wording changes, both in the Proposed Rule and in the draft Ontario legislation that clarifies that a representative of a registered mutual fund dealer can be in a principal-agent (independent contractor) relationship with the dealer, in addition to a more traditional employment relationship.

Sandra L. Kegie, Executive Director
Federation of Mutual Fund Dealers
Tel: 416-621-8857 Cell: 647-409-8369
skegie@sympatico.ca

However, our members are disappointed that the CSA have decided to not proceed to consider how best to allow for "incorporated salespersons" at this time. Given the importance of this issue for mutual fund dealers and our members in their recruitment and retention of qualified advisors, we believe that this matter is of critical importance and we believe that an appropriate legal structure can be developed that will ensure appropriate investor protection, while also allowing increased flexibility and tax efficiencies for advisors.

In the interim until a definitive position is taken, we strongly recommend that the CSA clearly permit, via the Proposed Rule or by some other mechanism, representatives of registered mutual fund dealers to direct commissions to be paid to their personal holding corporations, on the same conditions as recently put into place by the Manitoba Securities Commission.

We know that the approach taken to this matter is not currently uniform across Canada, but given the importance of this issue, we strongly recommend that the CSA work to permit the most permissive scheme through amendments to the Proposed Rule. We believe that the approach adopted by the Manitoba Securities Commission is one that will work in practice, at least in the interim.

8. **Exceptions for SRO Members (section 3.3)**

While we agree with the exemptions provided for SRO members set out in section 3.3 of the Proposed Rule, we believe that the list of exemptions do not go far enough. Given that the MFDA has extensive rules regarding complaint handling, KYC, referral arrangements and record-keeping, we believe that exemptions should also be granted in these areas. We strongly believe that given the overall complexities of the Canadian regulatory regime, our members should not be required to review two sets of regulations on the same subject area in order to determine appropriate compliance.

9. **Know Your Client (section 5.3)**

Notwithstanding the CSA's response to earlier comments on paragraph 5.3(1)(b) [comment response 346], we assert that a mutual fund dealer should not have to "ascertain whether a client is an insider of an issuer", given the nature of the securities these dealers distribute. This comment is particularly relevant since the CSA changed this requirement from "reporting issuers" to any "issuer". We submit that regulation should not require collection of irrelevant information from investors that have no bearing on what a dealer and its representatives will or will not recommend to those investors. To do so, only achieves greater regulatory burdens and increased costs. Securities regulators should not be requiring data

Sandra L. Kegie, Executive Director
Federation of Mutual Fund Dealers
Tel: 416-621-8857 Cell: 647-409-8369
skegie@sympatico.ca

collection that is more relevant to other regulatory schemes, such as anti-money laundering, for example.

10. KYC and Suitability (Sections 5.3 and 5.5)

We note that the additional flexibility given to registrants who deal with permitted clients contained in subsection 5.3(5) will not apply, in our view, erroneously, to registered mutual fund dealers since they are members of the MFDA. Given that section 5.5 does not apply (through the operation of section 3.3), these dealers cannot take advantage of the flexibility contained in subsection 5.5(3), which means that (from a drafting perspective) subsection 5.3(5) also cannot apply. We urge the CSA to redraft this provision to permit mutual fund dealers that are members of the MFDA the same flexibility when dealing with permitted clients that other non-SRO dealers have.

11. Providing relationship disclosure information (section 5.4)

Our members strongly urge the CSA to ensure that the SROs' version to implement the client relationship model, including the RDI, is consistent with that proposed by the CSA. We do not understand why clients should receive a different experience depending on which dealer they decide to work with. We believe that it should be the CSA that maintains ultimate control over the proposals of the SROs – this responsibility should not rest solely with the regulated SRO. We are disappointed that we have not had the benefit of reviewing the MFDA's proposals for implementing the client relationship model before being required to submit our members' comments on the Proposals.

12. Records – general requirements and Records – form, accessibility and retention (sections 5.15 and 5.16)

Paragraph 5.16(4)(b) imposes a requirement to maintain documentation for seven years from the date a client "ceases" to be a client. Our members who operate in client name will find this concept difficult and will benefit from a definition of when a "client" ceases to be a client. The definition should be based on activity or contact between the dealer/representative and the client and not on receipt of compensation (eg.. trailer fees) from the fund managers.

