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

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May 28, 2008

Mr. John Stevenson, Secretary
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Dear Sirs/Mesdames:

Re: Proposed National Instrument 31-103 and Companion Policy 31-103 – *Registration Requirements* (the "Instrument")

The Investment Industry Association of Canada commends the CSA for the changes it has made to the Instrument in response to comments from the industry on the first version of NI31-103. The amendments have improved the Instrument so that it reflects many more of the practical realities facing the industry, without compromising investor protection. Despite the improvements to the instrument, there remain a few outstanding areas of concern.

General Comments

It is clear from the Instrument and the recent IDA materials circulated to certain of its committees that there has been a concerted effort to harmonize provisions as between the CSA and the IDA. Consistency in regulation is extremely important to ensure that a level playing field exists for all participants conducting similar business activities, and to reduce the amount of confusion for dealers and investors alike. We note that there are some remaining inconsistencies in important areas such as the account opening

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documentation and proficiency standards for Exempt Market Dealers. We encourage the CSA and the IDA to focus on those areas to create a closely aligned regulatory regime that does not create opportunities for regulatory arbitrage in respect of any significant requirements.

As noted previously, despite the benefits of the Registration Reform initiative, the fact that it does not provide for one registration with one fee to apply all provinces is a major shortcoming of the instrument. The reduction and harmonization of registration categories and the fact that the Proposed Instrument will be applied nationally provides the natural infrastructure for a truly national registration system. At the very least, it should be structured in a similar way to the prospectus review system under Passport, where approval by the principal regulator will allow the registrant to act in other jurisdictions using delegated authority and providing a more seamless system of transacting business in Canada. The current mobility exemption falls far short of that objective. Provincial registration in the context of a system with national requirements and a very mobile labour force (registrants and clients) is contradictory and appears to undermine the purpose of the Instrument; which is to create efficiency in the regulatory realm. The requirement for registrants to pay fees in each jurisdiction is not justifiable from an administrative basis.

Specific Comments/Concerns

Definitions – Permitted Client

We commend the CSA for introducing this category of investor in response to industry comments. It is appropriate to make a distinction between the regulatory protection required for those investors that are truly sophisticated by virtue of their size and experience from those who merely meet a relatively low income / asset test.

Exempt Market Dealers Category

As noted in our previous submission we fully support the addition of the new registration category of Exempt Market Dealer to address the existing gap in the net of investor protection. We are, however concerned with the apparent reduction of the proposed proficiency requirements from the previous version of the Instrument. The elimination of the requirement for the Exempt Market Dealers' dealing representatives to pass the Conduct and Practices exam or the Partners, directors and Senior Officers exam creates an inconsistency and a gap in regulation and investor protection that the new category was created to address. This inconsistency means that investors cannot count on having adequate and consistent protection when making their investment decisions through an Exempt Market Dealer. This amendment waters down investor protection standard to a level where it is closer to the existing Limited Market Dealers' standards. We are concerned that while the creation of this new category provides these types of dealers with a much higher level of credibility, the reality of their minimal proficiency standards creates an inconsistency in the industry and investor perception of what expertise Exempt

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Market Dealers are actually able to provide. 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.

In addition to our objections to the reduced proficiency requirements, we remain very concerned that the British Columbia and Manitoba are proposing not to adopt this registration category. Given that the majority of non-brokered private placements are undertaken in Western Canada, primarily by venture issuers with an increased risk profile, the need for investor protection in respect of these transactions is high. Intermediaries between the issuer and the investor must ensure that the investor is properly qualified and eligible to purchase exempt securities, and that such securities are suitable investments for them. The non-adoption of this category by BC and Manitoba, as well as the reduced proficiency requirements in respect of the adopting jurisdictions do not advance this objective. In addition to the investor protection concerns, the BCSC and the MSC must consider the objective of regulatory uniformity to create an efficient, cohesive and competitive market structure within Canada.

Individual Registration Categories

UDP and CCO

We agree that the specific new individual categories for the Ultimate Designated Person (UDP) and the Chief Compliance Officer (CCO) are appropriate. However the requirement that the UDP be the CEO, sole proprietor or head of the registrable division 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 agree that the responsibility for compliance should be placed at a top management level in a firm, so that senior management is held accountable for compliance and recommendations and issues cannot be overruled or ignored, the CSA should provide a certain amount of flexibility to recognize different management structures of firms.

