



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

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December 22, 2008

Dear Sir/Madam:

**Re: IIROC Amendments to Implement the CSA Registration Reform Project  
("Proposed Amendments")**

The Investment Industry Association of Canada (IIAC) appreciates the opportunity to comment on the Proposed Amendments published on September 26, 2008.

We support the cooperation between the CSA and IIROC to develop a common regulatory base for matters related to registration. Harmonization of regulation will help level the playing field for those undertaking similar activities, thus reducing the possibility of regulatory arbitrage and the amount of confusion faced by dealers and investors alike.

As noted in our May 28, 2008 comment letter to the CSA, the IIAC is generally supportive of the provisions in NI 31-103 *Registration Requirements*. That letter outlines in detail our members' perspective on the substantive issues in the Proposed Instrument. As such, we will confine our comments to matters of significance and those arising from the harmonization of IIROC requirements with the Proposed Instrument.

Despite the benefits of the Registration Reform initiative, the fact that it does not provide registrants with the ability to undertake a single registration, with one regulatory body and have one fee to apply, is a major shortcoming of the regulatory structure. The

creation of a single point of entry, applicable to all jurisdictions, for all registration matters would greatly enhance the efficiency and effectiveness of the Canadian registration system without prejudicing investors.

### **Simplification of Approval Categories**

The IIAC supports the reduction of approval categories to reflect business activities rather than titles. This approach provides members with more flexibility in developing and managing an appropriate structure for their business, and is a positive move towards more principles based regulation.

#### *Supervisor*

In particular the new Supervisor category which replaces, among other things, the Branch Manager category, recognizes the shortcomings and rigidity of the current structure. This category will accommodate the business models of dealers doing business other than retail or advisory.

The retention of the two tier method of retail account supervision as a model rather than a requirement provides a measure of certainty of compliance for those firms for which the current model is suitable.

#### *Executive*

The creation of the Executive category recognizes the distinction between the responsibilities of those persons that fill executive management and those who have no involvement in the actual management of the dealer. The removal of the approval requirement for those without management functions is a positive step in removing regulatory burdens where they do not advance investor protection. The retention of the proficiency requirements for this category is appropriate.

#### *UDP/CCO*

As noted in our response to CSA on NI 31-103, we agree that the specific new individual categories for the Ultimate Designated Person (UDP) and the Chief Compliance Officer (CCO) or person designed with equivalent supervisory and decision-making authority, are appropriate. However we remain concerned with the requirement that the UDP category be occupied by the CEO. This requirement does not provide firms with sufficient flexibility to manage the critical elements of compliance in a manner that is best suited to its management structure. We believe the current IIROC structure that permits the UDP to be the Chief Financial Officer (CFO) or the Chief Operating Officer (COO) is a much more appropriate model. It may also be appropriate to permit the President to fulfill this role. Consistent with current IIROC regulation, we believe it is advisable to retain the Alternate Designated Person (ADP) and the CFO as registration categories.

### **Transfers – Automatic Approval for 90 days**

The automatic transfer of an Approved Person from one dealer to another is a very positive development and will benefit the industry and clients by facilitating seamless service to clients. It is very important for clients to be able to access the services and

expertise of their advisor in a timely manner without a break in service when the advisor changes firms.

### **Definitions of Investment Representative and Registered Representative**

The broadening of the categories of Investment Representative and Registered Representative to include those who trade in or advise on exempt debt securities and non exchange traded options and futures is a positive development that levels the playing field in respect of previously non registered individuals. We are concerned however, that the proficiency requirements for those trading or advising in exempt securities are less stringent under NI 31-101, which does not have a requirement for Exempt Market Dealers' dealing representatives to pass the Conduct and Practices exam or the Partners, directors and Senior Officers exam. This creates an inconsistency and a gap in regulation and investor protection that the new Exempt Market Dealer category was created to address. The result is that investors cannot count on having adequate and consistent protection when making their investment decisions through an Exempt Market Dealer. There is also an issue of unequal treatment and review standards by having these registered dealers operate outside an SRO framework. In order to ensure that a similar level of regulation and oversight is provided for the firms and individuals dealing with the public in this forum, they should operate under the SRO structures that are currently in place. At a minimum level, NI 31-103 should impose the same proficiency requirements that are imposed by IIROC.

