BY HAND

March 18, 2002

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
The Manitoba Securities Commission
Ontario Securities Commission
Office of the Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland
Registrar of Securities, Northwest Territories
Registrar of Securities, Nunavet
Registrar of Securities, Yukon Territories

c/o Mr. John Stevenson
Secretary
Ontario Securities Commission
20 Queen Street West
Suite 800, Box 55
Toronto, Ontario
M5H 3S8

Dear Mr. Stevenson:

Re: Request for Comment -
Proposed Multilateral Instrument 31-102 - National Registration Database

In response to the request for comments published on December 14, 2001 (the "Notice") with reference to Proposed Multilateral Instrument 31-102 (the "Instrument") the Scotiabank Wealth Management Group ("Scotiabank") wishes to offers its comments with regard to the Instrument and related matters. We are most appreciative of being provided this opportunity. In this letter we address general concerns and issues first.

It is our hope that our comments will be of assistance to the NRD Project Team in a number of ways, including in designing forms that will be simple and easy to use. We also wish to express our appreciation for being invited to participate in a number of sessions regarding the NRD and the willingness of members of NRD Project Team to meet with interested parties to discuss the NRD proposal.

We are of the view that NRD can only be seen as a success if a reasonable person acting with reasonable diligence will be able to properly complete NRD registration and other forms with little or no assistance. In such regard, we wish to take this opportunity to voice our disappointment that many of the comments we have previously offered with respect of NRD forms in our letter of August 3, 2001 were not accepted. The response to many of our suggestions relating to the need for clearer instructions and increased specificity in the forms were somewhat less than satisfactory. For example, our suggestion that specifics be provided as to the nature of information to be provided in response to the requirement that applicants provide "full disclosure" of their employment history was met the response that applicants would need to seek guidance from their legal counsel or compliance department. If the explanation of what is meant by "full disclosure" were to be found in the Filer Manual, it would have been helpful if this was the response to our suggestion. If the explanation is to be found in the Filer Manual, but the explanation is not sufficiently certain[1], then we reiterate our concern that few individuals (and their legal counsel and compliance departments), will know what is expected of them in completing NRD forms. Clearly, if NRD forms cannot be easily understood and completed, the number of deficiencies in NRD forms submitted will be significant and the efficiency gains and cost savings that have been both promised and promoted by the NRD Project Team will not be as easily achieved.

With regard to the Notice itself, we note that in some instances[2] permissive language is used in a manner that would suggest that registrants' and applicants' use of NRD might not be mandatory. It is not clear that this is the case as we have been unable to find any non-mandatory aspects of the Instrument.

The additional "hard" dollar costs to be incurred by the industry are significant. The key argument in support of the imposition of additional fees on registrant firms and individuals are the considerable economic benefits that are expected to flow to the industry as determined by the OSC's Chief Economist. The Chief Economist has come to his conclusions based on a survey that he apparently both prepared and conducted. We and others who responded to the survey had great difficulty in interpreting and answering many of the questions as in many instances the questions were presented without context or were

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[1] Page 54 of the Filer manual provides that in responding to Item 11 of form 33-109 F4 that details of previous employment, including name and address of employers and name and title of immediate supervisors be provided. The use of the word "including" means that the description of what must be provided is not definitive or exhaustive.

[2] A few examples; "NRD is also a system that will *allow* (emphasis added) registrants to electronically submit certain registration…" "maintain a bank account from which fees *may* (emphasis added) be paid by electronic pre-authorized debit through NRD"

overly general and vague. We question whether the data on which the Chief Economist has based his conclusions regarding expected cost savings could reasonably be relied upon. In addition, while much has been said with regard to the industry's savings, there has been little or no acknowledgement of the savings to be achieved by the participating securities regulators and SROs. Despite this, it would appear that the industry is being called upon to finance the entire cost of both the development and maintenance of the registration system, a system that securities regulators and SROs have a duty to maintain.

The rationale for having a tiered schedule of Enrollment Fees dependent on the number of registered individuals is not clear. If there is more work involved in enrolling a firm with more registered individuals than one with less, as is implied by tiered schedule, how can it be that firms that become registered after the Instrument is in to effect pay a single fee, regardless of size.

It is unclear to us why NRD enrollment fees are payable in addition to the registration fees currently prescribed under securities legislation. While it is suggested that NRD fee together with annual NRD filer fees are intended to cover the cost of developing and operating NRD, the question arises whether the industry should be paying these costs. We submit that the establishment and maintenance of a system by which securities regulators fulfill their obligations is a cost that they alone should bear. Is this not what the registration fees currently prescribed under securities legislation are intended for?