We note that the IDA has also proposed to change its approval categories to be consistent with the Instrument. However, we believe that rather than the IDA moving to the CSA model of requiring the UDP to be the CEO, the CSA should adopt the IDA model which provides that the UDP may be either the Chief Financial Officer (CFO) or the Chief Operating Officer (COO). In addition, consistent with IDA regulation, we believe it is appropriate to require the Alternate Designated Person (ADP) and the CFO to also be registration categories for consistency and to avoid market confusion.

Fit and Proper Requirements

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Proficiency

To the extent that the Instrument harmonizes proficiency requirements as between SRO and non-SRO members, we support the provisions. Consistent standards are essential from an investor protection and market integrity perspective, regardless of whether the registrant operates primarily under SRO or CSA jurisdiction. To this end it is important that the CSA ensure that the exam based requirements equip registrants with a similar base of knowledge as they would acquire pursuant to the IDA course based proficiency standards. As noted above, we support the application of the fit and proper requirements to Exempt Market Dealers, but are concerned about the reduced proficiency requirements applicable to dealing representatives in this category.

Solvency Requirements

We support the updated approach to capital requirements, which reflects a more risk-based perspective, and is targeted to activities undertaken by firms.

Conduct Rules

Account opening and know-your-client

As stated in our previous letter, it is critical to have consistency as between SRO and non-SRO registrants in this area. Investors should not be prejudiced in respect of the KYC and suitability obligations of their registrant, based on the registrant's oversight jurisdiction. Such inconsistency creates confusion for investors, and detracts from market integrity.

We note that the new KYC provision that requires registrants to ascertain if the client is an insider of an issuer has not been clarified to indicate if this applies to all issuers in all jurisdictions, including foreign jurisdictions.

Relationship Disclosure

The proposed requirements are not consistent with existing or proposed SRO rules in this area. It is very important that such requirements be aligned as between SRO and non SRO firms. Clients should be entitled to receive similar information with similar presentation guidelines regardless of which regulator has jurisdiction over the firm presenting the information. In respect of the recommended content and format of the information, we do not recommend that the CSA adopt the proposed Client Relationship Model documentation.

One of the fundamental differences between the IDA Proposed Rules and the relationship disclosure information provisions in the Instrument is that the Instrument no longer requires a relationship disclosure document. Instead, it provides a basic list of

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information items which must be disclosed to clients. This requirement allows firms some flexibility in how they comply, such as permitting firms to satisfy the requirement using existing documents rather than the prescriptive approach in the IDA Proposed Rules which specifically requires a document entitled "Relationship Disclosure".

In addition to the actual relationship disclosure documentation, the IIAC supports the CSA's move to a principles-based approach surrounding relationship disclosure in general. For example, rather than mandating specific disclosure that may not be relevant to many clients, the Instrument contains a principles-based provision which requires registrants to provide information that a reasonable client would consider important respecting the client's relationship with the registrant.

We note that the IIAC Alternative Model, which was proposed to the IDA as another, more principles-based approach to client relationship disclosure is more aligned with the approach taken in the National Instrument both in its general approach and in relation to certain administratively burdensome details regarding proof of delivery through client signatures and audit trails that exist in the IDA Proposed Rules but not in the Instrument.

In addition to these substantive differences, the disclosure items in the Instrument vary somewhat from those listed in the IDA Proposed Rules. For example, the Instrument still requires a discussion surrounding the products and services offered by the firm and how these will meet the client's investment objectives, a discussion of risk factors and types of risk and information about how the client can contact the firm. All these items have been removed from the most recent version of the IDA Proposed Rules. Other items in the IDA Proposed Rules such as the suitability triggers and a description of the process used by the adviser and firm to assess the client's investment objectives and risk tolerance are not included in the Instrument. It appears that the IDA and the CSA did not discuss and compare their two CRM models as the approach used by the regulators is significantly different.

It is imperative that the IDA and the CSA requirements are consistent and harmonized for all registrants before implementation. Canadian investors should receive the same disclosure across the regulatory spectrum. Consistency of regulation across all channels is essential. For a more in-depth analysis of the IDA Proposed Rules, please refer to our submission dated May 21 , 2008 in response to the CSA and IDA Request for Comments on this issue.

