CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

National Instrument 31-103
Registration Requirements

Notice And Request For Comment

Proposed National Instrument 31-103
Registration Requirements

Proposed Companion Policy 31-103CP
Registration Requirements

And Proposed Consequential Amendments

Table of contents

February 29, 2008

INTRODUCTION

The Canadian Securities Administrators (the **CSA** or **we**) are seeking comment on a revised draft National Instrument 31-103 *Registration Requirements* (the **Rule**) as well as on a revised draft Companion Policy 31-103CP *Registration Requirements* (the **Companion Policy**).

The Rule, which introduces harmonized registration requirements across all CSA jurisdictions, the Companion Policy and related instruments were initially published for comment on February 20, 2007 (the **2007 Proposal**). The Companion Policy provides guidance on how the CSA will interpret or apply the Rule and related securities legislation.

The Rule will constitute the primary instrument for regulating registration requirements. However, other instruments, such as the national registration database (**NRD**) instruments, also apply to registrants, and registrants should refer to securities legislation of their local jurisdiction and to other CSA instruments for additional requirements that may apply to them.

The Rule will be implemented as:

- a rule in each of Alberta, British Columbia, Manitoba, Newfoundland and Labrador, Nova Scotia, New Brunswick, Ontario and Prince Edward Island;

- a regulation in each of Québec, the Northwest Territories, Nunavut and the Yukon Territory;

- a commission regulation in Saskatchewan.

The text of the Rule, Companion Policy and consequential amendments (the **Revised Proposal)** will be available on websites of CSA members, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
www.gov.ns.ca/nssc
www.nbsc-cvmnb.ca
www.osc.gov.on.ca
www.sfsc.gov.sk.ca

We are publishing the Rule, the Companion Policy and consequential amendments for comment for 90 days. The comment period will expire on May 29, 2008 and will not be extended by the CSA.

CONSULTATIVE PROCESS

Industry consultations

Throughout the development of the Rule, the CSA have sought to keep stakeholders informed about the issues being considered and proposals being developed. The CSA registration reform project has a dedicated website at www.rrp-info.ca on which we published, among other things, proposal papers, which discuss the policy basis for the proposed registration regime. Industry consultations were held in British Columbia, Alberta, Ontario, Québec and New York at various times over the past three years to seek feedback on the issues being considered and proposals being developed.

Comment letters

The CSA received 267 comment letters on the 2007 Proposal. The comments were thorough, detailed and very extensive. Most commenters generally supported the 2007 Proposal. The CSA would like to thank all those who participated in the consultations and those who provided written comments. This participation and these comments have been extremely helpful to us in the development of the Rule and Companion Policy.

The Autorité des marchés financiers (AMF) would particularly like to thank all those who participated in the two consultations in February and September 2007 on the mutual fund sector in Québec.

We believe the Revised Proposal addresses the majority of the concerns raised by commenters, while remaining consistent in substance with the 2007 Proposal. The majority of the amendments to the Rule are in response to the comments we received during the comment period. Other amendments are in response to answers we received to the specific questions posed in the CSA Notice that accompanied the 2007 Proposal. Finally, some amendments are the result of further development by the CSA of the policies underlying the Rule.

Summary of comments and responses

A summary of the comments we received and our responses to those comments is available at www.rrp-info.ca as well as on the websites set out above.

PROPOSED LEGISLATIVE AMENDMENTS

Legislative amendments

As indicated in the February 20, 2007 Notice, most of the CSA jurisdictions are proposing to make the following legislative amendments, in addition to the implementation of the business trigger:

- amendments to detailed registration provisions in the legislation which relate to or are replaced by provisions included in the Rule

- in Québec, amendments to the *Securities Act* and the *Act respecting the Distribution of Financial Products and Services* (**Distribution Act**) to provide the transfer of mutual fund dealers, scholarship plan dealers and investment contracts firms and their representatives, from the Distribution Act to the *Securities Act*

- new provisions to require registration of investment fund managers and key compliance and supervisory positions in all categories of firm registration, namely the ultimate designated person (**UDP**) and chief compliance officer (**CCO**)

- new, or amendments to existing, rule-making authority to allow implementation of the Rule

- other amendments to facilitate harmonization across the CSA and consistency of securities legislation with the Rule

British Columbia and New Brunswick will replace the current "trade" trigger with a "business" trigger for dealer registration. However, they intend to do so by introducing an exemption from dealer registration in National Instrument 45-106 – *Prospectus and Registration Exemptions* (NI 45-106) for persons who are not in the business of trading in securities, rather than by amending the current dealer registration provision in their respective securities legislation.

British Columbia will also maintain the capital-raising and safe securities exemptions currently set out in NI 45-106 for a person who trades solely under these exemptions in British Columbia. A person trading under these exemptions will not need to be registered in British Columbia as an exempt market dealer unless the person is registered in any other category in British Columbia or is registered in any category in any other Canadian jurisdiction.

Manitoba is not adopting the 'business" trigger for dealer registration under its securities legislation. Manitoba will retain all the registration exemptions currently set out in NI 45-106 and a person trading under these exemptions in Manitoba will not need to be registered

in Manitoba as an exempt market dealer unless the person is registered in any other category in Manitoba or is registered in any category in any other Canadian jurisdiction.

The requirements in NI 31-103 will apply to everyone who is registered in any jurisdiction in Canada.

PROPOSED CONSEQUENTIAL AMENDMENTS

Consequential amendments

CSA instruments and local rules governing registration and registrants will be repealed or amended as necessary. In addition to the consequential amendments described in this Notice,

- we are publishing and seeking comment, by way of a separate notice being published concurrently with this Notice, accessible at www.nbsc-cvmnb.ca , on proposed amendments to the instruments relating to NRD, namely National Instrument 31-102 *National Registration Database* (NI 31-102) and Companion Policy 31-102CP, and 33-109 *Registration Requirements* (NI 33-109) and Companion Policy 33-109CP, as well as several forms

- we propose to amend NI 45-106, which is being published under a separate notice concurrently with this Notice, accessible at www.nbsc-cvmnb.ca, in order to reflect, among other things, the adoption of the business trigger for dealers and the transition from the exemptions regime under NI 45-106 to the exemptions regime under the Rule

In addition, we are proposing the revocations of and amendments to National Instruments and National Policies set out in Appendices A – L to SCHEDULE 1. The instruments providing for the revocation or amendment are proposed to be effective upon the coming into force of the Rule.

Substance and purpose of proposed consequential amendments

The amendment instruments provide for changes that mostly reflect new terminology used in, and the relocation of subject matter to the Rule. The revocation instruments provide for the elimination of instruments and policies on the basis that the subject matter of the instrument or policy is now addressed in the Rule. This summary does not provide a complete list of all changes. The following summarizes the more significant proposed changes.

Amendments

(i) National Instrument 14-101 – *Definitions*

The new term “investment fund manager registration requirement” is proposed to be added to reflect the adoption of a registration requirement for investment fund managers. The terms “dealer registration requirement” and “underwriter registration requirement” are

proposed to be changed to reflect the adoption of a "business trigger" and to clarify the appropriate category in the case of "underwriter registration requirement".

(ii) National Instrument 33-105 **–** *Underwriting Conflicts and Companion Policy 33-105CP*

The term "registrant" which is proposed to be re-termed "specified firm registrant" has been revised to include persons or companies registered, or required to be registered, as a "registered investment fund manager".

(iii) National Instrument 81-102 **–** *Mutual Funds*

The proposed amendments to this instrument preserve the exemption provided in subsection 4.1(5) of NI 81-102.

(iv) National Instrument 81-107 **–** *Independent Review Committee for Investment Funds*

The amendments to this instrument update section references and reflect the revocation of applicable sections in the Ontario Regulation 1015.

(v) Multilateral Policy 34-202 **–** *Registrants Acting as Corporate Directors*

Sections 1.3 and 1.4 are revised to refer to agency relationships. The repeal of section 1.6 is also proposed.

Revocations
The following are proposed to be revoked on the basis that the subject matter is subsumed in the Rule:

- National Instrument 33-102 **–** *Regulation of Certain Registrant Activities* and Companion Policy 33-102CP
- National Policy 34-201 – *Breach of Requirements of other Jurisdictions*
- Multilateral Instrument 11-101 – *Principal Regulator System* (MI 11-101) and Companion Policy 11-101CP *Principal Regulator System*[1]

BUSINESS TRIGGER FOR REGISTRATION

Revised Proposal – Business trigger factors

We have made two technical changes to the discussion of the business trigger factors in the Companion Policy. Neither represents a material change to the substance of the business trigger, which remains as it was in the 2007 Proposal.

[1] The mobility exemption in MI 11-101 has been replaced by an exemption in the Rule.

- The business trigger for dealing activities is now described by way of a reference to "trading in securities", instead of "dealing in securities". This change was made in response to comments received which suggested that referencing the business trigger to "dealing in securities" could create some degree of uncertainty about the breadth of activity intended to be captured by the trigger. The change has been made to clarify the breadth of the trigger and ensure consistency with securities legislation. It does not reflect any change in policy.

- We have added the concepts of acting in an intermediary capacity or as a market-maker to the discussion in the Companion Policy of the factors to be considered when assessing whether an activity is conducted as a business. These factors were not included in the 2007 Proposal. However, they were discussed in the February 2006 *Proposal for Registration Reform* paper, accessible at www.rrp-info.ca.

Applying the business trigger

The Companion Policy includes expanded guidance on the application of the business trigger, particularly in respect of security issuers, mortgage investment companies, venture capital financing, principal trading activities and activities not commonly in the business of trading or advising in securities.

We have also included in the Companion Policy further discussion of "incidental activity", namely an activity which is incidental to the primary business of a firm and which may suggest that there is no business purpose in the activity itself. Registration and, consequently, registration exemptions, would therefore not be required in such situations.

SUMMARY OF KEY CHANGES MADE TO THE RULE

Part 1: Definitions

MFD SRO

We have deleted the definition of MFD SRO, which was intended to cover both the Mutual Fund Dealers Association of Canada (**MFDA**) and in Québec, a self-regulatory organization (**SRO**) recognized for the purpose of regulating mutual fund dealers. This change has been made following the consultation process in Québec on the regulatory framework for mutual fund dealers[2].

Permitted clients

In responses to the comments received, we have introduced a new category of investor: the "permitted client". Permitted clients form a subset of "accredited investor" (as that term is defined in NI 45-106) consisting primarily of institutional, corporate and very high net worth individuals. Prospectus exemptions under NI 45-106 are not affected by the introduction of the permitted client concept in the Rule.

[2] See *Québec regulatory framework for mutual fund dealers* in this Notice.

We believe that, at the upper end of the accredited investor spectrum, there are investors who are sufficiently sophisticated, or have sufficient resources to obtain expert advice, that they may neither need nor wish for the same level of protection as that which the registration regime extends to other investors. For example, the suitability obligation does not apply to exempt market dealers when dealing with permitted clients.[3]

Permitted clients of advisers and dealers, other than exempt market dealers, will have the ability to waive the requirement for the adviser or dealer to make investment suitability determinations for them. Accordingly, registrants will have a reduced suitability review obligation when dealing with permitted clients, which will result in reduced regulatory burden.

Prescribed functions

We have deleted the reference in the Rule to prescribed functions relating to the ultimate designated person and chief compliance officer under Alberta securities laws. This will form part of local Alberta rule and the reference is therefore no longer required in the Rule.

Part 2: Categories of registration and permitted activities

Registration categories for firms and certain exemptions

We have not changed the categories of registration for firms. However, we have:

- clarified that only investment dealers and exempt market dealers are permitted to act as an underwriter

- clarified in the Companion Policy that investment fund managers are required to register only in the jurisdiction where the person or company that directs the management of the fund is located, which in most cases will be where their head office is located. This includes investment fund managers that are located in a foreign jurisdiction. Regardless of where the investment fund manager of an investment fund is located, the distribution of units of the investment fund in a jurisdiction is subject to the prospectus requirements; and trades in, or advising on the buying or selling of, units in the investment fund are subject to the dealer and adviser registration requirements of that jurisdiction

- indicated that in certain jurisdictions (excluding Québec), mutual fund dealers are permitted to trade in securities of investment funds that are labour sponsored investment fund corporations or labour sponsored venture capital corporations and, in British Columbia, securities of scholarship plans, educational plans or educational trust.

[3] The entire regulatory framework proposed for exempt market dealers in response to comments is discussed in greater in Part 2.

We have clarified the exemption from dealer registration for advisers trading in securities of their pooled funds, and the exemption from adviser registration for dealers without discretionary authority, both set out in Part 2 of the Rule. A notice requirement for advisers who use the exemption has been added.

Exempt market dealer category

In response to the comments we received, we have made important changes to the regulatory framework which will apply to exempt market dealers.[4] Certain fit and proper and conduct requirements will not apply to exempt market dealers that do not handle, hold or have access to client cash or assets, including cheques and other similar instruments, and when dealing with permitted clients. The Companion Policy provides guidance and examples of situations in which a registered dealer would be considered to handle, hold, or have access to client cash or assets, including cheques and other similar instruments. The full regime of the Rule will apply to those exempt market dealers who handle, hold, or have access to client cash or assets, including cheques and other similar instruments.

Exempt market dealers that do not handle, hold or have access: The Revised Proposal provides that the following requirements will not apply to exempt market dealers that do not handle, hold or have access to client cash or assets, including cheques and other similar instruments, whether or not they deal with permitted clients:

- capital requirements
- insurance requirements
- the delivery of annual audited financial statements. However, exempt market dealers that do not handle, hold or have access to client cash or assets, including cheques and other similar instruments will be required to deliver certified quarterly unaudited financial statements

Exempt market dealers when dealing with permitted clients: When dealing with permitted clients, the following requirements will not apply to exempt market dealers, whether or not they handle, hold or have access to client cash or assets, including cheques and other similar instruments:

- the know-your-client rule, except for basic information gathering to establish the identity of the client
- the suitability obligation

4 British Columbia and Manitoba will, however, maintain the capital-raising and safe securities exemptions currently set out in NI 45-106 for persons who trade solely in prospectus-exempt securities in British Columbia or Manitoba, and who are not otherwise registered in any Canadian jurisdiction in any category. Such persons will not need to register locally in British Columbia or in Manitoba as an exempt market dealer.

- account opening information requirements

- complaint handling requirements

Dealing representatives for exempt market dealers: We have eliminated the requirement to pass either the Partners, Directors and Senior Officers exam or the Conduct and Practices Handbook exam for the exempt market dealer representative.

Registration categories for individuals

We have not changed the categories of registration for individuals, although we have:

- added a notice requirement when the adviser designates an advising representative[5] to approve the advice of an associate advising representative

- clarified that the UDP may also be the registered firm's sole proprietor, a position equivalent to that of the chief executive officer of the firm

- clarified in the Company Policy the responsibilities of the CCO

Multiple registration categories

The Companion Policy includes expanded guidance concerning multiple registration categories. While we have not eliminated multiple categories we have made every effort to reduce duplicative requirements for registrants who hold multiple registrations.

For example:

- if a firm is registered in multiple categories, it must meet the highest capital requirement of its various categories of registration

- a firm that is registered in multiple categories is only required to have one CCO. In this case, the CCO must meet the most stringent of the proficiency requirements of the firm's various categories of registration

Part 3: SRO Membership

We have expanded the list of the Rule requirements which will not apply to members of SROs on the basis that the requirements for these areas will be prescribed by the applicable SRO. This exemption is available for registrants registered as investment dealers and, subject to conditions in Québec, mutual fund dealers. It applies to mutual fund dealers in

[5] As stated in the 2007 proposal, the associate advising representative category, which currently exists in some CSA jurisdictions, is proposed for all jurisdictions. This category is primarily an apprentice category for individuals who are seeking full adviser registration but do not meet the experience or education requirements. It will also accommodate individuals who work for a portfolio manager and are in charge of client relationships but who do not perform portfolio management for clients.

Québec and their representatives, on the condition that they comply with the applicable regulations on mutual fund dealers in Québec.

For example, SRO members will be exempt from the following requirements in the Rule:

- solvency requirements
- relationship disclosure information
- in the case of investment dealers, proficiency requirements
- disclosure when recommending the use of borrowed money to purchase securities

Harmonization of SRO rules

The CSA intend to ensure harmonization between the Rule and the SRO requirements on an on-going basis through the existing SRO rule approval process.

Part 4: Fit and Proper Requirements

Proficiency requirements

We have not changed the substantive proficiency requirements from the 2007 Proposal, except that we have:

- added a general proficiency principle in the Rule, requiring education and experience reasonably necessary to perform the activity of the registered individual
- included the proficiency requirements which will apply to all mutual fund dealer representatives[6]
- eliminated the requirement that exempt market dealer representatives must pass either the Partners, Directors and Senior Officers exam or the Conduct and Practices Handbook exam
- amended the proficiency requirement applicable to the associate advising representative

Solvency requirements

We have made the following changes to the *capital requirement* set out in the 2007 Proposal:

[6] The Rule prescribes proficiency requirements for all mutual fund dealer representatives, whether or not the firm is a member of the MFDA, since the registration of those individuals will continue to be done by the securities regulatory authority or regulator, as applicable, in each jurisdiction.

- added guidance on line 12 *Unresolved differences* in the instructions pertaining to Form 31-103F1 *Calculation of excess working capital* (**Form F1**)

- added a Schedule 1 to Form F1, in support of calculating market risk as provided in line 9 of the form

- added, as Appendix B to the Rule, a harmonized form of subordination agreement for long-term related party debt

- eliminated the capital requirement for those exempt market dealers that do not handle, hold or have access to client cash or assets, including cheques, and other similar instruments

In addition to changes specific to the exempt market dealer category, we have made the following changes to the *insurance requirement* set out in the 2007 Proposal:

- we no longer refer only to a "financial institution bond", but rather "bonding or insurance"

- we have added that the terms of the bonding or insurance must be acceptable to the regulator

- we have included guidance in the Companion Policy on the concepts of double aggregate limit or a provision for full reinstatement of coverage

- we have added a provision allowing for registered firms to hold a global financial institution bond that benefits or names another person as insured subject to conditions

Part 5: Conduct Rules

Relationship with clients

We have maintained the provisions of the Rule relating to account opening and requiring that the registered firm[7] maintain *account opening documentation* for each client.

With respect to the know-your-client (KYC) requirement, we have added a provision requiring the registered firm to establish the identity of any individual who is the beneficial owner, directly or indirectly, of more than 10 % of the shares of a corporate client.

[7] Except for exempt market dealers who do not handle, hold or have access to client cash or assets, including cheques and other similar instruments.

We have replaced the requirement to provide a *relationship disclosure document* to clients, with a principle based provision requiring registrants to provide information that a reasonable client would consider important respecting the client's relationship with the registrant. The Rule provides a basic list of information items which will be required to be given to clients by registrants (except exempt market dealers that do not handle, hold or have access to client cash or assets, including cheques and other similar instruments).

As indicated in the Companion Policy, this requirement may be met by providing clients with separate documents which, together, give them the prescribed information. We anticipate that, in many cases, registrants will be able to satisfy this requirement using existing documents.

We received comments to the effect that relationship disclosure to clients should be considered together with the ongoing point of sale initiative by the Joint Forum, and the broader objective of a principle-based approach to the client relationship. We will continue to work within the Joint Forum on the development of the point of sale initiative, which is a separate project and does not form part of the registration reform project.

We have not changed the *suitability obligation*, except to provide that it does not apply to permitted clients as follows:

- to registrants where the permitted client has waived the obligation in writing
- to exempt market dealers when dealing with permitted clients

Compliance

We have clarified that a registrant must establish, maintain and apply a system of controls and supervision. This system must be designed to provide reasonable assurance that the firm and each individual acting on its behalf complies with securities legislation, thereby emphasizing that compliance is a firm-wide responsibility. We have expanded the discussion of compliance systems generally in the Companion Policy.

The Rule now prescribes that the functions of the UDP are the supervision of the firm's compliance directed activities, and promoting compliance.

The functions of the CCO are described as follows in the Rule:

- establish policies and procedures for assessing compliance by the firm
- monitor and assess compliance
- report to the UDP as soon as practicable in the event of substantial non-compliance

- submit an annual report to the board of directors or partnership for the purpose of assessing compliance

Complaint handling

We have not made substantial changes to the basic requirements of the 2007 Proposal other than to exempt investment fund managers and exempt market dealers from the requirements.

We expect registrants to handle complaints promptly. In most cases, a registered firm should have provided a substantive response to a complaint within three months of the date it was received, as discussed in the Companion Policy.

Part 6: Conflicts of interest

We have maintained the three mechanisms for responding to conflicts of interest situations: avoidance, control and disclosure. We have made a number of changes to the conflicts proposal following the comments received, and have include new and revised guidance in the Companion Policy[8].

The main changes from the 2007 Proposal are as follows:

- we have added an exemption for an investment fund manager in respect of an investment fund that is subject to National Instrument 81-107 – *Independent Review Committee for Investment Funds*

- while the registrant has the obligation to make reasonable efforts to identify conflicts, only conflicts which a client, acting reasonably, would expect to be informed of must be disclosed to the client

- the scope of the prohibition on certain managed account transactions, in the case of associates, has been narrowed to include only those associates who have access or participate in formulating an investment decision

- we have added a provision in the Rule prohibiting a registered firm from acting as an adviser in respect of its own securities, or the securities of a related issuer and, in the course of a distribution, a connected issuer of the firm

- the issuer disclosure statement regime has been simplified to take into account the situations which the commenters have brought to our attention, particularly with respect to keeping the statement constantly updated

[8] In particular, we have clarified and given examples of the regulation of conflicts between clients in the Companion Policy.

- a disclosure obligation of an adviser's financial or other interest when making a recommendation has been included in the Rule

Part 7: Suspension and revocation of registration

We propose in the amendments to NI 33-109 being published under a separate notice a new form (Form 33-109F7) for individuals transferring between firms. We believe the form will be helpful in connection with the transfer procedure in the Rule.

Former Part 8: Information sharing

We have removed Part 8 of the Rule following the comments we received and, in Québec, a particular concern about the impact of privacy legislation. Instead of the information sharing provision as originally proposed, we have amended NI 33-109 to provide:

- an obligation on the part of the registered firm to provide the representative with a copy of the Form 33-109F1

- an obligation on the part of a registered firm that is considering becoming the sponsoring firm of a registered individual to obtain from such individual a copy of the Form 33-109F1 completed by his or her most recent sponsoring firm

New Part 8: Exemptions from registration

In response to comments we have added a few exemptions and made amendments to others. For example, we have:

- added an exemption from the dealer registration requirement for issuers who are considered to be in the business and therefore subject to registration. The exemption will apply to issuers trading in securities of their own issue and solely for their own account, provided they do so solely through a registered dealer

- added Alberta to the list of jurisdictions in which the mortgages exemption is not available for trades in syndicated mortgages

- added an exemption for trading in government guaranteed debt

- added an exemption for trading in self-directed registered educational savings plans

- expanded the list of permitted clients for international dealers and advisers

- removed the prohibition on international advisers from soliciting new business

Federally regulated financial institutions

The application of securities legislation to federally regulated financial institutions is not set out in the same way in all jurisdictions. In Ontario, the Hockin-Kwinter Accord sets out the understanding on the respective responsibilities of the federal and provincial governments concerning the securities-related activities of federally regulated financial institutions.

The exemption regime that currently exists for federally regulated financial institutions in Ontario will continue under the proposed regime.

The other jurisdictions will continue to follow their existing practices concerning the securities-related activities of federally regulated financial institutions.

Relationship between exemptions under NI 45-106 and exemptions under NI 31-103
As mentioned in the CSA Notice to the 2007 Proposal, many of the exemptions that currently exist in securities legislation are not needed with a business trigger for dealers. We propose to transition from the exemptions under NI 45-106 to the exemptions under the Rule, when implemented, in the following way:

- NI 45-106 is being published concurrently with the Rule for the purpose of seeking comment on amendments to the substantive provisions as well as provisions needed for the transition from the exemptions under NI 45-106 to the exemptions under the Rule

- the registration and prospectus exemptions have been separated and a provision added which will render the registration exemptions inoperative in certain jurisdictions following a transition period after the coming into force of the Rule

- after the coming into force of the Rule, the registration exemptions will be in the Rule and NI 45-106 will become primarily a prospectus exemption rule except for registration exemptions that will continue in British Columbia, Manitoba and New Brunswick[9]

Part 9: Exemption

We have added a standard exemption provision to the Rule providing for the granting of exemptions from provisions of the Rule.

Part 10: Transition

The general transition regime is as follows:

[9] Some jurisdictions will continue with more exemptions than other jurisdictions. For more detail please see the CSA Notice for NI 45-106 and the amendments to NI 45-106 being published concurrently with this Notice.

For firms

- registered firms will be deemed to be registered in their new category[10]

- a person or company that is acting as an investment fund manager must apply for registration as an investment fund manager within six months of the effective date of the Rule

- investment fund managers will have a one year transition period to comply with capital and insurance requirements

- exempt market dealers[11]must apply for registration within six months of the effective date of the Rule

- a six month transition starting on the effective date of the Rule is provided to all registrants for the delivery of relationship disclosure to clients

- except in Québec, a six month transition starting on the effective date of the Rule is provided to all registrants in respect of complaint handling obligations

- a six month transition starting on the effective date of the Rule is provided to all registrants in respect of referral arrangements

For individuals

- registered individuals will be deemed to be registered in their new category[12]

- dealing representatives for scholarship plan dealers must comply with the proficiency requirements 12 months after the effective date of the Rule

- dealing representatives for exempt market dealers must apply for registration within six months of the effective date of the Rule

- individuals designated as UDP or CCO must apply for registration within one month of the effective date of the Rule[13]

During the transition period registrants will need to comply with existing requirements until such time as they are in compliance with the new requirements.

[10] See Appendix C to the Rule.
[11] In Ontario and Newfoundland and Labrador, a person or company registered as a limited market dealer will have to apply to be registered as an exempt market dealer.
[12] See Appendix D to the Rule.
[13] CCOs and UDPs currently registered will be grandfathered.

QUÉBEC REGULATORY FRAMEWORK FOR MUTUAL FUND DEALERS

The AMF has carried on extensive public consultations in February and September 2007 to discuss with mutual fund dealers and other interested parties in Québec, the question of the recognition of an SRO in Québec for mutual fund dealers and the most efficient way to achieve regulatory harmonization.

As a result of these consultations, the AMF has formulated the following recommendations:

- Québec mutual fund dealers, scholarship plan dealers and investment contract dealers and their representatives, which are currently subject to the Distribution Act, will upon the coming into force of the Rule, be subject to the Securities Act and the Rule

- mutual fund dealers registered in Québec will not be required to be members of the MFDA, and will remain under the direct supervision of the AMF

- they will be required to maintain professional liability insurance, as is the case currently

- mutual fund representatives, scholarship plan representatives and investment contract representatives will continue to be required to be members of the Chambre de la sécurité financière

- no change will be made to the obligation to contribute to the Fonds d'indemnisation des services financiers[14]

ONTARIO LEGISLATIVE AMENDMENTS

Changes to the Securities Act (Ontario) would be required to implement the proposed Rule. At this time the Government of Ontario has not completed its consideration of possible legislative amendments. Any statutory amendments will only become law if they are passed by the Legislative Assembly of Ontario. If the government publishes a consultative draft of the legislative proposals for public review, the OSC has suggested that it would be helpful to stakeholders for the review to occur within the timeframe for comment on the Rule.

If and when a consultation draft of the legislation is published, the OSC would prepare a cross-reference to assist public consideration, relating the provisions in the legislation to the comparable provisions in the Rule and identifying any modifications to the Rule which might be required in Ontario to complement and maintain consistency with any proposed

[14] The compensation fund which provides financial compensation to investors who are victims of fraudulent tactics or embezzlement committed by firms or representatives in the mutual fund, scholarship plan and investment contract sectors in Québec.

legislative amendments. This could result in the OSC having to publish a modified rule proposal in Ontario in conjunction with the proposed legislative amendments.

HEADS OF AUTHORITY

In Ontario, the OSC is seeking amendments to the *Securities Act* (Ontario) to provide it with the requisite authority to make certain provisions in the Rule. The remaining provisions are made under the authority of the following paragraphs of subsection 143(1) of the *Securities Act* (Ontario): 1, 2, 3, 4, 5, 7, 8, 10, 13, 18, 25, 31, 33, 34, 35, 39, 39.1, 45, 47, 50 and 56.

In Québec, the Rule is made under the authority of the following paragraphs of section 331.1 of the *Securities Act* (Québec): 1°, 8°, 9°, 11°, 25°, 26°, 27°, 27.1° and 34°.

In New Brunswick the Rule is made under the authority of the following paragraphs of subsection 200(1) of the Securities Act (New Brunswick): (a)-(v), (aa)-(ee), (www), (xxx), (aaaa)-(dddd).

ANTICIPATED COSTS AND BENEFITS

We believe that the overall benefits of the proposed registration regime will substantially outweigh the costs. Given that the securities regulatory regimes of the jurisdictions are not harmonized today, the specific costs and benefits will vary from jurisdiction to jurisdiction. Nonetheless, the common benefits of the proposed harmonized registration regime across all CSA jurisdictions include:

- harmonization of individual and firm registration categories, fit and proper requirements, conduct requirements and exemptions, which creates efficiencies for regulators, for NRD and for industry

- reduction in regulatory burden through adoption of a permanent registration regime and streamlined transfer procedures

- the introduction of a business trigger which is intended to require registration of those who present regulatory risk because they are engaging in business in the securities industry. It will not require registration of those who may be doing a trade (by definition) but who do not present regulatory risk. This reduces the number of statutory registration exemptions required and consequently reduces the exemptive relief applications that have been needed in the past for transactions or trades that do not present regulatory risk but do not fall within the wording of the statutory exemptions

- increased investor protection through the introduction of:
    - relationship disclosure requirements
    - referral arrangement restrictions

- complaint handling procedures
- enhanced conflicts and compliance requirements

- reduction of regulatory burden for registered firms dealing with permitted clients through reduced requirements in certain areas

- new exemptions which will reduce regulatory burden for international registrants

Some of the costs associated with the proposed registration regime, depending on the jurisdiction, include:

- obtaining and maintaining registration for exempt market dealers and investment fund managers

- increased capital and insurance requirements for some registrants

ALTERNATIVES CONSIDERED

No alternatives to the Rule were considered.

UNPUBLISHED MATERIALS

In proposing the revised version of the Rule, we have not relied on any significant unpublished study, report or other written materials.

HOW TO PROVIDE YOUR COMMENTS

You must submit your comments in writing by May 29, 2008. If you are not sending your comments by email, you should also send a diskette containing the submissions (in Windows format, Microsoft Word).

Please address your comments to all of the CSA member commissions, as follows:

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
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

Please send your comments **only** to the addresses below. Your comments will be forwarded to the remaining CSA jurisdictions.

Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
Tour de la Bourse
800, square Victoria
C.P. 246, 22 étage
Montreal, Québec
H4Z 1G3
Fax: (514) 864-6381
Email: consultation-en-cours@lautorite.qc.ca

John Stevenson
Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario
M5H 3S8
Fax (416) 593-2318
Email: jstevenson@osc.gov.on.ca

Please note that all comments received during the comment period will be made publicly available. We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period. We will post all comments received during the comment period to the OSC website at www.osc.gov.on.ca and to the AMF website at www.lautorite.qc.ca to improve the transparency of the policy-making process.

QUESTIONS

Please refer your questions to any of the following CSA members:

David McKellar
Director, Market Regulation
Alberta Securities Commission
Tel: (403) 297-4281
david.mckellar@seccom.ab.ca

Sophie Jean
Conseillère en réglementation
Surintendance de la distribution
Autorité des marchés financiers
Tel: (514) 395-0337 ext. 4786
sophie.jean@lautorite.qc.ca

Laura Bliss
Senior Legal Counsel
Capital Markets Regulation
British Columbia Securities Commission
Tel: (604) 899-6666
1-800-373-6393 (in B.C. and Alberta)
lbliss@bcsc.bc.ca

Marsha Gerhart
Assistant Manager, Legal
Registrant Regulation
Ontario Securities Commission
Tel: (416) 595-8918
mgerhart@osc.gov.on.ca

Dean Murrison
Deputy Director, Legal/Registration
Saskatchewan Financial Services Commission
Tel: (306) 787-5879
dmurrison@sfsc.gov.sk.ca

The text of the Rule, Companion Policy, consequential amendments and summary of comments and responses can be found on various CSA member websites.

SCHEDULE 1

PROPOSED CONSEQUENTIAL CHANGES TO NATIONAL INSTRUMENTS AND POLICIES

Appendix A

Revocation of
Multilateral Instrument 11-101 *Principal Regulator System*

1. Multilateral Instrument 11-101 *Principal Regulator System* is revoked on •.

.....