Specific comments and suggestions are set out below.

NRD Filer Manual

With regard to Chapter 3 (C) consider providing instructions as to how a firm will be given access to their NRD number, so that they can put it on their 31-102F1 for initial enrolment with the NRD Administrator.

With regard to Chapter 7 (A)(2)(a)(ii), the instructions state that a transfer is possible only if the three conditions are satisfied. Condition (B) states, "the employment or agency of the individual with his or her last sponsoring firm was terminated between September 16 and December 15 of a given year, and he or she is applying for registration prior to December 15 of that year". Please provide guidance as to how to treat a "transfer" if the individual terminated from his/her last sponsoring firm before September 16 of any given year.

Please provide guidance in situations where the individual is attempting a transfer from one firm to another, but has his relationship with the first firm has not yet been terminated. Will there be a way for individuals to determine if their registration has been terminated with the first firm?

Please also consider providing an explanation of the differences between a registrant/applicant/non-registrant removing an individual category and a registrant/applicant/non-registrant surrendering an individual category.

With reference to Chapter 7 (E), consider indicating how long the regulators will wait for a response from a firm before they will treat a submission as abandoned.

The NRD Filer Manual states in Chapter 8 (G), "You will receive an error message if your report contains more than 200 items or if no information is retrieved." One of the proposed reports a firm can generate is the Individual Registrant Report, which lists all individuals associated with the firm. How will a firm with more than 200 associated individuals be able to access this report?

Consider changing the definition of "sub-branch" to exclude locations of a firm that do not need to be registered. At present it reads "any location', which is confusing.

Notice of Proposed Multilateral Instrument 31-102 –National Registration Database (NRD)

In Part 1.1, the inclusions of definitions of "NRD number" and "NRD Account" (in order to identify the account designated under Part 3.2 (c)) would be helpful.

In Part 4.2 (b) (ii) replace "any" with "a".

In Part 4.4 (2) reference is made to "any change to the contact information previously submitted" while in Part 4.3 reference is made to "of a change to the information" as triggering an obligation to provide an completed Form 31-102F3 and Form 31-102F1 respectively. Was it intended to differentiate between information and contact information ? If so, what information on Form 31-102F3 is "contact information"?

Assuming our suggestion that the account designated under Part 3.2 (c) be defined as the "NRD Account", the words "through NRD" in Parts 5.1 (1), 5.2 (1) and 5.3 (1) should be replaced with "from the filer's NRD Account".

We have grave concerns with regard to Part 8.5 which effectively "downloads" the responsibility for loading up the NRD database on the industry. Those firm filers that were permitted to use Form 4A will face great operational and cost challenges. It is our understanding that firm filers whose individual registrants utilized Form 4A to register represent a significant portion, if not a majority, of all registrants. These firm filers do not have the data required to complete Form 33-109F4 and therefore will be unable to meet the requirements of Part 8.5 without having to obtain significant amounts of information from individual registrants. This will be an onerous task given that many of these firms have in excess of 5,000 individual filers who have completed only Form 4As in the past. We note that the cost of this exercise has apparently not been considered in any cost benefit analysis.

The requirements of Part 8.7 and 8.8 and those of Sections 8.5 and 8.7 of MI 33-109 are duplicative in many respects. These sections of MI 33-109 require the filling of form advising of changes in "Form 4" information using Form 33-109F5. Parts 8.7 and 8.8 of the Instrument require a separate filling of a completed Form 33-109F4 within 15 business

days after the later of the filing firm's NRD access date and the date the individual submitted the 33-109F5. Consideration should be given to providing that if a Form 33-109F4 is filed within 5 business days of an event that triggers a filing requirement under MI 33-109, that a Form 33-109F5 need not be filed.

We have great reservations regarding the feasibility of the effective dates proposed in Part 9.1. Assuming that our comments and those of others (we have seen those to be submitted by both IFIC and the CBA, which we generally endorse) will be given fair consideration, it seems unlikely that all that needs to be done can be done by the Fall of this year. However, given that a Senior member of OSC Staff disclosed a few months ago that NRD systems "coding" has commenced, a question arises as to the nature of any changes that can be made in response to comments received. Further, given that the Instrument presumes that the industry is to pay for the development and maintenance of NRD, it would seem only fair and reasonable that the industry's views must be given full and due consideration, even if this means a significant delay in the implementation of NRD. Recent experience in changes from paper based systems to net based systems only lends strength to this concern.