We urge the CSA to provide guidance around record keeping in respect of electronic mail and other recent technological forms of communication. We understand the SEC is currently clarifying this in the United States.

Sandra L. Kegie, Executive Director
Federation of Mutual Fund Dealers
Tel: 416-621-8857 Cell: 647-409-8369
skegie@sympatico.ca

13. **Statement of Accounts and portfolio –**

The requirements for quarterly statements of account are new requirements that will impose significant additional burdens on mutual fund dealers that are not justified in the circumstances, particularly where those dealers have provided their clients electronic, pass-word protected access to their accounts on a real-time basis. All our members currently mail out annual statements of account, in addition to the MFDA-required quarterly statements to clients whose securities are held in "nominee name", which we expect are retained by investors, together with their confirmation of trades and their account documentation.

In response to similar comments made by industry participants on the first version of the Proposals, the CSA explain that they "disagree" and that quarterly reporting "is a reasonable standard". We urge the CSA to reconsider this point having regard to the regulatory burden and the lack of a demonstrated need for this increased reporting. Mailing three additional statements of account to thousands of investors can be expected to cost in the neighbourhood of upwards of $200,000++ per annum, which we believe the CSA would agree is not an insignificant amount. We ask the CSA to consider whether this increased cost and associated environmental detriments associated with the paper required to fulfil this requirement (which will be borne either by industry participants or investors) is justified in the context of our members.

Clients have clearly stated on numerous occasions to our members that they neither want nor need these paper mailings. Increasingly clients are complaining about the environmental impact of continuous mailings. Many of our members have worked hard to respond to those comments by providing electronic access to client accounts.

14. **Complaints Handling – Division 6 (sections 5.27-5.32)**

We note above that we believe Division 6 should not apply to mutual fund dealers, since the MFDA has its own rules regarding complaints handling.

If these provisions continue to apply to mutual fund dealers, we expect that questions will arise as to when a complaint arises and when it can be said to be resolved. For example, if a registrant concludes that there is no wrongdoing on its part and informs a client of its conclusion, is this complaint resolved? Absent a client taking a positive action to indicate agreement with the conclusion - something that we see as unlikely - how will a registrant know if there is resolution? We believe that once a registrant has come to some conclusion which does not entail the acceptance of a client's position and has informed the client of that conclusion, that should be seen as "resolution" unless the client

Sandra L. Kegie, Executive Director
Federation of Mutual Fund Dealers
Tel: 416-621-8857 Cell: 647-409-8369
skegie@sympatico.ca

advises in writing within a specific time period of his or her intention to take further action or steps with regard to the complaint.

We also strongly urge the regulators to reduce the regulatory burden on registrants by withdrawing the proposal that registrants send in bi-annual complaint reports. Where do they need to be filed? To all regulators in provinces where our members are registered? What will the regulators do with the complaint handling reports sent in (presumably in paper form) to each regulator where the registrant is registered? This question should be answered, and the policy rationale behind this requirement provided, by the CSA in the interests of transparent rule-making. We believe a better approach would be to require registrants to maintain records of complaints which could be reviewed by the regulators during compliance audits. At the very least, the CSA should recognize that mutual fund dealers provide reporting to the MFDA and should not duplicate this requirement.

15. Referral Arrangements (sections 6.11-6.15)

We note above that we believe the rules regarding referral arrangements should not apply to mutual fund dealers, since the MFDA has its own rules regarding referral arrangements.

16. **Mobility Exemptions (sections 8.20-8.25)**

In our view, the proposed mobility exemptions for mutual fund dealers and advisors do not reflect the realities of a more mobile Canadian population or the efforts of the CSA to implement a Passport System and will not significantly reduce the regulatory burdens of having to become registered in multiple provinces where clients reside.

The restrictions on the availability of this exemption, particularly for mid-to-large registrants are patently too onerous and without any degree of reasonable practicality. For one of our members with over a hundred advisors to consider that the exemption would only apply if 10 or fewer clients move to a particular province, is not meaningful. And a successful advisor to be capped at five clients moving to a particular province, is also not realistic or meaningful.