Appendix B

Rescission of
Companion Policy 11-101CP *Principal Regulator System*
to Multilateral Instrument 11-101 *Principal Regulator System*

1. Companion Policy 11-101CP *Principal Regulator System* is rescinded on •.

.....

Appendix C

Revocation of
Form 11-101F1 *Notice of Principal Regulator*
under Multilateral Instrument 11-101 Principal Regulator System

1. Form 11-101F1 *Notice of Principal Regulator under Multilateral Instrument 11-101* is revoked on •.

.....

Appendix D

Amendments to
National Instrument 14-101 Definitions

1. ***National Instrument 14-101 Definitions is amended by this Instrument.***

2. ***Section 1.1(3) is amended***

   a. ***by repealing the definition of "***dealer registration requirement***" and substituting the following:***

"dealer registration requirement" means the requirement in securities legislation that, depending upon the jurisdiction, either prohibits a person or company from trading in a security, or prohibits a person or company from engaging in, or holding himself, herself or itself as engaging in, the business of trading in securities, unless, in each case, the person or company is registered in the appropriate category of registration under securities legislation;**,**

b. ***by adding the following after the definition of "***insider reporting requirement***":***

"investment fund manager registration requirement" means the requirement in securities legislation that prohibits a person or company from acting as investment fund manager, unless the person or company is registered in the appropriate category of registration under securities legislation;**,**

c. ***by repealing the definition of "***registration requirement***" and substituting the following:***

"registration requirement" means the requirement in securities legislation that:

(a) depending upon the jurisdiction, either prohibits a person or company from trading in a security, or prohibits a person or company from engaging in, or holding himself, herself or itself out as engaging in, the business of trading in securities, or

(b) prohibits a person or company from acting as an underwriter, an adviser or an investment manager,

unless, in each case, the person or company is registered in the appropriate category of registration under securities legislation; ***,and***

d. ***by repealing the definition of "***underwriter registration requirement***" and substituting the following:***

"underwriter registration requirement" means the requirement in securities legislation that prohibits a person or company from acting as an underwriter unless the person or company is registered in the appropriate category of registration under securities legislation; and

3. ***This Instrument comes into force on •.***

.....

Appendix E

Revocation of
National Instrument 33-102 *Regulation of Certain Registrant Activities*

1. National Instrument 33-102 *Regulation of Certain Registrant Activities* is revoked on •.

.....

Appendix F

Rescission of
Companion Policy 33-102CP Regulation of Certain Registrant Activities

1. Companion Policy 33-102CP *Regulation of Certain Registrant Activities* is rescined on •.

.....

Appendix G

Amendments to
National Instrument 33-105 Underwriting Conflicts

1. ***National Instrument 33-105 Underwriting Conflicts is amended by this Instrument.***

2. ***Section 1.1 is amended***

   a. ***in the definition of "***connected issuer***" by striking out "***registrant***" wherever it occurs and substituting "***specified firm registrant***",***

   b. ***in the definition of "***influential securityholder***" by striking out "***the registrant of the professional group***" and substituting "***specified firm registrant***",***

   c. ***in the definition of "***professional group***" by striking out "***registrant***" wherever it occurs and substituting "***specified firm registrant***",***

   d. ***by repealing the definition of "***registrant***",***

   e. ***in the definition of "***related issuer***" by striking out "***; and***" and substituting "***;***",***

   f. ***in the definition of "***special warrant***" by striking out "***distribution of the other security***" and substituting "***distribution of the other security; and***",***
      and

g. ***by adding the following after the definition of "***special warrant***":***

h. "specified firm registrant" means a person or company registered, or required to be registered, under securities legislation as a registered dealer, registered adviser or registered investment fund manager**..**

3. ***In the following provisions of the Instrument, "***registrant***" is struck out wherever it occurs and "***specified firm registrant***" is substituted:***

   a. ***section 1.2,***

   b. ***section 2.1, and***

   c. ***section 3.1.***

4. ***Appendix C is amended by striking out "***registrant***" wherever it occurs and substituting "***specified firm registrant***".***

5. ***This Instrument comes into force on •.***

.....

Appendix H

Amendments to
Companion Policy 33-105CP Underwriting Conflicts

1. ***Companion Policy 33-105CP Underwriting Conflicts is amended by this Instrument.***

2. ***In the following provisions of the Companion Policy "***registrant***" is struck out wherever it occurs and "***specified firm registrant" ***is substituted:***

   a. ***section 2.1,***

   b. ***section 2.2,***

   c. ***section 2.4,***

   d. ***section 4.1,***

   e. ***section 4.2,***

   f. ***section 4.3,***

   g. ***section 5.1, and***

   h. ***section 6.1.***

3. ***Appendix A-1 is amended by striking out "***registrant***" wherever it occurs and substituting "***specified firm registrant***".***

4. ***Appendix A-2 is amended by striking out "***registrant***" wherever it occurs and substituting "***specified firm registrant***".***

5. ***Appendix A-3 is amended by striking out "***registrant***" wherever it occurs and substituting "***specified firm registrant***".***

6. ***Appendix A-4 is amended by striking out "***registrant***" wherever it occurs and substituting "***specified firm registrant***".***

7. ***This Instrument comes into force •.***

.....

Appendix I

Revocation of
National Policy 34-201 *Breach of Requirements of Other Jurisdictions*

New Brunswick will not be requiring this Appendix

.....

Appendix J

Amendments to
National Instrument 81-102 Mutual Funds

1. ***National Instrument 81-102 Mutual Funds is amended by this Instrument.***

2. ***Appendix C is amended***

   a. ***in the column Securities Legislation Reference***

      (i) ***by striking out "***s. 227 of Reg. 1015***", and***

      (ii) ***by adding "***Section 6.6 of National Instrument 31-103 Registration Requirements" ***at the end of Appendix C.***

   b. ***in the column Jurisdiction by adding the following at the end of Appendix C:***

      Alberta, British Columbia, Manitoba, Newfoundland and Labrador, New Brunswick, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Quebec, Saskatchewan, and Yukon***.***

3. ***This Instrument comes into force on •.***

.....

Appendix K

Amendments to
Multilateral Policy 34-202 Registrants Acting As Corporate Directors

1. ***Multilateral Policy 34-202 Registrants Acting as Corporate Directors is amended by this Instrument.***

2. ***Section 1.3 is amended by striking out "***Any director of a reporting issuer who is a partner, director, officer or employee of a registrant should, in the view of the Canadian securities regulatory authorities, recognize that the director's first responsibility in this area is to the reporting issuer on whose board the director serves. A director should meticulously avoid any disclosure of inside information to partners, directors, officers and employees of the registrant or to its clients.***" and substituting "***Any director of a reporting issuer who is a partner, director, officer, employee or agent of a registrant should, in the view of the Canadian securities regulatory authorities, recognize that the director's first responsibility in this area is to the reporting issuer on whose board the director serves. A director should meticulously avoid any disclosure of inside information to partners, directors, officers, employees or agents of the registrant or to its clients.***"**

3. ***Section 1.4 is amended by striking out "***If a representative of a registrant***" and substituting "***If a partner, director, officer, employee or agent of a registrant***".**

4. ***Section 1.6 is repealed.***

5. ***This Instrument comes into force on •.***

.....

Appendix L

Amendments to
National Instrument 81-107 Independent Review Committee for Investment Funds

1. ***National Instrument 81-107 Independent Review Committee for Investment Funds is amended by this Instrument.***

2. ***Appendix A is amended by adding "***and section 6.2 of National Instrument 31-103 *Registration Requirements****" after "***Part 4 of National Instrument 81-102 *Mutual Funds****".***

3. ***Appendix B is amended***

a. ***in the column Securities Legislation Reference***

(i) ***by striking out "***Section 118(2)(b) of the *Securities Act* (Ontario)***", and***

(ii) ***by striking out "***Section 115(6) of Reg. 1015***", and***

(iii) ***by adding "***Section 6.2(2) of National Instrument 31-103 *Registration Requirements****" at the end of Appendix B.***

b. ***in the column Jurisdiction by adding***

"Alberta, British Columbia, Manitoba, Newfoundland and Labrador, New Brunswick, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Quebec, Saskatchewan, and Yukon***" at the end of Appendix B.***

4. ***This Instrument comes into force on •.***

NATIONAL INSTRUMENT 31-103

REGISTRATION REQUIREMENTS

Table of Contents

NATIONAL INSTRUMENT 31-103

REGISTRATION REQUIREMENTS

PART 1 - DEFINITIONS

Definitions

1.1 (1) In this Instrument

"Canadian financial institution" has the same meaning as in section 1.1 of National Instrument 45-106 *Prospectus and Registration Exemptions*;

"connected issuer" has the same meaning as in section 1.1 of National Instrument 33-105 *Underwriting Conflicts*;

"fully-managed account" means an account of a client that is managed by an adviser through discretionary authority granted by the client;

"IDA" means the Investment Dealers Association of Canada;

"marketplace" has the same meaning as in section 1.1 of National Instrument 21-101 *Marketplace Operation*;

"MFDA" means the Mutual Fund Dealers Association of Canada;

"permitted client" means

(a) a Canadian financial institution or a Schedule III bank;

(b) the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada);

(c) a subsidiary of any person or company referred to in paragraph (a) or (b), if the person or company owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of the subsidiary;

(d) a person or company registered under the securities legislation of a jurisdiction of Canada as an adviser or dealer, other than a scholarship plan dealer or a restricted dealer;

(e) a pension fund that is regulated by either the federal Office of the Superintendent of Financial Institutions or a pension commission or similar regulatory authority of a jurisdiction of Canada;

(f) an entity organized in a foreign jurisdiction that is analogous to any of the entities referred to in paragraphs (a) to (e);

(g) the Government of Canada or a jurisdiction of Canada, or any crown corporation, agency or wholly-owned entity of the Government of Canada or a jurisdiction of Canada;

(h) a municipality, public board or commission in Canada and a metropolitan community, school board, the Comité de gestion de la taxe scolaire de l'île de Montréal or an intermunicipal management board in Québec;

(i) a trust company or trust corporation registered or authorized to carry on business under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in a jurisdiction of Canada or a foreign jurisdiction, acting on behalf of a fully-managed account managed by the trust company or trust corporation, as the case may be;

(j) a person or company acting on behalf of a fully-managed account managed by the person or company, if the person or company is registered or authorized to carry on business as an adviser or the equivalent under the securities legislation of a jurisdiction of Canada or a foreign jurisdiction;

(k) an investment fund that is advised by a person or company registered as an portfolio manager under the securities legislation of a jurisdiction of Canada;

(l) a registered charity under the *Income Tax Act* (Canada) that obtains advice on the securities to be traded from an eligibility adviser, as defined in National Instrument 45-106 *Prospectus and Registration Exemptions*, or an adviser registered under the securities legislation of the jurisdiction of the registered charity;

(m) an individual who beneficially owns, directly or indirectly, financial assets, as defined in National Instrument 45-106 *Prospectus and Registration Exemptions*, having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds $5 million or its equivalent in another currency as certified by the individual;

(n) a person or company that is entirely owned, legally and beneficially, by an individual or individuals referred to in paragraph (m), who hold its or their ownership interest in the person or company directly or through a trust the trustee of which is a trust company referred to in paragraph (i); or

(o) a corporation that has shareholders' equity of at least $100 million on a consolidated basis or its equivalent in another currency;

"registered firm" means a registered dealer, a registered adviser, or a registered investment fund manager;

"registered individual" means an individual who is registered

(a) to trade or advise on behalf of a registered firm,

(b) in the category of ultimate designated person, or

(c) in the category of chief compliance officer;

"related issuer" has the same meaning as in section 1.1 of National Instrument 33-105 *Underwriting Conflicts*; and

"Schedule III bank" means an authorized foreign bank named in Schedule III of the *Bank Act* (Canada).

(2) Except in Part 8, in Alberta, British Columbia and Saskatchewan, a reference to "security" or "securities" in this Instrument includes "exchange contract" or "exchange contracts".

PART 2 - CATEGORIES OF REGISTRATION AND PERMITTED ACTIVITIES

Dealer and underwriter categories

2.1 (1) A dealer or underwriter, if required to be registered, must be registered by the regulator in one or more of the following categories:

(a) investment dealer, being a dealer or underwriter that is permitted to trade in, or act as an underwriter in respect of, any security;

(b) mutual fund dealer, being a dealer that is only permitted to trade in securities of

(i) mutual funds, and

(ii) except in Québec, investment funds that are labour sponsored investment fund corporations or labour sponsored venture capital corporations under provincial legislation;

(c) scholarship plan dealer, being a dealer that is only permitted to trade in securities of scholarship plans, educational plans or educational trusts;

(d) exempt market dealer, being

(i) a dealer that is only permitted to trade

A) in securities that are distributed under an exemption from the prospectus requirement,

B) in securities that are distributed under a prospectus if the distribution may have been made under an exemption from the prospectus requirement,

C) in securities that, if the trade were a distribution, may have been distributed under an exemption from the prospectus requirement, and

D) on behalf of a client, any securities acquired by the client in a circumstance described in subparagraph (A), (B) or (C) , if the trade is with a registered dealer, and

(ii) an underwriter that is only permitted to act as an underwriter in respect of a distribution of securities that may be made under an exemption from the prospectus requirement;

(e) restricted dealer, being a dealer that is limited by conditions on its registration to trading in a specified security, class of security or the securities of a class of issuers.

(2) Despite subsection (1)(b), in British Columbia a mutual fund dealer is only permitted to trade in securities of

(i) mutual funds,

(ii) investment funds that are labour sponsored investment fund corporations or labour sponsored venture capital corporations under provincial legislation, and

(iii) securities of scholarship plans, educational plans or educational trusts.

Exemption from dealer registration for advisers

2.2 (1) The dealer registration requirement does not apply to a registered adviser, or an adviser that is exempt from registration under section 8.16 [*international adviser*], that buys or sells a security of a pooled fund administered by the adviser for a fully-managed account that is created and managed by the adviser.

(2) The exemption in subsection (1) is not available if the fully-managed account or pooled fund is created or used primarily for the purpose of qualifying for the exemption.

(3) The exemption in subsection (1) is not available unless the adviser, within 5 business days of its first use of the exemption, provides written notice to the regulator that it is relying on the exemption.

Adviser categories

2.3 An adviser, if required to be registered, must be registered by the regulator in one of the following categories:

(a) portfolio manager, being an adviser that is permitted to advise in any security;

(b) restricted portfolio manager, being an adviser that is limited by conditions on its registration to advising in specified securities, classes of securities or the securities of a class of issuers.

Exemption from adviser registration for dealers without discretionary authority

2.4 The adviser registration requirement does not apply to a registered dealer that advises a client in connection with a security in which the dealer is permitted to trade if

(a) the advice is provided by a dealing representative, and

(b) the dealer does not manage the client's investment portfolio through discretionary authority granted by the client.

Exemption from adviser registration for IDA members with discretionary authority

2.5 The adviser registration requirement does not apply to an IDA member that manages a client's investment portfolio through discretionary authority granted by the client.

Investment fund manager category

2.6 An investment fund manager, if required to be registered, must be registered by the regulator in the category of investment fund manager, being a person or company that is permitted to direct the business, operations or affairs of an investment fund.

Individual categories

2.7 An individual, if required to be registered to act on behalf of a registered firm, must be registered by the regulator in one or more of the following categories:

(a) dealing representative;

(b) advising representative;

(c) associate advising representative;

(d) ultimate designated person;

(e) chief compliance officer.

Associate advising representative – approved advising only

2.8 (1) An associate advising representative of a registered adviser must not advise in securities unless, before giving the advice, the advice is approved by an advising representative designated by the adviser.

(2) A registered adviser that designates an advising representative for the purpose of subsection (1) must notify the regulator of the designation no later than the 5th business day following the date of the designation.

Ultimate designated person

2.9 (1) A registered firm must have an individual who is registered under securities legislation in the category of ultimate designated person to perform the functions described in section 5.24 [*ultimate designated person – functions*].

(2) An individual must not act as the ultimate designated person of a registered firm unless the individual is

(a) the chief executive officer or sole proprietor of the registered firm,

(b) an officer in charge of a division of the registered firm, if the activity that requires the firm to register occurs only within the division,

(c) an individual acting in a capacity similar to that of an officer described in paragraph (a) or (b).

Chief compliance officer

2.10 (1) A registered firm must have an individual who is registered under securities legislation in the category of chief compliance officer to perform the functions described in section 5.25 [*chief compliance officer – functions*].

(2) An individual must not act as the chief compliance officer for a registered firm unless the individual is an officer or partner of the registered firm, or the firm's sole proprietor.

PART 3 - SRO MEMBERSHIP

IDA membership for investment dealers

3.1 (1) No person or company may be registered as an investment dealer unless the person or company is a member of the IDA.

(2) No individual may be registered to act on behalf of an investment dealer unless the individual is an approved person under the by-laws, regulations and policies of the IDA.

MFDA membership for mutual fund dealers

3.2 Except in Québec, no person or company may be registered as a mutual fund dealer unless the person or company is a member of the MFDA.

Exceptions for SRO members

3.3 (1) A registrant that is a member of the IDA, or a dealing representative of a member of the IDA, is exempt from each requirement in the following sections that applies to a registered dealer, or a dealing representative, if the registrant complies with the by-laws, regulations and policies of the IDA that deal with the same subject matter:

(a) section 4.18 [*capital requirement*];

(b) section 4.19 [*report capital deficiency*];

(c) section 4.21 [*insurance – dealer*];

(d) section 4.25 [*notice of change, claim, or cancellation*];

(e) section 4.26 [*appointment of auditor*];

(f) section 4.27 [*direction to auditor*];

(g) section 4.28 [*delivering financial information – dealer*];

(h) section 5.4 [*providing relationship disclosure information*];

(i) section 5.5 [*suitability*];

(j) section 5. 7 [*margin*];

(k) section 5.8 [*disclosure when recommending use of borrowed money*];

(l) section 5.10 [*holding client assets in trust*];

(m) section 5.11 [*securities subject to safekeeping agreement*];

(n) section 5.12 [*securities not subject to safekeeping agreement*];

(o) section 5.18 [*confirmation of trade – general*];

(p) except in Québec, section 5.29 [*dispute resolution service*].

(2) Except in Québec, the provisions listed in subsection (1) do not apply to a registrant that is a member or approved person of the MFDA if the registrant complies with the by-laws, rules and policies of the MFDA that deal with the same subject matter.

(3) In Québec, the provisions listed in subsection (1) do not apply to a mutual fund dealer or a dealing representative of a mutual fund dealer if the registrant complies with the regulation on mutual fund dealer requirements in Québec.

PART 4 - FIT AND PROPER REQUIREMENTS

Division 1: Proficiency requirements

Definitions

4.1 In this Division

"Branch Manager Proficiency Exam" means the examination prepared and administered by the RESP Dealers Association of Canada and so designated by that Association;

"Canadian Investment Funds Exam" means the examination prepared and administered by the Investment Funds Institute of Canada and so designated by that Institute;

"Canadian Securities Exam" means the examination prepared and administered by the CSI Global Education Inc. and so designated by that corporation;

"CFA Charter" means the charter earned through the Chartered financial analyst examination program prepared and administered by the CFA Institute and so designated by that institute;

"Canadian Investment Manager designation" means the designation earned through the Canadian investment manager program prepared and administered by the CSI Global Education Inc. and so designated by that corporation;

"Investment Funds in Canada Exam" means the examination prepared and administered by the Institute of Canadian Bankers and so designated by that Institute;

"New Entrants Exam" means the examination prepared and administered by the CSI Global Education Inc. and so designated by that corporation;

"PDO Exam" means

(a) the Officers', Partners' and Directors' Exam prepared and administered by the Investment Funds Institute of Canada and so designated by that Institute, or

(b) the Partners, Directors and Senior Officers Exam prepared and administered by the CSI Global Education Inc. and so designated by that corporation;

"Sales Representative Proficiency Exam" means the examination prepared and administered by the RESP Dealers Association of Canada and so designated by that Association; and

"Series 7 Exam" means the program prepared and administered by the Financial Industry Regulatory Authority in the United States of America and so designated by that regulator.

U.S. equivalency

4.2 In this Division, an individual is not required to have passed the Canadian Securities Exam if the individual has passed the Series 7 Exam and the New Entrants Exam.

Proficiency principle

4.3 When a registered individual performs an activity that requires registration, the individual must have the education and experience reasonably necessary to perform the activity.

Time limits on examination proficiency

4.4 **(1)** Subject to subsection (2), an individual must not be registered in a category unless the individual passed the examination or successfully completed the program required in this Division for the category within 36 months of the date the individual applied for registration.

(2) If an individual passed the examination or successfully completed the program required in this Division for a category more than 36 months before the date the individual applied for registration, the individual must not be registered in the category unless the individual

(a) was registered in the category in a jurisdiction of Canada for 12 months during the 36 month period before the date the individual applied for registration, or

(b) gained 12 months of relevant experience during the 36 month period before the date the individual applied for registration.

Mutual fund dealer – dealing representative

4.5 A dealing representative of a mutual fund dealer must not trade on behalf of the mutual fund dealer unless the representative

(a) has passed the Canadian Investment Funds Exam, the Canadian Securities Exam, or the Investment Funds in Canada Exam, or

(b) has met the requirements of section 4.11 [*portfolio manager – advising representative*].

Mutual fund dealer – chief compliance officer

4.6 A mutual fund dealer must not designate an individual as its chief compliance officer under subsection 2.10(1) [*chief compliance officer*] unless the individual

(a) has met the requirements of section 4.13 [*portfolio manager – chief compliance officer*], or

(b) has passed

(i) the Canadian Investment Funds Exam, the Canadian Securities Exam, or the Investment Funds in Canada Exam, and

(ii) the PDO Exam.

Scholarship plan dealer – dealing representative

4.7 A dealing representative of a scholarship plan dealer must not trade on behalf of the scholarship plan dealer unless the representative has passed the Sales Representative Proficiency Exam.

Scholarship plan dealer – chief compliance officer

4.8 A scholarship plan dealer must not designate an individual as its chief compliance officer under subsection 2.10(1) [*chief compliance officer*] unless the individual has passed

(a) the Sales Representative Proficiency Exam,

(b) the Branch Manager Proficiency Exam, and

(c) the PDO Exam.

Exempt market dealer – dealing representative

4.9 A dealing representative of an exempt market dealer must not trade on behalf of the exempt market dealer unless the individual

(a) has passed the Canadian Securities Exam, or

(b) meets the requirements of section 4.11 [*portfolio manager – advising representative*].

Exempt market dealer – chief compliance officer

4.10 An exempt market dealer must not designate an individual as its chief compliance officer under subsection 2.10(1) [*chief compliance officer*] unless the individual has passed the Canadian Securities Exam.

Portfolio manager – advising representative

4.11 An advising representative of a portfolio manager must not act as an adviser on behalf of the portfolio manager unless the representative

(a) has earned a CFA Charter and has 12 months of relevant investment management experience in the 36-month period before applying for registration, or

(b) has received the Canadian Investment Manager designation and has 48 months of relevant investment management experience, 12 months of which was in the 36-month period before applying for registration.

Portfolio manager – associate advising representative

4.12 An associate advising representative of a portfolio manager must not act as an adviser on behalf of the portfolio manager unless the representative

(a) has completed Level 1 of the Chartered Financial Analyst Program and has 24 months of relevant investment management experience, or

(b) has received the Canadian Investment Manager designation and has 24 months of relevant investment management experience.

Portfolio manager – chief compliance officer

4.13 A portfolio manager must not designate an individual as its chief compliance officer under subsection 2.10(1) [*chief compliance officer*] unless the individual

(a) has been previously registered as an advising representative of a portfolio manager in a jurisdiction of Canada,

(b) has

(i) earned a CFA Charter or a professional designation as a lawyer, Chartered Accountant, Certified General Accountant or Certified Management Accountant in a jurisdiction of Canada, a notary in Québec, or the equivalent in a foreign jurisdiction,

(ii) passed the Canadian Securities Exam and the PDO Exam, and

(iii) either

A) worked for a registered dealer or a registered adviser for three years, or

B) provided professional services in the securities industry for three years and worked for a registered dealer or a registered adviser for 12 months, or

(c) has passed the Canadian Securities Exam and the PDO Exam and has either

(i) worked for a registered dealer or a registered adviser for five years, including for three years in a compliance capacity, or

(ii) worked for five years for a Canadian financial institution in a compliance capacity relating to portfolio management and worked for a registered dealer or a registered adviser for 12 months.

Restricted portfolio manager – chief compliance officer

4.14 A restricted portfolio manager must not designate an individual as its chief compliance officer under subsection 2.10(1) [*chief compliance officer*] unless the

individual has met the requirements of section 4.13 [*portfolio manager – chief compliance officer*].

Investment fund manager – chief compliance officer

4.15 An investment fund manager must not designate an individual as its chief compliance officer under subsection 2.10(1) [*chief compliance officer*] unless the individual

(a) has

(i) earned a CFA Charter or a professional designation as a lawyer, Chartered Accountant, Certified General Accountant or Certified Management Accountant in a jurisdiction of Canada, a notary in Québec, or the equivalent in a foreign jurisdiction,

(ii) passed the Canadian Securities Exam and the PDO Exam, and

(iii) either

A) worked for an investment fund manager for three consecutive years, or

B) provided professional services in the securities industry for three consecutive years and worked for an investment fund manager for 12 consecutive months, or

(b) has

(i) passed the Canadian Investment Funds Exam, the Canadian Securities Exam, or the Investment Funds in Canada Exam,

(ii) passed the PDO Exam, and

(iii) worked for a registered investment fund manager for five consecutive years, including for three consecutive years in a compliance capacity.

Grandfathered registrants

4.16 (1) If, on the date this Instrument comes into force, an individual is registered in a category referred to in a section of this Division, the individual is exempt from that section.

(2) Despite subsection (1), an individual who is a dealing representative of a scholarship plan dealer on the date this Instrument comes into force is exempt from section 4.7 [*scholarship plan dealer – dealing representative*] until 12 months after this Instrument comes into force.

Division 2: Solvency requirements

Exemption for certain exempt market dealers

4.17 This Division does not apply to an exempt market dealer that does not handle, hold, or have access to any client assets, including cheques and other similar instruments.

Capital requirement

4.18 (1) A registered firm must ensure that its excess working capital, as calculated using Form 31-103F1 *Calculation of excess working capital*, is not less than zero.

(2) For the purpose of completing Form 31-103F1 *Calculation of excess working capital*, the minimum capital is

(a) $25,000, for an adviser,

(b) $50,000, for a dealer, and

(c) $100,000, for an investment fund manager.

(3) A registered firm must calculate its excess working capital as at the end of each month by completing Form 31-103F1 *Calculation of excess working capital* no later than the 20th business day after the end of the month.

Report capital deficiency

4.19 If, at any time, the excess working capital of a registered firm, as calculated using Form 31-103F1 *Calculation of excess working capital*, is less than zero, the registered firm must notify the regulator as soon as practicable.

Subordination agreement – notice requirement

4.20 If a registered firm has executed a subordination agreement for the purpose of reducing its long-term related party debt on Form 31-103F1 *Calculation of excess working capital*, the firm must notify the regulator 5 days before it

(a) repays the loan or any part of the loan, or

(b) terminates the agreement.

Insurance – dealer

4.21 (1) A registered dealer must maintain bonding or insurance with a single loss limit in the highest of the following amounts:

(a) $50,000 per employee, agent and dealing representative or $200,000, whichever is less;

(b) one per cent of the total client assets that the dealer handles, holds or has access to, as calculated using the dealer's most recent financial records, or $25,000,000, whichever is less;

(c) one per cent of the dealer's total assets, as calculated using the dealer's most recent financial records, or $25,000,000, whichever is less;

(d) the amount determined to be appropriate by a resolution of the board of directors of the dealer.

(2) A registered dealer must maintain bonding or insurance, provided by an insurer lawfully carrying on business in the local jurisdiction,

(a) that contains the clauses set out in Appendix A,

(b) that provides for a double aggregate limit or a full reinstatement of coverage, and

(c) whose terms are otherwise acceptable to the regulator.

(3) In Québec, this section does not apply to a scholarship plan dealer.

Insurance – adviser

4.22 (1) A registered adviser that does not handle, hold, or have access to client assets, including cheques and other similar instruments, must maintain bonding or insurance with a single loss limit of $50,000.

(2) A registered adviser that handles, holds, or has access to client assets, including cheques and other similar instruments, must maintain bonding or insurance with a single loss limit in the highest of the following amounts:

(a) one per cent of assets under management that the adviser handles, holds, or has access to, as calculated using the adviser's most recent financial records, or $25,000,000, whichever is less;

(b) one per cent of the adviser's total assets, as calculated using the adviser's most recent financial records, or $25,000,000, whichever is less;

(c) $200,000;

(d) the amount determined to be appropriate by a resolution of the board of directors of the adviser.

(3) A registered adviser must maintain bonding or insurance, provided by an insurer lawfully carrying on business in the local jurisdiction,

(a) that contains the clauses set out in Appendix A,

(b) that provides for a double aggregate limit or a full reinstatement of coverage, and

(c) whose terms are otherwise acceptable to the regulator.

Insurance – investment fund manager

4.23 (1) A registered investment fund manager must maintain bonding or insurance with a single loss limit in the highest of the following amounts:

(a) one per cent of assets under management, as calculated using the investment fund manager's most recent financial records, or $25,000,000, whichever is less;

(b) one per cent of the investment fund manager's total assets, as calculated using the investment fund manager's most recent financial records, or $25,000,000, whichever is less;

(c) $200,000;

(d) the amount determined to be appropriate by a resolution of the directors of the investment fund manager.

(2) A registered investment fund manager must maintain bonding or insurance, provided by an insurer lawfully carrying on business in the local jurisdiction,

(a) that contains the clauses set out in Appendix A,

(b) that provides for a double aggregate limit or a full reinstatement of coverage, and

(c) whose terms are otherwise acceptable to the regulator.

Global financial institution bonds

4.24 For the purposes of this Division, a registered firm may maintain bonding or insurance that benefits, or names as an insured, another person or company only if the bond provides that, without regard to the claims, experience or any other factor referable to that other person or company,

(a) the registered firm has the right to claim directly against the insurer in respect of losses, and any payment or satisfaction of such losses must be made directly to the registered firm, and

(b) the individual or aggregate limits under the policy may only be affected by claims made by or on behalf of

(i) the registered firm, or

(ii) a subsidiary of the registered firm whose financial results are consolidated with those of the registered firm.

Notice of change, claim or cancellation

4.25 A registered firm must, as soon as practicable, notify the regulator in writing of any change in, claim made under, or cancellation of any insurance policy required under this Division.

Division 3: Financial records

Appointment of auditor

4.26 A registered firm must appoint an auditor that is authorized to sign an auditor's report by the laws of a jurisdiction of Canada or a foreign jurisdiction and that meets the professional standards of that jurisdiction.

Direction to auditor

4.27 (1) A registered firm must direct its auditor in writing to conduct any audit or review required by the regulator during its registration and must deliver a copy of the direction to the regulator

(a) with its application for registration, and

(b) no later than the 5th business day after the registered firm changes its auditor.

(2) The regulator may order a registered firm to direct its auditor, at the registered firm's expense, to conduct any audit or review required by the regulator and deliver the audit or review to the regulator as soon as practicable.

Delivering financial information – dealer

4.28 (1) A registered dealer must deliver to the regulator no later than the 90th day after the end of its fiscal year

(a) its annual financial statements for the fiscal year, and

(b) a completed Form 31-103F1 *Calculation of excess working capital*, showing the calculation of the dealer's excess working capital as at the end of the fiscal year and as at the end of the immediately preceding fiscal year.

(2) A registered dealer must deliver to the regulator no later than the 30th day after the end of the first, second and third quarter of its fiscal year

(a) its financial statements for the quarter, and

(b) a completed Form 31-103F1 *Calculation of excess working capital*, showing the calculation of the dealer's excess working capital as at the end of the quarter and as at the end of the immediately preceding quarter.

Delivering financial information – adviser

4.29 A registered adviser must deliver to the regulator no later than the 90th day after the end of its fiscal year

(a) its annual financial statements for the fiscal year, and

(b) a completed Form 31-103F1 *Calculation of excess working capital*, showing the calculation of the adviser's excess working capital as at the end of the fiscal year and as at the end of the immediately preceding fiscal year.

Delivering financial information – investment fund manager

4.30 (1) A registered investment fund manager must deliver to the regulator no later than the 90th day after the end of its fiscal year

(a) its annual financial statements for the fiscal year,

(b) a completed Form 31-103F1 *Calculation of excess working capital*, showing the calculation of the investment fund manager's excess working capital as at the end of the fiscal year and as at the end of the immediately preceding fiscal year, and

(c) a description of any net asset value adjustment made during the fiscal year.

