INVESTMENT DEALERS ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DES COURTIERS EN VALEURS MOBILIÈRES

JOSEPH J. OLIVER
President and Chief Executive Officer

September 20, 2005

Industry Canada
235 Queen Street
Ottawa, ON
K1A 0H5

Attn: Joseph Allen
Senior Project Leader
Corporate sand Insolvency Law
Policy Directorate

Dear Sirs/Mesdames:

Re: RRSP Regulations
Bill C-55, An Act to Establish the Wage Earners Protection Act, to amend the Bankruptcy and Insolvency Act and the Companies Creditors' Arrangement Act and to make consequential changes to other Acts

The Investment Dealers Association of Canada is pleased to respond to your request for comments with respect to the anti-abuse mechanisms that are proposed to modify the general exemption for RRSPs from seizure in bankruptcy as provided in Bill C-55. In this regard, we refer to your document dated August 11, 2005 outlining such mechanisms and requesting comments on the technical details of implementing aspects of them.

GENERAL

The Association is very pleased that the Government of Canada has proposed general protection for registered retirement savings plans and similar registered plans (all referred to generically in this letter as "RRSPS") as provided for in Bill C-55. The Association believes that stimulating the growth in retirement funds for individual Canadians is critically important and, as a corollary, protection of such funds through exemption from seizure by creditors is important. In addition, as you know, the protections that have been available to certain retirement funds such as registered pension plans and insurance-based RRSPs have not extended to other kinds of RRSPs including self-directed plans of the kind administered for customers by members of the Association and issued by trust companies and banks. Not only is this latter circumstance unfair but it materially restricts economic growth in Canada stimulated by entrepreneurs who are not members of registered pension plans and must rely on self-directed RRSPs.

For your information, the Association has recently committed itself to ensuring that all RRSP products are entitled to protections from creditor seizure. In this regard the intention has been to urge both the federal government and the governments of the provinces and territories of Canada to adopt effective and uniform protections to achieve the overall policy goal of ensuring Canadians have a secure future in retirement. It is the view of the Association and its members that current retirement funding for Canadians through government and private retirement plans may not be adequate, particularly for the many Canadians who do not participate in employer sponsored plans.

As part of the foregoing initiative the Association has reviewed many of the proposals that have been made to protect retirement funds both in Canada and elsewhere and it is generally familiar with the issues and policy considerations involved. In particular, members of the Association administer for their clients a very large proportion of the self-directed RRSPs in Canada.

ANTI-ABUSE MECHANISMS

While the Association is very supportive of the proposed protections for RRSPs as provided in Bill C-55, we are very concerned about the anti-abuse mechanisms that are also being proposed. In short, the Association believes that the proposed anti-abuse mechanisms are unnecessary and will introduce a degree of complexity and uncertainty in an already complicated and uncertain area of the law and, therefore, cannot be justified either as a matter of broad policy or on any cost-benefit basis.

We appreciate your request for comments on the anti-abuse mechanisms assumes that the Government has or will endorse the need for some kind of anti-abuse protections. However, the Association will urge your Department and the Government in general to reconsider this view. In addition, however, if some protections are viewed as being necessary the concerns of the Association suggest that such mechanisms be minimal and as simple as possible.

As a further general comment, it is important to bear in mind that the protection of RRSP savings in the context of bankruptcy is only part of the overall solution for achieving the policy objective and provincial and territorial laws relating to creditors' rights are equally important. Moreover, as a matter of policy, the Association would expect that the protections available under federal laws and the laws of the provinces and territories should be uniform. The range of protections available at present are inexcusably diverse, uncertain and unfair across Canada and, with respect, the anti-abuse proposals under the regulations to Bill C-55 will only exacerbate the problem. The prospect of achieving uniform provincial and territorial protections is daunting enough but the proposals of your government will not be helpful. Instead, the Association would hope that the government could take a leadership role in encouraging national uniformity, and the adoption of a simple policy of protecting retirement savings without unnecessary and

complicated anti-abuse mechanisms would be a significant and achievable contribution in that regard.

As indicated above, the Association has considered a number of the proposals and options that have been advanced by many bodies and commentators relating to RRSP protection. The relatively simple and practical approach recommended by the Alberta Law Reform Institute ("ALRI") in its report on Exemption of Future Income Plans of May 2004 (with which we are sure you are familiar) is endorsed by the Association. The report considers a wide range of protections including anti-abuse provisions not only by provinces and territories but also the federal government under bankruptcy and insolvency legislation. The three proposed mechanisms of a cap, clawback and lock-in are rejected.