At a minimum we urge the CSA to expand the categories of family members with whom a firm and an advisor can deal with (see section 8.20 – definition of "eligible client" – paragraph (b)) to include siblings, parents and grandparents of the client.

We also urge the CSA to review the complexities proposed that are associated with using this exemption. Are all of the filings, forms, and notices really

necessary in light of (i) the Passport System and (ii) a more mobile Canadian population?

17. **Part 10 – Transition – Applications for Registration as an EMD**

If the CSA does not accept our comment 3 and continues to require our members to become registered as EMDs if they wish to trade in exempt securities, we urge the CSA to clarify how applications for this registration are to be made. In light of subsection 10.1(2) it is not clear whether the OSC and the Newfoundland regulator expect a currently registered limited market dealer to apply (under section 10.4) for registration as an EMD. We urge the OSC and the Newfoundland regulator to clarify that no additional filing is necessary in those provinces if a mutual fund dealer is also registered as a limited market dealer at the time the Proposals come into force. We do not understand that there is any regulatory need for these already registered entities to be forced to apply for registration (when they are deemed to be so registered under subsection 10.1(2)).

We also strongly encourage the CSA to consider a much more streamlined registration process for companies that are " in the business" of dealing in exempt securities at the time the Proposals come into force, particularly for a registered mutual fund dealer that is also registered in Ontario and Newfoundland as an LMD. The proposed requirements for an application for registration have been substantially increased which will put additional regulatory burdens on our members wishing to continue their ability to trade in exempt products (see our comment 2) at a time when they will be overburdened with the compliance issues associated with ensuring compliance with the new regime embodied in the Proposals. This has particularly resonance to mutual fund dealers that must become registered as EMDs. To pull together the new application filing package required of completely new, start-up entrants into the industry appears to us to be unduly burdensome to long-time compliant participants in Canada's capital markets.

18. **Transition – Filing Deadlines (section 10.5 and 10.6)**

We urge the CSA to adopt uniform timing throughout this transition period. The one-month deadline for UDPs and CCOs to apply for registration in those capacities (and be grandfathered from the new proficiency requirements for CCOs) is unrealistic and unduly punitive for compliant registrants. Capital market participants, including our members, will be fully engaged in continuing to understand the Proposals when they come into force, as well as considering what business changes they must implement in order to be compliant. Having to

Sandra L. Kegie, Executive Director
Federation of Mutual Fund Dealers
Tel: 416-621-8857 Cell: 647-409-8369
skegie@sympatico.ca

remember to file two applications for registration within one month of the Proposed Rule coming into force is not realistic or reasonable.

****

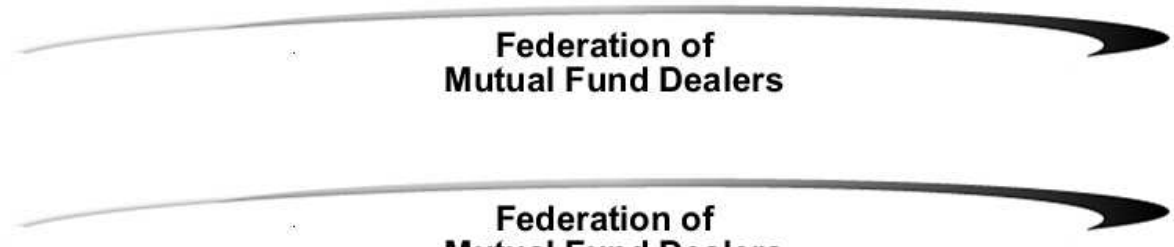
We thank you for allowing us the opportunity to comment on the Proposals. Please contact Sandra Kegie, the Executive Director of the Federation at 416-621-8857 and skegie@sympatico.ca if you would like to discuss our comments. Our members would be pleased to meet with you at your convenience.