(2) A registered investment fund manager must deliver to the regulator no later than the 30th day after the end of the first, second and third quarter of its fiscal year

(a) its financial statements for the quarter,

(b) a completed Form 31-103F1 *Calculation of excess working capital*, showing the calculation of the investment fund manager's excess working capital as at the end of the quarter and as at the end of the immediately preceding quarter, and

(c) a description of any net asset value adjustment made during the quarter.

(3) A description of a net asset value adjustment referred to in this section must include

(a) the cause of the adjustment,

(b) the dollar amount of the adjustment, and

(c) the effect of the adjustment on net asset value per unit or share and any corrections made to purchase and sale transactions affecting either the investment fund or security holders of the investment fund.

Content of annual financial statements

4.31 The annual financial statements delivered to the regulator under this Division must include

(a) an income statement, a statement of retained earnings and a statement of cash flows, each for the fiscal year, and

(b) a balance sheet as at the end of the fiscal year, signed by at least one director of the registered firm.

Preparation of financial statements

4.32 **(1)** The annual and quarterly financial statements delivered to the regulator under this Division must be prepared in accordance with generally accepted accounting principles, except that the statements are to be prepared on an unconsolidated basis.

(2) The annual financial statements delivered to the regulator under this Division must be accompanied by an auditor's report that is prepared in accordance with generally accepted auditing standards.

Cooperation with auditor

4.33 A registrant must not withhold, destroy or conceal any information or documents or otherwise fail to cooperate with a reasonable request made by an auditor of the registered firm in the course of an audit.

Financial records for certain exempt market dealers

4.34 **(1)** An exempt market dealer that does not handle, hold or have access to client assets, including cheques and other similar instruments, is exempt from sections 4.26 [*appointment of auditor*] to 4.31 [*content of financial statements*] and subsection 4.32(2) [*preparation of financial statements*].

(2) An exempt market dealer that does not handle, hold or have access to client assets, including cheques and other similar instruments, must deliver to the regulator, no later than the 30th day after the end of each quarter of its fiscal year, its financial statements for the quarter certified by the chief executive officer and the chief financial officer of the dealer or, if no such officers have been appointed, individuals acting on behalf of the dealer in a similar capacity.

(3) The regulator may order an exempt market dealer to direct an auditor, at the registered firm's expense, to conduct any audit or review required by the regulator and deliver the audit or review to the regulator as soon as practicable.

PART 5 - CONDUCT RULES

Division 1: Relationship with clients

Exemption for investment fund managers

5.1 This Division does not apply to an investment fund manager.

Account opening documentation

5.2 (1) A registered firm must maintain account opening documentation for each client.

(2) Subsection (1) does not apply to an exempt market dealer in respect of a client whose assets, including cheques and other similar instruments, the exempt market dealer does not handle, hold or have access to.

Know-your-client

5.3 (1) A registrant must take reasonable steps to

(a) establish the identity of a client and, where there may be cause for concern, the reputation of the client,

(b) ascertain whether a client is an insider of an issuer,

(c) ensure that it has sufficient information about a client to enable it to meet its regulatory obligations when it

(i) makes a recommendation to the client,

(ii) accepts an instruction to trade from the client, or

(iii) makes a discretionary purchase or sale of a security on behalf of the client, and

(d) establish the creditworthiness of a client, if the registered firm is financing the client's acquisition of a security.

(2) For the purpose of establishing the identity of a client that is a corporation under paragraph (1)(a), the registrant must establish the nature of the client's business and the identity of any individual who is a beneficial owner, directly or indirectly, of more that ten per cent of the client.

(3) In paragraph (1)(b), "insider" has the meaning ascribed to that term in the Act except that "reporting issuer", as it appears in the definition of "insider", is to be read as "issuer".

(4) A registrant must make reasonable efforts to keep the information required under this section current.

(5) Paragraph (1)(c) does not apply if

(a) the client is a permitted client that has waived, in writing, the requirements under subsections 5.5(1) and (2) [*suitability*], or

(b) the client is a permitted client and the registrant is an exempt market dealer.

(6) Paragraph (1)(d) does not apply if the client is a permitted client and the registrant is an exempt market dealer.

(7) Despite subsections (5) and (6), this section does not apply if the client is a registered firm, a Canadian financial institution or a Schedule III bank.

Providing relationship disclosure information

5.4 (1) A registrant must provide a client with relationship disclosure information before the registrant first

(a) purchases or sells a security for the client, or

(b) advises the client to purchase, sell or hold a security.

(2) If there is a significant change to the relationship disclosure information provided to a client under subsection (1), the registrant must make reasonable efforts to notify its clients of the change in a timely manner, and wherever practicable before the registrant next

(a) purchases or sells a security for the client, or

(b) advises the client to purchase, sell or hold a security.

(3) For the purpose of this section, “relationship disclosure information” means information that a reasonable client would consider important respecting the client's relationship with the registrant and includes, subject to subsections (4), (5) and (6), the following:

(a) a description of the nature of the client's account or the type of account held by the client;

(b) a discussion that identifies which products or services offered by the registered firm will meet the client's investment objectives and how they will do so;

(c) a discussion of investment risk factors and types of risks that should be considered by the client when making an investment decision, including the risk of using borrowed money to finance a purchase of a security;

(d) a description of the conflicts of interest that the registered firm is required to disclose under securities legislation;

(e) disclosure of all service fees and charges in respect of the operation of the client's accounts;

(f) a description of the costs the client will pay in making and holding investments and the compensation paid to the registered firm in relation to the different types of products that the client may purchase through the registered firm;

(g) a description of the content and frequency of reporting for each account or portfolio of the client;

(h) information about how the client can contact the firm;

(i) notice that a dispute resolution service is available to mediate any dispute that might arise between the client and the firm regarding a product or service of the firm;

(j) the information a registered firm is required to collect about the client under section 5.3 [*know-your-client*].

(4) Despite subsection (3), relationship disclosure information provided by an exempt market dealer to a client is not required to include the information referred to in paragraphs (3)(a), (e) and (g) if the dealer does not handle, hold or have access to the client's assets, including cheques and other similar instruments.

(5) In addition to the information required under subsection (3), relationship disclosure information provided by a dealer must include a description of the nature and scope of the firm's obligation to assess whether a purchase or sale of a security is suitable for a client prior to executing the transaction or at any other time.

(6) In addition to the information required under subsection (3), relationship disclosure information provided by an adviser must include the following:

(a) if the client's account is a fully-managed account, a description of the adviser's discretionary authority;

(b) a description of how the adviser will ensure that investments made are suitable for the client based on the information provided by the client;

(c) a statement that there is no guarantee, implied or otherwise, that the investments made will be successful;

(d) a discussion of investment risk factors and types of risks that should be considered by the client when deciding to invest using an adviser;

(e) if the client's account is a fully-managed account and a person or company exempted from registration under section 8.17 [*sub-advisers*] provides advice in respect of the account, information about the role of the person or company and their relationship to the client.

(7) This section does not apply to an exempt market dealer in respect of a permitted client.

Suitability

5.5 (1) A registrant must take reasonable steps to ensure that before it makes a recommendation to, or accepts instructions from, a client or makes a discretionary purchase or sale of a security on behalf of a client, the proposed purchase or sale is suitable for the client with reference to the client's

(a) financial circumstances,

(b) risk tolerance,

(c) investment knowledge, and

(d) investment needs and objectives.

(2) If a client instructs a registrant to buy, sell or hold a security and in the registrant's opinion, acting reasonably, following the instruction would not be suitable for the client, the registrant must inform the client of the registrant's opinion and must not buy or sell the security unless the client instructs the registrant to proceed nonetheless.

(3) This section does not apply in respect of a permitted client if

(a) the permitted client has waived, in writing, the requirements under subsections (1) and (2), or

(b) the registrant is an exempt market dealer.

(4) Despite subsection (3), this section does not apply if the client is a registered firm, a Canadian financial institution or a Schedule III bank.

Sale or assignment of client account

5.6 If a registered firm proposes to sell or assign a client's account in whole or in part to another registrant, the registered firm must, prior to the sale or assignment, give a written explanation to the client of the proposal and inform the client of the client's right to withdraw the client's account.

Margin

5.7 A registrant must not lend, extend credit or provide margin to a client.

Disclosure when recommending use of borrowed money

5.8 (1) If a registrant recommends that a client should use borrowed money to finance any part of a purchase of a security, the registrant must, before the purchase, provide the client with a written statement in substantially the following form:

"Using borrowed money to finance the purchase of securities involves greater risk than a purchase using cash resources only. If you borrow

money to purchase securities, your responsibility to repay the loan and pay interest as required by its terms remains the same even if the value of the securities purchased declines."

(2) Subsection (1) does not apply if

(a) the registrant has provided the client with the statement described under subsection (1) no earlier than the 180th day before the date of the proposed purchase,

(b) the proposed purchase is on margin and the client's margin account is maintained with a registered firm that is a member of the IDA or the MFDA, or

(c) the client is a permitted client.

Disclosure when opening an account in a financial institution

5.9 (1) If a registered firm opens a client account to trade in securities in an office or branch of a Canadian financial institution or a Schedule III bank, the registered firm must give the client a written notice stating that it is a separate legal entity from the Canadian financial institution or Schedule III bank and, unless otherwise advised by the registrant, securities purchased from or through the registrant

(a) are not insured by a government deposit insurer,

(b) are not guaranteed by the Canadian financial institution or Schedule III bank, and

(c) may fluctuate in value.

(2) A registered firm that is subject to subsection (1) must receive a written confirmation from the client that the client has read and understood the notice before the registered firm

(a) purchases or sells a security for the client, or

(b) advises the client to purchase, sell or hold a security.

(3) This section does not apply to a registered firm if the client is a permitted client.

Division 2: Client assets

Holding client assets in trust

5.10 (1) A registered firm that holds client assets, including cheques and other similar instruments, must hold the assets separate and apart from its own property and in trust for the client.

(2) A registered firm that holds cash on behalf of a client must hold the cash separate and apart from the property of the firm in a designated trust account with a Canadian financial institution or a Schedule III bank.

Securities subject to safekeeping agreement

5.11 A registered firm that holds unencumbered securities for a client under a written safekeeping agreement must

(a) segregate the securities from all other securities,

(b) identify the securities as being held in safekeeping for the client in

(i) the registrant's security position record,

(ii) the client's ledger, and

(iii) the client's statement of account, and

(c) release the securities only on an instruction from the client.

Securities not subject to safekeeping agreement

5.12 (1) A registered firm that holds unencumbered securities for a client that are either fully paid for or are excess margin securities, but that are not held under a written safekeeping agreement, must

(a) segregate and identify the securities as being held in trust for the client, and

(b) describe the securities as being held in segregation on

(i) the registrant's security position record,

(ii) the client's ledger, and

(iii) the client's statement of account.

(2) If a client is indebted to a registered firm, the registered firm may sell or lend the securities described in subsection (1), but only to the extent reasonably necessary to cover the indebtedness.

(3) Securities described in subsection (1) may be segregated in bulk.

Reduction of debit balances

5.13 (1) In this section,

"derivatives account" includes a commodity futures account;

"free credit balance"

(a) includes money received from, or held for the account of, clients by a registered firm,

(i) for investment pending the investment and payment for securities purchased by the clients from or through the registered firm where the registered firm does not own such securities at the time of purchase or has not purchased them on behalf of the clients, pending the purchase thereof by the registered firm, and

(ii) as proceeds of securities purchased from clients or sold by the registered firm for the account of clients where securities have been delivered to the registered firm but payment has not been made pending payment of such proceeds to the clients, and

(b) does not include money that is committed to be used on a specific settlement date as payment for securities if the registered firm who maintains the securities account prepares financial statements on a settlement date basis.

(2) If a registered firm maintains two or more accounts for a client, one of which is a derivatives account that contains a debit balance of more than $5,000, the

registered firm must transfer from any account containing a free credit balance as much of the free credit balance as is necessary to eliminate, or reduce to the greatest extent possible, the debit balance in the derivatives account.

(3) Subsection (2) does not apply to a registered firm in respect of a client's securities and derivatives accounts if the client has given directions to the registered firm in writing, or orally if subsequently confirmed in writing,

(a) to transfer an amount that is less than the amount otherwise required to be transferred, or

(b) not to transfer any amount from the securities account to the derivatives account.

(4) A registered firm who maintains a securities account and a derivatives account for the same client may make a transfer of any amount of a free credit balance from the securities account to the derivatives account, or, from the derivatives account to the securities account of the client if

(a) the transfer is made in accordance with a written agreement between the registered firm and the client, and

(b) the transfer is not a transfer referred to in subsections (2) and (3).

Account supervision

5.14 A registered adviser must ensure that the account of each client is supervised separately and distinctly from the accounts of other clients.

Division 3: Record-keeping

Records – general requirements

5.15 (1) A registered firm must maintain records to

(a) accurately record its business activities, financial affairs, and client transactions, and

(b) demonstrate compliance with applicable requirements of securities legislation.

(2) Such records must include, but are not limited to, records that

(a) permit timely creation and audit of financial statements and other financial information required to be filed or delivered to the securities regulatory authority,

(b) permit determination of the registered firm's capital position,

(c) demonstrate compliance with the registered firm's capital and insurance requirements,

(d) demonstrate compliance with internal control procedures,

(e) demonstrate compliance with the firm's policies and procedures,

(f) permit the identification and segregation of client cash, securities, and other property,

(g) identify all transactions conducted on behalf of the registered firm and each of its clients, including the parties to the transaction and the terms of the purchase or sale,

(h) provide an audit trail for

(i) client instructions and orders, and

(ii) each trade transmitted or executed for a client or by the registered firm on its own behalf,

(i) permit creation of account activity reports for clients,

(j) provide securities pricing as may be required by securities legislation,

(k) demonstrate compliance with client account opening requirements,

(l) document correspondence with clients, and

(m) document compliance and supervision actions taken by the firm.

Records – form, accessibility and retention

5.16 **(1)** A registered firm must keep its records safe and in a durable form.

(2) For a period of two years after the creation of a record, a registered firm must keep the record in a manner that permits it to be provided promptly to the regulator, and thereafter the record may be kept in a manner that permits it to be provided to the regulator in a reasonable period of time.

(3) A record provided under subsection (2) must be in a form that is capable of being read by the regulator.

(4) A registered firm must keep

(a) an activity record for seven years from the date of the act, and

(b) a relationship record for seven years from the date the person or company ceases to be a client of the registered firm.

(5) In subsection (4),

"activity record" includes

(a) a confirmation of a transaction required under section 5.18 [*confirmation of trade – general*],

(b) a communication between the registrant and the client made in respect of a purchase or sale of a security, including a record of an oral communication,

(c) a statement of account and portfolio required under section 5.22 [*statements of account and portfolio*],

(d) a referral of the client that is subject to Division 2 [*referral arrangements*] of Part 6; and

"relationship record" means a document, other than an activity record, that describes the relationship between a registrant and a client of the registrant including

(a) a communication between the registrant and the client not made in respect of a purchase or sale of a

security, including a record of an oral communication,

(b) an agreement entered into between the registrant and the client,

(c) a client complaint,

(d) relationship disclosure information provided to the client under section 5.4 [*providing relationship disclosure information*].

Division 4: Account activity reporting

Exemption for investment fund managers and exempt market dealers

5.17 This Division does not apply to

(a) an investment fund manager, or

(b) an exempt market dealer that does not handle, hold, or have access to client assets, including cheques and other similar instruments.

Confirmation of trade – general

5.18 (1) Subject to subsection (2), a registered dealer that has acted on behalf of a client in connection with a trade or series of trades in a security must promptly send or deliver to the client, or to a registered adviser acting for the client if the client consents, a written confirmation of the transaction, setting out,

(a) the quantity and description of the security traded,

(b) the consideration,

(c) the commission, sales charge, service charge and any other amount charged in respect of the trade,

(d) whether the registered dealer acted as principal or agent,

(e) the date and the name of the marketplace, if any, on which the transaction took place, or if applicable, a statement that the

transaction took place on more than one marketplace or over more than one day,

(f) the name of the dealing representative, if any, in the transaction,

(g) the settlement date of the trade, and

(h) if applicable, that the security is a security of the registrant, a security of a related issuer of the registrant or, in the course of a distribution, a security of a connected issuer of the registrant.

(2) If the transaction involved more than one trade or if the transaction took place on more than one marketplace the information referred to in subsection (1) above may be set out in the aggregate if the confirmation also contains a statement that additional details concerning the transaction will be provided to the client upon request and without additional charge.

(3) If a trade is made in a security of a mutual fund, scholarship plan, educational plan or educational trust, the confirmation required under subsection (1) must contain, in addition to the requirements of subsection (1), the price per share or unit at which the trade was effected.

(4) Paragraph (1)(h) does not apply if the security is a security of a mutual fund that is an affiliate of the registered dealer and the names of the dealer and the fund are sufficiently similar to disclose that they are affiliated.

(5) For the purpose of paragraph (1)(f), a dealing representative may be identified by means of a code or symbol if the confirmation also contains a statement that the name of the dealing representative will be provided to the client on request of the client.

Reporting trades otherwise

5.19 (1) If a registered firm sends or delivers to a client a report, other than a confirmation under section 5.18 [*confirmation of trade – general*], of a trade in a security that the registered firm made with or on behalf of the client, including a report of a trade made by or at the direction of a registrant that is managing the investment portfolio of the client through discretionary authority granted by the client, the report must state, if applicable, that the security is a security of the registered firm, a security of a related

issuer of the registered firm or, in the course of a distribution, a security of a connected issuer of the registered firm.

(2) Subsection (1) does not apply if the security is a security of a mutual fund that is an affiliate of the registered firm and the names of the registered firm and the fund are sufficiently similar to disclose that they are affiliated.

Semi-annual confirmations for certain automatic plans

5.20 The requirement under section 5.18 [*confirmation of trade – general*] to send or deliver a confirmation promptly does not apply to a registered dealer in respect of a trade if

(a) the client gave the dealer prior written notice that the trade is made under the client's participation in an automatic payment plan or an automatic withdrawal plan in which a trade is made at least monthly,

(b) the registered dealer sent a confirmation as required under section 5.18 [*confirmation of trade – general*] for the first trade made under the plan after receiving the notice referred to under paragraph (a),

(c) the trade is in a security of a mutual fund, scholarship plan, educational plan or educational trust, and

(d) the registered dealer sends or delivers the information required under section 5.18 [*confirmation of trade – general*] for the trade semi-annually to the client or, if the client consents, to a registered adviser acting for the client.

Confirmation of trade – exemption

5.21 A registered dealer is not required to send or deliver to a client a written confirmation of a trade in a security of a mutual fund if the investment fund manager of the mutual fund sends or delivers the client a written confirmation containing the information required to be sent under section 5.18 [*confirmation of trade – general*].

Statements of account and portfolio

5.22 **(1)** A registered dealer must send or deliver a statement of account to each client not less than once every three months showing any debit or credit balance and the details of securities held for or owned by the client, unless the client has requested statements on a monthly basis in which case the registered dealer must send or deliver statements monthly.

(2) The statement required by subsection (1) must list the securities held for the client and indicate clearly which securities are held for safekeeping or in segregation.

(3) Subject to subsection (4), a registered adviser must send or deliver to each client not less than once every three months, a statement of the portfolio of the client under the registered adviser's management, unless the client has requested statements on a monthly basis in which case the registered adviser must send or deliver statements monthly.

(4) If a client has provided the consent referred to in subsection 5.18(1) [*confirmation of trade – general*], the registered adviser must send or deliver to the client not less than once every month, a statement of the portfolio of the client under the registered adviser's management.

Division 5: Compliance

Compliance system

5.23 **(1)** A registered firm must establish, maintain and apply a system of controls and supervision sufficient to

(a) provide reasonable assurance that the firm and each individual acting on its behalf complies with securities legislation, and

(b) manage the risks associated with its business in conformity with prudent business practices.

(2) The system of controls referred to in subsection (1) must be documented in the form of written policies and procedures.

Ultimate designated person – functions

5.24 The ultimate designated person of a registered firm must

(a) supervise the activities of the firm that are directed towards ensuring compliance with securities legislation by the firm and each individual acting on its behalf, and

(b) promote compliance with securities legislation within the firm.

Chief compliance officer – functions

5.25 The chief compliance officer of a registered firm must

(a) establish and maintain policies and procedures for assessing compliance by the firm, and individuals acting on its behalf, with securities legislation,

(b) monitor and assess compliance by the firm, and individuals acting on its behalf, with securities legislation,

(c) report to the ultimate designated person as soon as practicable if the chief compliance officer becomes aware of any circumstances indicating that the firm, or any individual acting on its behalf, is in substantial non-compliance with securities legislation, and

(d) submit an annual report to the board of directors or partnership for the purpose of assessing compliance by the firm, and individuals acting on its behalf, with securities legislation.

Access to board or partnership

5.26 A registered firm must permit its ultimate designated person and its chief compliance officer to directly access the board of directors or partnership at such times as either of them may independently deem necessary or advisable in view of his or her responsibilities.

Division 6: Complaint handling

Exemption for investment fund managers and exempt market dealers

5.27 This Division does not apply to

(a) an investment fund manager, or

(b) an exempt market dealer in respect of a permitted client.

Complaints

5.28 A registered firm must document, and effectively and fairly respond to, each complaint made to the registered firm about any product or service offered by the firm or a representative of the firm.

Dispute resolution service

5.29 (1) A registered firm must participate in an independent dispute resolution service unless required by securities legislation to use the dispute resolution service provided by the securities regulatory authority.

(2) If a person or company makes a complaint to a registered firm about any trading or advising activity of the firm or one of its representatives, the registered firm must as soon as practicable inform the person or company of how to contact and use

(a) the dispute resolution service in which the firm participates, or

(b) the dispute resolution service of the securities regulatory authority, if it provides a dispute resolution service.

Policies and procedures on complaint handling

5.30 A registered firm must have policies and procedures on documenting and responding to complaints made about its products and services.

Reporting to the securities regulatory authority

5.31 (1) On January 30 and July 30 of each year, a registered firm must deliver a report containing the following information to the securities regulatory authority:

(a) each complaint made to the firm during the reporting period,

(b) each complaint that was resolved during the reporting period,

(c) each complaint that remained unresolved as of the end of the reporting period.

(2) In subsection (1), "reporting period" means, for information that must be delivered on

(a) January 30, from July 1 to December 31 of the prior year, and

(b) July 30, from January 1 to June 30 of the current year.

Firms registered in Québec

5.32 A registered firm in Québec complies with Division 6 if it complies with sections 168.1.1 to 168.1.3 of the Québec Securities Act.

Division 7: Non-resident registrants

Notice to clients

5.33 A registered firm whose head office is not located in the local jurisdiction must provide its clients in the local jurisdiction

(a) a statement in writing disclosing the non-resident status of the registrant,

(b) the registrant's jurisdiction of residence,

(c) the name and address of the agent for service of process of the registrant in the local jurisdiction, and

(d) the nature of risks to clients that legal rights may not be enforceable in the local jurisdiction.

Compliance with requests

5.34 A registered firm whose head office is not located in the local jurisdiction must comply with requests under the securities regulatory authority's investigation powers and orders under the securities legislation in the jurisdiction in relation to the firm's dealings with clients in the jurisdiction to the extent those powers and orders would be enforceable against the firm if the firm were resident in the jurisdiction.

Custody of assets

5.35 (1) A registered firm whose head office is not located in a jurisdiction of Canada must make reasonable efforts to ensure that all client assets are held

(a) directly by the client,

(b) on behalf of the client by a custodian or sub-custodian that

(i) meets the guidelines prescribed for acting as a sub-custodian of the portfolio securities of a mutual fund in Part 6 of National Instrument 81-102 *Mutual Funds*, and

(ii) is subject to the Bank for International Settlements' framework for international convergence of capital measurement and capital standards, or

(c) on behalf of the client by a registered dealer that is a member of an SRO that is a member of Canadian Investor Protection Fund or other comparable compensation fund or contingency trust fund.

(2) Section 5.10 [*holding client assets in trust*] does not apply to a registered firm that is subject to subsection (1).

PART 6 - CONFLICTS OF INTEREST

Division 1: General

Identifying and responding to conflicts of interest

6.1 (1) A registered firm must make reasonable efforts to identify existing conflicts of interest and conflicts the registered firm, acting reasonably, would expect to arise between the firm, including each individual acting on the firm's behalf, and its clients.

(2) A registered firm must respond to a conflict of interest identified under subsection (1).

(3) If a client, acting reasonably, would expect to be informed of a conflict of interest identified under subsection (1), the registered firm must disclose the nature and extent of the conflict of interest to the client.

(4) This section does not apply to an investment fund manager in respect of an investment fund that is subject to National Instrument 81-107 *Independent Review Committee for Investment Funds*.

Prohibition on certain managed account transactions

6.2 **(1)** In this section, "responsible person" means, for a registered adviser,

(a) the adviser, and

(b) each of the following who has access to, or participates in formulating, an investment decision to be made on behalf of a client of the adviser or advice to be given to a client of the adviser:

(i) a partner, director, officer, employee or agent of the adviser,

(ii) an affiliate of the adviser,

(iii) a partner, director, officer, employee or agent of an affiliate of the adviser,

(iv) an associate of a person or company listed in subparagraph (i), (ii) or (iii).

(2) A registered adviser must not cause an investment portfolio managed by it to

(a) purchase or sell a security of an issuer in which a responsible person is a partner, officer, director, or employee, or for which a responsible person is an agent, unless this fact is disclosed to the client and the written consent of the client to the purchase is obtained before the purchase,

(b) purchase or sell a security in which a responsible person has direct or indirect beneficial ownership, or over which a responsible person exercises control or direction, unless this fact is disclosed to the client and the client consents to the purchase in writing before the purchase,

(c) purchase or sell a security from or to another investment portfolio managed by the adviser or a responsible person including an investment fund for which the adviser or responsible person acts as adviser, or

(d) provide a guarantee or loan to a responsible person.

Registrant relationships

6.3 An individual registered as a dealing, advising or associate advising representative of a registered firm must not act as an officer, partner or director of another registered firm that is not an affiliate of the first-mentioned registered firm.

Issuer disclosure statement

6.4 **(1)** In this section, "issuer disclosure statement" means, for a registered firm,

(a) a list of the related issuers of the registered firm,

(b) a concise statement of the nature of the relationship between the registered firm each related issuer of the registered firm, and

(c) in the course of a distribution, a concise statement of the nature of the relationship between the registered firm the connected issuers of the registered firm.

(2) A registered firm must maintain a current issuer disclosure statement.

(3) When a registrant opens an account for a client, the registrant must provide the client with a current issuer disclosure statement.

(4) If there is a significant change to a registered firm's issuer disclosure statement, the registered firm must make reasonable efforts to notify its clients of the change in a timely manner, and wherever practicable before the registrant next

(a) purchases or sells, for the client, a security of a related issuer, or in the course of a distribution, a connected issuer, or

(b) advises the client to purchase, sell or hold a security of a related issuer, or in the course of a distribution, a connected issuer.

(5) A registrant may notify a client under subsection (3) by providing the client with

(a) a revised issuer disclosure statement, or

(b) a written notice describing the change.

(6) For the purposes of this section, "related issuer" and "connected issuer" do not include a mutual fund that is an affiliate of a registered firm if the names of the registered firm and the mutual fund are sufficiently similar to disclose that they are affiliated.

(7) This section does not apply to a registered firm if it does not act as an adviser or a dealer in respect of,

(a) its own securities,

(b) securities of a related issuer of the registered firm, or

(c) in the course of a distribution, securities of a connected issuer of the registered firm.

(8) This section does not apply to a registered dealer in respect of a client if

(a) the dealer does not trade for the client other than to execute the client's order to purchase or sell a security,

(b) the dealer does not advise the client in respect of trades, and

(c) the restrictions described in paragraphs (a) and (b) are set out in the dealer's account agreement with the client.

Recommendations

6.5 A registered firm must not make a recommendation in any medium of communication to buy, sell or hold its own securities, securities of a related issuer or, in the course of a distribution, securities of a connected issuer of the registered firm, unless

(a) the recommendation is in a publication that

(i) is published or distributed by the registered firm regularly in the ordinary course of its business, and

(ii) includes in a conspicuous position and large type, a complete statement of the relationship or connection between the registered firm and the issuer,

(b) the registered firm is acting as an underwriter in a distribution of the securities,

(c) the recommendation is in respect of a security of a mutual fund that is an affiliate of the registered firm and the names of the registered firm and the fund are sufficiently similar to disclose that they are affiliated, or

(d) the recommendation is in respect of a security of a scholarship or educational plan or trust that is an affiliate of the registered firm and the names of the registered firm and the scholarship or educational plan or trust are sufficiently similar to disclose that they are affiliated.

Limitations on advising

6.6 (1) A registered firm must not act as an adviser in respect of a security of the registered firm, a related issuer of the registered firm or, in the course of a distribution, a connected issuer of the registered firm.

(2) Subsection (1) does not apply if

(a) the registered firm is acting as an adviser in respect of a fully-managed account and the transaction is made in accordance with subsection 4.1(4) of National Instrument 81-102 *Mutual Funds*,

(b) the registered firm is acting as an adviser in respect of an account that is not a fully-managed account and the registered firm, before or concurrently with providing the advice, makes a written or oral statement to the client of the relationship between the registered firm and the issuer of the securities,

(c) the client is a registered dealer, or

(d) the client is a related issuer of the registered firm.

Allocating investment opportunities fairly

6.7 (1) A registered adviser must ensure fairness in allocating investment opportunities among its clients.

(2) A registered adviser must provide a client with a copy of the written policies required under section 5.23 [*compliance system*] that respond to the requirement under subsection (1)

(a) when the adviser opens an account for the client, and

(b) if there is a significant change to the policies last provided to the client, the earlier of

(i) the 45th day after the date the policies were changed, or

(ii) as soon as practicable after next advising the client to purchase, sell or hold a security.

Acquiring a registered firm's securities or assets

6.8 (1) A person or company must give the regulator written notice at least 30 days before the acquisition if it proposes to acquire,

(a) directly or indirectly, beneficial ownership of, or control or direction over, ten per cent or more of the securities of a registered firm, or

(b) a substantial part of the assets of a registered firm.

(2) The notice required under subsection (1) must include all relevant facts regarding the acquisition to permit the regulator to determine if it is

(i) likely to give rise to conflicts of interest,

(ii) likely to hinder the registered firm in complying with securities legislation,

(iii) inconsistent with an adequate level of investor protection, or

(iv) otherwise prejudicial to the public interest.

(3) If, within 30 days of the regulator's receipt of a notice under subsection (1), the regulator notifies the person or company making the acquisition that the regulator objects to the acquisition, the acquisition must not occur until the regulator approves it.

(4) Following receipt of a notice of objection under subsection (3), the person or company who submitted the notice to the regulator may request the regulator to hold a hearing on the matter.

(5) Subsection (1) does not apply to

(a) an acquisition by a registered firm in the ordinary course of its business of trading in securities, or

(b) an amalgamation, merger, arrangement or reorganization in which the direct or indirect beneficial ownership of a registered firm does not change.

Settling securities transactions

6.9 A registered firm must not require a person or company to settle that person's or company's transaction with the registered firm through that person's or company's account at a Canadian financial institution as a condition, or on terms that would appear to a reasonable person to be a condition, of supplying a product or service, unless this method of settlement is reasonably necessary to provide the specific product or service that the person or company has requested.

Tied selling

6.10 No person or company shall require another person or company

(a) to buy, sell or hold particular securities as a condition, or on terms that would appear to a reasonable person to be a condition, of supplying or continuing to supply products or services, or

(b) to buy, sell or use any products or services as a condition, or on terms that would appear to a reasonable person to be a condition, of buying or selling particular securities.

Division 2: Referral arrangements

Definitions – referral arrangements

6.11 For the purposes of this section to section 6.15 [*application and transition to prior referral arrangements*]

"client" includes a prospective client;

"referral arrangement" means any arrangement in which a registrant agrees to pay or receive a referral fee; and

"referral fee" means any form of compensation, direct or indirect, paid for the referral of a client to or from a registrant.

Permitted referral arrangements

6.12 A registrant must not participate in a referral arrangement unless,

(a) before a client is referred by or to the registrant, the terms of the referral arrangement are set out in a written agreement between

(i) the registrant,

(ii) the person or company making or receiving the referral, and

(iii) if the registrant is a registered individual, the registered firm on whose behalf the registered individual acts,

(b) the registrant or, if the registrant acts on behalf of a registered firm, the registered firm, records all referral fees on its records, and

(c) the registrant ensures that the information prescribed by subsection 6.13(1) [*disclosing referral arrangements to clients*] is provided to the client in writing before the earlier of opening the client's

account or any services are provided to the client under the referral arrangement.