If proprietary traders are to be registered, they should have a separate category with proficiency requirements related only to their functions, recognizing that they do not deal with public clients.

### **Conflict of Interest Disclosure**

Section 7.7 will be replaced with the more principles based approach to dealing with conflicts of interest contained in NI 31-103. As noted in our letter to the CSA on NI 31-103, it would be helpful to supplement this section with guidance and examples to compensate for the precision that is lost with the move to principles-based regulation. The guidance should make it clear that the only conflicts that need to be disclosed to clients are ones that are relevant to the dealer-client relationship and could have materially adverse effects on such clients.

### **Mutual Fund Registration**

We support the proposed requirement to require Investment Representatives and Registered Representatives restricted to mutual funds to complete the necessary proficiency requirements to conduct full retail securities business within 270 days of initial approval and to complete an upgrade to full retail or institutional business within 18 months of initial approval. This requirement will help alleviate the existing investor confusion as to the qualifications of their IR or RR to sell various products, especially as various new products and hybrids have emerged which make the determination about who can sell what less clear. The Proposed Amendments will also eliminate the inconsistency in practice among different provincial jurisdictions.

### **Controls on Discretionary Accounts**

The Proposed Amendments requiring firms to designate a Supervisor to be responsible for discretionary accounts, approve each discretionary account and record that approval is reasonable.

### **Managed account review / supervision**

The Proposed Amendment to section 1300.15 that would require that the Chief Compliance Officer be a member of the committee to conduct an annual review of its policies and procedures to supervise managed accounts, does not afford firms with the flexibility to determine if that person is the most appropriate to fulfill this role. The provision should permit the firms to determine who is most suited to serve on this committee, based on the structure and competencies within their organization, consistent with the principles-based approach to the Proposed Amendments.

### **Supervision of Retail Accounts**

The Proposed Amendments change the supervision requirements to principles-based guidelines. As noted above, it is appropriate to retain the structures and procedures established in the current Rule 2500 as an option for an acceptable structure.

The changes that give dealers the option of having minor changes approved at lower levels in the organization reflect a practical approach to the regulation of management processes.

The new risk-based approach to selecting accounts for review which takes into account more factors than commissions amount as a basis for account selection reflects a more pragmatic and relevant approach to risk assessment.

The guidance in Part III provide helpful guidelines that will assist in compliance.

### **Permitted Clients**

We are concerned that the proposed amendment to Rule 2700 which recognizes the permitted client exemption, but disallows the suitability waiver approach for permitted clients that are individuals may cause confusion due to inconsistency between the CSA and IIROC rules. We urge the CSA and IIROC to establish a common standard, so that there is a level playing field as between IIROC members and other industry participants undertaking similar activities.

### **Client Relationship Documentation**

We understand that the CSA Registration Reform working group has decided to pull the client relationship documentation out of proposed NI 31-103 as IIROC and the MFDA have different proposals in development. It is very important that the CSA and IIROC develop harmonized requirements based on the substantial feedback provided to the regulators as they have advanced these proposals.

## Conclusion

The IIAC supports the CSA and IIROC initiatives to streamline and rationalize regulations relating to registration in National Instrument with harmonized provisions in SRO regulations. The creation of standards applicable to all entities undertaking similar activities is important in respect of regulatory efficiency and investor protection. To the extent that there are inconsistencies between jurisdictions and between CSA and IIROC regulations, we encourage the regulators to work to find common ground.

We are concerned that the ongoing delay in respect of the approval of NI 31-103 and potential changes to that Instrument may result in the deferral of many important and positive changes to the registration regime. To the extent that there are controversial or problematic elements in NI 31-103 and the Proposed Amendments that threaten timely implementation, we recommend that if possible, the balance of the regulations be implemented while discussion continues on such elements. In this way, the industry will benefit from the many of the efficiencies of Registration Reform, without undue delay, or the possibility that such changes are lost or deferred due to the emergence of other regulatory priorities as a result of the current market turbulence.

Thank you for considering our submission. If you have any questions, please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. Copland', written in a cursive style.

Susan Copland