W. Sian Burgess
Senior Vice President,
Head of Legal and Compliance, Canada

BY ELECTRONIC MAIL: jstevenson@osc.gov.on.ca, consultation-en-cours@lautorite.qc.ca

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British Columbia Securities Commission
Alberta Securities Commission
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
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West, Suite 1903, Box 55
Toronto, ON M5H 3S8

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22$^{e}$ étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3

Dear Sirs / Madames:

**RE: Proposed Amendments to NI 31-103 Registration Requirement and Exemptions**

Thank you for the opportunity to provide comments to the Canadian Securities Administrators ("CSA") Notice of Proposed Amendments to National Instrument 31-103 *Registration Requirements and Exemptions* ("NI 31-103") and to Companion Policy 31-103 *Registration Requirement and Exemptions* ("Companion Policy 31-103CP").

Fidelity Investments Canada ULC ("Fidelity") is the 6th largest fund management company in Canada and part of the Fidelity Investments organization in Boston, one of the world's largest financial services provider. In Canada, Fidelity manages approximately $60 billion in mutual funds and institutional assets. It offers 140 mutual funds or pooled funds to Canadian investors.

4.1 Restrictions on Acting for Another Registered Firm

Section 4.1 (1)(b) of NI 31-103 restricts an individual registered as a dealing, advising or associate advising representative of a registered firm from being registered as an advising, associate advising and dealing representative of another registered firm (even if the firms are affiliated). The Companion Policy provides guidance on the exemption application process, which would involve a review on a case by case basis.

Fidelity believes that NI 31-103 should permit registration of individuals with affiliated firms. Fund managers, like Fidelity may structure their businesses so that services are provided to the funds or the manager through various affiliates. Other fund managers house all the services under one corporation with different departments and would therefore have all categories of registration in one firm.

We believe that the supervising firms should have the responsibility to ensure that the registered individuals have adequate time to perform their duties for multiple firms. Further, each firm should be required to demonstrate that they have adequate policies and procedures to address any conflicts of interest that may arise, as required under section 13.4 of NI 31-103, and registered individuals should clearly identify which firm they are representing when dealing with clients.

We find that registration officers at the various securities commissions have differing views on valid business reasons and we are concerned that different standards will be applied to these applications. At a minimum, we feel that the CSA should establish criteria for granting these exemptions based on published criteria that takes into account the differing structures in the industry used to accomplish the same business objectives.

We recommend that the CSA continue to permit individuals to be registered with affiliated firms as long as each firm can demonstrate it has adequate policies and procedures to address any conflict of interest matters that may arise, as well as an adequate supervisory structure.

Outsourcing Arrangements – Trade Confirmation

Fidelity is concerned about the combined effect of:

(1) the repeal of Ontario *Securities Act* section 36 (7)
(2) the implementation of section 14.12 of NI 31-103
(3) the CSA guidance relating to the outsourcing of certain functions as described in Part 11 of Companion Policy 31-103CP

(4) the publication of MFDA Bulletin #0396-P National Instrument 31-103 Registration Requirements, and
(5) the CSA's proposal to a section to the Companion Policy 31-103CP on outsourcing arrangements.

In Fidelity's view, the discussion of outsourcing arrangements in MFDA Bulletin #0396-P expressed a regulatory view that was inconsistent with long-standing industry practice and with dealers' and managers' understanding of the history behind section 36 (7). That section indicated that dealers did not need to send trade confirmations to clients where a written confirmation was sent by the fund manager. This has been industry practice for many years and has worked well.

In March 2010, The Investment Funds Institute of Canada ("IFIC") submitted a letter to the OSC outlining IFIC member's concerns in this area, and asked the CSA to consider incorporating into NI 31-103 a provision equivalent to section 36 (7).

In our view, the CSA is simply creating an additional burden by insisting on outsourcing agreements. The industry does not currently operate by way of outsourcing agreement. Rather it relies on the regulations of the MFDA, the Securities Act (specifically section 36(7)) and National Instruments as well as specific arrangements where appropriate i.e. FundServ application forms for dealers to send orders through to fund managers, which include references to trade confirmations. To force the industry to adopt agreements will result in agreements which will need to be standardized, or negotiated among more fund managers and broker/dealers than we wish to count. The administrative burden is not warranted in our view.