We would ask that consideration be given to bring the Instrument into force in the spring of 2003 at the earliest. Both the September 1, 2002 and the November 15, 2000 dates proposed for implementation coincide with other significant changes to the registration process. For the first time nearly all registration renewals are to occur in December 2002 (a firm's provincial renewals are usually spread out over the year). The first Continuing Education Cycle also ends in December 2002. Finally each firm filer will be required to put in place the resources necessary to ensure that the transition to NRD is successful. More time is required to secure and train the necessary resources.

Multilateral Instrument 31-102 –National Registration Database (NRD)

Consider making reference to Form 33-109F5 with the other listed forms in Section 2.1.

More than 15 days should be permitted to submit Form 33-109F3 under Section 8.4. A large firm with over 1000 branches will find it extremely difficult to comply with a 15 days requirement. A 30-business day period would be more appropriate.

The requirements of Section 8.5 are far more onerous than realized by the NRD Project Team. It is suggested that the Project Team invite representatives from the firm filers to discuss at length the impact that Section 8.5 will have on the firms with the view to making changes that meet the needs of all concerned.

Allowing only 15 days for the submission of Form 33-109F4 for the individuals as provided for in Section 8.6 is not satisfactory. A large firm with thousands of individuals will find it extremely difficult to comply with a 15-day requirement. A 30-business day time limit would be more appropriate.

With respect of Section 8.6 and 8.9 it should be possible to make the necessary changes to NRD in instances when the firm filer has submitted an application in writing **prior** to the data transfer date.

Please clarify whether it is the intent of Section 8.7 that firm filers provide notices in regards to changes to Form 4 information that occurred after August 31, 2002, no earlier than October 28, 2002 (presupposing a September 1, 2002 enforcement date).

Multilateral Instrument 33-109 – Registration Information Requirements

In Section 1.1 consider defining the term "business location". The proposed definition should exclude locations where a registrant/applicant/non-registrant could carry on registerable activities on an ad hoc or occasional basis, but that should not be considered a registered location (i.e. a booth in at a fall fair).

Consider replacing "an" with "a" in Section 2.2 (2)..

The comments regarding Companion Policy 33-109CP – Registration Information Requirements Section 2.1 apply to Section 6.1(1).

The requirement under Section 6.1(4) that all records required to be kept under Section 6.1 with respect to a registered individual or a non-registered individual be kept at the location of the sponsoring firm at which the individual is working is not practical. Firms may keep all of these records at one central location. If the records were to be kept at the location that the individual is working, it would be difficult for the firm to exercise the due diligence required. Consider amending this to include the firm head office and/or any registered office of the firm as acceptable locations for record retention. Further, this requirement, as it currently reads, could make it difficult for firm locations to comply with 6.1 (5), as NRD submission numbers would be made available to the AFRs, which are not likely to be located in all the various business locations from which the registered or non-registered individuals are working.

Form 31-102F1

With regard to the Initial Filling under NRD, given that securities regulators are already aware of the legal names of firm filers and firm filers are obliged to notify the securities regulators of any change in their legal name, why is it necessary to provide documentary evidence that confirms the legal name of a firm filer.

With regard to change to Previous Filing please consider replacing the second bullet with "Change in information in section 3" as the reference to "other change to account information" is unclear as no section of the form is entitled account information. This change would be consistent with the language found in the third paragraph of Section 4. Please consider revising the first sentence in Section 4. The phrase "shall complete a Change of Previous Filling to this form" is awkward. A similar change is suggested in the third sentence of this paragraph.

Appendix to Form 31-102F1

In the preamble above section 1, reference is made to the terms and condition of use *above* and below. Which terms and conditions are above?

With respect of the second paragraph in Section 1 the language should be modified such that firm filers are clearly liable for only for actions of individual filers who are sponsored by the firm filer.

The use of the word "could" in the first sentence of the second paragraph of Section 2 is troublesome as it is impossible for any one to conclude that any particular use could not overburden or impair NRD or the NRD's web site. The test should be based on knowledge or belief that the use would likely damage, disable, overburden or impair.

Both the fact that there is to be a penalty for payment for unpaid fees of 1% per month and the fact that it is payable to the NRD Administrator are objectionable. Is the rate to be applied on a per diem basis or is it 1% for any late payment within the first month?

The limitation of liability provisions and disclaimers found in section 6, while understandable from the CSRA and NRD Administrators perspective raise an issue which needs to be addressed. As NRD filers are obliged to use the NRD system and the section 6 contemplates the possibility of systems failure it is only fair that NRD filers responsibilities and liabilities be suspended automatically during such failures.