Disclosing referral arrangements to clients

6.13 (1) Written disclosure of the referral arrangement as required by subsection 6.12(c) [*permitted referral arrangements*] must include the following:

(a) the name of each party to the referral arrangement;

(b) the purpose and material terms of the referral arrangement, including the nature of the services to be provided by each party;

(c) any conflicts of interest resulting from the relationship between the parties to the referral arrangement and from any other element of the referral arrangement;

(d) the method of calculating the referral fee and, to the extent possible, the amount of the fee;

(e) the category of registration of each registrant that is a party to the agreement with a description of the activities that the registrant is authorized to engage in under that category and, giving consideration to the nature of the referral, the activities that the registrant is not permitted to engage in;

(f) if a referral is made to a registrant, a statement that all activity requiring registration resulting from the referral arrangement will be provided by the registrant receiving the referral; and

(g) any other information that a reasonable client would consider important in evaluating the referral arrangement.

(2) If there is a change to the information set out in subsection (1), the registrant must ensure that written disclosure of that change is provided to each client affected by the change as soon as practicable and no later than the 30th day before the date on which a referral fee is next paid or received.

Reasonable diligence when referring clients

6.14 A registrant that refers a client to another person or company must take reasonable steps to satisfy itself that the person or company has the appropriate qualifications to provide the services, and if applicable, is registered to provide those services.

Application and transition to prior referral arrangements

6.15 (1) Sections 6.12 [*permitted referral arrangements*] to 6.14 [*reasonable diligence when referring clients*] apply to a referral arrangement entered into before this Instrument came into force if a referral fee is paid under the referral arrangement after this Instrument comes into force.

(2) Subsection (1) does not apply until the 180th day after this Instrument comes into force.

PART 7 - SUSPENSION AND REVOCATION OF REGISTRATION

Activities requiring registration are prohibited

7.1 If the registration of a registered firm or a registered individual in a category is suspended, he, she or it must not act as a dealer, an adviser, or an investment fund manager in that category.

Suspension of registered firm

7.2 If the registration of a registered firm in a category is suspended, the registration of each registered dealing, advising or associate advising representative in that category is suspended.

Suspension of IDA approval

7.3 (1) If the IDA revokes or suspends a registered firm's membership, the firm's registration in the category of investment dealer is suspended.

(2) If the IDA revokes or suspends a registered individual's approval, the individual's registration in the category of investment dealer is suspended.

Suspension of MFDA approval

7.4 **(1)** If the MFDA revokes or suspends a registered firm's membership, the firm's registration in the category of mutual fund dealer is suspended.

(2) If the MFDA revokes or suspends a registered individual's approval, the individual's registration in the category of mutual fund dealer is suspended.

(3) This section does not apply in Québec.

Failure to pay fees

7.5 **(1)** A registered firm is suspended on the 30th day after the date its annual fees were due if the firm has not paid its annual fees.

(2) In subsection (1), "annual fees" means

(a) in Alberta, the fee required under section 8 of Alta. Reg. 115/95 – Securities Regulation,

(b) in British Columbia, the fee required under section 22 of *Securities Regulation B.C. Reg 196/97*,

(c) in Québec, the fee required under section 271.5 of the Québec Securities Regulation,

(d) in Ontario, the participation fee required under Ontario Securities Commission Rule 13-502 *Fees*, and

(e) in Saskatchewan, the annual registration fee required to be paid by a registrant under section 176 of *The Securities Regulations* (Saskatchewan).

Termination of employment, etc.

7.6 If a registered individual ceases to have an employment, partnership or agency relationship with a registered firm, the individual's registration with the registered firm is suspended on the date the relationship ceased.

Revocation of registration

7.7 If a registration has been suspended under this Part and it has not been reinstated, the registration is revoked on the second anniversary following the suspension.

Exception – hearing

7.8 Despite 7.7 [*revocation of registration*], if a hearing concerning a suspended registrant is commenced under the Act, the registration remains suspended until a decision has been made by the regulator or the securities regulatory authority.

PART 8 - EXEMPTIONS FROM REGISTRATION

Division 1: General

Interpretation

8.1 (1) In this Division, each of the following terms has the same meaning ascribed to the term in section 1.1 of National Instrument 45-106 *Prospectus and Registration Exemptions*: "director", "executive officer", "person" and "subsidiary".

(2) In this Division, an exemption from the dealer registration requirement is deemed to be an exemption from the underwriter registration requirement.

Investment fund distributing through dealer

8.2 The dealer registration requirement does not apply to an investment fund or the investment fund manager of the fund that distributes a security of the investment fund's own issue only through a registered dealer.

Issuer distributing through dealer

8.3 The dealer registration requirement does not apply to an issuer that is trading in securities for the purpose of distributing a security of its own issue for its own account if the trading is done only through a registered dealer.

Investment fund reinvestment

8.4 (1) Subject to subsections (3), (4) and (5), the dealer registration requirement does not apply to an investment fund or the investment fund manager of the fund trading

(a) a dividend or distribution out of earnings, surplus, capital or other sources payable in respect of the investments fund's securities are applied to the purchase of the security that is of the same class or series as the securities to which the dividends or distributions out of earnings, surplus, capital or other sources are attributable, or

(b) subject to subsection (2), the security holder makes an optional cash payment to purchase the security of the investment fund that is of the same class or series of securities described in paragraph (a) that trade on a marketplace.

(2) The aggregate number of securities issued under the optional cash payment referred to in paragraph (1)(b) must not exceed, in any fiscal year of the investment fund during which the trade takes place, two per cent of the issued and outstanding securities of the class to which the plan relates as at the beginning of the fiscal year.

(3) A plan that permits a trade described in subsection (1) must be available to every security holder in Canada to which the dividend or distribution is out of earnings, surplus, capital or other sources available.

(4) No sales charge is payable on a trade described in subsection (1).

(5) The most recent prospectus of the investment fund, if any, must set out

(a) details of any deferred or contingent sales charge or redemption fee that is payable at the time of the redemption of the security,

(b) any right that the security holder has to make an election to receive cash instead of securities on the payment of a dividend or making of a distribution by the investment fund, and

(c) instructions on how the right referred to in paragraph (b) can be exercised.

Additional investment in investment funds

8.5 The dealer registration requirement does not apply to an investment fund or the investment fund manager of the fund in respect of a trade in a security of the investment fund's own issue with a security holder of the investment fund if

(a) the security holder initially acquired securities of the investment fund as principal for an acquisition cost of not less than $150,000 paid in cash at the time of the trade,

(b) the trade is for a security of the same class or series as the securities initially acquired, as described in paragraph (a), and

(c) the security holder, as at the date of the trade, holds securities of the investment fund that have

(i) an acquisition cost of not less than $150,000, or

(ii) a net asset value of not less than $150,000.

Private investment fund - loan and trust pools

8.6 (1) The dealer registration requirement does not apply in respect of a trade in a security of an investment fund if the investment fund

(a) is administered by a trust company or trust corporation that is registered or authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada,

(b) has no promoter or manager other than the trust company or trust corporation referred to in paragraph (a), and

(c) co-mingles the money of different estates and trusts for the purpose of facilitating investment.

(2) Despite subsection (1), a trust company or trust corporation registered under the laws of Prince Edward Island that is not registered under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in another jurisdiction of Canada is not a trust company or trust corporation for the purpose of paragraph (1)(a).

(3) The investment fund manager registration requirement does not apply to a trust company or trust corporation that administers an investment fund referred to in subsection (1).

Private investment club – investment fund manager exemption

8.7 The investment fund manager registration requirement does not apply to a person or company that directs the business, operations or affairs of an investment fund if the investment fund

(a) has no more than 50 beneficial security holders,

(b) does not seek and has never sought to borrow money from the public,

(c) does not and has never distributed its securities to the public,

(d) does not pay or give any remuneration for investment advice or in respect of trades in securities, except normal brokerage fees, and

(e) for the purpose of financing the operations of the investment fund, requires holders to make contributions in proportion to the value of the securities held by them.

Mortgages

8.8 (1) In this section, "syndicated mortgage" means a mortgage in which two or more persons participate, directly or indirectly, as lenders in the debt obligation that is secured by the mortgage.

(2) Subject to subsection (3), the dealer registration requirement does not apply in respect of a trade in a mortgage on real property in a jurisdiction of Canada by a person who is registered or licensed, or exempted from registration or licensing, under mortgage brokerage or mortgage dealer legislation of that jurisdiction.

(3) In Alberta, British Columbia, Manitoba, Québec and Saskatchewan, subsection (2) does not apply in respect of a trade in a syndicated mortgage.

Personal Property Security legislation

8.9 The dealer registration requirement does not apply in respect of a trade in a security evidencing indebtedness secured by or under a security agreement, secured in accordance with personal property security legislation of a jurisdiction of Canada that provides for the granting of security in personal property.

Variable insurance contract

8.10 **(1)** In this section,

"contract", "group insurance", "insurance company", "life insurance" and "policy" have the respective meanings assigned to them in the legislation for a jurisdiction referenced in Appendix A of National Instrument 45-106 *Prospectus and Registration Exemptions*; and

"variable insurance contract" means a contract of life insurance under which the interest of the purchaser is valued for purposes of conversion or surrender by reference to the value of a proportionate interest in a specified portfolio of assets.

(2) The dealer registration requirement does not apply in respect of a trade in a variable insurance contract by an insurance company if the variable insurance contract is

(a) a contract of group insurance,

(b) a whole life insurance contract providing for the payment at maturity of an amount not less than 75 per cent of the premium paid up to age 75 years for a benefit payable at maturity,

(c) an arrangement for the investment of policy dividends and policy proceeds in a separate and distinct fund to which contributions are made only from policy dividends and policy proceeds, or

(d) a variable life annuity.

Schedule III banks and cooperative associations - evidence of deposit

8.11 The dealer registration requirement does not apply in respect of a trade in an evidence of deposit issued by a Schedule III bank or an association governed by the *Cooperative Credit Associations Act* (Canada).

Plan administrators

8.12 (1) The dealer registration requirement does not apply in respect of a trade of a security of an issuer by a trustee, custodian, or administrator acting on behalf of, or for the benefit of employees, executive officers, directors or consultants of the issuer or of a related entity of the issuer with

(a) the issuer,

(b) a current or former employee, executive officer, director or consultant of the issuer or a related entity of the issuer,

(c) a permitted assign of a person referred to in paragraph (b),

if the trade is pursuant to a plan of the issuer and the security is obtained directly from the issuer or from a current or former employee, executive officer, director or consultant of the issuer or of a related entity of the issuer or through a registered dealer.

(2) In this section,

"consultant" has the same meaning as in section 2.22 of National Instrument 45-106 *Prospectus and Registration Exemptions*;

"permitted assign" has the same meaning as in section 2.22 of National Instrument 45-106 *Prospectus and Registration Exemptions*;

"plan" means a plan or program established or maintained by an issuer providing for the acquisition of securities of the issuer by employees, executive officers, directors or consultants of the issuer or of a related entity of the issuer; and

"related entity" has the same meaning as in section 2.22 of National Instrument 45-106 *Prospectus and Registration Exemptions*.

Reinvestment plan

8.13 (1) Subject to subsections (3), (4) and (5), the dealer registration requirement does not apply in respect of the following trades by an issuer, or by a trustee, custodian or administrator acting for or on behalf of the issuer, to a security holder of the issuer if the trades are permitted by a plan of the issuer:

(a) a trade in a security of the issuer's own issue if a dividend or distribution out of earnings, surplus, capital or other sources

payable in respect of the issuer's securities is applied to the purchase of the security, and

(b) subject to subsection (2), a trade in a security of the issuer's own issue if the security holder makes an optional cash payment to purchase the security of the issuer that trades on a marketplace.

(2) The aggregate number of securities issued under the optional cash payment referred to in subsection (1)(b) must not exceed, in any financial year of the issuer during which the trade takes place, 2% of the issued and outstanding securities of the class to which the plan relates as at the beginning of the financial year.

(3) A plan that permits the trades described in subsection (1) must be available to every security holder in Canada to which the dividend or distribution out of earnings, surplus, capital or other sources is available.

(4) This section does not apply to a trade in a security of an investment fund.

(5) Subject to section 8.4.1 [*transition – reinvestment plan*] of National Instrument 45-106, if the security traded under a plan described in subsection (1) is of a different class or series than the security to which the dividend or distribution is attributable, the issuer or the trustee, custodian or administrator must have provided to each participant that is eligible to receive a security under the plan either a description of the material attributes and characteristics of the security traded under the plan or notice of a source from which the participant can obtain the information without charge.

Advising generally

8.14 (1) The adviser registration requirement does not apply to a person or company that engages in, or holds himself, herself or itself out as engaging in, the business of advising others, either through direct advice or through publications or other media, as to the investing in or the buying or selling of securities, including classes of securities and the securities of a class of issuers, not purporting to be tailored to the needs of the person or company receiving the advice.

(2) If a person or company that is exempt from the adviser registration requirement by reason of subsection (1) recommends buying, selling or holding a specified security, a class of securities or the securities of a class of issuers in which any

of the following has a financial or other interest, the adviser must disclose the interest concurrently with providing the advice:

(a) the adviser;

(b) any partner, director or officer of the adviser;

(c) any person or company that would be an insider of the adviser if the adviser were a reporting issuer.

(3) For the purpose of subsection (2), "financial or other interest" includes

(a) ownership, beneficial or otherwise, in the security or in another security issued by the same issuer,

(b) an option in the security, including the terms of the option,

(c) a commission or other compensation received, or expected to be received, from any person or company in connection with a trade in the security,

(d) a financial arrangement regarding the security with any person or company, and

(e) a financial arrangement with any underwriter or other person or company who has any interest in the securities.

International dealer

8.15 (1) In this section

"debt security" has the same meaning as in section 1.1 of National Instrument 45-106 *Prospectus and Registration Exemptions*;

"foreign security" means

(a) a security issued by an issuer incorporated, formed or created under the laws of a jurisdiction other than Canada or any province or territory of Canada, and

(b) a security issued by a country other than Canada or by any political division of the country;

"international dealer" means a dealer that is registered under the securities legislation of the foreign jurisdiction in which its head office or principal place of business is located in a category of registration that permits the dealer to carry on the activities in that jurisdiction that registration as a dealer would permit the dealer to carry on in the local jurisdiction.

(2) Subject to subsection (3), the registration requirement does not apply to an international dealer

(a) carrying on those activities, other than sales of securities, that are reasonably necessary to facilitate a distribution of securities that are offered primarily abroad,

(b) trading in debt securities with a permitted client in the course of a distribution, where the debt securities are offered primarily abroad and a prospectus has not been filed with a Canadian securities regulatory authority for the distribution,

(c) trading in a debt security that is a foreign security with a permitted client, other than in the course of the distribution by which the foreign debt security was issued,

(d) trading in foreign securities with a permitted client, except in the course of a distribution for which a prospectus has been filed with a Canadian securities regulatory authority,

(e) trading in foreign securities with an investment dealer, or

(f) trading in any securities with an investment dealer that is acting as principal

if the international dealer is acting as principal or as agent for the issuer of the securities, for another permitted client, or for a person that is not a resident of Canada.

(3) An international dealer may not rely on subsection (2) unless it has delivered to the securities regulatory authority an executed Form 35-101F1 *Submission to Jurisdiction and Appointment of Agent for Service.*

(4) An international dealer may not rely on subsection (2) to trade with a permitted unless it first notifies the client,

(i) that it is not registered in Canada,

(ii) of the international dealer's jurisdiction of residence,

(iii) of the name and address of the agent for service of process of the international dealer in the local jurisdiction, and

(iv) that there may be difficulty enforcing legal rights against the international dealer because it is resident outside Canada and all or substantially all of its assets are situated outside Canada.

(5) For the purpose of subsection (4), "permitted client" excludes a person or company referred to in paragraph (d) of the definition of permitted client in section 1.1.

International adviser

8.16 (1) In this section

"international adviser" means an adviser that

(a) has its head office or principal place of business in a foreign jurisdiction,

(b) is registered, or operates under an exemption from registration, under the securities legislation of the foreign jurisdiction in which its head office or principal place of business is located in a category of registration that permits it to carry on the activities in that jurisdiction that a registered adviser is permitted to carry on in the local jurisdiction, and

(c) engages in the business of an adviser in the foreign jurisdiction in which its head office or principal place of business is located.

(2) The adviser registration requirement does not apply to an international adviser that is acting as an adviser for a permitted client if

(a) it delivers to the securities regulatory authority, before relying on this subsection, an executed Form 31-103F2 *Submission to Jurisdiction and Appointment of Agent for Service*,

(b) it notifies the client, before advising the client,

(i) that it is not registered in Canada,

(ii) of the international adviser's jurisdiction of residence,

(iii) of the name and address of the agent for service of process of the international adviser in the local jurisdiction, and

(iv) that there may be difficulty enforcing legal rights against the international adviser because it is resident outside Canada and all or substantially all of its assets are situated outside Canada,

(c) it does not advise clients in Canada with respect to securities of Canadian issuers, unless providing advice on securities of a Canadian issuer is incidental to providing advice on securities of a foreign issuer, and

(d) during its most recent fiscal year, not more than ten per cent of the aggregate consolidated gross revenue of the international adviser, its affiliates and its affiliated partnerships is derived from the portfolio management activities of the international adviser, its affiliates and its affiliated partnerships in Canada.

Sub-advisers

8.17 The adviser registration requirement does not apply to a person or company, not ordinarily resident in the jurisdiction, in connection with that person or company acting as an adviser for a registered adviser, or for a dealer acting as a portfolio manager as permitted by section 2.5 [*exemption from adviser registration for IDA members with discretionary authority*], if

(a) the obligations and duties of the person or company so acting as an adviser are set out in a written agreement with the registrant,

(b) the registrant contractually agrees with its clients on whose behalf investment advice is or portfolio management services are to be provided to be responsible for any loss that arises out of the failure of the person or company so acting as an adviser

(i) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the registrant and each client of the registrant for whose benefit the advice is or portfolio management services are to be provided, or

(ii) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances,

(c) the registrant cannot be relieved by its clients from its responsibility for loss under paragraph (b),

(d) the person or company so acting as an adviser, if a resident of a jurisdiction, is registered as an adviser in the jurisdiction,

(e) the person or company so acting as an adviser has no direct contact with the registrant's clients unless the registrant is present, and

(f) in Manitoba, the person or company so acting as an adviser is not registered in any jurisdiction of Canada.

Self-directed registered educational savings plans

8.18 The dealer registration requirement does not apply to a trade in a self-directed RESP to a subscriber if

(a) the trade is made by

(i) a mutual fund dealer or a person who is registered as a dealing representative of a mutual fund dealer and who is acting on behalf of the mutual fund dealer, or

(ii) a Canadian financial institution or, in Ontario, a financial intermediary or a person who is an officer, salesperson or employee of a Canadian financial institution or, in Ontario, a financial intermediary and who is acting on behalf of the Canadian financial institution or, in Ontario, the financial intermediary, and

(b) the self-directed RESP restricts its investments in securities to securities in which the person or company who traded the self-directed RESP is permitted to trade.

Specified debt

8.19 (1) In this section, "permitted supranational agency" means

(a) the African Development Bank, established by the Agreement Establishing the African Development Bank which came into force on September 10, 1964, that Canada became a member of on December 30, 1982;

(b) the Asian Development Bank, established under a resolution adopted by the United Nations Economic and Social Commission for Asia and the Pacific in 1965;

(c) the Caribbean Development Bank, established by the Agreement Establishing the Caribbean Development Bank which came into force on January 26, 1970, as amended, that Canada is a founding member of;

(d) the European Bank for Reconstruction and Development, established by the Agreement Establishing the European Bank for Reconstruction and Development and approved by the *European Bank for Reconstruction and Development Agreement Act* (Canada), that Canada is a founding member of;

(e) the Inter-American Development Bank, established by the Agreement establishing the Inter-American Development Bank which became effective December 30, 1959, as amended from time to time, that Canada is a member of;

(f) the International Bank for Reconstruction and Development, established by the Agreement for an International Bank for Reconstruction and Development approved by the *Bretton Woods and Related Agreements Act* (Canada); and

(g) the International Finance Corporation, established by Articles of Agreement approved by the *Bretton Woods and Related Agreements Act* (Canada).

(2) The dealer registration requirement does not apply to a trade of a debt security

(a) of or guaranteed by the Government of Canada or the government of a jurisdiction of Canada,

(b) of or guaranteed by a government of a foreign jurisdiction if the debt security has an approved credit rating from an approved credit rating organization,

(c) of or guaranteed by any municipal corporation in Canada, or secured by or payable out of rates or taxes levied under the law of a jurisdiction of Canada on property in the jurisdiction and to be collected by or through the municipality in which the property is situated,

(d) of or guaranteed by a Canadian financial institution or a Schedule III bank, other than debt securities that are subordinate in right of payment to deposits held by the issuer or guarantor of those debt securities,

(e) of the Comité de gestion de la taxe scolaire de l'île de Montréal, or

(f) of or guaranteed by a permitted supranational agency if the debt securities are payable in the currency of Canada or the United States of America.

Division 2: Mobility exemptions

Definitions – mobility exemptions

8.20 In this Division,

"eligible client" means, for a person or company, a client of the person or company if the client

(a) is an individual and was a client of the person or company immediately before the client became a resident of the local jurisdiction, or

(b) is a spouse or child of a client referred to in paragraph (a);

"NI 31-101" means National Instrument 31-101 *National Registration System*;

"non-principal jurisdiction" means, for a person or company, each jurisdiction of Canada that is not the principal jurisdiction of the person or company;

"principal jurisdiction" means, for a person or company, the jurisdiction of the principal regulator;

"principal regulator" means

(a) for a person or company other than an individual, the securities regulatory authority or the regulator in the jurisdiction of Canada in which the person or company's head office is located, and

(b) for an individual, the securities regulatory authority or the regulator in the jurisdiction of Canada in which the individual's working office is located; and

"working office" has the same meaning as in NI 31-101.

Notice to non-principal regulator

8.21 (1) As soon as practicable after relying on an exemption under section 8.23 [*mobility exemption – registered firm*] or section 8.24 [*mobility exemption – registered individual*], the person or company must file a completed Form 31-103F3.

(2) Subsection (1) does not apply if the person or company is required to file Form 31-101F1 or Form 31-101F2 under NI 31-101.

Notice of change of principal regulator

8.22 (1) A person or company relying on section 8.23 [*mobility exemption – registered firm*] or section 8.24 [*mobility exemption – registered individual*] must file a completed Form 31-103F3, as soon as practicable, if

(a) for a person or company, other than an individual, the person or company changes its head office to another principal jurisdiction, or

(b) for an individual, the location of the individual's working office changes to another principal jurisdiction.

(2) Subsection (1) does not apply if a person or company is required to file Form 31-101F2 under NI 31-101.

Mobility exemption – registered firm

8.23 If the local jurisdiction is a non-principal jurisdiction, the registration requirement does not apply to a person or company if the person or company

(a) is registered as a dealer or adviser in its principal jurisdiction,

(b) is trading or advising in securities with an eligible client,

(c) does not trade or advise in securities in the local jurisdiction other than as it is permitted to in its principal jurisdiction according to its category of registration,

(d) has 10 or fewer eligible clients in the local jurisdiction, and

(e) complies with section 8.25 [*mobility exemption conditions*].

Mobility exemption – registered individual

8.24 If the local jurisdiction is a non-principal jurisdiction, the registration requirement does not apply to an individual if

(a) the individual is registered in his or her principal jurisdiction as a dealing, advising or associate advising representative,

(b) the individual's registered firm is registered in its principal jurisdiction,

(c) the individual is trading or advising in securities with an eligible client,

(d) the individual does not trade or advise in securities in the local jurisdiction other than as it is permitted to in its principal jurisdiction according to its category of registration,

(e) in the local jurisdiction, the individual trades or advises in securities for no more than five eligible clients, and

(f) the individual complies with section 8.25 [*mobility exemption conditions*].

Mobility exemption conditions

8.25 For the purposes of paragraphs 8.23(e) and 8.24(f) the person or company must

(a) disclose to an eligible client, before it relies on an exemption in section 8.23 [*mobility exemption – registered firm*] or 8.24 [*mobility exemption – registered individual*], that the person or company

(i) is exempt from registration in the local jurisdiction, and

(ii) is not subject to requirements otherwise applicable under local securities legislation, and

(b) act fairly, honestly and in good faith in the course of its dealings with an eligible client.

PART 9 - EXEMPTION

Exemption

9.1 (1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario only the regulator may grant such an exemption.

(3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

PART 10 - TRANSITION

Change of registration categories – firms

10.1 **(1)** On the date this Instrument comes into force, a person or company registered in a category referred to in

(a) column 1 of Appendix C [*new category names – firms*], opposite the name of the local jurisdiction, is deemed to be registered as an investment dealer,

(b) column 2 of Appendix C [*new category names – firms*], opposite the name of the local jurisdiction, is deemed to be registered as a mutual fund dealer,

(c) column 3 of Appendix C [*new category names – firms*], opposite the name of the local jurisdiction, is deemed to be registered as a scholarship plan dealer,

(d) column 4 of Appendix C [*new category names – firms*], opposite the name of the local jurisdiction, is deemed to be registered as a restricted dealer,

(e) column 5 of Appendix C [*new category names – firms*], opposite the name of the local jurisdiction, is deemed to be registered as a portfolio manager, and

(f) column 6 of Appendix C [*new category names – firms*], opposite the name of the local jurisdiction, is deemed to be registered as a restricted portfolio manager.

(2) In Ontario and Newfoundland and Labrador, a person or company registered as a limited market dealer or an international dealer on the date this Instrument comes into force is deemed to be registered as an exempt market dealer.

Change of registration categories – individuals

10.2 On the date this Instrument comes into force, an individual registered in a category referred to in

(a) column 1 of Appendix D [*new category names – individuals*], opposite the name of the local jurisdiction, is deemed to be registered as a dealing representative,

(b) column 2 of Appendix D [*new category names – individuals*], opposite the name of the local jurisdiction, is deemed to be registered as an advising representative, and

(c) column 3 of Appendix D [*new category names – individuals*], opposite the name of the local jurisdiction, is deemed to be registered as an associate advising representative.

Registration of investment fund managers

10.3 (1) The requirement to register as an investment fund manager does not apply to a person or company that is acting as an investment fund manager on the date this Instrument comes into force

(a) until six months after this Instrument comes into force, or

(b) if the person or company applies for registration as an investment fund manager within six months of this Instrument coming into force, until the regulator has accepted or refused the registration.

(2) Despite paragraph 4.18(2)(c) [*capital requirement*], for the purpose of calculating excess working capital, the minimum capital is $50,000 for a registered dealer or registered adviser that is acting as an investment fund manager on the date this Instrument comes into force.

(3) Subsection (2) expires six months after this Instrument comes into force.

(4) Section 4.23 [*insurance – investment fund manager*] does not apply to a registered dealer or registered adviser that is acting as an investment fund manager on the date this Instrument comes into force.

(5) Subsection (4) expires six months after this Instrument comes into force.

Registration of exempt market dealers

10.4 (1) In this section, "a dealer in the exempt market" means

(a) a dealer who trades in securities referred to in subparagraph 2.1(1)(d)(i) (A), (B) or (C), or

(b) a person or company who acts as an underwriter in respect of a distribution of securities that may be made under an exemption from the prospectus requirement.

(2) Despite section 2.1 [*dealer and underwriter categories*], a person or company that is a registered firm on the date this Instrument comes into force and is a dealer in the exempt market on that date, is not required to register as an exempt market dealer

(a) until six months after this Instrument comes into force, or

(b) if the dealer applies for registration as an exempt market dealer within six months of this Instrument coming into force, until the regulator has accepted or refused the registration.

(3) Despite section 2.7 [*individual categories*], an individual who is a registered individual on the date this Instrument comes into force and is a dealer in the exempt market on that date, is not required to register as a dealing representative of an exempt market dealer

(a) until six months after this Instrument comes into force, or

(b) if the individual applies to be registered as a dealing representative of an exempt market dealer within six months of this Instrument coming into force, until the regulator has accepted or refused the registration.

(4) A person or company that is not registered under securities legislation and is a dealer in the exempt market on the date this Instrument comes into force, is exempt from the dealer registration requirement and the underwriter registration requirement

(a) until six months after this Instrument comes into force, or

(b) if the person or company applies for registration as an exempt market dealer, or a dealing representative of an exempt market dealer within six months of this Instrument coming into force, until the regulator has accepted or refused the registration.

(5) Despite section 4.16 [*grandfathered registrants*], an individual who is a dealer in the exempt market on the date this Instrument comes into force is exempt from section 4.9 [*exempt market dealer – dealing representative*] until 12 months after this Instrument comes into force.

Registration of ultimate designated persons

10.5 If a person or company is a registered firm on the date this Instrument comes into force, section 2.9 [*ultimate designated person*] does not apply to the firm

(a) until one month after this Instrument comes into force, or

(b) if an individual applies to be registered as the ultimate designated person of the firm within one month of this Instrument coming into force, until the regulator has accepted or refused the registration.

Registration of chief compliance officers

10.6 (1) If a person or company is a registered firm on the date this Instrument comes into force, section 2.10 [*chief compliance officer*] does not apply to the firm

(a) until one month after this Instrument comes into force, or

(b) if an individual applies to be registered as the chief compliance officer of the firm within one month of this Instrument coming into force, until the regulator has accepted or refused the registration.

(2) If an individual applies, within one month of this Instrument coming into force, to be registered as the chief compliance officer of a person or company that is a registered firm on the date this Instrument comes into force, Division 1 [*proficiency requirements*] of Part 4 does not apply in respect of the individual.

(3) Despite subsection (2), if an individual applies, within six months of this Instrument coming into force, to be registered as the chief compliance officer of a person or company that is acting as an investment fund manager on the date this Instrument

comes into force, section 4.15 [*investment fund manager – chief compliance officer*] does not apply in respect of the individual until 12 months after this Instrument comes into force.

(4) Despite subsection (2), if an individual applies, within six months of this Instrument coming into force, to be registered as the chief compliance officer of a person or company that is a dealer in the exempt market on the date this Instrument comes into force, section 4.10 [*exempt market dealer – chief compliance officer*] does not apply in respect of the individual until 12 months after this Instrument comes into force.

(5) In subsection (4), "a dealer in the exempt market" means

(a) a dealer who trades in securities referred to in subparagraph 2.1(1)(d)(i) (A), (B) or (C), or

(b) a person or company who acts as an underwriter in respect of a distribution of securities that may be made under an exemption from the prospectus requirement.

Relationship disclosure information

10.7 (1) Section 5.4 [*providing relationship disclosure information*] does not apply to a person or company that is a registrant on the date this Instrument comes into force.

(2) Subsection (1) expires 6 months after this Instrument comes into force.

Complaint handling

10.8 (1) In each jurisdiction of Canada except Québec, a person or company that is a registered firm on the date this Instrument comes into force is exempt from section 5.29 [*dispute resolution service*] and section 5.31 [*reporting to the securities regulatory authority*].

(2) Subsection (1) expires 6 months after this Instrument comes into force.

Referral arrangements

10.9 (1) Division 2 [*referral arrangements*] of Part 6 does not apply to a person or company that is a registrant on the date this Instrument comes into force.

(2) Subsection (1) expires 6 months after this Instrument comes into force.

Capital requirements

10.10 (1) A person or company that is a registered firm on the date this Instrument comes into force is exempt from sections 4.18 [*capital requirement*] to 4.20 [*subordination agreement – notice requirement*] if it complies with each provision listed in Appendix E [*non-harmonized capital requirements*] across from the name of the local jurisdiction.

(2) Subsection (1) expires 12 months after this Instrument comes into force.

Insurance requirements

10.11 (1) A person or company that is a registered firm on the date this Instrument comes into force is exempt from sections 4.21 [*insurance – dealer*] to 4.25 [*notice of change, claim or cancellation*] if it complies with each provision listed in Appendix F - [*non-harmonized insurance requirements*] across from the name of the local jurisdiction.

(2) Subsection (1) expires 6 months after this Instrument comes into force.

PART 11 - EFFECTIVE DATE

Effective date

11.1 This instrument comes into force on [●].

Form 31-103F1 Calculation of excess working capital

_____

Firm Name

Capital Calculation

(as at _____ with comparative figures as at _____)

	Component	Current period	Prior period
1.	Current assets		
2.	Less current assets not readily convertible into cash (*e.g.*, prepaid expenses)		
3.	Adjusted current assets Line 1 minus line 2 =		
4.	Current liabilities		
5.	Add 100 per cent of long-term related party debt unless the firm and the lender have executed a subordination agreement in the form set out in Appendix B and the firm has delivered a copy of the agreement to the regulator		
6.	Adjusted current liabilities Line 4 plus line 5 =		
7.	Adjusted working capital Line 3 minus line 6 =		
8.	Less minimum capital		
9.	Less market risk		
10.	Less any deductible under the firm's bonding or insurance policy		
11.	Less Guarantees		
12.	Less unresolved differences		
13.	**Excess working capital**		

Notes:

This form must be prepared on an unconsolidated basis.