Yours very truly,

"Sandra Kegie"

Sandra Kegie
Executive Director

Sandra L. Kegie, Executive Director
Federation of Mutual Fund Dealers
Tel: 416-621-8857 Cell: 647-409-8369
skegie@sympatico.ca



Federation of
Mutual Fund Dealers

COPY OF ORIGINAL EMAILED TO THE MINISTRY OF FINANCE

May 29, 2008

Via Email

Ministry of Finance
95 Grosvenor Street, 4th Floor
Toronto, Ontario
M7A 1Z1

Attention: Colin Nickerson
Senior Manager, Industrial and Financial Policy Branch
osaconsultations.fin@ontario.ca

Dear Sirs/Mesdames:

Re: Proposed Amendments to the Securities Act – Consultation Draft and Invitation for Comments dated April 25, 2008

On behalf of the members of the Federation of Mutual Fund Dealers, we are pleased to provide the Ministry of Finance with comments on the above-noted proposed amendments to the Securities Act (the Proposed Legislation), which are designed to come into force at the same time as the proposed new rule of the Canadian Securities Administrators – National Instrument 31-103 *Registration Requirements*. Our comments include comments that we have made to the CSA on proposed National Instrument 31-103 and we attach, for your information, the letter that we have now sent to the CSA on proposed National Instrument 31-103.

About the Federation

The Federation of Mutual Fund Dealers was established in 1996 and presently has 30 registered mutual fund dealers as members and 12 industry affiliate members. More than 14,000 licenced advisors work with our members and

Sandra L. Kegie, Executive Director
Federation of Mutual Fund Dealers
Tel: 416-621-8857 Cell: 647-409-8369
skegie@sympatico.ca

provide financial services to over 3.5 million Canadians in every province and territory of Canada. Our members collectively have over $75 billion in assets under administration. Our mission is to ensure that the interests and views of mutual dealers are clearly represented in our industry, with a focus on sustainability issues.

We urge the Ontario government to consider our comments in light of the demonstrated benefits that our members provide to Ontario investors, many of whom are average Ontarians saving for their family's well-being, education and/or retirement. The distribution network exhibited by our members is unique in the Canadian financial services marketplace and our focus is to ensure that average Canadians continue to have access to mutual funds and other financial products, along with expert advice and service. We aim to press for reforms that will allow our industry to thrive so that we can continue to allow average Canadians to save for their futures.

Support for the CSA's General Direction

We fully support the goal of the CSA with the overall Registration Reform Project: to harmonize, streamline and modernize the registration regime across Canada and to create a flexible and administratively efficient regime with reduced regulatory burden.

To the extent that the Proposals will create a nationally uniform set of rules that would govern the "fit and proper" requirements and conduct rules for mutual fund dealers, as well as any applicable exemptions for specified industry participants, we believe that the Proposals are a very positive regulatory development. Today's regulatory regime creates inefficiencies, regulatory burdens and increased costs for our members that are unjustified in the context of the Canadian capital markets.

19. Concerns about the Process and the Lack of Uniformity in Approach

We urge the CSA and the Ontario government to move forward with the Registration Reform Project with a view to ensuring that each jurisdiction passes uniform legislation and rules, and, even more importantly, that staff in each jurisdiction administer and interpret the legislation and rules in a uniform and consistent fashion. As mutual fund dealers, our members operate in all provinces and territories of Canada and must comply with differing rules, legislation and administrative positions, of provincial securities regulators and also of the Mutual Fund Dealers Association of Canada, all of which contribute to a strong sense of regulatory overload by our members.

Sandra L. Kegie, Executive Director
Federation of Mutual Fund Dealers
Tel: 416-621-8857 Cell: 647-409-8369
skegie@sympatico.ca

While we are providing our comments on the Proposals and on the draft Ontario securities legislative amendments, we wish to voice our strong concerns about the process that has been followed to date by the CSA and by the various provincial governments. Reviewing draft regulations and legislation and providing written comments to regulators and political staff is time-consuming, costly and unduly burdensome from all perspectives. A much better approach would be for securities regulators to actually meet directly with the different segments of the financial services industry that will be affected by the Proposals in order to achieve a more solid understanding of the implications of the Proposals on the various business models and obtain feedback directly from the firms and individuals that will be affected. Our members appreciate the time that has been taken to date by the securities regulators in broadcasting their various positions, but we are not aware that any of our members were given the opportunity to actually voice their views on the issues other than through the formal written comment process.