In addition, the CSA has not defined what an "outsourcing" arrangement might be. If it adopts the OSFI standard of outsourcing, for example, this would require quite onerous procedures around assessment of those agreements, audits etc. At a minimum, the CSA should be much more specific about what it expects in those agreements and the standards it expects dealers and managers to meet in the agreements. However, we say again, that we do not see that this will add in any meaningful or positive way to the regulatory oversight relating to dealers and fund managers.

We did note that section 14.12 to Companion Policy 31-103CP did contemplate that there might be varying degrees of due diligence depending on the dealer's history with the fund manager. However, this language doesn't really provide clear guidance to dealers or fund managers.

Accordingly, we strongly recommend that the CSA incorporate a provision similar to the former section 36 (7) of the Ontario Securities Act.

Section 13.2 Know Your Client

Section 13.2 (7) exempts certain registrants from the requirement to establish whether a client is an insider of a reporting issuer or any other issuer whose securities are publicly traded. The exemption only applies if the registrant is registered in only one or more of the following categories:

(1) a mutual fund dealer or a dealing representative, chief compliance officer or ultimate designated person of a mutual fund dealer;
(2) a scholarship fund dealer or a dealing representative, chief compliance officer or ultimate designated person of a scholarship fund dealer;
(3) an investment fund manager or a chief compliance officer or ultimate designated person of an investment fund manager.

According to section 13.2 (7), a registrant who is registered both as a mutual fund dealer and as an adviser would not be exempt from the requirement to establish whether a client is an insider of a reporting issuer. We note that this is inconsistent with the February 29, 2010 Blanket Order which exempted mutual fund dealers from the requirement to establish whether clients are insiders of issuers so long as the mutual fund dealer is not registered in any other category specified in section 7.1 of NI 31-103. We believe that compliance with this requirement should depend on the capacity in which the registrant is acting in respect of a particular client and not on the number of categories of registration the firm or the individual holds. For example, if the registrant is acting as a mutual fund dealer or as a mutual fund dealer's dealing representative, the registrant should not be required to determine whether the client is an insider of a reporting issuer. If the registrant is acting as a portfolio manager or advising representative then they would be required to comply with this requirement. We recommend that the CSA incorporate language to this effect in section 13.2 (7).

Section 14.14(3.1) Account statements

The CSA is proposing to require investment fund managers to send account statements to securityholders at least once every 12 months if there is no dealer of record for the security holder on the records of the investment fund manager. Fidelity does not have any concerns with this proposal and has systems in place to meet the obligations under proposed section 14.14 (3.1).

Form 33-109F6

We would like to provide a general comment on Form 33-109F6 (the "Form"). Having recently completed the Form to register Fidelity as an investment fund manager, as well as to comply with NI 31-103 transition rules, we note that a number of questions on the Form request information relating to the firm's specified affiliates, which is defined to mean "*a person or company that is a parent to the firm, a specified subsidiary of the firm, or a specified subsidiary of the firm's parent*". Comprehensive disclosure relating to a firm's specified affiliates is impractical for large firms like Fidelity. Fidelity Canada is

a member of a large global group of companies, and various actions and proceedings arise in the ordinary course of Fidelity's businesses. In addition, due to the complex nature of some of these actions and proceedings, it may be a number of years before such matters are ultimately resolved. Comprehensive disclosure would also result in providing continuous updates to the regulators regarding previously disclosed information on the Form, which would be impractical. It is our view that the regulators should require disclosure relating to Canadian affiliates that are closely related to the registrant and have a bearing on the registrant's business.

We thank you for the opportunity to comment on the proposed amendments. As always, we are more than willing to meet with you to discuss any of our comments.

Yours truly,

W. Sian Burgess
Senior Vice President, Head of Legal and Compliance, Canada

c.c. Rob Strickland, President

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