Line 8. Minimum Capital – The amount on this line must be not less than (a) $25,000 for an adviser, (b) $50,000 for a dealer, and (c) $100,000 for an investment fund manager.

Line 9. Market Risk – The amount on this line must be calculated according to the instructions set out in Schedule 1 to this Form.

Line 11. Guarantees – If the registered firm is guaranteeing the liability of another party, the total amount of the guarantee must be included in the capital calculation.

Line 12. Unresolved differences – Any unresolved differences that could result in a loss from either firm or client assets must be included in the capital calculation.

The examples below are intended to provide guidance as to how to calculate unresolved differences:

(i) If there is an unresolved difference relating to client securities, the amount to be reported on Line 12 will be equal to the market value of the client securities that are short, plus the applicable margin rate for those securities.

(ii) If there is an unresolved difference relating to the registrant's investments, the amount to be reported on Line 12 will be equal to the market value of the investments (securities) that are short.

(iii) If there is an unresolved difference relating to cash, the amount to be reported on Line 12 will be equal to the amount of the shortfall in cash.

Management Certification

Registered Firm Name: _____

We have examined the attached capital calculation and certify that the firm is in compliance with the capital requirements as at _____.

Name and Title	**Signature**	**Date**
1. _____	_____	_____

_____

2. _____ _____
_____

_____

Schedule 1 of Form 31-103F1 *Calculation*
of excess working capital
(*calculating line 9 [market risk]*)

1. All securities are to be valued at market as of the reporting date. The margin rates to be used are those outlined below:

(a) Bonds, Debentures, Treasury Bills and Notes

(i) Bonds, debentures, treasury bills and other securities of or guaranteed by the Government of Canada, of the United Kingdom, of the United States of America or guaranteed by any province of Canada:

within 1 year	1% of market value multiplied by the fraction determined by dividing the number of days to maturity by 365
over 1 year	5% of market value

(ii) All other bonds, debentures and notes:

within 1 year	3% of market value multiplied by the fraction determined by dividing the number of days to maturity by 365
over 1 year	10% of market value

(b) Bank Paper

Deposit certificates, promissory notes or debentures issued by a Canadian chartered bank (and of Canadian chartered bank acceptances) maturing:

within 1 year	2% of market value multiplied by the fraction determined by dividing the number of days to maturity by 365
over 1 year	10% of market value

(c) Mutual Funds

Securities of mutual funds qualified by prospectus for sale in any province of Canada must be margined at the following rates:

Money Market Funds (as defined in National Instrument 81-102) – 5% of market value.

All Other Mutual Funds – 50% of market value.

(d) Stocks

On securities (other than bonds and debentures) including rights and warrants listed on any recognized stock exchange in Canada or the United States:

Long Positions – Margin Required

Securities selling at $2.00 or more – 50% of market value

Securities selling at $1.75 to $1.99 – 60% of market value

Securities selling at $1.50 to $1.74 – 80% of market value

Securities selling under $1.50 to 100% of market value

Short Positions – Credit Required

Securities selling at $2.00 or more – 150% of market value

Securities selling at $1.50 to $1.99 - $3.00 per share

Securities selling at $0.25 to $1.49 – 200% of market value

Securities selling at less than $0.25 – market value plus $0.25 per shares

(e) F**or all other securities** – 100% of market value.

Form 31-103F2
Submission to jurisdiction and appointment of agent for service

(sections 8.15 [international dealer] and 8.16[international adviser])

1. Name of registered firm (the "Registered Firm"):

2. Jurisdiction of incorporation of the Registered Firm:

3. Name of agent for service of process (the "Agent for Service"):

4. Address for service of process on the Agent for Service:

5. The Registered Firm designates and appoints the Agent for Service at the address stated above as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal or other proceeding (a "Proceeding") arising out of or relating to or concerning the Registered Firm's activities in the local jurisdiction and irrevocably waives any right to raise as a defense in any such proceeding any alleged lack of jurisdiction to bring such Proceeding.

6. The Registered Firm irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial and administrative tribunals of the local jurisdiction and any administrative proceeding in the local jurisdiction, in any Proceeding arising out of or related to or concerning the Registered Firm's activities in the local jurisdiction.

7. Until six years after the Registered Firm ceases to be registered, the Registered Firm must file

a. a new Submission to Jurisdiction and Appointment of Agent for Service in this form no later than the 30th day before the date this Submission to Jurisdiction and Appointment of Agent for Service is terminated; and

b. an amended Submission to Jurisdiction and Appointment of Agent for Service no later than the 30th day before any change in the name or above address of the Agent for Service.

8. This Submission to Jurisdiction and Appointment of Agent for Service is governed by and construed in accordance with the laws of the local jurisdiction.

Dated:

(Signature of Registered Firm or authorized signatory)

(Name and Title of authorized signatory)

Acceptance

The undersigned accepts the appointment as Agent for Service of (Insert name of Registered Firm) under the terms and conditions of the foregoing Submission to Jurisdiction and Appointment of Agent for Service.

Dated:
(Signature of Agent for Service or authorized signatory)

(Name and Title of authorized signatory)

Form 31-103F3

Notice of principal regulator

(section 8.21 [notice to non-principal regulator] and section 8.22 [notice of change of principal regulator])

1. Date: _____

2. Information about person or company

NRD # (if applicable): _____

Name: _____

3. Principal regulator

The securities regulatory authority or regulator in the following jurisdiction is the principal regulator for the person or company: _____

4. Previous notice filed

If the person or company has previously filed a Form 31-103F3, indicate the principal regulator noted in the previous notice: _____

5. Reasons for principal regulator

The principal regulator for the person or company is its principal regulator

(a) based on the location of its head office (for a registered firm) or working office (for a registered individual) (check box), or ☐

(b) on the following basis provide details:

_____

_____

_____

Appendix A – Bonding and insurance clauses

(section 4.21 [insurance – dealer], section 4.22 [insurance – adviser] and section 4.23 [insurance – investment fund manager])

Clause	Name of Clause	Details
A	Fidelity	This clause insures against any loss through dishonest or fraudulent act of employees.
B	On Premises	This clause insures against any loss of money and securities or other property through robbery, burglary, theft, hold-up, or other fraudulent means, mysterious disappearance, damage or destruction while within any of the insured's offices, the offices of any banking institution or clearing house or within any recognized place of safe-deposit.
C	In Transit	This clause insures against any loss of money and securities or other property through robbery, burglary, theft, hold-up, misplacement, mysterious disappearance, damage or destruction, while in transit in the custody of any employee or any person acting as messenger except while in the mail or with a carrier for hire other than an armoured motor vehicle company.
D	Forgery or Alterations	This clause insures against any loss through forgery or alteration of any cheques, drafts, promissory notes or other written orders or directions to pay sums in money, excluding securities.
E	Securities	This clause insures against any loss through having purchased or acquired, sold or delivered, or extended any credit or acted upon securities or other written instruments which prove to have been forged, counterfeited, raised or altered, or lost or stolen, or through having guaranteed in writing or witnessed any signatures upon any transfers, assignments or other documents or written instruments.

Appendix B – Subordination Agreement

(Line 5 of Form 31-103F1 Calculation of excess working capital)

The subordination agreement made this ____ day of _____, 20___

Between:

_____
(hereinafter called the "Lender")

- and

_____
(hereinafter called the "Registrant")

WHEREAS the Registrant is engaged in business as a _____ and such business is carried on in the City/Town of _____ , Province of _____ .

WHEREAS ON THE _____DAY OF _____ , 20__ , the Registrant borrowed from
the Lender a sum of $_____ , repayable with interest at the rate of ____ per annum (hereinafter called the "loan"), the sum being needed for the carrying on of the business of the Registrant;

NOW THEREFORE, this agreement witnesses that, in consideration of $1 paid by the parties to each other, receipt of this sum being acknowledged by each of the parties, the parties agree as follows:

1. The loan and all monies payable in respect thereof are hereby declared to be subordinate to, and the repayment of the loan, and all monies repayable in respect thereof, is hereby postponed to all claims of other present and future creditors of the Registrant, to the extent that all such creditors shall in the event of the dissolution, winding-up, liquidation, insolvency or bankruptcy of the Registrant be paid their existing claims in full in priority to the claims of the Lender and before the Lender shall have any claim upon any property belonging or which belonged to the Registrant or shall have any right to receive any payment in respect to the loan.

2. The Registrant must notify the Director of the Provincial Securities Commission prior to repayment of the loan or any part thereof. The Director may require further documentation after receiving this notification from the Registrant.

3. Interest can be paid at the agreed upon rate and time provided that the payment of such interest does not result in a capital deficiency.

4. During the term of this agreement, any loan or advance or posting of security for a loan or advance by the Registrant to the Lender, shall be deemed to be a payment on account of the loan which is the subject of this agreement.

5. In this agreement "Registrant" shall include every successor thereof and every successor to the Registrant or of any such successor or to any part of such business and every firm which contains the Registrant or any partner thereof.

6. This agreement shall be binding upon and to the benefit of the parties hereto and their respective legal representatives.

7. The agreement shall remain in full force and effect until it is terminated. This agreement may be only terminated by the Lender once notification pursuant to clause 2 of this agreement is received by the Director of the Provincial Securities Commission.

DATED AT _____ , in the Province of _____,

the _____day of_____ , 20____.

In the Presence of:

Name: _____

On behalf of: _____

(Lender)

Name: _____

On behalf of: _____

(Registrant)

Notes:
(1) This form should be executed in triplicate with one duly executed copy to be delivered to the Provincial Securities Commission.
(2) A breach of this subordination agreement will be considered by the Provincial Securities Commission sufficient cause for immediate suspension of registration.

APPENDIX C – New category names - firms

(Section 10.1 [change of registration categories – firms])

	Column 1 *[investment dealer]*	Column 2 *[mutual fund dealer]*	Column 3 *[scholarship plan dealer]*	Column 4 *[restricted dealer]*	Column 5 *[portfolio manager]*	Column 6 *[restricted portfolio manager]*
Alberta	investment dealer	mutual fund dealer	scholarship plan dealer	*[blank]*	investment counsel or portfolio manager	*[blank]*
British Columbia	investment dealer	mutual fund dealer	scholarship plan dealer	exchange contracts dealer, special limited dealer	investment counsel or portfolio manager	*[blank]*
Manitoba	investment dealer	mutual fund dealer	scholarship plan dealer	*[blank]*	investment counsel or portfolio manager	*[blank]*
New Brunswick	investment dealer	mutual fund dealer	scholarship plan dealer	*[blank]*	investment counsel and portfolio manager	*[blank]*
Newfoundland & Labrador	investment dealer	mutual fund dealer	scholarship plan dealer	*[blank]*	investment counsel or portfolio manager	*[blank]*
Nova Scotia	investment dealer	mutual fund dealer	scholarship plan dealer	*[blank]*	investment counsel or portfolio manager	*[blank]*
Ontario	investment dealer	mutual fund dealer	scholarship plan dealer	*[blank]*	investment counsel or portfolio manager	*[blank]*
Prince Edward Island	investment dealer	mutual fund dealer	scholarship plan dealer	*[blank]*	investment counsel or portfolio manager	*[blank]*

	Column 1 *[investment dealer]*	Column 2 *[mutual fund dealer]*	Column 3 *[scholarship plan dealer]*	Column 4 *[restricted dealer]*	Column 5 *[portfolio manager]*	Column 6 *[restricted portfolio manager]*
Québec	- unrestricted practice dealer - unrestricted practice dealer (introducing broker) -unrestricted practice dealer (International Financial Centre) -discount broker	firm in group-savings-plan brokerage	scholarship plan dealer	- Québec Business investment company (QBIC) Debt securities dealer - restricted practice Dealer - firm in investment contract brokerage - unrestricted practice dealer (Nasdaq)	-unrestricted practice adviser -unrestricted practice adviser (International Financial Centre)	- restricted practice advisor
Saskatchewan	investment dealer	mutual fund dealer	scholarship plan dealer	*[blank]*	investment counsel or portfolio manager	*[blank]*
Northwest Territories	investment dealer	mutual fund dealer	scholarship plan dealer	*[blank]*	investment counsel or portfolio manager	*[blank]*
Nunavut	investment dealer	mutual fund dealer	scholarship plan dealer	*[blank]*	investment counsel or portfolio manager	*[blank]*
Yukon	broker	broker	scholarship plan dealer	*[blank]*	broker	*[blank]*

APPENDIX D – New category names - individuals

(Section 10.2 [change of registration categories – individuals])

	Column 1 *[dealing representative]*	Column 2 *[advising representative]*	Column 3 *[associate advising representative]*
Alberta	Officer (Trading), Salesperson, Salesperson/Branch Manager	Officer (Advising), Advising Employee	Junior Officer (Advising)
British Columbia	Salesperson, trading partner, trading director, trading officer	Advising employee, advising partner, advising director, advising officer	
Manitoba			
New Brunswick	- salesperson - officer (trading) - partner (trading)	- representative (advising) - officer (advising) - partner (advising) - sole proprietor (advising)	- associate officer (advising) - associate partner (advising) - associate representative (advising)
Newfoundland & Labrador			
Nova Scotia	- salesperson - officer – trading - partner- trading - director - trading	- officer- advising - officer – counselling - partner- advising - partner- counselling - director- advising - director- counselling	
Ontario	Salesperson, Officer (Trading), Partner (Trading), Sole Proprietor	Advising Representative, Officer (Advising), Partner (Advising), Sole Proprietor	
Prince Edward Island			

	Column 1 *[dealing representative]*	Column 2 *[advising representative]*	Column 3 *[associate advising representative]*
Québec	Representative, Representative - Group Savings Plan (SalesPerson), Representative - Scholarship Plan (SalesPerson)	Representative (Portfolio Manager), Representative (Advise), Representative Options, Representative Futures	
Saskatchewan	Officer (Trading), Partner (Trading), Salesperson	Officer (Advising), Partner (Advising), Employee (Advising)	
Northwest Territories			
Nunavut			
Yukon			

APPENDIX E – Non-harmonized capital requirements

(Section 10.10 [capital requirements])

Alberta	Sections 23 and 24 of the *Alberta Securities Commission Rules (General)*
British Columbia	Sections 19, 20, 24 and 25 of the *Securities Rules*. Sections 2.1(i), 2.3(i), 8.3, 9.4, 10.3, 12.3, 13.3, 14.4, 15.4 and 16.3 of BC Policy 31-601 *Registration Requirements*.
Manitoba	
New Brunswick	
Newfoundland & Labrador	
Nova Scotia	
Ontario	Sections 96, 97, 107, 108, 109, 111 of the Ontario Regulation 1015 made under the *Securities Act*, as those sections read on [date that is 1 day before their revocation].
Prince Edward Island	
Québec	Sections 207 to 209, 211 and 212 of the Québec Securities Regulation
Saskatchewan	Sections 19 and 24 of *The Securities Regulations* (Saskatchewan) as they read immediately prior to the implementation of this regulation
Northwest Territories	
Nunavut	
Yukon	

APPENDIX F – Non-harmonized insurance requirements

(Section 10.11 [insurance requirements])

Alberta	Sections 25 and 26 of the *Alberta Securities Commission Rules (General)*
British Columbia	Sections 21 and 22 of the *Securities Rules*. Sections 2.1(h), 2.2(g), 2.3(h) and 2.5(h) of BC Policy 31-601 *Registration Requirements*.
Manitoba	
New Brunswick	
Newfoundland & Labrador	
Nova Scotia	
Ontario	Sections 96, 97, 107, 108, 109, 111 of the Ontario Regulation 1015 made under the *Securities Act*, as those sections read immediately before revocation.
Prince Edward Island	
Québec	Section 213 and 214 of the Québec Securities Regulation.
Saskatchewan	Section 33 of *The Securities Act, 1988* (Saskatchewan) as it read immediately prior to the implementation of this regulation. Sections 20, 21 and 22 of *The Securities Regulations* (Saskatchewan) as they read immediately prior to the implementation of this regulation.
Northwest Territories	
Nunavut	
Yukon	

Companion Policy 31-103CP

Registration Requirements

Table of Contents

Companion Policy 31-103CP

Registration Requirements

PART 1 - DEFINITIONS AND INTERPRETATION

1.1 Introduction

This Companion Policy sets out how the Canadian Securities Administrators (the CSA or we) interpret or apply the provisions of National Instrument 31-103 *Registration Requirements* (NI 31-103) and related securities legislation.

Registrants should refer to securities legislation of their local jurisdiction and to other CSA instruments for additional requirements that may apply to them. Registrants must also comply with applicable self-regulatory organization (SRO) requirements.

1.2 Definitions

Unless defined in NI 31-103, terms used in NI 31-103 and this Companion Policy have the meaning given to them in local securities legislation or in National Instrument 14-101 *Definitions*. In NI 31-103, "day" has its ordinary meaning, except where business days are specified. All references in this Companion Policy to sections, Parts and Divisions are to NI 31-103, unless otherwise noted.

1.3 Business trigger for registration[1]

As a starting principle, anyone who is in the business of trading[2] or advising in securities should be subject to the registration requirement, regardless of the type of security, the name used to describe the business or how the business is organized.

The following section describes the factors that are relevant in determining whether a person or company is trading or advising in securities for a business purpose. For the most part, they are taken from case law and regulatory decisions that have interpreted the business purpose test in the context of securities matters.

We look at the type of activity and whether it is conducted as a business when determining whether the registration requirement applies to the person or company conducting the activity.

---

[1] The discussion in this section does not apply in Manitoba, where the trade trigger for dealer registration will continue to apply without change.

[2] In Québec, "trading in securities" also refers to distributing a security or any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of those activities.

The first step is to assess whether the activity is:

- trading in securities
- advising in securities, or
- acting as an investment fund manager

We will always consider a person or company that is acting as an investment fund manager to be conducting that activity as a business. Registration will therefore be required unless an exemption has been provided.

If the activity is trading or advising in securities, further analysis is required to assess whether the activity is conducted as a business. We consider the factors set out below, among others.

In general, any person or company that performs the activities discussed in paragraphs (a) or (b) is in the business of trading or advising in securities. No one of the activities in paragraphs (c), (d) and (e) will necessarily determine whether a person or company is in the business of trading or advising in securities.

(a) ***Directly or indirectly holding oneself out as being in the business of the activity***
Merely holding oneself out as being willing to engage in trading or advising in securities is sufficient to be engaged in the business for the purposes of securities legislation. This is because holding out induces the client to rely on the dealer or adviser.

Engaging in practices similar to those used by registrants also reflects a business purpose. Examples include promoting securities and making disclaimers or stating by any other means that the person or company will buy or sell securities. Carrying on any of these activities at the start-up stage may be considered carrying on a business.

(b) ***Acting in an intermediary capacity or as a market maker***
Acting in an intermediary capacity between a seller and a buyer of securities or making a market in securities constitute trading for a business purpose.

(c) ***Directly or indirectly carrying on the activity with repetition, regularity or continuity***
Frequent transactions are a common indicator that a person is engaged in a business. We consider a person who regularly trades or advises in any manner that could produce profits to be engaged in a business. The activity does not have to be the person's sole or even primary endeavour for that person to be in the business. However, whether a person has other sources of income and how much time the person spends on the activity are also relevant factors.

(d) ***Being, or expecting to be, remunerated or otherwise compensated for the activity***

Receiving, or expecting to receive, compensation for carrying on the activity, whether transaction or value based, reflects a business purpose. It does not matter if the person actually receives compensation or what form the compensation takes. Having the capacity or the ability to carry on the activity to produce profit is also a relevant factor.

However, carrying on an activity with no expectation of compensation may suggest that it is not for a business purpose.

(e) ***Directly or indirectly soliciting others in connection with the activity***

Contacting others to solicit securities transactions or to offer advice reflects a business purpose. Solicitation includes contacting others by any means, including advertising that proposes buying or selling securities or participating in a securities transaction, or that offers services or advice for these purposes.

We do not consider an entity setting up a website for third parties to post information on investment opportunities, such as a bulletin board, to be in the business of advising or trading in securities if that entity has no other role in any trades that may take place between parties who use the bulletin board.

1.4 Applying the business trigger factors

This section explains how the business trigger factors might apply to some common situations.

1.4.1 Securities issuers

In general, securities issuers with an active non-securities business are not also in the business of trading in securities, even when distributing their own securities directly to investors. This is because, even when taking raising capital into account, most issuers:

- trade in securities infrequently
- are not remunerated, or do not expect to be remunerated, for trading in securities
- do not act in an intermediary capacity
- do not produce, or intend to produce, distinct profit from trading in securities
- do not hold themselves out as being in the business of trading in securities

However, securities issuers may be in the business of trading securities if they:

- regularly trade in securities
- hold themselves out as being in the business of trading in securities

- employ or otherwise contract with persons to perform activities on their behalf that are similar to those performed by a registrant (other than underwriting in the normal course of a distribution or trading for their own account)

Section 8.3 provides securities issuers whose activities fall within the business trigger with an exemption from the dealer registration requirement if they distribute their securities:

- solely for their own account

- solely through a registered dealer that is registered in the appropriate category

Securities issuers are in most cases subject to the prospectus requirements in securities legislation. Regulators have the discretionary authority to require an underwriter for a prospectus distribution.

1.4.2 Mortgage investment companies

Mortgage investment companies (MICs) are securities issuers. In many cases, they are in the business of trading in securities and are therefore required to register in an appropriate dealer category.

While MICs can have various business models, they typically:

- solicit investors actively

- trade in securities frequently

- do not expect to be remunerated for issuing their own securities to investors, but may act as intermediaries to the extent that their business model is based on obtaining a return on the further investment of their investors' funds in securities (the mortgages)

- select mortgage investments, rather than develop the underlying real estate

- only allow investors to withdraw their capital by exercising redemption rights through the MIC

1.4.3 Venture capital

A wide range of potentially registerable activities can be described as "venture capital" investing. While we cannot give specific guidance for every possible situation, we have found that considering the expectations and reliance of investors can be particularly relevant when applying the business trigger factors to venture capital.

For example, whether the general partner (GP) of a limited partnership (LP) that acquires securities would have to register as an adviser depends on:

- the application of the business trigger factors to the business purpose of the LP
- the types of services the GP provides to the LP
- the expectations of the limited partners

If the purpose of the LP is to invest in a trading portfolio of securities and the limited partners are relying on the GP's expertise in selecting the securities and deciding when to buy and sell them, we would require the GP to register as an adviser.

If the limited partners are relying on the GP for expertise other than providing advice on selecting investments in securities, we may not require the GP to register as an adviser. This would be the case where a GP's role is to select small private companies that the GP will actively manage and develop. We would view the purchase and eventual sale of the securities as incidental to the GP's activities on behalf of the LP.

1.4.4 Principal trading activities

Trading for own account
In most instances, we would not consider persons or companies to be in the business of trading in securities if their main or sole trading activity is trading for their own account. For example, individuals, day traders and pension funds that regularly buy or sell securities for their own account, through a registered dealer or otherwise, would not need to register.

Applying the business trigger factors discussed in section 1.3 of this Companion Policy, these persons or companies would not be in the business of trading securities because they:

- are not remunerated for undertaking the activity
- do not solicit others in connection with the activity
- do not act as an intermediary, or
- do not hold themselves out as being in the business of trading in securities

Trading for a registered firm
Principal trading carried on by a registered firm is inherently different from that carried on by a business that is not otherwise required to register. Registered firms and those who trade on their behalf have a unique position in, and direct access to, the markets. They also have obligations to clients. There is often the potential for conflicts of interest in these circumstances.

In addition, principal trading can have a significant impact on a firm's financial viability, which introduces systemic risks. It is therefore appropriate that individuals who conduct

principal trading for a registered firm be subject to the registration requirement, even if they do not trade for clients.

1.4.5 Activities not commonly in the business of trading or advising in securities

One-time activities
In general, we do not require registration for trading activities:

- by an individual or other person that is acting as a trustee, executor, administrator, personal or other legal representative
- relating to selling goods or supplying services between affiliated companies
- relating to the sale of a business

In some cases, these are one-time activities that do not reflect a business purpose. In other cases, the overall activities may be of a business nature, but trading or advising in securities is incidental to the primary purpose of the business.

Incidental activities
Activity that is incidental to the primary business of a firm may suggest that there is no business purpose in the activity in itself.

For example, merger and acquisition specialists advising the parties to a transaction between corporations are not normally required to register as advisers in connection with that activity, even though the transaction may result in trades in securities. The business purpose in this example is to effect the transaction. Any advice with respect to trades in the securities is incidental to that purpose and is limited to the parties to the transaction.

In general, professionals such as lawyers, accountants, engineers, geologists and teachers, who provide advice in the normal course of their professional operations, are not in the business of advising in securities. For the most part, any advice they may give will be incidental to their professional activities. However, in each case it is important to consider the advising activity with reference to the business trigger factors.

Normally, these professionals are not in the business of advising securities because they do not:

- repeatedly advise in securities
- receive separate remuneration for their advising services
- solicit clients on the basis of their advising services
- hold themselves out as being in the business of advising in securities

However, we would consider a professional to be in the business of advising in securities if securities advice is a primary reason for the client's relationship with the professional.

This is the case if the professional regularly provides advice on securities and solicits clients based on these advising services.

PART 2 - CATEGORIES OF REGISTRATION

2.1 General

Securities legislation distinguishes among investment fund managers and categories of dealers and advisers.

The categories of registration for firms serve two main purposes:

- to specify the type of business that the firm may conduct and, therefore, the types of business that the firm is not registered to conduct and may not carry on

- to provide a framework for the requirements the registrant must meet

Individual categories set out the qualifications necessary for an individual to perform particular roles on behalf of a registered firm.

This Part explains categories of registration that were introduced in NI 31-103.

2.2 Exempt market dealer

Section 2.1 restricts an exempt market dealer to trading in:

- securities distributed under an exemption from the prospectus requirement,

- securities distributed under a prospectus despite the fact that a prospectus exemption was available,

- securities that, if the trade were a distribution, may have been distributed under an exemption from the prospectus requirement, or

- any security, if the trade is (i) on behalf of a client of the exempt market dealer, (ii) the security was acquired by the client in a circumstance for which there would be a prospectus exemption if the trade formed part of a distribution, and (iii) the trade is with a registered dealer

For example, an exempt market dealer may trade in prospectus-qualified securities with accredited investors. Also an exempt market dealer can, under subsection 2.1(1)(d)(i)C), trade in a security if such trade does not constitute a distribution within the meaning of NI 45-106 provided that, if it were a distribution, it could have been made under an exemption from the prospectus requirement.

2.3 Restricted dealer

This category permits specialized dealers that would not necessarily qualify for unrestricted dealer registration to carry on business under terms and conditions imposed

by the local regulator. We will only register restricted dealers if there is a compelling case for permitting the proposed trading to take place outside of one of the other registration categories.

For example, an issuer might use this category if it must register because it is in the business of trading in securities but cannot rely on the exemption in section 8.3. In this case, the regulator would restrict the issuer's registration to trading in securities of its own issue and exclusively for its own account.

Terms and conditions for restricted dealers will be coordinated among the CSA jurisdictions.

2.4 Trading in securities – exemption for advisers

Firms that are registered advisers routinely create pooled funds as a way to efficiently invest money deposited to their clients' accounts. In doing so, they enter into the business of trading in securities because this trading activity is more than incidental to their business as advisers. However, requiring an adviser that has bona fide fully-managed accounts to also register as a dealer would not achieve any material benefits from a regulatory point of view.

The exemption in section 2.2 relieves a registered adviser that is actively managing its clients' accounts with discretionary authority from having to register as a dealer to distribute units of its pooled funds into the clients' accounts. The exemption is available both to registered advisers and those who qualify for the international portfolio manager exemption under section 8.15.

There is an anti-avoidance provision in subsection 2.2(2). The exemption is not intended to apply to an adviser that operates an investment fund as a core or principal business activity. This may be the case if an adviser:

- has only a small number of funds into which most of its client accounts are invested
- dedicates more time to managing its funds than managing client accounts
- focuses on designing and managing its funds, rather than on understanding the investment needs of its clients and tailoring the fully-managed portfolios to their needs

In this situation, advisers should consider whether the prospectus requirement and the requirement to register as an investment fund manager apply.

2.5 Advising in securities

Those who provide specific advice are required to register as an adviser. Specific advice is tailored to the needs and circumstances of the client and concerns one or more specific securities. The most obvious example of specific advice is discretionary account management.

Section 8.14 contains an exemption from registering as an adviser for those who provide generic advice. Generic advice is not tailored to the needs and circumstances of the person or company receiving the advice, although it may refer to specific securities.

Generic advice about specific securities may be delivered through investment newsletters and articles in general circulation newspapers and magazines or through websites, e-mail, internet chat rooms and bulletin boards, as long as it does not claim to be tailored to the needs and circumstances of any recipient.

Generic advice can also be given at conferences. However, if a purpose of the conference is to solicit specific securities transactions, we may consider the advice to be specific or may consider the individual giving it to be engaged in trading activity in that the real purpose of the advice is to generate trades by members of the audience.

2.6 Restricted portfolio manager

The advising activities of a restricted portfolio manager are limited by terms and conditions that the regulator imposes on its registration. This category is intended to permit persons or companies to advise in specific securities, classes of securities or the securities of a class of issuers.

For example, an individual who has extensive expertise in oil and gas issuers, but does not have the prescribed proficiency of a portfolio manager advising representative might be registered as an advising representative of a restricted portfolio manager whose terms and conditions on registration permit it to advise solely in securities of oil and gas issuers.

Terms and conditions for restricted portfolio managers will be coordinated among the CSA jurisdictions.

2.7 Associate advising representative

An individual who does not meet the education and experience requirements for registration as an advising representative may be registered as an associate advising representative. This category is primarily intended to be an apprentice category for individuals who intend to become full advising representatives but who do not meet the education or experience requirements.

This category allows an individual to work at a registered adviser while completing the proficiency requirements for an advising representative. For example, it would allow a former advising representative to work in an advising capacity while acquiring the relevant working experience that is required for an advising representative under section 4.11.

However, there is no requirement for an associate advising representative to subsequently register as a full advising representative. This category accommodates, for example, an individual who has a client relationship role that includes specific advice, but who is not managing clients' portfolios without supervision.

As required by section 2.8, advice provided by an associate advising representative must be approved by an advising representative. The appropriate processes for approving the advice of an associate advising representative will depend on the circumstances, including the individual's level of experience. The registered firm must:

- document its policies and procedures for meeting these obligations and maintain specific records where advice is approved, as provided in sections 5.15 and 5.23

- notify the regulator of the designation of an advising representative for approving the advice of an associate no later than the 5th business day following the date of the designation

2.8 Investment fund manager

Investment fund manager is defined in section 2.6 as "a person or company that is permitted to direct the business, operations and affairs of an investment fund". An investment fund manager generally organizes the fund and contractually accepts responsibility for its management and administration. It does not act as a portfolio manager for the fund.

Administering an investment fund may include information gathering, performance reporting and handling client assets. The fund, trust or company broadly delegates these responsibilities to the investment fund manager under a management agreement. Most agreements allow the fund manager to sub-delegate these responsibilities to other service providers. An investment fund manager remains fully liable for any sub-delegated responsibilities.

We do not expect an investment fund manager to register in every jurisdiction where a fund is distributed. Investment fund managers are required to register only in the jurisdiction where the person or company that directs the management of the fund is located, which in most cases will be where their head office is located. However, if an investment fund manager directs the management of funds from locations in more than one jurisdiction, it must register in each of them. If an investment fund manager is located outside Canada, there is no requirement for it to be registered in Canada, unless it is directing the management of a fund from inside Canada.

2.8.1 Marketing and wholesaling activities of investment fund managers

In general, investment fund managers will have to register as a dealer if they carry on marketing and wholesaling activities, such as:

- advertising the fund to the general public

- promoting the fund to registered dealers

- distributing the fund to registered dealers which then sell securities of the fund to investors

Investment fund managers do not have to register as a dealer if their marketing and wholesaling activities are incidental to their activities as an investment fund manager. In this case:

- the marketing and wholesaling activities must relate to investment funds managed by the investment fund manager, not a third party, and

- the funds must be distributed to investors through a dealer, not directly by the investment fund manager

2.9 Chief compliance officer and ultimate designated person

Sections 2.9 and 2.10 require registered firms to designate a chief compliance officer (CCO) and ultimate designated person (UDP). The CCO and UDP must be registered and perform the compliance functions prescribed in sections 5.24 and 5.25.

While the CCO and UDP have specific compliance functions, they are not solely responsible for compliance – it is the responsibility of the firm as a whole. A good compliance system will include provisions for alternates designated to act in the absence of the UDP or CCO.