Given the significant changes being proposed in the Proposals and the draft legislation, our members believe that a 90-day comment period simply is not sufficient for industry participants to truly understand all of the various implications to their businesses. We note that the Ontario government released the draft Ontario legislative changes for a comment period that is only a little over 30 days long, while the other provincial governments have not published any draft legislation for comment.

The Proposals represent significant changes to the status quo and industry participants deserve more time to completely comprehend the implications of the Proposals.

We are also increasingly concerned that the above-noted goals of the CSA will not be met. We described our concerns with the draft Ontario legislation in this comment letter. We know that many of the other provincial governments are considering bringing into force different legislation and certain of the CSA members are “opting out” or proposing different rules for their province. In most cases, the policy rationale behind the perceived need for such differences are not explained in any great detail, so that we are left to essentially guess at the reasons why the “problems” the different rules are designed to solve differ from one province to another. We fundamentally do not agree that any inherent different problems exist in the securities industry in one province from another that would justify those differences. As we note above, any differences between provinces only serves to increase the costs of doing business in Canada, which we submit is not a positive development, particularly when these differences are based solely on philosophical opinions as to the particular issue at hand held by different regulatory staff in the applicable provinces.

Sandra L. Kegie, Executive Director
Federation of Mutual Fund Dealers
Tel: 416-621-8857 Cell: 647-409-8369
skegie@sympatico.ca

20. Legislative Approach

We are troubled by the approach taken by the Ontario government in building into legislation matters that the other provincial governments appear content to leave up to the securities regulatory authorities. As far as we are aware, the Ontario government has not explained the reason it believes it needs to do this. We believe that this approach is a regressive step and will significantly detract from the above-noted goals of a nationally uniform regime.

The Ontario government's approach has necessitated the OSC to publish a revised version of National Instrument 31-103 indicating where the words "other than in Ontario" will appear in the final draft. We believe that the potential for a shift, over time, away from a uniform or even harmonized approach is considerable, given the ease with which other provincial regulators will be able to amend the rules and the comparative difficulties that the OSC will experience in requesting the Ontario legislature to amend the legislation to ensure that Ontario stays in step with the other members of the CSA. We point out below several areas where this approach may lead to potential difficulties and we urge the Ontario government to ensure that the legislation adopted is consistent in approach with the other provincial legislatures.

We would strongly urge the Ontario government to limit the legislative amendments to those set out under "Proposed Legislative Amendments" in the CSA request for comments on National Instrument 31-103 and in a manner consistent with the amendments to the legislation of the other provinces.

21. Definition of "representative"

We fully support the proposed change from the current definition of "salesperson" to the proposed definition of "representative". The proposed change clarifies that a representative of a registered dealer can be in a principal-agent (independent contractor) relationship with the dealer, in addition to a more traditional employment relationship.

In our comment letter on proposed National Instrument 31-103, we encourage the OSC and the other members of the CSA to continue to consider how best to allow for "incorporated salespersons", given the importance of this issue for our members in their recruitment and retention of qualified advisors. Given that legislative solutions may be necessary, we urge the Ministry of Finance to work closely with the OSC to ensure that this matter is dealt with on an expedited time frame. This issue has become increasingly important to many of our members and individual advisors and we believe that an appropriate legal structure can be developed that will ensure appropriate investor protection, while also allowing increased flexibility and tax efficiencies for advisors.

Sandra L. Kegie, Executive Director
Federation of Mutual Fund Dealers
Tel: 416-621-8857 Cell: 647-409-8369
skegie@sympatico.ca

In the interim until a definitive position is taken, we have suggested that the CSA clearly permit, via National Instrument 31-103 or by some other mechanism, advisors to direct commissions to be paid by mutual fund dealers to their personal holding corporations. We know that the approach taken to this matter is not uniform across Canada, but given the importance of this issue, we have recommended that the CSA work to permit the most permissive scheme through amendments to National Instrument 31-103 (or by some other instrument). We believe that the approach recently adopted by the Manitoba Securities Commission is one that will work in practice, at least in the interim.

22. Engaged in a Business – subsection 25(6)

We have three comments on this subsection.