Companion Policy 31-102CP

Please amend Section 2.1 to refer to "securities regulatory authorities" as opposed to "securities regulatory authority".

Form 33-109F1 – Notice of Termination

Consider defining "for cause". For example, a registrant/applicant/non-registrant who is terminated on account of poor sales performance should not be consider as being terminated for cause. It is understood that this phrase may need to be broad, but some guidance would be of great assistance. The terminated registrant/applicant/non-registrant in the example who wishes to transfer to another firm should not have his/her transfer held up as a result of further unnecessary screening.

Form 33-109F2– Change of Individual Categories

Consider providing an explanation of the differences between a registrant/applicant/non-registrant removing an individual category and a registrant/applicant/non-registrant surrendering an individual category.

Please explain how an individual submitting this form in NRD format can certify the truthfulness of statements of fact provided by another individual.

Form 33-109F4 – Registration Information For An Individual

It is suggested to place the word "Current" before "Residential" on the line that requests the current residential information in Item 2

It appears as if the form only has room for one address and the name of only one agent of service in Item 7. If this is the case, consider the fact that a registrant/applicant/non-registrant may have more than one agent of service if he is registered in more than one jurisdiction.

Please clarify the statement, "if you are a non-registered individual, you are not required to complete this Item." found in Item 8(1). It probably should read, "if you are a non-registered individual, you may not be required to complete this Item."

Given the language of Item 8(2) and given that there has been a determination to add a field for student numbers issued by the Trust Company Institute or for other institutions only in a later release of NRD, please indicate how such information will be captured upon NRD's launch.

In Item 11, consider removing the last line requesting the applicant/registrant/non-registrant to "check here if all disclosure required by this section has been made in response to Item 10." It would seem that there would not be any instances where this option could be used. How can one provide disclosure relating to previous employment in the current employment section if they are newly employed and/or now seeking registration?

There are many participants in the Canadian financial industry and many different standards of conduct. With regard to Item 12(a) it has been suggested that the Item is intended to refer only to regulatory standards of conduct. The language should be amended to reflect this.

In Item 13(3) consider removing the comma after the phrase "of that firm". Most firms have been subject to a cease trade order. Some firms have been subject of a cease trade order of their own voting securities.

Although the current Form 4 does not exclude minor traffic violations and parking tickets from those offences that need to be reported, it has been the practice of Staff of the securities regulators and SROs not include an investigation into these matters as part of the assessment of eligibility for registration or continued registration. Requiring an applicant/registrant/non-registrant to disclose information that will not be used to assess their suitability or continued suitability for registration seems counter-productive. Requiring registrants/non-registrants to complete a change form each time they are cited for a minor offence or infraction serves no useful purpose. Consider specifying the types of charges and offences that applicants must disclose, and those that they do not need to disclose in Items 14(a) and (b).

Consider redrafting Item 14 (c) by removing the words "*are or"*. It should be the responsibility of the firm, not the applicant, to disclose whether such charges occurred prior to the applicant's association with the firm. It is suggested to draft this question as follows:

> "Have charges been laid, alleging an offence that was committed in Canada, or had it been committed in Canada, constitutes or would constitute an offence under the laws of Canada, against any firm, in which you were at the time of such event, a partner, director, officer or holder of voting securities carrying more than 10 percent of the votes carried by all outstanding voting securities?"

Consider providing a threshold or types of financial obligations necessary for disclosure under Item 16(2). In its current form this Item would require a registrant/applicant/non-registrant/applicant to disclose the failure to meet insignificant financial obligation (e.g. a missed $100.00 credit card payment 15 years ago).

The Agent for Service and Submission to Jurisdiction provisions require one to file a notice appointing a new agent for service of process **at least 30 days prior** to termination for any reason of the appointment of the Agent for Service, and to file a notice amending the name or address of the Agent for Service at least 30 days before any change in the name or address of the Agent for Service, this may not be practical, and may in fact not be possible. Perhaps it would be practical to request the registrant/applicant/non-registrant to submit notice within a period of time after which the registrant/non-registrant is aware of the termination or pending termination of the agent for service.

If this suggestion is not accepted, it would be helpful to provide guidance how one is to handle instances when the registrant/non-registrant is made aware of the intention of an agent of service to terminate its agreement for service less than 30 days prior to the termination. Also, please indicate what the sanction will be for non-compliance in those instances when it is impossible for the registrant/applicant/non-registrant to comply.

