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

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Mr. Richard Fyfe, QC
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Dear Mr. Fyfe:

Re: Request to Defer Coming into Force of Irrevocable Beneficiary Provisions in Part 5 of *Wills, Estates and Succession Act*

We apologize for the lateness of this letter, in which we request deferral of the imminent coming-into-force of sections 87 and 88 of the British Columbia *Wills, Estates and Succession Act* (the Act) to allow for discussion of the difficulties and unintended consequences for British Columbians saving and investing in registered retirement savings plans (RRSPs), registered retirement income funds (RRIFs), tax-free savings accounts (TFSAs) and other registered plans.

The Investment Industry Association of Canada (IIAC) represents investment dealers regulated by the Investment Industry Regulatory Organization of Canada (IIROC) on securities regulation, tax and other public policy matters. The Association's purpose is to improve the savings and investment process and achieve efficient, liquid, competitive markets that benefit Canadian investors and issuing companies. Our 160 member firms range from small retail to regional institutional to large full-service companies employing thousands of Canadians across the country. An important number of our members operate in British Columbia and they hold an estimated $40 billion in RRSPs, RRIFs, TFSAs and other similar plans for British Columbians. It is for this reason that we are writing to you now.

Goals

We understand that, as rationale for the changes reflected in the Act, are two reasons of relevance to sections 87 and 88, that is:

1. Adding simplicity and flexibility to the estate-planning process; and
2. Harmonizing the treatment of retirement plan designations with designations under insurance policies. In this regard, the web document *Information about British Columbia's new Wills, Estates and Succession Act* notes that: "There is really no principled reason why similar products offered by

insurance companies should allow irrevocable designations while other benefit plans do not." It also states that "While this section applies to benefit plans generally, it will not apply to benefit plans that are governed by pension legislation, as the legislation governing pensions has specific requirements which will supersede this general rule." For most people, RRSPs and RRIFs are their pension equivalent.

We strongly support making estate-related provisions simpler in light of an aging population, and one that has become much more mobile than at any time in the past, meaning that more Canadians than ever will face the challenges of dealing with different rules in different jurisdictions. This is one reason we have encouraged different provinces to work together to unify locked-in plan provisions across the country. However, the irrevocable beneficiary designation provisions unfortunately create more complexity and uncertainty than they may address within B.C. and across jurisdictions. We have had the opportunity to review the submission made by the Canadian Bankers' Association in this regard and echo many of the concerns raised there.

Imposing irrevocable beneficiary designation, an insurance concept, on these type of registered plans held at investment dealers creates a new set of not principles-based, but rather practical issues that would likely have negative effects on certainty and cost for investors, and for those that might expect to benefit from the new rule. This is why we hope to meet with you to address the disadvantages that the legislation risks causing for planholders, their estates and the intended beneficiaries.

Practical Issues Arising from Differences between Insurance Companies and Investment Dealers

1. **Regulatory impact – who is the client:** Investment dealers, regulated by IIROC, are subject to extensive requirements in the name of investor protection. These requirements include know your product (KYP), know your client (KYC) and enhanced suitability. Investment dealers and their advisors must act for their client, and in many, if not most cases, the irrevocable beneficiary will not, in fact, be their client as well. Subsection 88(2) of the Act provides that, if an irrevocable designation has been made, the "benefit is not subject to the control of the participant". This may suggest that the client planholder may (i) lose control over his or her holdings during the plan's life, (ii) have limited investment options, and (iii) have little or no ability to transfer or withdraw money. We note that the definition of "benefit" means "a benefit payable under a benefit plan on the death of a participant", but there is no guidance as to whether this has any impact on the planholder while alive. However irrevocable designations are treated by the insurance industry, we have no guidance on their application to non-insurance registered plans. There would likely be a divergence between the interests of the client and the irrevocable beneficiary, especially as we understand that such irrevocable designations often arise in the settlements of marriage breakdown situations. It is unclear what the regulatory or civil consequences of this might be and we wonder whether this matter was raised by B.C. representatives with their counterparts on the Joint Forum of Financial Market Regulators – a group including the Canadian Council of Insurance Regulators (CCIR), Canadian Association of Pension Supervisory Authorities (CAPSA), and Canadian Securities Administrators (CSA), with the Canadian Insurance Services Regulatory Organizations (CISRO).

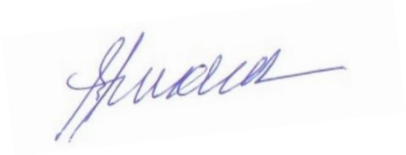
2. **Regulatory impact – transfers:** It is our understanding that life insurance policies are not subject to transfer in the ordinary course and that insurance-company-type equivalents to RRSPs and other such plans do not have the same specific requirements that investment dealers do to transfer assets. To expedite and facilitate transfers for investors, practice in the investment industry is for investors to go to the investment dealer that he or she intends to deal with going forward. This dealer initiates the transfer in from the relinquishing dealer. The relinquishing dealer is under considerable time pressure to transfer all client assets quickly (and is not in a position to refuse to act on the basis of the planholder/annuitant request). The relinquishing dealer cannot be left with an account that may appear to be that of a non-client. Investment dealers must transfer registered plans under IIROC Rule 2300 within 10 clearing (business) days through the Account Transfer Online Notification (ATON) system, built by the investment dealers to speed and reduce the risk of transfers. Investment dealers operating in B.C. are bound to comply with IIROC rules (see sections 24 and 26 of the B.C. *Securities Act)*. This arguably could be construed as an enactment that prevails over the Act's provisions. Also, beneficiary entitlement is plan-specific. The designation cannot transfer from one to another firm; it ends when a plan ends. A new plan is established on transfer and a new designation must be made at the new issuer. As noted above, each dealer has a KYC, KYP and enhanced suitability duty to the planholder/annuitant and not to third parties. Finally, when a transfer of a client is made within the same firm to a branch in another province, where irrevocable beneficiaries cannot be assigned on registered plans, it is not clear what rules would apply.

3. **CRA-related impact:** Registered plans must operate in accordance with CRA-approved specimens and the *Income Tax Act*. The planholder or his or her estate, or the issuer in certain cases, is held liable for all tax consequences resulting from transactions in the plan. Of particular note, TFSAs must operate to the "exclusive benefit" of the holder and if a beneficiary's consent were required for transactions, we understand that one interpretation is that the TFSA could be deregistered.

The regulatory, business practice, systems and tax constructs relating to investment dealers suggest that not only may the targeted beneficiaries not get the certainty that is presumably their goal, but planholders themselves may find themselves disadvantaged.

We believe that sections 87 and 88 could safely be severed from those parts of the Act that come into force next week. We look forward to discussing this with you.

Yours truly,



Cc: Tyler Nyvall, Legal Counsel, Civil Policy and Legislation Office