(a) Consistent with our first comment we believe it is completely inappropriate for subsection (6) to entrench into legislation the various factors that must be considered in an analysis of whether an entity is "in the business" of acting as a dealer. In all of the other provinces, we understand that the discussion on the meaning of "being in the business" is provided for in a regulatory statement of policy (ie. in the Companion Policy). It is much easier to amend a companion policy than to amend legislation. We do not understand the rationale for entrenching these factors in legislation, even if the registration reform initiative was solely an Ontario-only project, and given the desirability for Ontario to stay in step with the other provinces, we recommend that this subsection be deleted and the OSC retain the jurisdiction to expand on the meaning of this term in conformity with the other provinces.

(b) We do not understand the intention of the Ontario government in listing various factors to be considered. If one of our members meet one factor, but none of the others, would it be more likely to be considered to be "in the business"? If the intention is that it is more likely that one of our members would be in the business of trading or advising if it hit an accumulation of factors, then we believe the drafting should reflect this. We believe that if an entity is trading or advising without any remuneration or expectation of profit (factor 2), that even if it hit the other tests, it should not be considered to be "in the business of trading or advising".

(c) Perhaps equally important, we believe that the narrative explanation of the factors that industry participants are to consider

Sandra L. Kegie, Executive Director
Federation of Mutual Fund Dealers
Tel: 416-621-8857 Cell: 647-409-8369
skegie@sympatico.ca

when making the critical determination of whether or not they are "in the business" of a regulated securities business contained in the proposed Companion Policy are far more complete and comprehensible than the list of factors proposed in the Proposed Legislation.

23. Dealer Registration Categories – section 26

In the interests of allowing future flexibility, we recommend that the Proposed Legislation not contain the table presently part of section 26(2) of the Proposed Legislation. We believe that it is not useful to have entrenched in legislation, the different categories of dealers and the permitted activities of these dealers. We believe that the future for the distribution of securities is fluid and that something so subject to potential change should not be entrenched in legislation.

In our comment letter on National Instrument 31-103, we urge the CSA to allow firms and their representatives that are registered as mutual fund dealers to be authorized to also distribute securities of any "mutual fund" (as that term is defined in securities legislation), as well as other forms of securities, including scholarship plans, and financial products not subject to the OSC's jurisdiction such as GICs and principal protected notes, without having to become also registered as scholarship plan dealers and/or exempt market dealers. In our view, the mutual fund dealer registration category should permit registered firms to distribute securities, whether on a public or exempt basis, where those products either do not fall within the purview of securities regulators (GICs and PPNs) or have many of the same characteristics of mutual funds and are regulated as "investment funds", in many ways similar to mutual funds. We believe that the regulatory oversight of mutual fund dealers, when coupled with the proficiency required of mutual fund dealer representatives, is sufficient to cover such securities and no additional registration or proficiency is necessary. This comment is relevant to the Ministry of Finance given the restrictions on the ability of mutual fund dealers embodied in the table contained in subsection 26(2). Even if the table is deleted from the final amendments to the Securities Act (which we recommend), we want to bring this issue to the attention of the Ministry of Finance, given its importance to Ontario investors and capital markets.

24. Duty to deal fairly, honestly and in good faith – section 32(3)

We are concerned about the proposal to impose a statutory duty of care on the Ultimate Designated Person and the CCO under Ontario laws. This concept is not part of National Instrument 31-103. In our view, if a statutory duty of care were imposed personally on UDPs and CCOs, there is a danger that qualified individuals would not wish to take on these responsibilities for our members

Sandra L. Kegie, Executive Director
Federation of Mutual Fund Dealers
Tel: 416-621-8857 Cell: 647-409-8369
skegie@sympatico.ca

without significant reassurances as to their liability, which will impact on compensation and insurance costs for our members, among other things.

25. Section 44

We fully support the proposed replacement of section 44, which is long overdue.

****

We thank you for allowing us the opportunity to comment on the Proposals. Please contact Sandra Kegie, the Executive Director of the Federation at 416-621-8857 and skegie@sympatico.ca if you would like to discuss our comments. Our members would be pleased to meet with you at your convenience.

Yours very truly,

ORIGINAL SIGNED BY SANDRA KEGIE

Sandra Kegie
Executive Director

Sandra L. Kegie, Executive Director
Federation of Mutual Fund Dealers
Tel: 416-621-8857 Cell: 647-409-8369
skegie@sympatico.ca