DISCUSSION

The Association is aware that the three specific issues on which Industry Canada has sought comment have their origin in the August 2002 Final Report of the Personal Insolvency Task Force whose recommendations were echoed in the November 2003 Report of the Senate Committee on Banking. It is obvious that the drafters of Bill C-55 had the recommendations of those Reports in mind and the Association agrees as a matter of principle that there should not be room for debtors to abuse the general RRSP protections to be provided. On the other hand, when examined carefully the policy rationale for the anti-abuse proposals does not appear to be very strong and the remedy is worse than the cure. The Association urges the government and your Department to weigh carefully the benefits of the policy identified against the practical costs and benefits actually achieved.

Clawback

The Personal Insolvency Task Force originally recommended that there be a three year clawback, although this period was reduced to one year in the recommendations of the Senate Committee. The motive is apparently to ensure that debtors do not make contributions to their RRSPs when they should be paying their debts. In effect, the provision was referred to as a "cheap and effective anti-avoidance device…to ensure creditor confidence". Abuses by debtors in hiding or protecting assets are difficult to remedy under provincial laws (such as fraudulent conveyances and preferences) and the Task Force and Senate Committee apparently had in mind an automatic one year clawback. In addition, the Industry Canada proposals indicate that creditors could challenge in the bankruptcy proceedings any prior contributions although contributions by way of rollovers from existing plans would not be included. The one year clawback appears to be arbitrary and the proposal in general may not reflect an appropriate balance of fairness between creditors' rights and the advantages to encouraging retirement saving. Apart from the policy considerations, it appears to us that the incidence of abusive strategic planning by debtors through RRSPs would be relatively rare and, in any event, the amount of money protected would be one year's contribution limit, i.e. a maximum of

$16,500 in 2005. The policy risk being addressed seems hardly worth the trouble of introducing the exemption. In addition, it is noted that pensions which benefit from creditor protections are not subject to a clawback for recent contributions.

Cap

The proposal for a cap on the savings that can be protected again appears to be arbitrary and does not apply to conventional pension plans. Presumably the policy intention is that very wealthy people with large RRSPs should be restricted in the amounts that they can protect. However, it has been argued that the contribution limits themselves for RRSPs impose an appropriate kind of restriction and, although RRSPs may represent a significant portion of retirement funds, they are limited in their size and growth by virtue of the contribution limits. In any event, all RRSP savings are subject to creditor remedies when withdrawn and in any case where there are significant assets accumulated and a concern about abuse, the matter can be dealt with by the terms of a discharge from bankruptcy. The ALRI philosophy is that savings for retirement should be encouraged and it is already uncertain for most people whether RRSPs themselves will provide sufficient retirement income. On the other hand, apparently a hard cap of $1 million has been established in the United States. Industry Canada proposes different means of establishing a cap by a mathematical formula or by a fixed amount. There does not appear to be any statistical back-up or basis for either proposal. For instance, it would be important to know (if the data is available) whether there would be any material amount of "excess" retirement savings available to creditors based on profiles of holders of RRSPs in Canada. The mathematical formula suggested is based on the latest maximum available RRSP contribution multiplied by years of contribution after 18 and would have to be subject to analysis to see whether appropriate growth in retirement savings would be recognized by the formula. Until such research is conducted the proposal appears to the Association to be premature and likely in the end unwarranted.

Lock-in

The proposal that only locked-in RRSPs be subject to protection is apparently based on principles of fairness to creditors or, as the Task Force put it, "the integrity of the bankruptcy system" being in jeopardy if savings funds can be withdrawn after debtors rely on the protection. The proposal is that a debtor would have the opportunity to lock in an RRSP that had not previously been locked-in during the course of the insolvency proceedings.

This proposal raises a number of policy considerations in addition to what appear to be complex technical issues and market concerns. We understand that currently locked-in RRSPs are not available in the market and the administration of locked-in pension plans is pursuant to pension and income tax law which would not apply to RRSPs. The administrative aspects of requiring individuals to convert RRSPs to include a lock-in feature would also appear to be complex, time consuming and uncertain. In effect, a new lock-in procedure would have to be created to parallel the procedures now permitted in

pension laws for converting/transferring pension assets. Again, the costs and complexity must be weighed against the objects of a policy that it is at least doubtful.

The ALRI points out that for practical purposes RRSPs are locked-in to the extent that funds withdrawn are subject to tax and once the property is withdrawn from the plan it is subject to creditors' remedies. These features would likely be disincentives to abuse. Again, the policy of protecting all retirement savings in registered plans would appear to outweigh the anti-abuse situations that appear to be behind the lock-in proposal.

We will be pleased to discuss the foregoing with you at your convenience or meet as proposed in your letter.

Yours very truly,

Joseph J. Oliver