Consider replacing,

> "The undersigned applicant has discussed the questions in this application with an officer or branch manager of this firm. The undersigned authorized officer is satisfied that the applicant fully understands the question, and further certifies on behalf of the sponsoring firm that the applicant will be engaged as registered or approved."
>
> with
>
> "The undersigned applicant has discussed the questions in this application with an officer or branch manager of this firm, and the applicant has affirmed that he or she fully understands the questions. The undersigned authorized officer certifies on

behalf of the sponsoring firm that the applicant will be engaged as registered or approved."

This change is suggested as it is unclear how an officer or branch manager can ascertain whether an applicant truly understands the questions on the Form 33-109F4. What steps will an officer or branch manager need to take to be satisfied that an applicant understands the questions? It is suggested that it should only be necessary for an officer or branch manager to simply inquire of the applicant if he/she understands the questions, to attempt to explain each question not understood by the applicant, and to certify that this inquiry, and if necessary explanation, has taken place. Assuming agreement with proposal, we would suggest replacing the last sentence with.

> "I certify that I have discussed the questions set out in this application with the applicant or where the applicant has applied through one of our branch office, the branch manager or another officer has do done and the applicant has affirmed that he or she fully understands the questions."

It appears that Schedule F only provides room for information about **one** current employer. If this is the case, consider the fact that many registrant/applicant/non-registrants may have more than one current employer.

Consider defining *'major portion of your time'*. This phrase is too broad and can be interpreted differently. It is suggested to specify the number of hours per week that would be considered a major portion of a registrant/applicant/non-registrant's time. If an applicant/registrant/non-registrant were to work 40 hours a week for the sponsoring firm some would interpret this as the major portion of their time, however, as there are more than 80 hours in a week they, in fact, are not devoting the major portion of their time to the sponsoring firm. A definition would be most helpful.

It appears that Schedule G only provide room for information about only one previous employer. If this is the case, consider the fact that a registrant/applicant/non-registrant may have more than one previous employer.

Please specify whether the requirement to provide full disclosure referred to in the first sentence would be satisfied by answering the questions in the Schedule. If the requirement is to provide any additional disclosures, please specify what type of disclosure is requested, and where to disclose the information.

With respect of Schedule H, parts (1)(d), (e), (2)(c), (3)(c), K (1), (2), (4), L (1)(e), (f) and (g) the use of phrases *'relevant details'* and *'full details'* should be removed from the schedules. The items do not indicate what *'relevant'* or *'full'* may mean, or to whom the disclosure may be relevant. If these phrases are to be used, perhaps include a definition of what specific disclosure is expected. It has been suggested that that the distinction between the two is intentional, but has not provided an explanation of the distinction.

With regard to Schedule H (1)(a), (b), (2)(a) and (3)(a) please replace the words "the period of registration or licensing" with "the dates between which you held the registration or license" or "the length of time you held the registration or license".

In regard to the terms "full disclosure", "relevant details", "full details", consider using plain language and providing comprehensive definitions, instructions or explanation so that any individual who is required to complete this form (including the firm's compliance and legal departments) may understand what is required of him or her.

Form 33-109F5 – Change of Registration Information

Please explain the purpose of the blank line following the second bullet "Form 33-109F4".

Is it intended for the registrant/applicant/non-registrant will complete and sign this form? If so, clearly this individual should certify the facts, not the signing officer for the firm filer. How can the signing officer attest to the truth of the facts?

Companion Policy 33-109CP – Registration Information Requirements

Is it the intention of Section 2.1 that firm filers verify that each piece of information provided by the applicant is true by performing an investigation of the individual prior to submission of a Form 33-109F4? Further, is it the intention that firm filers investigate into the credit and banking history of the individual registrants? If this is so, please advise how filer firms are to verify that an applicant has disclosed all of his/her banking or credit information? Will filer firms be given statutory authority to demand this information from financial institutions so that they may verify the truthfulness of the applicant's statements?

As noted above we are appreciative of having the opportunity to provide our comments and are most hopeful that the NRD Project Team will engage the industry in comprehensive discussions regarding the resolution of operating and other issues. The development of a comprehensive registration system is an admirable goal. We are concern that the desire to get the system up and running in the short term will override any decision to have a system that meets its potential in terms of ease of use and economic efficiency for all those involved.

If clarification is required, or if you should wish to discuss any of our comments, please feel free to contact Mr. Phillip Gayle, Senior Manager Registrations, Scotiabank Wealth Management at (416) 933-2157 or the undersigned at (416) 866-2019. A copy of our submission in Word is enclosed on disc for your convenience.

Yours truly,

Richard E. Austin
Deputy Head of Compliance
Wealth Management

c.c. R. Pitfield
J. Smart
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A. Harbinson
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