2.9.1 UDP

The UDP is the chief executive officer or sole proprietor of the registered firm, or the senior officer responsible for the division in the firm that carries on the activity that requires registration. The role of the UDP is to lead the compliance efforts of the firm. This involves promoting a culture of compliance and overseeing the effectiveness of the firm's compliance system. The UDP is not necessarily required to be involved in the day-to-day management of the compliance group. There is no proficiency requirement for the UDP.

2.9.2 CCO

The CCO is an operating officer whose role is to lead the monitoring component of the registered firm's compliance system. This includes establishing or keeping up-to-date policies and procedures for the firm's compliance system, and managing the firm's compliance monitoring activities and compliance reporting according to those policies and procedures. The CCO may, in the firm's discretion, also have authority to take supervisory action to resolve compliance issues.

The CCO must meet the applicable proficiency requirements set out in Part 4. There is no requirement for any other compliance staff to be designated or registered unless they are also advising or trading. The CCO may determine what knowledge and skills are necessary or desirable for individuals who report to the CCO.

A firm that is registered in multiple categories is only required to have one CCO. In this case, the CCO must meet the most stringent of the proficiency requirements of the firm's various categories of registration.

In especially large firms, the scale and kind of activities undertaken by different operating divisions may warrant the designation of more than one CCO. We will consider applications, on a case-by-case basis, for situations where the CCO of one registered firm may act as the CCO of another registered firm.

2.9.3 The same person as UDP and CCO

The appropriate size and structure of a registered firm's compliance group will depend on the size and scope of the firm's operations. The UDP and the CCO may be the same person, if that person meets the requirements for both registration categories. In our view, separating the functions is the best practice, but we recognize that this might not be practical for some registered firms.

2.9.4 UDP or CCO as adviser or dealer

The UDP and CCO may also be registered in trading or advising categories. For example, a small registered firm might conclude that one individual can adequately function as UDP and CCO, while also conducting advising and trading activities. A large registered firm with diverse operations may require a large team of compliance professionals with several divisional heads of compliance reporting to a CCO dedicated entirely to a compliance role.

2.10 Multiple registrations

2.10.1 Multiple firm categories

A firm may carry on trading activities in several types of securities. In this case, it must register in all applicable dealer categories as set out in section 2.1. For example, a mutual fund dealer may only trade in prospectus-exempt securities if it also registers as an exempt market dealer. Similarly, a portfolio manager that manages an investment fund may have to register as a portfolio manager and an investment fund manager.

2.10.2 Multiple individual categories

An individual who performs more than one activity requiring registration on behalf of a registered firm must register in all applicable categories. For example, an advising representative of a portfolio manager who is also the firm's CCO must register in the categories of advising representative and CCO. This individual must meet the proficiency requirements of both registration categories.

2.10.3 Individual registered in a firm category

In some cases, an individual may be registered in both a firm and individual category. For example, a sole proprietor who is registered in the firm category of portfolio manager will also be registered in the individual category of advising representative.

2.10.4 Multiple registration categories: solvency requirements

The solvency requirements for firms, as set out in Part 4, Division 2, are not cumulative. If a firm is registered in multiple categories, it must meet the highest capital requirement of its various categories of registration.

2.10.5 Multiple registration categories: conduct requirements

When a firm or individual registered in multiple categories carries on a registerable activity, it must comply with the conduct requirements that apply to that activity. For example, in most circumstances, a registrant in the categories of exempt market dealer and mutual fund dealer must comply with the relationship disclosure requirements in section 5.4 before recommending a mutual fund trade to a permitted client. However, when the registrant is trading an exempt security to a permitted client, the registrant does not have to comply with the relationship disclosure requirement.

PART 3 - SRO MEMBERSHIP

3.1 Requirement for SRO membership

A person or company applying for registration as an investment dealer must be a member of the Investment Dealers Association of Canada (IDA). An individual applying for registration as a representative of a registered investment dealer must be an approved person of the IDA.

Except in Québec, a person or company applying for registration as a mutual fund dealer must be a member of the Mutual Fund Dealers Association of Canada (MFDA) and an individual applying for registration as a representative of a mutual fund dealer must be an approved person of the MFDA.

Mutual fund dealers (except those registered in Québec only), investment dealers and their registered individuals will be automatically suspended under sections 7.3 or 7.4 if they do not maintain their status as members or approved persons in good standing with the applicable SRO.

PART 4 - FIT AND PROPER REQUIREMENTS

4.1 General

The regulator will not register an applicant if the applicant does not appear to be fit and proper, or “suitable”, for registration. Every registrant has an ongoing requirement to maintain suitability for registration. The regulator may review a registrant’s suitability at any time.

Securities legislation gives the regulator discretionary authority to impose terms and conditions on a registration. The regulator will impose terms and conditions if it determines that an applicant or registrant is suitable only for restricted registration. The regulator may suspend or revoke the registration if it determines that a registrant has become unsuitable for registration.

There are three fundamental criteria for assessing a person or company's suitability for registration:

(a) ***Integrity***
The applicant or registrant must display integrity and be of honest character.

(b) ***Proficiency***
Applicants must meet the applicable education and experience requirements prescribed by securities legislation and demonstrate knowledge of securities legislation. Registrants must also ensure that they develop and maintain a level of knowledge and ethics training that keeps pace with new products and services that they may offer.

(c) ***Solvency***
The regulator will assess the overall financial situation of the applicant or registrant. Depending on the circumstances, the regulator may consider the registrant's or applicant's contingent liabilities. An applicant that is insolvent will be considered unsuitable for registration. An applicant that has a history of bankruptcy usually will not be suitable for registration. If a registrant becomes bankrupt or insolvent, the regulator may take that into account when assessing the registrant's continuing suitability, as further discussed in section 4.6 of this Companion Policy.

The regulator will also consider whether an individual's ability to discharge the responsibilities of a registrant might be affected by:

- other employment or partnerships
- service as a member of a board of directors
- potential conflicts of interest

4.2 IDA proficiency requirements

Part 4 does not prescribe proficiency requirements for investment dealer representatives who are approved by the IDA. The IDA prescribes the minimum entry and ongoing proficiency requirements for dealing representatives of its members. Accordingly, subsection 3.1(2) requires that a dealing representative of an investment dealer must be approved by the IDA. However, satisfying IDA proficiency requirements is a key factor for the regulator in determining suitability of these individuals.

4.3 Examination-based proficiency requirements

Part 4 prescribes examination-based, rather than course-based, education requirements, where possible. For example, an applicant is not required to complete the Canadian Securities Course but must pass the Canadian Securities Examination. It is up to the individual to determine what courses or other preparation, if any, is appropriate for him or her.

4.4 Relevant experience

The regulator will consider granting an exemption from any of the prescribed proficiency requirements in Part 4, Division 1 if it is satisfied that an individual has qualifications or relevant experience that are equivalent to, or more appropriate in the circumstances, than the prescribed proficiency requirements.

The 12 and 24 months of relevant experience referred to in subsection 4.4(2) and sections 4.11 and 4.12 respectively does not have to be consecutive. It can be a cumulative total during the 36-month period before the date the individual applied for registration.

Relevant experience under subsection 4.4(2) may include experience from working in:

- a registered dealer or registered adviser
- an investment fund manager firm
- related investment fields, such as investment banking, securities trading on behalf of a financial institution, securities research, portfolio management, investment advisory services or supervision of those activities
- legal, accounting and consulting practices related to securities legislation
- providing other professional services to the securities industry
- a securities-related business in a foreign jurisdiction

Relevant investment management experience under section 4.11 may include employment:

- as a registered dealing representative with a registered dealer firm
- under the supervision of:
    - an unregistered investment manager of a Canadian financial institution
    - an adviser that is registered in another jurisdiction of Canada or a foreign jurisdiction, or

- an adviser that is not required to be registered under the laws of the jurisdiction in Canada or foreign jurisdiction where the adviser carries on business

4.5 Restricted dealer and restricted adviser – proficiency for representatives

The regulator will decide on a case-by-case basis what education and experience are required for registration as:

- a dealing representative or CCO of a restricted dealer
- an advising representative or CCO of a restricted adviser

The regulator will determine these requirements when it assesses the individual's suitability for registration.

4.6 Bankruptcy or insolvency after registration

The regulator will review the circumstances of a registrant's bankruptcy or insolvency on a case-by-case basis. If the regulator finds evidence that activities, such as unethical conduct or gross error in business judgment, led to the bankruptcy, it may suspend or terminate the registrant's registration. In other situations, the regulator may impose terms and conditions on the registrant's registration, such as close supervision of the individual and delivering progress reports to the regulator.

4.7 Capital and insurance requirements

Initial and ongoing capital requirements are intended to ensure a registered firm can meet the demands of its counterparties and, if necessary, wind down its business in an orderly fashion without loss to its clients. Registrants must calculate their excess working capital using Form 31-103F1 *Calculation of excess working capital*. Excess working capital must never be less than zero.

Registrants are also required to maintain bonding or insurance that provides for a "double aggregate limit" or a "full reinstatement of coverage".

A double aggregate limit provision covers the registrant for twice the amount of the single loss limit for any number of losses in the year. The coverage for any one loss may not exceed the single loss limit. For example, if an adviser maintains a financial institution bond of $50,000 with a double aggregate limit, the adviser's coverage is $50,000 for any one claim and $100,000 for all claims during the year.

A full reinstatement of coverage provision means that the policy has no total loss limit. However, the total claimed for any one loss cannot exceed the amount of the policy's single loss limit. For example, if an adviser maintains a financial institution bond of $50,000 with a full reinstatement of coverage provision, the adviser's maximum coverage is $50,000 for any one claim and there is no limit to the total amount that can be claimed under the bond.

4.7.1 Capital, insurance, and client assets

The capital and insurance requirements applicable to an exempt market dealer, and the insurance requirements applicable to an adviser, depend in part on whether the dealer or adviser handles, holds or has access to client assets, including cheques or similar instruments. This is the case when the dealer or adviser:

- holds clients' securities certificates or cash for any period of time
- has the authority (e.g. power of attorney) to withdraw funds or securities from clients' accounts
- accepts funds from clients (e.g. a cheque made payable to the registrant)
- handles client cheques in transit (e.g. a cheque made payable to a third-party issuer)
- accepts clients' funds from a custodian (e.g. clients' funds are deposited in the registrant's bank accounts prior to issuing a cheque to the clients)
- acts in the capacity of a trustee for clients
- has, in any capacity, legal ownership of, or access to, the client funds or securities
- has authority to debit client accounts to pay bills other than investment management fees

4.8 Financial records

Subsection 4.32(1) requires registered firms to prepare financial statements in accordance with generally accepted accounting principles, except that the statements are to be prepared on an unconsolidated basis.

Section 5600 of the CICA Handbook provides guidance for auditors signing an audit report concerning financial statements prepared in accordance with regulatory or legislative requirements.

4.9 Criminal charges

If a registrant is charged with a crime, in particular fraud or theft, the regulator may take action to suspend the registration without waiting for the results of the criminal proceedings. The regulator will normally consider the facts giving rise to criminal charges in a hearing that is closed to the public. In these cases, the registrant's right to a fair trial before the criminal courts outweighs the desirability of adhering to the principle that all hearings be open to the public.

4.10 Foreign head office

When determining whether a firm whose head office is in a foreign jurisdiction is, and remains, suitable for registration, we will consider:

- whether the firm maintains registration or regulatory organization membership that is appropriate for the securities business being carried out in the foreign jurisdiction

- whether the firm continues to engage in the securities business for which the registration or membership is required in the foreign jurisdiction

The registered firm must notify the regulator in accordance with National Instrument 33-109 *Registration Information* (NI 31-109) of any change in this information.

PART 5 - CONDUCT RULES

5.1 Account opening and recordkeeping

Each record required under subsection 5.2(1) abd section 5.15 should clearly indicate the person or company and the account to which the record refers. Information in a record can cover only the accounts of the same accountholder or group. For example, registrants should obtain separate information for an individual's personal accounts and for accounts of a legal entity that the individual wholly owns or jointly holds with another party. Registrants should also obtain all required proxy documents.

Where applicable, the financial details should note whether the information is for an individual client or a family. This includes spousal income and net worth. The financial details for legal entity accounts should note whether the information refers to the entity or the owner(s) of the entity.

Investment knowledge or experience for multi-party or legal entity accounts should note whose investment knowledge or experience is being described.

If a client is opening more than one account, the investment objectives and risk tolerance should indicate whether they apply to a particular account or to the client's whole portfolio across accounts.

All information relating to suitability should be in a form that makes it usable in the registered firm's supervision systems.

If the registered firm permits clients to complete new account forms themselves, the forms should use language that is clear and avoids terminology that may be unfamiliar to unsophisticated clients.

5.2 Know-your-client

The know-your-client (KYC) obligation in section 5.3 is an exercise in due diligence that protects the client, the registrant and the integrity of the capital markets. KYC forms the

basis for investment suitability determinations and identifying, among other things, violations of trading rules and persons or companies that may want to trade illegally.

Registrants should collect the following information about clients that are not individuals:

- the nature of the client's business or other purposes of the entity
- control structure
- beneficial ownership

If it is unduly difficult for a registrant to determine beneficial ownership, as part of determining identity as required by subsection 5.3(4), the registrant should consider carefully why this might be so and whether it would be appropriate to closely scrutinize account activity until the beneficial owners are identified or to decline to accept the client.

To determine suitability, registrants should, at a minimum, collect the following information about each client:

- investment objectives
- investment knowledge and experience
- risk tolerance
- investment time horizon
- current investment holdings
- employment status
- income level
- net worth

Under subsection 5.3(3), registrants are required to make reasonable efforts to keep the KYC information of their clients current. Registrants should at all times have a reasonable basis for believing that they are acting on current KYC information.

We would interpret "current" in the context of the obligation to have sufficiently up-to-date information to support a suitability determination. This means, for example, that a portfolio manager with discretionary authority should update its client's KYC information frequently, but a dealer who only occasionally recommends trades to a client would only be expected to ensure that client's KYC information is up-to-date at the time of a recommendation.

5.3 Relationship disclosure information

5.3.1 Content of relationship disclosure information

The relationship disclosure information required under section 5.4 is not required to take the form of a separate document specially prepared for this purpose. The requirement may be met by providing a client with separate documents which, together, give the client the prescribed information. A registered firm should also provide its clients with any other information that the registered firm determines is necessary to clearly set out essential relationship information.

5.3.2 Promoting client understanding

Registered firms should promote their clients' understanding of the relationship and encourage their clients to:

- provide full and accurate information to the firm and the registered individuals acting on behalf of the firm
- promptly inform the firm of a change to any information that could reasonably result in a change to the types of investments appropriate for the client, such as a change to the client's income, investment objectives, risk tolerance, time horizon or net worth
- carefully review all account documentation, sales literature and other documents provided by the firm
- understand the potential risks and returns on investments
- ask questions and request information from the firm to resolve questions about the account, transactions, investments or the relationship with the firm or a registered individual acting on behalf of the firm
- pay for securities purchases by the settlement date
- regularly review portfolio holdings and performance
- consult professionals, such as a lawyer or an accountant, for legal or tax advice, where appropriate

A client's ability to meet some of these expectations will depend to some extent on the quality of the information provided by the firm.

5.4 Suitability of investments

To meet the obligation in section 5.5 to determine suitability of an investment for a client, registered individuals must understand all products that they are trading for, or recommending to, the client. This includes the structure, features and full costs of each product and any eligibility requirements (for example, whether the product is restricted to accredited investors).

Under subsections 5.5(3) and 5.5(4), there is no obligation to make a suitability determination for certain clients who are deemed not to need or want the protections that a suitability determination provides. Permitted clients are treated differently depending on the type of registrant who is trading or advising. For example, exempt market dealers are not required to determine suitability for permitted clients because of the nature of the business relationship. However, nothing precludes an exempt market dealer from providing a suitability determination if a permitted client asks for one.

Under subsection 5.5(5), permitted clients of other registrants may waive suitability determinations. Registrants should ensure that these clients are fully informed of the consequences of waiving suitability before they do so. Registrants should properly document and retain the waiver in their record-keeping system.

Section 3.3 also provides exemptions from the investment suitability obligation for SRO members. These exemptions generally apply to discount broker activity or to certain institutional clients.

5.5 Recordkeeping – general

In most circumstances, registered firms should maintain the following records to satisfy subsection 5.15(1)(a):

- material contracts
- reconciliations of bank statements and securities positions
- notes of oral communications with a client
- all e-mail, regular mail, fax and other written communications with clients

5.6 Activity and relationship records

5.6.1 Activity records

Activity records record information about buy or sell transactions, referrals, margin transactions and any other activities relating to a client's account.

They include records of all actions leading to trade execution, settlement and clearance, such as trades on exchanges, alternative trading systems, over-the-counter markets, debt markets, and distributions and trades in the prospectus-exempt market.

Examples of activity records are:

- trade confirmation statements
- summary information about account activity
- communications between a registrant and its client about particular transactions

- records of transactions resulting from securities a client holds, such as dividends or interest paid, or dividend reinvestment program activity

In determining whether a record is an activity record, firms should also consider the recordkeeping requirements in National Instrument 23-101 *Trading Rules*.

A trade should be reported in the currency in which it was executed. Where foreign currency is executed through a Canadian account, the exchange rate should be reported to the client.

A sub-adviser to an adviser or a dealer executing trades directed by an adviser or another dealer should consider the other registrant to be its client for purposes of providing activity records.

5.6.2 Relationship records

Relationship records record information about a registered firm's relationship with its client and relationships that any representatives have with that client.

Relationship records include:

- communication between the firm and its clients, such as:
    - disclosure provided to clients
    - agreements between the registrant and its clients
- account opening information
- change of status information provided by the client
- disclosure and other relationship information provided by the firm
- margin account agreements
- communications that do not relate to a particular transaction
- conflicts records

5.7 Third party access to records

Registered firms should have proper safeguards in place to ensure that there is no unauthorized access to information, particularly confidential client information. Registered firms should be particularly vigilant if they maintain books and records in a location that employees of a third party can access.

5.8 Complying with recordkeeping requirements

Registered firms should consider conducting regular internal tests to determine whether their records comply with applicable securities legislation.

The regulator or the securities regulatory authority is authorized under securities legislation to access, examine and take copies of a registered firm's records. The regulator or the securities regulatory authority may conduct regular and spot compliance reviews of registered firms.

5.9 Compliance system

5.9.1 Purpose of compliance system

The purpose of the compliance system mandated under section 5.23 is to protect both clients and registrants, which contributes to greater investor confidence and participation in our capital markets. An effective compliance system provides reasonable assurance that the registered firm is meeting, and will continue to meet, all requirements of applicable securities laws and SRO rules.

A registered firm's compliance system should:

- ensure that everyone in the firm, including the board of directors or partners, management, employees and agents (whether or not they are registered) understands the standards of conduct for their role
- be reasonably likely to identify non-compliance at an early stage
- provide effective mechanisms for correcting non-compliant conduct in a timely manner

Compliance is a firm-wide responsibility. The existence of the UDP and CCO, and in larger registered firms, a dedicated compliance monitoring group and individuals inside or outside that group with specific compliance and/or supervisory responsibilities, does not relieve others in the firm of the obligation to report and act on compliance issues.

5.9.2 Elements of an effective compliance system

Registered firms must operate an effective compliance system in order to remain suitable for registration. An effective compliance system has two inter-related elements: day-to-day supervision and systemic monitoring.

Day-to-day supervision includes:

- identifying specific cases of non-compliance
- taking action to remedy them
- minimizing the risk of non-compliant behaviour in key areas of the registered firm's operations

Minimizing risk usually involves activities such as approving new account documents, monitoring and in some cases, approving transactions, approving marketing material and preventing inappropriate use or disclosure of non-public information.

Systemic monitoring involves assessing, advising on and reporting on the effectiveness of the registered firm's compliance system. This includes ensuring that day-to-day supervision at the firm is reasonably effective in identifying compliance deficiencies and promptly remedying them. It also includes ensuring that policies and procedures are kept up to date and that everyone at the firm generally understands and complies with them.

More specific components of an effective compliance system include:

- the visible commitment of senior management and the board of directors or partners
- sufficient resources to operate effectively
- detailed written policies and procedures that:
    - set out the firm's standards of conduct for regulatory compliance
    - set out the systems for monitoring and enforcing compliance with those standards
    - clearly outline who is expected to do what, when and how
    - are readily accessible by everyone who is expected to know and follow them
    - are kept up to date with changes in regulatory requirements and the firm's business practices
- the designation of individuals to monitor the firm's compliance, identify any incidents of non-compliance and take supervisory action to correct them, including those assigned to fill those positions temporarily during absences (all of these individuals must have the qualifications and authority to carry out the responsibilities assigned to them)
- training to ensure that everyone at the firm understands the standards of conduct and his or her role in the compliance system, including ongoing communication and training on changes in regulatory requirements or the firm's policies and procedures
- records of activities conducted to identify and correct compliance deficiencies
- where compliance deficiencies have been identified, records of the action taken to remedy them

5.9.3 Setting up a compliance system

It is up to each registered firm to determine the most appropriate compliance system for its operations. For example, in some firms, the compliance-monitoring group may be

authorized to take supervisory action, but in others it may not. Policies and procedures alone do not make an acceptable compliance system.

Registered firms should consider their size, scope of operations, products, types of clients or counterparties, risks and compensating controls, and any other relevant factors. Some of the elements noted in section 5.9.2 of the Companion Policy may be unnecessary or unworkable in smaller registered firms. However, all registered firms must have systems, policies and procedures to ensure they comply with the regulatory requirements under subsection 5.23(2).

We encourage firms to meet or exceed industry best practices to assist them in complying with regulatory requirements. The CSA or its member regulators may from time-to-time publish recommendations for best practices for various categories of registration. The SROs also do this for their members.

5.9.4 Supervision

Managers or others designated by their registered firm with authority to supervise specified registered individuals have a responsibility on behalf of the firm to take all reasonable measures to ensure that each of these individuals:

- acts honestly and in good faith toward clients
- complies with securities legislation and firm policies and procedures
- maintains an appropriate level of proficiency on an on-going basis

The effectiveness of a registered firm in identifying and remedying compliance deficiencies is an important element in assessing its continuing suitability for unrestricted registration.

5.10 Outsourcing

Registrants may only outsource non-core “back office” activities that are not registerable. Outsourcing can be a cost-effective alternative to the registered firm conducting those operations in-house. It can also be a way to access specialized expertise that would otherwise be unavailable. However, registered firms are fully liable and accountable for all functions that they outsource to a service provider. A written, legally binding contract should include the expectations of the parties to an outsourcing arrangement.

Prudent business practice requires registered firms to conduct a due diligence analysis of prospective third-party service providers to assess their reputation, financial stability, relevant internal controls and overall ability to deliver the services. This includes third-party service providers that are affiliates of the firm.

Registered firms should:

- ensure that third-party service providers have adequate safeguards for keeping information confidential and, where appropriate, disaster recovery capabilities

- conduct ongoing reviews of the quality of outsourced services

- develop business continuity plans for the possibility that third-party service providers may not deliver their services in a satisfactory manner, which could lead to disruption of a firm's business and negative consequences for its clients

- note that other legal requirements, such as privacy laws, may apply when entering into outsourcing arrangements

The regulator, the registered firm and the firm's auditors should have the same access to the work product of a third-party service provider as they would if the firm performed the activities. We expect firms to ensure that this access is provided and to include a provision for it in their contractual arrangements if necessary.

5.11 Responsibility to prevent client confusion

As part of its duty toward clients, registrants should ensure that their clients understand which legal entity they are dealing with, especially if more than one financial services firm is carrying on business in the same location. Registrants may use various methods, including signage and disclosure, to differentiate themselves. A registrant should carry on all registerable activities in the name of the registrant. Contracts, confirmation and account statements, among other documents, should contain the full legal name of the registrant.

5.12 Client complaints

5.12.1 Firms registered in Québec

Registered firms in Québec comply with Division 6 if they comply with sections 168.1.1 to 168.1.3 of the Québec *Securities Act*, which has provided a substantially similar regime since 2002.

The following guidance applies to firms registered in any jurisdiction, including Québec.

5.12.2 Definition of complaints

A complaint may be made orally or in writing. A matter is a complaint if it:

- is a reproach against a registered firm

- identifies a real or potential harm that a person or company has experienced, or may experience, because of the actions of a registered firm or it representatives

- is a request for the registered firm to take remedial action

Registered firms must document and effectively and fairly respond to every complaint, not just those relating to possible violations of securities legislation. An effective complaint system deals with all formal and informal complaints or disputes internally or refers them to the appropriate external person or process in a timely and fair manner.

5.12.3 Dispute resolution service

Registered firms must participate in an independent dispute resolution service for complaints relating to any trading or advising activity of the firm or its representatives.

Registrants should be fully aware of all applicable processes for dealing with complaints. They should disclose to all clients all dispute resolution mechanisms available for pursuing different types of complaints. Dispute resolution mechanisms include those prescribed by the applicable SRO.

In Québec, registrants must inform each complainant, in writing and without delay, that if the complainant is dissatisfied with the handling of the complaint or with the outcome, the complainant may request the registrant to forward a copy of the complaint file to the Autorité des marchés financiers. A copy of the complaint file must, upon request by a complainant, be forwarded to the Autorité des marchés financiers which examines the complaint and may, if it considers it appropriate, act as a mediator if the parties agree.

5.12.4 Disclosure of complaints

Some registrants are also registered or licensed to do business in other sectors, such as insurance. These registrants should inform their clients of the complaint resolution mechanisms for each sector in which they do business and how to use them.

5.12.5 Handling of complaints

Registered firms should acknowledge receipt of the complaint to the complainant within 10 business days.

Sales supervisors or compliance staff should handle the complaint promptly. In most cases, registered firms should provide a substantive response to a complaint within three months of receiving it.

Registered firms should ensure that the CCO and appropriate supervisors are aware of all complaints. They should also ensure that procedures are in place to inform senior management about all complaints of serious misconduct and of all legal actions.

Registered firms should document all complaints made against them and their representatives, and all legal actions or other dispute resolution proceedings relating to these complaints. They should keep a current record of complaints, and retain it for seven years from the date of the complaint.

Complaint records should include the following information:

- date of the complaint
- nature of the complaint
- complainant's name
- name of the person who is the subject of the complaint
- financial product or service that is the subject of the complaint
- date and nature of the decision made about the complaint

PART 6 - CONFLICTS OF INTEREST

6.1 Definition of conflict of interest

6.1.1 General

Conflicts of interest are circumstances where the interests of different parties, such as the interests of clients and those of a registrant, are inconsistent or divergent. This definition of conflicts of interest is not intended to capture inconsequential matters.

The obligations in section 6.1 apply to all conflicts of interest, even when there is a specific section that also applies to the conflict.

6.2 Responding to conflicts of interest

6.2.1 Mechanisms

When responding to any conflict of interest, registrants should consider their standard of care for dealing with clients.

Registrants will generally use three mechanisms to respond to conflicts of interest:

(a) ***Avoidance***
Registrants should avoid all conflicts of interest that are prohibited by law. If a conflict of interest is not prohibited by law, registrants should avoid it if it is sufficiently contrary to the interests of a client that there can be no other reasonable response.

(b) ***Control***
If a registered firm does not avoid a conflict of interest, it should consider what internal structures or policies and procedures it should use or have to respond to the conflict of interest reasonably.

(c) ***Disclosure***
If a registrant does not avoid the conflict of interest, it must consider if it is required to disclose the conflict.

6.2.2 Consistency

Registrants should apply consistent criteria when responding to similar types of conflicts of interest.

6.2.3 Conflicts of interest between clients

If there is a conflict of interest between a registered firm's clients, the firm should be fair to all clients. Firms should have internal systems to evaluate the balance struck between these interests.

For example, there can be a conflict of interest between the interests of investment banking clients, who want the highest price, lowest interest rate or best terms in general for their issuances of securities, and the interests of the retail clients who will buy the product. The firm should consider whether the product meets the needs of retail clients and is competitive with alternatives available in the market.

6.3 Avoiding conflicts of interest

Some conflicts of interest are so contrary to another person's or company's interest that a registrant cannot use controls and/or disclosure to respond to them. In these cases, the registrant should avoid the conflict, stop providing the service or stop dealing with the client. A registered firm's conflicts management policies and procedures should allow the firm and its staff to identify conflicts of interest that should be avoided.

If a registrant allows serious conflicts of interest to continue, there is a high risk of harm to clients or to the market. Registrants should determine the level of risk a conflict of interest raises. If the risk of harming a client or the integrity of the markets is too high, the conflict needs to be avoided.

6.4 Controlling conflicts of interest

6.4.1 General

Depending on the conflict of interest, registered firms may control the conflict using methods such as:

- assigning a different representative to provide the service to the particular client
- creating a group or committee to review, develop or approve responses
- monitoring market activity
- blocking certain internal communication with information barriers

6.4.2 Organizational structures

Registered firms should ensure that their organizational structures, reporting lines, and physical layout enable them to control conflicts of interest effectively.

For example, the following situations would likely raise a conflict of interest:

- advisory staff reporting to marketing staff
- compliance or internal audit staff reporting to a business unit
- registered representatives and investment banking staff in the same physical location

Robust information barriers may help registered firms control these types of conflicts of interest.

6.4.3 Remuneration

Registered firms should consider whether any particular benefits, compensation or remuneration practices are inconsistent with their obligations to clients, especially if the firm relies heavily on commission-based remuneration.

6.4.4 Multiple roles for individuals

Conflicts of interest can arise when representatives serve on a board of directors. Examples include conflicting fiduciary duties owed to the company and to a registered firm or client, possible receipt of inside information and conflicting demands on the representative's time.

Registered firms should consider:

- requiring their representatives to seek permission from the firm to serve on the board of directors of a public issuer or restricted issuer
- having policies for board participation that identify the circumstances where the activity would not be in the best interests of the firm and its clients

6.4.5 Outside business activities

When individuals are involved in outside business activities, conflicts of interest can arise, for example, from any associated compensation or because of the nature of the relationship between the individual and the outside entity. Before approving any of these activities, registered firms should consider potential conflicts of interest. If the firm cannot properly control a potential conflict of interest, it should not permit the outside activity.

6.5 Disclosing conflicts of interest

6.5.1 General

Registered firms should make appropriate disclosure of conflicts of interest to their clients. While disclosure alone will often not be enough, it is an integral part of responding to conflicts of interest. Registered firms should ensure that their clients are adequately informed about any conflicts of interest that may affect the services the firm provides to them. Generic disclosure is unlikely to satisfy the registered firm's obligations to respond to conflicts properly.

Disclosure about conflicts of interest should:

- be prominent, specific, clear and meaningful to the client, so that the client can understand the conflict of interest and how it could affect the service the client is being offered

- usually occur before or when the service is provided, so that the client has a reasonable amount of time to assess it

Registered firms should ensure that they do not:

- give partial disclosure that misleads their clients

- obscure conflicts of interest in overly detailed disclosure

6.5.2 Timing

Registered firms should disclose a conflict of interest to their clients before an action, such as a transaction occurs. If it is impossible to do so, the registered firm should disclose the conflict to its clients as soon as possible afterwards.

6.5.3 When disclosure is inappropriate

There are some situations in which disclosing a particular conflict of interest is inappropriate. Examples include conflicts of interest that involve confidential or commercially sensitive information, or that amount to "inside information" under the insider trading provisions.

In these situations, registered firms will need to assess whether they can provide any disclosures and whether there are mechanisms to respond to the conflict of interest adequately. The firm may have to decline to provide the service to avoid the conflict of interest.

Registered firms may disclose material, non-public information only if it is in the necessary course of business. Otherwise, it would be considered "tipping". Registered firms should have specific procedures for responding to conflicts of interest that involve inside information.

6.6 Registrant relationships

The regulator may exercise his or her discretion to register an individual as a dealing, advising or associate advising representative of a registered firm and as a representative of another affiliated registered firm.

6.7 Issuer disclosure statement

The nature of the relationship between a registered firm and a related issuer and, in the course of a distribution, a connected issuer, can vary. The requirement to describe the nature of those relationships can be satisfied by describing, as applicable:

- an ownership interest
- an overlap of individuals
- a commercial interest
- a family relationship
- any other relevant interest

To satisfy the requirement to describe a connected issuer in the course of a distribution, registered firms may find it useful to provide examples of connected issuers and a description of the nature of the relationship with the firm.

The description of the nature of these relationships in the issuer disclosure statement should not be boilerplate disclosure that could apply to any registrant. The description should be tailored to the particular registered firm, so that the description is meaningful to the firm's clients.

6.8 Allocating investment opportunities fairly

If the investment process involves allocating investment opportunities, an adviser's fairness policy should, at a minimum, disclose the method used to allocate:

- price and commission among clients when trades are bunched or blocked
- block trades and initial public offerings among client accounts and among clients that are partially filled, such as pro-rata

The adviser's fairness policy should also address any other situation where investment opportunities must be allocated.