Record keeping

As recognized in our previous letter, the recognition of the differences in firms' business through the implementation of a general obligation to maintain an effective record keeping system rather than a requirement for prescriptive lists is an appropriate application of principles based regulation. We remain concerned, however with the retention requirements for "activity" and "relationship" records. Given the room for

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significant overlap between the two categories, and the administrative burden of categorizing and storing such communications on this basis, the administrative and cost burden will be very significant. We question whether firms will be able to create a useable archive and retrieval system for all electronic communications, taking into account the enormous volume of information required to be archived. Once again, we suggest that the CSA focus on the specific type of records of concern, and provide a more reasonable time frame in respect of the record retention period.

Confirmation of trades

We suggest that this section be updated to reflect the realities of business transacted by Canadian registered dealers with other registered dealers, both Canadian and foreign. The Instrument specifies the contents of the confirmations, including the commission, sales charge, service charge and any other amount charged in respect of the trade. It should be recognized that firms transacting clearing trades with US registered dealers must compare and lock in clearing trades through the FINRA/NASDAQ Trade Reporting Facility using ACT Technology in real time. The real time comparison and locked in clearing negates the practical requirement for printed trade confirmations and monthly statements. These trades are typically done on a net or spread basis. ACT Technology does not facilitate recording information not necessary to confirm and clear the trade. Dealers agree between themselves at the time of the trade with respect to foreign exchange and consideration. Through confirmation on ACT dealers confirm the trade details as those bargained for.

It should be noted that firms have been using the ACT system, which is mandated for US dealers, for many years. The Securities Act and Instrument requirements for Canadian dealers to send a separate confirmation slip and monthly account statements to US dealers results in a duplicative system with additional paperwork that is unnecessary and unwanted by US dealers.

A similar environment exists for business conducted between Canadian registered dealers. In these cases, the new requirements for Institutional Trade Matching contained in NI 24-101 take the place of confirmations through the ACT system.

We recommend that section 5.18(2) be amended to create an exemption for trades for or on behalf of another foreign or domestic registered dealer where an alternate confirmation system is utilized. Given that the parties to the trade in both cases are registered dealers and do not require the regulatory protection afforded by the confirmation, and the existence of an alternative system that has been successfully utilized and (in the case of ACT) mandated for many years, the imposition of the confirmation requirement is a regulatory burden without a commensurate benefit. The amended process should also be reflected in IDA Rules to ensure that there is regulatory consistency.

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Compliance

We note that in order to be consistent with the approach in the Instrument, the IDA has proposed the removal of the currently prescribed requirement applicable to branch offices and branch managers, to be replaced by the creation of a Supervisor category. This appears to be a reasonable means of providing firms with the flexibility to manage their different business models (with mixed retail, institutional and other specialized businesses) at the appropriate branch and head office level, without imposing a one-size fits all branch manager construct. The IDA and CSA should be consistent in their approach to ensuring that the Supervisors have appropriate expertise in the areas that they are responsible for supervising, and that the documentation, reporting and administration requirements do not become so burdensome that they negate the benefits of the flexibility of this new structure.

Complaint Handling

We support the principles based approach to complaint handling in the Instrument. That all registered firms implement policies and procedures to address client complaints is important from an investor protection and level playing field perspective. However, we note that the requirements are different from what is proposed under the IDA proposed complaint handling procedures, and certain provisions under the proposed changes to the Ombudsman for Banking Services and Investments (OBSI). The different processes and any variance in the definition and scope of complaints should be consistent between firms under CSA and SRO jurisdiction. In order to maintain market integrity, clients must have similar recourse regardless of whether a firm is overseen by the CSA or an SRO. We advocate a process whereby internal complaint handling processes (such as internal Ombudspersons or other formal and documented procedures) implemented by firms are recognized and allowed to operate to their reasonable conclusion before external dispute resolution procedures such as OBSI can be invoked.

Conflicts

Consolidation

We were pleased to see that this section was narrowed somewhat to impose a reasonability standard, provide additional guidance on conflicts of interest between clients and provide more reasonable requirements regarding the need for an issuer disclosure statement. However, while we support the move to a more principles-based Instrument, we are concerned that there is still not sufficient guidance to assist firms in determining the expectation of the types of conflicts that should be disclosed to clients. The requirement that the firm use the clients' expectations as a basis on what must be disclosed is fraught with problems, depending on the nature of the client, the market conditions and the problems of evaluating that decision after the fact, with the benefit of hindsight. A more consistent and clearly delineated standard, using materiality, as ascertained by the firm, should be included in the Instrument.