6.9 Acquiring securities or assets of a registered firm

For purposes of section 6.8, the book of business of a registered firm would be "a substantial part of the assets" of the registered firm.

6.10 Relationship pricing

We are aware that industry participants offer financial incentives or advantages to certain clients. This practice is commonly referred to as “relationship pricing”.

The tied selling provision in section 6.10 is intended to prevent certain abusive sales practices. It is not intended to prohibit relationship pricing or other beneficial selling arrangements similar to relationship pricing.

In our view, section 6.10 would be contravened if, for example, a financial institution refused to make a loan unless the client acquired securities of mutual funds that are sponsored by the financial institution, and the client otherwise met the financial institution’s criteria for making loans.

6.11 Referral arrangements

6.11.1 Application

Section 6.11 defines “referral arrangement” in broad terms. The definition is not limited to referrals for providing financial services or services requiring registration. It also includes receiving a referral fee for providing a client name and contact information to a person or company.

A party to a referral arrangement may need to be registered depending on the activities that party carries out. Registrants cannot use a referral arrangement to assign or contract out of their regulatory obligations.

“Referral fee” is also broadly defined. It includes sharing or splitting any commission resulting from the purchase or sale of a security.

6.11.2 Clients

A client who is referred to a person or company becomes the client of that person or company for the purposes of the trading or advising services provided under the referral arrangement.

The person or company receiving the referral must be registered in an appropriate category or must undertake trading or advising activities under an applicable registration exemption. Section 6.14 requires the registrant making the referral to satisfy itself that this is the case.

The registrant receiving a referral must meet all of its obligations as a registrant toward its referred clients, including know-your-client and suitability determinations.

Registrants involved in referral arrangements should manage any related conflicts of interest in accordance with the applicable provisions of Part 6, Division 1. For example, if the proposed referral fee seems excessive in relation to the service to be provided, the registered firm should assess whether this may create a conflict that could motivate its representatives to act contrary to their duties toward their clients.

6.11.3 Written agreement

The requirement in section 6.12 that parties to a referral arrangement set out its terms in a written agreement is intended to ensure that each party's roles and responsibilities are made clear.

We expect referral arrangements to include:

- the roles and responsibilities of each party
- limitations on any party to the referral arrangement that is not a registrant to ensure that it is not engaging in any activities requiring registration
- the method of calculating the referral fee and, to the extent possible, the amount of the fee
- the disclosure to be provided to referred clients
- who provides the disclosure to referred clients
- who is responsible for communicating with referred clients

Registered firms are required to be parties to referral agreements entered into by their representatives. This ensures that they are aware of these arrangements so they can adequately supervise their representatives and monitor compliance. This does not preclude the individual registrant from also being a party to the agreement.

6.11.4 Disclosure to clients

The disclosure of information to clients required under section 6.13 is intended to help clients make an informed decision about the referral arrangement and to assess any conflicts of interest.

In providing the prescribed disclosure, registrants should take reasonable steps to ensure that clients understand:

- which entity they are dealing with
- what they can expect that entity to provide to them
- the registrant's key responsibilities to them
- the limitations of the registrant's registration category and any relevant terms and conditions imposed on its registration
- the extent of the referrer's financial interest in the referral arrangement

- the nature of any potential or actual conflict of interest that arises from the referral arrangement

PART 7 - SUSPENSION AND REVOCATION OF REGISTRATION

7.1 General

There is no annual or other renewal requirement for registration. Registration remains effective until it is suspended or terminated by a triggering event. Triggering events for terminating registration include:

- an individual ceasing to have a sponsoring firm
- the regulator accepting a request from the registrant to surrender registration
- the regulator suspending or revoking registration

“Suspension” is a restricted state of registration. A suspended registrant must cease the registerable activity but otherwise remains a registrant, subject to the jurisdiction of the securities regulatory authority. “Reinstatement” means that a suspension on a registration has been lifted. “Revocation” means that a registration has been terminated. As a result, the firm or individual must submit a new application to become a registrant again.

Registrants may be entitled to an opportunity to be heard before a decision is made to suspend or revoke registration.

7.2 Termination of a registered individual

If a registered firm terminates the employment, partnership or agency relationship of a registered individual for any reason (for example, the individual resigns, is dismissed or retires), the firm has five days after the effective date of the individual’s termination to file the prescribed notice of termination (Form 33-109F1).

If the notice of termination indicates that the individual resigned or was dismissed for a reason other than retirement or completing a temporary employment contract, the former sponsoring firm has 30 days from the date of termination to file additional prescribed information about the reasons for the termination. This information is necessary for the regulator to determine if there are any concerns about the individual’s conduct that may be relevant to his or her ongoing suitability for registration.

7.3 Automatic suspension

An individual must have a sponsoring firm to be an active registrant. Individuals who voluntarily or involuntarily leave their sponsoring firm are automatically suspended, effective on the day that they cease to have the firm’s authority to act on its behalf.

If the registration of a firm is suspended or revoked, the registration of each of its individual dealing or advising representatives is automatically suspended. There is no opportunity to be heard in the case of an automatic suspension.

Certain registration categories require registered firms to be a member of a specified SRO. Individuals acting on behalf of SRO member firms may also be required to be an approved person of the SRO. If an SRO revokes or suspends the membership of a registered firm or approval of an individual, the firm or individual's registration in the category requiring SRO membership or approval will be automatically suspended. This will not apply to mutual fund dealers registered only in Québec.

Where an individual been suspended by his or her SRO for reasons that do not involve significant regulatory concerns and the SRO has subsequently reinstated his or her approval, we will reinstate the individual's registration as quickly as possible. An example of this would be the routine suspension of IDA approved persons who have missed a deadline to upgrade their proficiency under IDA rules. The IDA reinstates such individuals' approved person status as soon as the required courses have been completed.

If a firm or individual is registered in multiple categories, the regulator will consider on a case-by-case basis whether to suspend the firm's or individual's other registration(s) or to impose terms and conditions, subject to an opportunity to be heard.

7.4 Reinstatement

If an individual joins a new sponsoring firm within 90 days of leaving registered employment and is seeking registration in the same category as previously held, the individual's registration will be automatically reinstated, subject to certain conditions set out in NI 33-109. This process allows a qualified individual who transfers directly from one sponsoring firm to another to start engaging in activities requiring registration from the first day with the new sponsoring firm.

In other circumstances, a suspended individual who has found a new sponsoring firm will have to apply for reinstatement under the process set out in NI 33-109.

Despite automatic reinstatement or any other procedure, maintaining suitability for registration is an ongoing requirement and the regulator has discretionary authority to suspend or revoke an individual's registration or restrict it with terms and conditions at any time. The regulator may do this, for example, if it receives information through the form 33-109F1 Notice of Termination filed by the individual's former sponsoring firm or other sources that causes the regulator to question the individual's continued suitability for registration. In these situations, individuals will be given an opportunity to be heard before a decision is made to suspend or revoke registration or to impose terms and conditions.

7.5 Surrender of registration

If a registrant intends to cease activity requiring registration, it may apply to surrender its registration. A registration is revoked when the regulator gives notice that it has accepted its surrender. The individual or firm remains registered until it receives this notice.

7.5.1 Registered firms

Before accepting a registered firm's surrender, the regulator will require evidence that the firm's clients have been dealt with appropriately. This is not necessary for a registered individual who applies to surrender registration. In this case, the sponsoring firm will continue to be responsible for meeting obligations to clients who may have been served by the individual.

When considering a registered firm's application to surrender its registration, the regulator may consider whether:

- the firm has ceased carrying on activity requiring registration or proposes an effective date within 6 months of the date of the application to surrender (revocation of registration to take effect on or after that date as notified by the regulator)

- the firm has, at the time of filing the application to surrender, satisfied any previously outstanding fees and filings

- the application to surrender registration:

    - discloses the firm's reasons for ceasing to carry on activity requiring registration

    - provides satisfactory evidence that the firm has given all of its clients reasonable notice of its intention to cease carrying on activity requiring registration, including an explanation of how it will affect them in practical terms

    - includes copies of the firm's most recent unaudited financial statements

    - provides satisfactory evidence that it has given appropriate notice to the SRO, if applicable

- the regulator has received, or waived receipt of, the following from the firm in satisfactory form, supported by an officer's or partner's certificate and auditor's comfort letter:

    - evidence that the firm has resolved all outstanding client complaints (including litigation, judgments and liens) or made reasonable arrangements to deal with and fund any payments relating to them, as well as any subsequent client complaints, settlements or liabilities

    - confirmation that all money or securities owed to clients has been returned or transferred to another registrant, where possible according to client instructions

    - up-to-date audited financial statements

- evidence that the firm has satisfied the SRO's requirements for withdrawing membership, if applicable

In determining whether it would be prejudicial to the public interest to accept the surrender of registration, the regulator will refer to all information the registered firm has provided and any other regulatory concerns that relate to the firm, including terms and conditions on registration that have not been met and compliance issues, among other things. The regulator also has the authority to act in the public interest by suspending the registration of a registered firm that has applied to surrender it.

7.5.2 Registered individuals

Registered individuals who want to terminate their registration do not have to apply to surrender it. They may simply resign from their sponsoring firm. However, individuals may choose to apply to surrender registration using Form 33-109F2 if, for example, they are registered in multiple jurisdictions and want to have their registration revoked in one jurisdiction only.

PART 8 - EXEMPTIONS FROM REGISTRATION

8.1 International dealers and international advisers

When international dealers or advisers relying on the registration exemptions in subsections 8.15(2) and 8.16(2) stop carrying on business in the jurisdiction, they should give notice by sending an e-mail to the securities regulatory authority in the jurisdiction where they are trading or advising in securities in reliance on the registration exemption as soon as possible after they stop carrying on business in the jurisdiction.

The e-mail addresses of the relevant jurisdictions are listed in Form 31-101F2.

8.2 Mobility exemption

In limited circumstances, the mobility exemption in Part 8, Division 2 allows registrants to continue dealing with clients (and certain of their family members) who move to a different jurisdiction, without registering in that other jurisdiction. The availability of the mobility exemption is triggered when the client moves to another jurisdiction.

The registered firm's compliance system must have appropriate policies and procedures for supervising individual representatives relying on a mobility exemption. Registered firms must also keep appropriate records to demonstrate compliance with the conditions of the mobility exemption.

SCHEDULE 1

PROPOSED CONSEQUENTIAL CHANGES TO NATIONAL INSTRUMENTS AND POLICIES

Appendix A

Revocation of
Multilateral Instrument 11-101 *Principal Regulator System*

1. Multilateral Instrument 11-101 *Principal Regulator System* is revoked on •.

.....

Appendix B

Rescission of
Companion Policy 11-101CP *Principal Regulator System*
to Multilateral Instrument 11-101 *Principal Regulator System*

1. Companion Policy 11-101CP *Principal Regulator System* is rescinded on •.

.....

Appendix C

Revocation of
Form 11-101F1 *Notice of Principal Regulator*
under Multilateral Instrument 11-101 Principal Regulator System

1. Form 11-101F1 *Notice of Principal Regulator under Multilateral Instrument 11-101* is revoked on •.

.....

Appendix D

Amendments to
National Instrument 14-101 Definitions

1. ***National Instrument 14-101 Definitions is amended by this Instrument.***

2. ***Section 1.1(3) is amended***

   a. ***by repealing the definition of "***dealer registration requirement***" and substituting the following:***

"dealer registration requirement" means the requirement in securities legislation that, depending upon the jurisdiction, either prohibits a person or company from trading in a security, or prohibits a person or company from engaging in, or holding himself, herself or itself as engaging in, the business of trading in securities, unless, in each case, the person or company is registered in the appropriate category of registration under securities legislation;**,**

b. ***by adding the following after the definition of "***insider reporting requirement***":***

"investment fund manager registration requirement" means the requirement in securities legislation that prohibits a person or company from acting as investment fund manager, unless the person or company is registered in the appropriate category of registration under securities legislation;**,**

c. ***by repealing the definition of "***registration requirement***" and substituting the following:***

"registration requirement" means the requirement in securities legislation that:

(a) depending upon the jurisdiction, either prohibits a person or company from trading in a security, or prohibits a person or company from engaging in, or holding himself, herself or itself out as engaging in, the business of trading in securities, or

(b) prohibits a person or company from acting as an underwriter, an adviser or an investment manager,

unless, in each case, the person or company is registered in the appropriate category of registration under securities legislation; ***,and***

d. ***by repealing the definition of "***underwriter registration requirement***" and substituting the following:***

"underwriter registration requirement" means the requirement in securities legislation that prohibits a person or company from acting as an underwriter unless the person or company is registered in the appropriate category of registration under securities legislation; and

3. ***This Instrument comes into force on •.***

.....

Appendix E

Revocation of
National Instrument 33-102 *Regulation of Certain Registrant Activities*

1. National Instrument 33-102 *Regulation of Certain Registrant Activities* is revoked on •.

.....

Appendix F

Rescission of
Companion Policy 33-102CP Regulation of Certain Registrant Activities

1. Companion Policy 33-102CP *Regulation of Certain Registrant Activities* is rescined on •.

.....

Appendix G

Amendments to
National Instrument 33-105 Underwriting Conflicts

1. ***National Instrument 33-105 Underwriting Conflicts is amended by this Instrument.***

2. ***Section 1.1 is amended***

   a. ***in the definition of "***connected issuer***" by striking out "***registrant***" wherever it occurs and substituting "***specified firm registrant***",***

   b. ***in the definition of "***influential securityholder***" by striking out "***the registrant of the professional group***" and substituting "***specified firm registrant***",***

   c. ***in the definition of "***professional group***" by striking out "***registrant***" wherever it occurs and substituting "***specified firm registrant***",***

   d. ***by repealing the definition of "***registrant***",***

   e. ***in the definition of "***related issuer***" by striking out "***; and***" and substituting "***;***",***

   f. ***in the definition of "***special warrant***" by striking out "***distribution of the other security***" and substituting "***distribution of the other security; and***",***
      and

g. ***by adding the following after the definition of "***special warrant***":***

h. "specified firm registrant" means a person or company registered, or required to be registered, under securities legislation as a registered dealer, registered adviser or registered investment fund manager**..**

3. ***In the following provisions of the Instrument, "***registrant***" is struck out wherever it occurs and "***specified firm registrant***" is substituted:***

   a. ***section 1.2,***

   b. ***section 2.1, and***

   c. ***section 3.1.***

4. ***Appendix C is amended by striking out "***registrant***" wherever it occurs and substituting "***specified firm registrant***".***

5. ***This Instrument comes into force on •.***

.....

Appendix H

Amendments to
Companion Policy 33-105CP Underwriting Conflicts

1. ***Companion Policy 33-105CP Underwriting Conflicts is amended by this Instrument.***

2. ***In the following provisions of the Companion Policy "***registrant***" is struck out wherever it occurs and "***specified firm registrant" ***is substituted:***

   a. ***section 2.1,***

   b. ***section 2.2,***

   c. ***section 2.4,***

   d. ***section 4.1,***

   e. ***section 4.2,***

   f. ***section 4.3,***

   g. ***section 5.1, and***

   h. ***section 6.1.***

3. ***Appendix A-1 is amended by striking out "***registrant***" wherever it occurs and substituting "***specified firm registrant***".***

4. ***Appendix A-2 is amended by striking out "***registrant***" wherever it occurs and substituting "***specified firm registrant***".***

5. ***Appendix A-3 is amended by striking out "***registrant***" wherever it occurs and substituting "***specified firm registrant***".***

6. ***Appendix A-4 is amended by striking out "***registrant***" wherever it occurs and substituting "***specified firm registrant***".***

7. ***This Instrument comes into force •.***

.....

Appendix I

Revocation of
National Policy 34-201 *Breach of Requirements of Other Jurisdictions*

New Brunswick will not be requiring this Appendix

.....

Appendix J

Amendments to
National Instrument 81-102 Mutual Funds

1. ***National Instrument 81-102 Mutual Funds is amended by this Instrument.***

2. ***Appendix C is amended***

   a. ***in the column Securities Legislation Reference***

      (i) ***by striking out "***s. 227 of Reg. 1015***", and***

      (ii) ***by adding "***Section 6.6 of National Instrument 31-103 Registration Requirements" ***at the end of Appendix C.***

   b. ***in the column Jurisdiction by adding the following at the end of Appendix C:***

      Alberta, British Columbia, Manitoba, Newfoundland and Labrador, New Brunswick, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Quebec, Saskatchewan, and Yukon***.***

3. ***This Instrument comes into force on •.***

.....

Appendix K

Amendments to
Multilateral Policy 34-202 Registrants Acting As Corporate Directors

1. ***Multilateral Policy 34-202 Registrants Acting as Corporate Directors is amended by this Instrument.***

2. ***Section 1.3 is amended by striking out "***Any director of a reporting issuer who is a partner, director, officer or employee of a registrant should, in the view of the Canadian securities regulatory authorities, recognize that the director's first responsibility in this area is to the reporting issuer on whose board the director serves. A director should meticulously avoid any disclosure of inside information to partners, directors, officers and employees of the registrant or to its clients.***" and substituting "***Any director of a reporting issuer who is a partner, director, officer, employee or agent of a registrant should, in the view of the Canadian securities regulatory authorities, recognize that the director's first responsibility in this area is to the reporting issuer on whose board the director serves. A director should meticulously avoid any disclosure of inside information to partners, directors, officers, employees or agents of the registrant or to its clients.***"**

3. ***Section 1.4 is amended by striking out "***If a representative of a registrant***" and substituting "***If a partner, director, officer, employee or agent of a registrant***".**

4. ***Section 1.6 is repealed.***

5. ***This Instrument comes into force on •.***

.....

Appendix L

Amendments to
National Instrument 81-107 Independent Review Committee for Investment Funds

1. ***National Instrument 81-107 Independent Review Committee for Investment Funds is amended by this Instrument.***

2. ***Appendix A is amended by adding "***and section 6.2 of National Instrument 31-103 *Registration Requirements****" after "***Part 4 of National Instrument 81-102 *Mutual Funds****".***

3. ***Appendix B is amended***

a. ***in the column Securities Legislation Reference***

(i) ***by striking out "***Section 118(2)(b) of the *Securities Act* (Ontario)***", and***

(ii) ***by striking out "***Section 115(6) of Reg. 1015***", and***

(iii) ***by adding "***Section 6.2(2) of National Instrument 31-103 *Registration Requirements****" at the end of Appendix B.***

b. ***in the column Jurisdiction by adding***

"Alberta, British Columbia, Manitoba, Newfoundland and Labrador, New Brunswick, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Quebec, Saskatchewan, and Yukon***" at the end of Appendix B.***

4. ***This Instrument comes into force on •.***

NATIONAL INSTRUMENT 31-103

REGISTRATION REQUIREMENTS

Table of Contents

NATIONAL INSTRUMENT 31-103

REGISTRATION REQUIREMENTS

PART 1 - DEFINITIONS

Definitions

1.1 (1) In this Instrument

"Canadian financial institution" has the same meaning as in section 1.1 of National Instrument 45-106 *Prospectus and Registration Exemptions*;

"connected issuer" has the same meaning as in section 1.1 of National Instrument 33-105 *Underwriting Conflicts*;

"fully-managed account" means an account of a client that is managed by an adviser through discretionary authority granted by the client;

"IDA" means the Investment Dealers Association of Canada;

"marketplace" has the same meaning as in section 1.1 of National Instrument 21-101 *Marketplace Operation*;

"MFDA" means the Mutual Fund Dealers Association of Canada;

"permitted client" means

(a) a Canadian financial institution or a Schedule III bank;

(b) the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada);

(c) a subsidiary of any person or company referred to in paragraph (a) or (b), if the person or company owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of the subsidiary;

(d) a person or company registered under the securities legislation of a jurisdiction of Canada as an adviser or dealer, other than a scholarship plan dealer or a restricted dealer;

(e) a pension fund that is regulated by either the federal Office of the Superintendent of Financial Institutions or a pension commission or similar regulatory authority of a jurisdiction of Canada;

(f) an entity organized in a foreign jurisdiction that is analogous to any of the entities referred to in paragraphs (a) to (e);

(g) the Government of Canada or a jurisdiction of Canada, or any crown corporation, agency or wholly-owned entity of the Government of Canada or a jurisdiction of Canada;

(h) a municipality, public board or commission in Canada and a metropolitan community, school board, the Comité de gestion de la taxe scolaire de l'île de Montréal or an intermunicipal management board in Québec;

(i) a trust company or trust corporation registered or authorized to carry on business under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in a jurisdiction of Canada or a foreign jurisdiction, acting on behalf of a fully-managed account managed by the trust company or trust corporation, as the case may be;

(j) a person or company acting on behalf of a fully-managed account managed by the person or company, if the person or company is registered or authorized to carry on business as an adviser or the equivalent under the securities legislation of a jurisdiction of Canada or a foreign jurisdiction;

(k) an investment fund that is advised by a person or company registered as an portfolio manager under the securities legislation of a jurisdiction of Canada;

(l) a registered charity under the *Income Tax Act* (Canada) that obtains advice on the securities to be traded from an eligibility adviser, as defined in National Instrument 45-106 *Prospectus and Registration Exemptions*, or an adviser registered under the securities legislation of the jurisdiction of the registered charity;

(m) an individual who beneficially owns, directly or indirectly, financial assets, as defined in National Instrument 45-106 *Prospectus and Registration Exemptions*, having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds $5 million or its equivalent in another currency as certified by the individual;

(n) a person or company that is entirely owned, legally and beneficially, by an individual or individuals referred to in paragraph (m), who hold its or their ownership interest in the person or company directly or through a trust the trustee of which is a trust company referred to in paragraph (i); or

(o) a corporation that has shareholders' equity of at least $100 million on a consolidated basis or its equivalent in another currency;

"registered firm" means a registered dealer, a registered adviser, or a registered investment fund manager;

"registered individual" means an individual who is registered

(a) to trade or advise on behalf of a registered firm,

(b) in the category of ultimate designated person, or

(c) in the category of chief compliance officer;

"related issuer" has the same meaning as in section 1.1 of National Instrument 33-105 *Underwriting Conflicts*; and

"Schedule III bank" means an authorized foreign bank named in Schedule III of the *Bank Act* (Canada).

(2) Except in Part 8, in Alberta, British Columbia and Saskatchewan, a reference to "security" or "securities" in this Instrument includes "exchange contract" or "exchange contracts".

PART 2 - CATEGORIES OF REGISTRATION AND PERMITTED ACTIVITIES

Dealer and underwriter categories

2.1 (1) A dealer or underwriter, if required to be registered, must be registered by the regulator in one or more of the following categories:

(a) investment dealer, being a dealer or underwriter that is permitted to trade in, or act as an underwriter in respect of, any security;

(b) mutual fund dealer, being a dealer that is only permitted to trade in securities of

(i) mutual funds, and

(ii) except in Québec, investment funds that are labour sponsored investment fund corporations or labour sponsored venture capital corporations under provincial legislation;

(c) scholarship plan dealer, being a dealer that is only permitted to trade in securities of scholarship plans, educational plans or educational trusts;

(d) exempt market dealer, being

(i) a dealer that is only permitted to trade

A) in securities that are distributed under an exemption from the prospectus requirement,

B) in securities that are distributed under a prospectus if the distribution may have been made under an exemption from the prospectus requirement,

C) in securities that, if the trade were a distribution, may have been distributed under an exemption from the prospectus requirement, and

D) on behalf of a client, any securities acquired by the client in a circumstance described in subparagraph (A), (B) or (C) , if the trade is with a registered dealer, and

(ii) an underwriter that is only permitted to act as an underwriter in respect of a distribution of securities that may be made under an exemption from the prospectus requirement;

(e) restricted dealer, being a dealer that is limited by conditions on its registration to trading in a specified security, class of security or the securities of a class of issuers.

(2) Despite subsection (1)(b), in British Columbia a mutual fund dealer is only permitted to trade in securities of

(i) mutual funds,

(ii) investment funds that are labour sponsored investment fund corporations or labour sponsored venture capital corporations under provincial legislation, and

(iii) securities of scholarship plans, educational plans or educational trusts.

Exemption from dealer registration for advisers

2.2 (1) The dealer registration requirement does not apply to a registered adviser, or an adviser that is exempt from registration under section 8.16 [*international adviser*], that buys or sells a security of a pooled fund administered by the adviser for a fully-managed account that is created and managed by the adviser.

(2) The exemption in subsection (1) is not available if the fully-managed account or pooled fund is created or used primarily for the purpose of qualifying for the exemption.

(3) The exemption in subsection (1) is not available unless the adviser, within 5 business days of its first use of the exemption, provides written notice to the regulator that it is relying on the exemption.

Adviser categories

2.3 An adviser, if required to be registered, must be registered by the regulator in one of the following categories:

(a) portfolio manager, being an adviser that is permitted to advise in any security;

(b) restricted portfolio manager, being an adviser that is limited by conditions on its registration to advising in specified securities, classes of securities or the securities of a class of issuers.

Exemption from adviser registration for dealers without discretionary authority

2.4 The adviser registration requirement does not apply to a registered dealer that advises a client in connection with a security in which the dealer is permitted to trade if

(a) the advice is provided by a dealing representative, and

(b) the dealer does not manage the client's investment portfolio through discretionary authority granted by the client.

Exemption from adviser registration for IDA members with discretionary authority

2.5 The adviser registration requirement does not apply to an IDA member that manages a client's investment portfolio through discretionary authority granted by the client.

Investment fund manager category

2.6 An investment fund manager, if required to be registered, must be registered by the regulator in the category of investment fund manager, being a person or company that is permitted to direct the business, operations or affairs of an investment fund.

Individual categories

2.7 An individual, if required to be registered to act on behalf of a registered firm, must be registered by the regulator in one or more of the following categories:

(a) dealing representative;

(b) advising representative;

(c) associate advising representative;

(d) ultimate designated person;

(e) chief compliance officer.

Associate advising representative – approved advising only

2.8 (1) An associate advising representative of a registered adviser must not advise in securities unless, before giving the advice, the advice is approved by an advising representative designated by the adviser.

(2) A registered adviser that designates an advising representative for the purpose of subsection (1) must notify the regulator of the designation no later than the 5th business day following the date of the designation.

Ultimate designated person

2.9 (1) A registered firm must have an individual who is registered under securities legislation in the category of ultimate designated person to perform the functions described in section 5.24 [*ultimate designated person – functions*].

(2) An individual must not act as the ultimate designated person of a registered firm unless the individual is

(a) the chief executive officer or sole proprietor of the registered firm,

(b) an officer in charge of a division of the registered firm, if the activity that requires the firm to register occurs only within the division,

(c) an individual acting in a capacity similar to that of an officer described in paragraph (a) or (b).

Chief compliance officer

2.10 (1) A registered firm must have an individual who is registered under securities legislation in the category of chief compliance officer to perform the functions described in section 5.25 [*chief compliance officer – functions*].

(2) An individual must not act as the chief compliance officer for a registered firm unless the individual is an officer or partner of the registered firm, or the firm's sole proprietor.

PART 3 - SRO MEMBERSHIP

IDA membership for investment dealers

3.1 (1) No person or company may be registered as an investment dealer unless the person or company is a member of the IDA.

(2) No individual may be registered to act on behalf of an investment dealer unless the individual is an approved person under the by-laws, regulations and policies of the IDA.

MFDA membership for mutual fund dealers

3.2 Except in Québec, no person or company may be registered as a mutual fund dealer unless the person or company is a member of the MFDA.

Exceptions for SRO members

3.3 (1) A registrant that is a member of the IDA, or a dealing representative of a member of the IDA, is exempt from each requirement in the following sections that applies to a registered dealer, or a dealing representative, if the registrant complies with the by-laws, regulations and policies of the IDA that deal with the same subject matter:

(a) section 4.18 [*capital requirement*];

(b) section 4.19 [*report capital deficiency*];

(c) section 4.21 [*insurance – dealer*];

(d) section 4.25 [*notice of change, claim, or cancellation*];

(e) section 4.26 [*appointment of auditor*];

(f) section 4.27 [*direction to auditor*];

(g) section 4.28 [*delivering financial information – dealer*];

(h) section 5.4 [*providing relationship disclosure information*];

(i) section 5.5 [*suitability*];

(j) section 5. 7 [*margin*];

(k) section 5.8 [*disclosure when recommending use of borrowed money*];

(l) section 5.10 [*holding client assets in trust*];

(m) section 5.11 [*securities subject to safekeeping agreement*];

(n) section 5.12 [*securities not subject to safekeeping agreement*];

(o) section 5.18 [*confirmation of trade – general*];

(p) except in Québec, section 5.29 [*dispute resolution service*].

(2) Except in Québec, the provisions listed in subsection (1) do not apply to a registrant that is a member or approved person of the MFDA if the registrant complies with the by-laws, rules and policies of the MFDA that deal with the same subject matter.

(3) In Québec, the provisions listed in subsection (1) do not apply to a mutual fund dealer or a dealing representative of a mutual fund dealer if the registrant complies with the regulation on mutual fund dealer requirements in Québec.

PART 4 - FIT AND PROPER REQUIREMENTS

Division 1: Proficiency requirements

Definitions

4.1 In this Division

"Branch Manager Proficiency Exam" means the examination prepared and administered by the RESP Dealers Association of Canada and so designated by that Association;

"Canadian Investment Funds Exam" means the examination prepared and administered by the Investment Funds Institute of Canada and so designated by that Institute;

"Canadian Securities Exam" means the examination prepared and administered by the CSI Global Education Inc. and so designated by that corporation;

"CFA Charter" means the charter earned through the Chartered financial analyst examination program prepared and administered by the CFA Institute and so designated by that institute;

"Canadian Investment Manager designation" means the designation earned through the Canadian investment manager program prepared and administered by the CSI Global Education Inc. and so designated by that corporation;

"Investment Funds in Canada Exam" means the examination prepared and administered by the Institute of Canadian Bankers and so designated by that Institute;

"New Entrants Exam" means the examination prepared and administered by the CSI Global Education Inc. and so designated by that corporation;

"PDO Exam" means

(a) the Officers', Partners' and Directors' Exam prepared and administered by the Investment Funds Institute of Canada and so designated by that Institute, or

(b) the Partners, Directors and Senior Officers Exam prepared and administered by the CSI Global Education Inc. and so designated by that corporation;

"Sales Representative Proficiency Exam" means the examination prepared and administered by the RESP Dealers Association of Canada and so designated by that Association; and

"Series 7 Exam" means the program prepared and administered by the Financial Industry Regulatory Authority in the United States of America and so designated by that regulator.

U.S. equivalency

4.2 In this Division, an individual is not required to have passed the Canadian Securities Exam if the individual has passed the Series 7 Exam and the New Entrants Exam.

Proficiency principle

4.3 When a registered individual performs an activity that requires registration, the individual must have the education and experience reasonably necessary to perform the activity.

Time limits on examination proficiency

4.4 **(1)** Subject to subsection (2), an individual must not be registered in a category unless the individual passed the examination or successfully completed the program required in this Division for the category within 36 months of the date the individual applied for registration.

(2) If an individual passed the examination or successfully completed the program required in this Division for a category more than 36 months before the date the individual applied for registration, the individual must not be registered in the category unless the individual

(a) was registered in the category in a jurisdiction of Canada for 12 months during the 36 month period before the date the individual applied for registration, or

(b) gained 12 months of relevant experience during the 36 month period before the date the individual applied for registration.

Mutual fund dealer – dealing representative

4.5 A dealing representative of a mutual fund dealer must not trade on behalf of the mutual fund dealer unless the representative

(a) has passed the Canadian Investment Funds Exam, the Canadian Securities Exam, or the Investment Funds in Canada Exam, or

(b) has met the requirements of section 4.11 [*portfolio manager – advising representative*].

Mutual fund dealer – chief compliance officer

4.6 A mutual fund dealer must not designate an individual as its chief compliance officer under subsection 2.10(1) [*chief compliance officer*] unless the individual

(a) has met the requirements of section 4.13 [*portfolio manager – chief compliance officer*], or

(b) has passed

(i) the Canadian Investment Funds Exam, the Canadian Securities Exam, or the Investment Funds in Canada Exam, and

(ii) the PDO Exam.

Scholarship plan dealer – dealing representative

4.7 A dealing representative of a scholarship plan dealer must not trade on behalf of the scholarship plan dealer unless the representative has passed the Sales Representative Proficiency Exam.

Scholarship plan dealer – chief compliance officer

4.8 A scholarship plan dealer must not designate an individual as its chief compliance officer under subsection 2.10(1) [*chief compliance officer*] unless the individual has passed

(a) the Sales Representative Proficiency Exam,

(b) the Branch Manager Proficiency Exam, and

(c) the PDO Exam.