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In order to assist firms in determining what is material, the Instrument or Companion Policy should contain more focused guidance as to what types of conflicts the regulators are really concerned about. As it stands, the disclosure could capture some of the more general conflicts that arise in any market in which there are the competing interests of buyers and sellers. Disclosing these types of conflicts does not advance investor protection, and may detract attention from the types of conflicts that may affect the decisions of an investor.

Referral arrangements

As indicated in our previous letter, the types of activities that are intended to be covered under this section should be more clearly defined so that it is clear . For example, it is whether the requirements are intended to apply to the payment of finders' fees for non brokered private placements or to soft dollar arrangements.

Consistent with our comments on conflicts, we believe that the parameters of disclosure should be well defined and not be based on the subjective views of the client. In particular, items 6.13 (1)(c) and (g) are too open ended to provide certainty as to the limits of disclosure.

Suspension and Revocation of Registration

Permanent registration / Automatic re-instatement

As we stated in our previous submission, the expedited process of permanent registration and automatic re-instatement in all CSA jurisdictions will significantly improve the efficiency of the registration system.

We recommend however that there be a process for lifting a suspension in certain circumstances when a hearing concerning the individual has been commenced. A suspension (or imposition of terms of registration) should not necessarily be automatic or non revocable until the outcome of the hearing in situations where the public is not at risk. In such circumstances, the onus should be on the regulator to make this case. The suspension or imposition of terms and conditions on registration should also be subject to the registrant's right to an opportunity to be heard and right of appeal to the securities regulatory authority.

We also believe that in order to provide certainty, the effect of a disciplinary proceeding by a non-principal regulator should be clearly addressed in the Instrument.

In respect of process concerns, we urge the CSA to ensure that system issues relating to the availability of the NRD are addressed to facilitate transfers on a timely basis if the system is down for reprogramming.

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Terminations

The revised process for dealing with terminations and information sharing using the Notice of Termination form is a significant improvement from the last version of the Instrument. We remain concerned, however, with the open ended nature of Question 10 on the form which reads: *Is there any other matter relating to the individual's termination or conduct leading up to it that the firm is aware of, and believes is relevant to his or her suitability for registration?*

An appropriate balance must be struck to ensure that regulators obtain the required information without exposing the firms to legal liability by providing such information.

Mobility exemption

We are disappointed with the decision to retain the limits on the broker mobility exemption. The limits are and inconsistent with the purpose of a national registration system and so restrictive to be of no use to firms or individuals. As stated in the introductory portion of this letter, the fact that the Instrument does not provide for one registration to be used in all provinces is a major shortcoming.

The cost and time required for firms to develop and monitor compliance with the exemption more than offset the benefits. It is not clear what regulatory purpose is served by the retention of such limits, unless the CSA perceives that provinces have significantly different standards in registration criteria – which should not be the case given that the governing instrument is national in nature.

Exemptions for International Dealers and Advisors

The amendments made to this section in response to industry feedback are appropriate and helpful. In particular, the expansion of the permitted client category and the removal of the restrictions relating to maintaining a Canadian office will help facilitate business in an efficient manner. The ability to maintain dually registered employees will allow Canadian affiliates of US firms to continue to effectively service US institutional account investments in Canadian securities. Clients will benefit from the sharing of information, research and expertise, and valuable access to foreign markets on a timely and direct basis where time zone issues arise.

Incorporated salespersons

The IIAC looks forward to continuing to work with the CSA to develop a suitable regulatory framework that will allow for the incorporation of salespersons. Ideally such a solution will be developed on a timeline that is consistent with the implementation of the Instrument.

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Ontario legislative amendments

We are extremely concerned that many of the proposed provisions in the Instrument are to be enshrined in legislation rather than in the Instrument. This creates inconsistency in implementation, and severely limits the ability to modify and update the Instrument in a timely and coordinated manner in response to emerging issues and market developments. We believe that this implementation strategy is inconsistent with the objective of regulatory harmonization through the creation on National Instruments; and contributes to the patchwork nature of Canadian regulation that has been so soundly criticized within Canada and on an international level. We fail to see any public interest concern that is served by this strategy; and for the reasons described above, believe that cementing rules outside the National Instrument is ultimately contrary to the public interest.

Conclusion

We thank you for taking our comments into consideration. If you have any questions relating to this submission, please do not hesitate to contact me.

Yours sincerely,

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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
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