Exempt market dealer – dealing representative

4.9 A dealing representative of an exempt market dealer must not trade on behalf of the exempt market dealer unless the individual

(a) has passed the Canadian Securities Exam, or

(b) meets the requirements of section 4.11 [*portfolio manager – advising representative*].

Exempt market dealer – chief compliance officer

4.10 An exempt market dealer must not designate an individual as its chief compliance officer under subsection 2.10(1) [*chief compliance officer*] unless the individual has passed the Canadian Securities Exam.

Portfolio manager – advising representative

4.11 An advising representative of a portfolio manager must not act as an adviser on behalf of the portfolio manager unless the representative

(a) has earned a CFA Charter and has 12 months of relevant investment management experience in the 36-month period before applying for registration, or

(b) has received the Canadian Investment Manager designation and has 48 months of relevant investment management experience, 12 months of which was in the 36-month period before applying for registration.

Portfolio manager – associate advising representative

4.12 An associate advising representative of a portfolio manager must not act as an adviser on behalf of the portfolio manager unless the representative

(a) has completed Level 1 of the Chartered Financial Analyst Program and has 24 months of relevant investment management experience, or

(b) has received the Canadian Investment Manager designation and has 24 months of relevant investment management experience.

Portfolio manager – chief compliance officer

4.13 A portfolio manager must not designate an individual as its chief compliance officer under subsection 2.10(1) [*chief compliance officer*] unless the individual

(a) has been previously registered as an advising representative of a portfolio manager in a jurisdiction of Canada,

(b) has

(i) earned a CFA Charter or a professional designation as a lawyer, Chartered Accountant, Certified General Accountant or Certified Management Accountant in a jurisdiction of Canada, a notary in Québec, or the equivalent in a foreign jurisdiction,

(ii) passed the Canadian Securities Exam and the PDO Exam, and

(iii) either

A) worked for a registered dealer or a registered adviser for three years, or

B) provided professional services in the securities industry for three years and worked for a registered dealer or a registered adviser for 12 months, or

(c) has passed the Canadian Securities Exam and the PDO Exam and has either

(i) worked for a registered dealer or a registered adviser for five years, including for three years in a compliance capacity, or

(ii) worked for five years for a Canadian financial institution in a compliance capacity relating to portfolio management and worked for a registered dealer or a registered adviser for 12 months.

Restricted portfolio manager – chief compliance officer

4.14 A restricted portfolio manager must not designate an individual as its chief compliance officer under subsection 2.10(1) [*chief compliance officer*] unless the

individual has met the requirements of section 4.13 [*portfolio manager – chief compliance officer*].

Investment fund manager – chief compliance officer

4.15 An investment fund manager must not designate an individual as its chief compliance officer under subsection 2.10(1) [*chief compliance officer*] unless the individual

(a) has

(i) earned a CFA Charter or a professional designation as a lawyer, Chartered Accountant, Certified General Accountant or Certified Management Accountant in a jurisdiction of Canada, a notary in Québec, or the equivalent in a foreign jurisdiction,

(ii) passed the Canadian Securities Exam and the PDO Exam, and

(iii) either

A) worked for an investment fund manager for three consecutive years, or

B) provided professional services in the securities industry for three consecutive years and worked for an investment fund manager for 12 consecutive months, or

(b) has

(i) passed the Canadian Investment Funds Exam, the Canadian Securities Exam, or the Investment Funds in Canada Exam,

(ii) passed the PDO Exam, and

(iii) worked for a registered investment fund manager for five consecutive years, including for three consecutive years in a compliance capacity.

Grandfathered registrants

4.16 (1) If, on the date this Instrument comes into force, an individual is registered in a category referred to in a section of this Division, the individual is exempt from that section.

(2) Despite subsection (1), an individual who is a dealing representative of a scholarship plan dealer on the date this Instrument comes into force is exempt from section 4.7 [*scholarship plan dealer – dealing representative*] until 12 months after this Instrument comes into force.

Division 2: Solvency requirements

Exemption for certain exempt market dealers

4.17 This Division does not apply to an exempt market dealer that does not handle, hold, or have access to any client assets, including cheques and other similar instruments.

Capital requirement

4.18 (1) A registered firm must ensure that its excess working capital, as calculated using Form 31-103F1 *Calculation of excess working capital*, is not less than zero.

(2) For the purpose of completing Form 31-103F1 *Calculation of excess working capital*, the minimum capital is

(a) $25,000, for an adviser,

(b) $50,000, for a dealer, and

(c) $100,000, for an investment fund manager.

(3) A registered firm must calculate its excess working capital as at the end of each month by completing Form 31-103F1 *Calculation of excess working capital* no later than the 20th business day after the end of the month.

Report capital deficiency

4.19 If, at any time, the excess working capital of a registered firm, as calculated using Form 31-103F1 *Calculation of excess working capital*, is less than zero, the registered firm must notify the regulator as soon as practicable.

Subordination agreement – notice requirement

4.20 If a registered firm has executed a subordination agreement for the purpose of reducing its long-term related party debt on Form 31-103F1 *Calculation of excess working capital*, the firm must notify the regulator 5 days before it

(a) repays the loan or any part of the loan, or

(b) terminates the agreement.

Insurance – dealer

4.21 (1) A registered dealer must maintain bonding or insurance with a single loss limit in the highest of the following amounts:

(a) $50,000 per employee, agent and dealing representative or $200,000, whichever is less;

(b) one per cent of the total client assets that the dealer handles, holds or has access to, as calculated using the dealer's most recent financial records, or $25,000,000, whichever is less;

(c) one per cent of the dealer's total assets, as calculated using the dealer's most recent financial records, or $25,000,000, whichever is less;

(d) the amount determined to be appropriate by a resolution of the board of directors of the dealer.

(2) A registered dealer must maintain bonding or insurance, provided by an insurer lawfully carrying on business in the local jurisdiction,

(a) that contains the clauses set out in Appendix A,

(b) that provides for a double aggregate limit or a full reinstatement of coverage, and

(c) whose terms are otherwise acceptable to the regulator.

(3) In Québec, this section does not apply to a scholarship plan dealer.

Insurance – adviser

4.22 (1) A registered adviser that does not handle, hold, or have access to client assets, including cheques and other similar instruments, must maintain bonding or insurance with a single loss limit of $50,000.

(2) A registered adviser that handles, holds, or has access to client assets, including cheques and other similar instruments, must maintain bonding or insurance with a single loss limit in the highest of the following amounts:

(a) one per cent of assets under management that the adviser handles, holds, or has access to, as calculated using the adviser's most recent financial records, or $25,000,000, whichever is less;

(b) one per cent of the adviser's total assets, as calculated using the adviser's most recent financial records, or $25,000,000, whichever is less;

(c) $200,000;

(d) the amount determined to be appropriate by a resolution of the board of directors of the adviser.

(3) A registered adviser must maintain bonding or insurance, provided by an insurer lawfully carrying on business in the local jurisdiction,

(a) that contains the clauses set out in Appendix A,

(b) that provides for a double aggregate limit or a full reinstatement of coverage, and

(c) whose terms are otherwise acceptable to the regulator.

Insurance – investment fund manager

4.23 (1) A registered investment fund manager must maintain bonding or insurance with a single loss limit in the highest of the following amounts:

(a) one per cent of assets under management, as calculated using the investment fund manager's most recent financial records, or $25,000,000, whichever is less;

(b) one per cent of the investment fund manager's total assets, as calculated using the investment fund manager's most recent financial records, or $25,000,000, whichever is less;

(c) $200,000;

(d) the amount determined to be appropriate by a resolution of the directors of the investment fund manager.

(2) A registered investment fund manager must maintain bonding or insurance, provided by an insurer lawfully carrying on business in the local jurisdiction,

(a) that contains the clauses set out in Appendix A,

(b) that provides for a double aggregate limit or a full reinstatement of coverage, and

(c) whose terms are otherwise acceptable to the regulator.

Global financial institution bonds

4.24 For the purposes of this Division, a registered firm may maintain bonding or insurance that benefits, or names as an insured, another person or company only if the bond provides that, without regard to the claims, experience or any other factor referable to that other person or company,

(a) the registered firm has the right to claim directly against the insurer in respect of losses, and any payment or satisfaction of such losses must be made directly to the registered firm, and

(b) the individual or aggregate limits under the policy may only be affected by claims made by or on behalf of

(i) the registered firm, or

(ii) a subsidiary of the registered firm whose financial results are consolidated with those of the registered firm.

Notice of change, claim or cancellation

4.25 A registered firm must, as soon as practicable, notify the regulator in writing of any change in, claim made under, or cancellation of any insurance policy required under this Division.

Division 3: Financial records

Appointment of auditor

4.26 A registered firm must appoint an auditor that is authorized to sign an auditor's report by the laws of a jurisdiction of Canada or a foreign jurisdiction and that meets the professional standards of that jurisdiction.

Direction to auditor

4.27 (1) A registered firm must direct its auditor in writing to conduct any audit or review required by the regulator during its registration and must deliver a copy of the direction to the regulator

(a) with its application for registration, and

(b) no later than the 5th business day after the registered firm changes its auditor.

(2) The regulator may order a registered firm to direct its auditor, at the registered firm's expense, to conduct any audit or review required by the regulator and deliver the audit or review to the regulator as soon as practicable.

Delivering financial information – dealer

4.28 (1) A registered dealer must deliver to the regulator no later than the 90th day after the end of its fiscal year

(a) its annual financial statements for the fiscal year, and

(b) a completed Form 31-103F1 *Calculation of excess working capital*, showing the calculation of the dealer's excess working capital as at the end of the fiscal year and as at the end of the immediately preceding fiscal year.

(2) A registered dealer must deliver to the regulator no later than the 30th day after the end of the first, second and third quarter of its fiscal year

(a) its financial statements for the quarter, and

(b) a completed Form 31-103F1 *Calculation of excess working capital*, showing the calculation of the dealer's excess working capital as at the end of the quarter and as at the end of the immediately preceding quarter.

Delivering financial information – adviser

4.29 A registered adviser must deliver to the regulator no later than the 90th day after the end of its fiscal year

(a) its annual financial statements for the fiscal year, and

(b) a completed Form 31-103F1 *Calculation of excess working capital*, showing the calculation of the adviser's excess working capital as at the end of the fiscal year and as at the end of the immediately preceding fiscal year.

Delivering financial information – investment fund manager

4.30 (1) A registered investment fund manager must deliver to the regulator no later than the 90th day after the end of its fiscal year

(a) its annual financial statements for the fiscal year,

(b) a completed Form 31-103F1 *Calculation of excess working capital*, showing the calculation of the investment fund manager's excess working capital as at the end of the fiscal year and as at the end of the immediately preceding fiscal year, and

(c) a description of any net asset value adjustment made during the fiscal year.

(2) A registered investment fund manager must deliver to the regulator no later than the 30th day after the end of the first, second and third quarter of its fiscal year

(a) its financial statements for the quarter,

(b) a completed Form 31-103F1 *Calculation of excess working capital*, showing the calculation of the investment fund manager's excess working capital as at the end of the quarter and as at the end of the immediately preceding quarter, and

(c) a description of any net asset value adjustment made during the quarter.

(3) A description of a net asset value adjustment referred to in this section must include

(a) the cause of the adjustment,

(b) the dollar amount of the adjustment, and

(c) the effect of the adjustment on net asset value per unit or share and any corrections made to purchase and sale transactions affecting either the investment fund or security holders of the investment fund.

Content of annual financial statements

4.31 The annual financial statements delivered to the regulator under this Division must include

(a) an income statement, a statement of retained earnings and a statement of cash flows, each for the fiscal year, and

(b) a balance sheet as at the end of the fiscal year, signed by at least one director of the registered firm.

Preparation of financial statements

4.32 **(1)** The annual and quarterly financial statements delivered to the regulator under this Division must be prepared in accordance with generally accepted accounting principles, except that the statements are to be prepared on an unconsolidated basis.

(2) The annual financial statements delivered to the regulator under this Division must be accompanied by an auditor's report that is prepared in accordance with generally accepted auditing standards.

Cooperation with auditor

4.33 A registrant must not withhold, destroy or conceal any information or documents or otherwise fail to cooperate with a reasonable request made by an auditor of the registered firm in the course of an audit.

Financial records for certain exempt market dealers

4.34 **(1)** An exempt market dealer that does not handle, hold or have access to client assets, including cheques and other similar instruments, is exempt from sections 4.26 [*appointment of auditor*] to 4.31 [*content of financial statements*] and subsection 4.32(2) [*preparation of financial statements*].

(2) An exempt market dealer that does not handle, hold or have access to client assets, including cheques and other similar instruments, must deliver to the regulator, no later than the 30th day after the end of each quarter of its fiscal year, its financial statements for the quarter certified by the chief executive officer and the chief financial officer of the dealer or, if no such officers have been appointed, individuals acting on behalf of the dealer in a similar capacity.

(3) The regulator may order an exempt market dealer to direct an auditor, at the registered firm's expense, to conduct any audit or review required by the regulator and deliver the audit or review to the regulator as soon as practicable.

PART 5 - CONDUCT RULES

Division 1: Relationship with clients

Exemption for investment fund managers

5.1 This Division does not apply to an investment fund manager.

Account opening documentation

5.2 (1) A registered firm must maintain account opening documentation for each client.

(2) Subsection (1) does not apply to an exempt market dealer in respect of a client whose assets, including cheques and other similar instruments, the exempt market dealer does not handle, hold or have access to.

Know-your-client

5.3 (1) A registrant must take reasonable steps to

(a) establish the identity of a client and, where there may be cause for concern, the reputation of the client,

(b) ascertain whether a client is an insider of an issuer,

(c) ensure that it has sufficient information about a client to enable it to meet its regulatory obligations when it

(i) makes a recommendation to the client,

(ii) accepts an instruction to trade from the client, or

(iii) makes a discretionary purchase or sale of a security on behalf of the client, and

(d) establish the creditworthiness of a client, if the registered firm is financing the client's acquisition of a security.

(2) For the purpose of establishing the identity of a client that is a corporation under paragraph (1)(a), the registrant must establish the nature of the client's business and the identity of any individual who is a beneficial owner, directly or indirectly, of more that ten per cent of the client.

(3) In paragraph (1)(b), "insider" has the meaning ascribed to that term in the Act except that "reporting issuer", as it appears in the definition of "insider", is to be read as "issuer".

(4) A registrant must make reasonable efforts to keep the information required under this section current.

(5) Paragraph (1)(c) does not apply if

(a) the client is a permitted client that has waived, in writing, the requirements under subsections 5.5(1) and (2) [*suitability*], or

(b) the client is a permitted client and the registrant is an exempt market dealer.

(6) Paragraph (1)(d) does not apply if the client is a permitted client and the registrant is an exempt market dealer.

(7) Despite subsections (5) and (6), this section does not apply if the client is a registered firm, a Canadian financial institution or a Schedule III bank.

Providing relationship disclosure information

5.4 (1) A registrant must provide a client with relationship disclosure information before the registrant first

(a) purchases or sells a security for the client, or

(b) advises the client to purchase, sell or hold a security.

(2) If there is a significant change to the relationship disclosure information provided to a client under subsection (1), the registrant must make reasonable efforts to notify its clients of the change in a timely manner, and wherever practicable before the registrant next

(a) purchases or sells a security for the client, or

(b) advises the client to purchase, sell or hold a security.

(3) For the purpose of this section, “relationship disclosure information” means information that a reasonable client would consider important respecting the client's relationship with the registrant and includes, subject to subsections (4), (5) and (6), the following:

(a) a description of the nature of the client's account or the type of account held by the client;

(b) a discussion that identifies which products or services offered by the registered firm will meet the client's investment objectives and how they will do so;

(c) a discussion of investment risk factors and types of risks that should be considered by the client when making an investment decision, including the risk of using borrowed money to finance a purchase of a security;

(d) a description of the conflicts of interest that the registered firm is required to disclose under securities legislation;

(e) disclosure of all service fees and charges in respect of the operation of the client's accounts;

(f) a description of the costs the client will pay in making and holding investments and the compensation paid to the registered firm in relation to the different types of products that the client may purchase through the registered firm;

(g) a description of the content and frequency of reporting for each account or portfolio of the client;

(h) information about how the client can contact the firm;

(i) notice that a dispute resolution service is available to mediate any dispute that might arise between the client and the firm regarding a product or service of the firm;

(j) the information a registered firm is required to collect about the client under section 5.3 [*know-your-client*].

(4) Despite subsection (3), relationship disclosure information provided by an exempt market dealer to a client is not required to include the information referred to in paragraphs (3)(a), (e) and (g) if the dealer does not handle, hold or have access to the client's assets, including cheques and other similar instruments.

(5) In addition to the information required under subsection (3), relationship disclosure information provided by a dealer must include a description of the nature and scope of the firm's obligation to assess whether a purchase or sale of a security is suitable for a client prior to executing the transaction or at any other time.

(6) In addition to the information required under subsection (3), relationship disclosure information provided by an adviser must include the following:

(a) if the client's account is a fully-managed account, a description of the adviser's discretionary authority;

(b) a description of how the adviser will ensure that investments made are suitable for the client based on the information provided by the client;

(c) a statement that there is no guarantee, implied or otherwise, that the investments made will be successful;

(d) a discussion of investment risk factors and types of risks that should be considered by the client when deciding to invest using an adviser;

(e) if the client's account is a fully-managed account and a person or company exempted from registration under section 8.17 [*sub-advisers*] provides advice in respect of the account, information about the role of the person or company and their relationship to the client.

(7) This section does not apply to an exempt market dealer in respect of a permitted client.

Suitability

5.5 (1) A registrant must take reasonable steps to ensure that before it makes a recommendation to, or accepts instructions from, a client or makes a discretionary purchase or sale of a security on behalf of a client, the proposed purchase or sale is suitable for the client with reference to the client's

(a) financial circumstances,

(b) risk tolerance,

(c) investment knowledge, and

(d) investment needs and objectives.

(2) If a client instructs a registrant to buy, sell or hold a security and in the registrant's opinion, acting reasonably, following the instruction would not be suitable for the client, the registrant must inform the client of the registrant's opinion and must not buy or sell the security unless the client instructs the registrant to proceed nonetheless.

(3) This section does not apply in respect of a permitted client if

(a) the permitted client has waived, in writing, the requirements under subsections (1) and (2), or

(b) the registrant is an exempt market dealer.

(4) Despite subsection (3), this section does not apply if the client is a registered firm, a Canadian financial institution or a Schedule III bank.

Sale or assignment of client account

5.6 If a registered firm proposes to sell or assign a client's account in whole or in part to another registrant, the registered firm must, prior to the sale or assignment, give a written explanation to the client of the proposal and inform the client of the client's right to withdraw the client's account.

Margin

5.7 A registrant must not lend, extend credit or provide margin to a client.

Disclosure when recommending use of borrowed money

5.8 (1) If a registrant recommends that a client should use borrowed money to finance any part of a purchase of a security, the registrant must, before the purchase, provide the client with a written statement in substantially the following form:

"Using borrowed money to finance the purchase of securities involves greater risk than a purchase using cash resources only. If you borrow

money to purchase securities, your responsibility to repay the loan and pay interest as required by its terms remains the same even if the value of the securities purchased declines."

(2) Subsection (1) does not apply if

(a) the registrant has provided the client with the statement described under subsection (1) no earlier than the 180th day before the date of the proposed purchase,

(b) the proposed purchase is on margin and the client's margin account is maintained with a registered firm that is a member of the IDA or the MFDA, or

(c) the client is a permitted client.

Disclosure when opening an account in a financial institution

5.9 (1) If a registered firm opens a client account to trade in securities in an office or branch of a Canadian financial institution or a Schedule III bank, the registered firm must give the client a written notice stating that it is a separate legal entity from the Canadian financial institution or Schedule III bank and, unless otherwise advised by the registrant, securities purchased from or through the registrant

(a) are not insured by a government deposit insurer,

(b) are not guaranteed by the Canadian financial institution or Schedule III bank, and

(c) may fluctuate in value.

(2) A registered firm that is subject to subsection (1) must receive a written confirmation from the client that the client has read and understood the notice before the registered firm

(a) purchases or sells a security for the client, or

(b) advises the client to purchase, sell or hold a security.

(3) This section does not apply to a registered firm if the client is a permitted client.

Division 2: Client assets

Holding client assets in trust

5.10 (1) A registered firm that holds client assets, including cheques and other similar instruments, must hold the assets separate and apart from its own property and in trust for the client.

(2) A registered firm that holds cash on behalf of a client must hold the cash separate and apart from the property of the firm in a designated trust account with a Canadian financial institution or a Schedule III bank.

Securities subject to safekeeping agreement

5.11 A registered firm that holds unencumbered securities for a client under a written safekeeping agreement must

(a) segregate the securities from all other securities,

(b) identify the securities as being held in safekeeping for the client in

(i) the registrant's security position record,

(ii) the client's ledger, and

(iii) the client's statement of account, and

(c) release the securities only on an instruction from the client.

Securities not subject to safekeeping agreement

5.12 (1) A registered firm that holds unencumbered securities for a client that are either fully paid for or are excess margin securities, but that are not held under a written safekeeping agreement, must

(a) segregate and identify the securities as being held in trust for the client, and

(b) describe the securities as being held in segregation on

(i) the registrant's security position record,

(ii) the client's ledger, and

(iii) the client's statement of account.

(2) If a client is indebted to a registered firm, the registered firm may sell or lend the securities described in subsection (1), but only to the extent reasonably necessary to cover the indebtedness.

(3) Securities described in subsection (1) may be segregated in bulk.

Reduction of debit balances

5.13 (1) In this section,

"derivatives account" includes a commodity futures account;

"free credit balance"

(a) includes money received from, or held for the account of, clients by a registered firm,

(i) for investment pending the investment and payment for securities purchased by the clients from or through the registered firm where the registered firm does not own such securities at the time of purchase or has not purchased them on behalf of the clients, pending the purchase thereof by the registered firm, and

(ii) as proceeds of securities purchased from clients or sold by the registered firm for the account of clients where securities have been delivered to the registered firm but payment has not been made pending payment of such proceeds to the clients, and

(b) does not include money that is committed to be used on a specific settlement date as payment for securities if the registered firm who maintains the securities account prepares financial statements on a settlement date basis.

(2) If a registered firm maintains two or more accounts for a client, one of which is a derivatives account that contains a debit balance of more than $5,000, the

registered firm must transfer from any account containing a free credit balance as much of the free credit balance as is necessary to eliminate, or reduce to the greatest extent possible, the debit balance in the derivatives account.

(3) Subsection (2) does not apply to a registered firm in respect of a client's securities and derivatives accounts if the client has given directions to the registered firm in writing, or orally if subsequently confirmed in writing,

(a) to transfer an amount that is less than the amount otherwise required to be transferred, or

(b) not to transfer any amount from the securities account to the derivatives account.

(4) A registered firm who maintains a securities account and a derivatives account for the same client may make a transfer of any amount of a free credit balance from the securities account to the derivatives account, or, from the derivatives account to the securities account of the client if

(a) the transfer is made in accordance with a written agreement between the registered firm and the client, and

(b) the transfer is not a transfer referred to in subsections (2) and (3).

Account supervision

5.14 A registered adviser must ensure that the account of each client is supervised separately and distinctly from the accounts of other clients.

Division 3: Record-keeping

Records – general requirements

5.15 (1) A registered firm must maintain records to

(a) accurately record its business activities, financial affairs, and client transactions, and

(b) demonstrate compliance with applicable requirements of securities legislation.

(2) Such records must include, but are not limited to, records that

(a) permit timely creation and audit of financial statements and other financial information required to be filed or delivered to the securities regulatory authority,

(b) permit determination of the registered firm's capital position,

(c) demonstrate compliance with the registered firm's capital and insurance requirements,

(d) demonstrate compliance with internal control procedures,

(e) demonstrate compliance with the firm's policies and procedures,

(f) permit the identification and segregation of client cash, securities, and other property,

(g) identify all transactions conducted on behalf of the registered firm and each of its clients, including the parties to the transaction and the terms of the purchase or sale,

(h) provide an audit trail for

(i) client instructions and orders, and

(ii) each trade transmitted or executed for a client or by the registered firm on its own behalf,

(i) permit creation of account activity reports for clients,

(j) provide securities pricing as may be required by securities legislation,

(k) demonstrate compliance with client account opening requirements,

(l) document correspondence with clients, and

(m) document compliance and supervision actions taken by the firm.

Records – form, accessibility and retention

5.16 **(1)** A registered firm must keep its records safe and in a durable form.

(2) For a period of two years after the creation of a record, a registered firm must keep the record in a manner that permits it to be provided promptly to the regulator, and thereafter the record may be kept in a manner that permits it to be provided to the regulator in a reasonable period of time.

(3) A record provided under subsection (2) must be in a form that is capable of being read by the regulator.

(4) A registered firm must keep

(a) an activity record for seven years from the date of the act, and

(b) a relationship record for seven years from the date the person or company ceases to be a client of the registered firm.

(5) In subsection (4),

"activity record" includes

(a) a confirmation of a transaction required under section 5.18 [*confirmation of trade – general*],

(b) a communication between the registrant and the client made in respect of a purchase or sale of a security, including a record of an oral communication,

(c) a statement of account and portfolio required under section 5.22 [*statements of account and portfolio*],

(d) a referral of the client that is subject to Division 2 [*referral arrangements*] of Part 6; and

"relationship record" means a document, other than an activity record, that describes the relationship between a registrant and a client of the registrant including

(a) a communication between the registrant and the client not made in respect of a purchase or sale of a

security, including a record of an oral communication,

(b) an agreement entered into between the registrant and the client,

(c) a client complaint,

(d) relationship disclosure information provided to the client under section 5.4 [*providing relationship disclosure information*].

Division 4: Account activity reporting

Exemption for investment fund managers and exempt market dealers

5.17 This Division does not apply to

(a) an investment fund manager, or

(b) an exempt market dealer that does not handle, hold, or have access to client assets, including cheques and other similar instruments.

Confirmation of trade – general

5.18 (1) Subject to subsection (2), a registered dealer that has acted on behalf of a client in connection with a trade or series of trades in a security must promptly send or deliver to the client, or to a registered adviser acting for the client if the client consents, a written confirmation of the transaction, setting out,

(a) the quantity and description of the security traded,

(b) the consideration,

(c) the commission, sales charge, service charge and any other amount charged in respect of the trade,

(d) whether the registered dealer acted as principal or agent,

(e) the date and the name of the marketplace, if any, on which the transaction took place, or if applicable, a statement that the

transaction took place on more than one marketplace or over more than one day,

(f) the name of the dealing representative, if any, in the transaction,

(g) the settlement date of the trade, and

(h) if applicable, that the security is a security of the registrant, a security of a related issuer of the registrant or, in the course of a distribution, a security of a connected issuer of the registrant.

(2) If the transaction involved more than one trade or if the transaction took place on more than one marketplace the information referred to in subsection (1) above may be set out in the aggregate if the confirmation also contains a statement that additional details concerning the transaction will be provided to the client upon request and without additional charge.

(3) If a trade is made in a security of a mutual fund, scholarship plan, educational plan or educational trust, the confirmation required under subsection (1) must contain, in addition to the requirements of subsection (1), the price per share or unit at which the trade was effected.

(4) Paragraph (1)(h) does not apply if the security is a security of a mutual fund that is an affiliate of the registered dealer and the names of the dealer and the fund are sufficiently similar to disclose that they are affiliated.

(5) For the purpose of paragraph (1)(f), a dealing representative may be identified by means of a code or symbol if the confirmation also contains a statement that the name of the dealing representative will be provided to the client on request of the client.

Reporting trades otherwise

5.19 (1) If a registered firm sends or delivers to a client a report, other than a confirmation under section 5.18 [*confirmation of trade – general*], of a trade in a security that the registered firm made with or on behalf of the client, including a report of a trade made by or at the direction of a registrant that is managing the investment portfolio of the client through discretionary authority granted by the client, the report must state, if applicable, that the security is a security of the registered firm, a security of a related

issuer of the registered firm or, in the course of a distribution, a security of a connected issuer of the registered firm.

(2) Subsection (1) does not apply if the security is a security of a mutual fund that is an affiliate of the registered firm and the names of the registered firm and the fund are sufficiently similar to disclose that they are affiliated.

Semi-annual confirmations for certain automatic plans

5.20 The requirement under section 5.18 [*confirmation of trade – general*] to send or deliver a confirmation promptly does not apply to a registered dealer in respect of a trade if

(a) the client gave the dealer prior written notice that the trade is made under the client's participation in an automatic payment plan or an automatic withdrawal plan in which a trade is made at least monthly,

(b) the registered dealer sent a confirmation as required under section 5.18 [*confirmation of trade – general*] for the first trade made under the plan after receiving the notice referred to under paragraph (a),

(c) the trade is in a security of a mutual fund, scholarship plan, educational plan or educational trust, and

(d) the registered dealer sends or delivers the information required under section 5.18 [*confirmation of trade – general*] for the trade semi-annually to the client or, if the client consents, to a registered adviser acting for the client.

Confirmation of trade – exemption

5.21 A registered dealer is not required to send or deliver to a client a written confirmation of a trade in a security of a mutual fund if the investment fund manager of the mutual fund sends or delivers the client a written confirmation containing the information required to be sent under section 5.18 [*confirmation of trade – general*].

Statements of account and portfolio

5.22 **(1)** A registered dealer must send or deliver a statement of account to each client not less than once every three months showing any debit or credit balance and the details of securities held for or owned by the client, unless the client has requested statements on a monthly basis in which case the registered dealer must send or deliver statements monthly.

(2) The statement required by subsection (1) must list the securities held for the client and indicate clearly which securities are held for safekeeping or in segregation.

(3) Subject to subsection (4), a registered adviser must send or deliver to each client not less than once every three months, a statement of the portfolio of the client under the registered adviser's management, unless the client has requested statements on a monthly basis in which case the registered adviser must send or deliver statements monthly.

(4) If a client has provided the consent referred to in subsection 5.18(1) [*confirmation of trade – general*], the registered adviser must send or deliver to the client not less than once every month, a statement of the portfolio of the client under the registered adviser's management.

Division 5: Compliance

Compliance system

5.23 **(1)** A registered firm must establish, maintain and apply a system of controls and supervision sufficient to

(a) provide reasonable assurance that the firm and each individual acting on its behalf complies with securities legislation, and

(b) manage the risks associated with its business in conformity with prudent business practices.

(2) The system of controls referred to in subsection (1) must be documented in the form of written policies and procedures.

Ultimate designated person – functions

5.24 The ultimate designated person of a registered firm must

(a) supervise the activities of the firm that are directed towards ensuring compliance with securities legislation by the firm and each individual acting on its behalf, and

(b) promote compliance with securities legislation within the firm.

Chief compliance officer – functions

5.25 The chief compliance officer of a registered firm must

(a) establish and maintain policies and procedures for assessing compliance by the firm, and individuals acting on its behalf, with securities legislation,

(b) monitor and assess compliance by the firm, and individuals acting on its behalf, with securities legislation,

(c) report to the ultimate designated person as soon as practicable if the chief compliance officer becomes aware of any circumstances indicating that the firm, or any individual acting on its behalf, is in substantial non-compliance with securities legislation, and

(d) submit an annual report to the board of directors or partnership for the purpose of assessing compliance by the firm, and individuals acting on its behalf, with securities legislation.

Access to board or partnership

5.26 A registered firm must permit its ultimate designated person and its chief compliance officer to directly access the board of directors or partnership at such times as either of them may independently deem necessary or advisable in view of his or her responsibilities.

Division 6: Complaint handling

Exemption for investment fund managers and exempt market dealers

5.27 This Division does not apply to

(a) an investment fund manager, or

(b) an exempt market dealer in respect of a permitted client.

Complaints

5.28 A registered firm must document, and effectively and fairly respond to, each complaint made to the registered firm about any product or service offered by the firm or a representative of the firm.

Dispute resolution service

5.29 (1) A registered firm must participate in an independent dispute resolution service unless required by securities legislation to use the dispute resolution service provided by the securities regulatory authority.

(2) If a person or company makes a complaint to a registered firm about any trading or advising activity of the firm or one of its representatives, the registered firm must as soon as practicable inform the person or company of how to contact and use

(a) the dispute resolution service in which the firm participates, or

(b) the dispute resolution service of the securities regulatory authority, if it provides a dispute resolution service.

Policies and procedures on complaint handling

5.30 A registered firm must have policies and procedures on documenting and responding to complaints made about its products and services.

Reporting to the securities regulatory authority

5.31 (1) On January 30 and July 30 of each year, a registered firm must deliver a report containing the following information to the securities regulatory authority:

(a) each complaint made to the firm during the reporting period,

(b) each complaint that was resolved during the reporting period,

(c) each complaint that remained unresolved as of the end of the reporting period.

(2) In subsection (1), "reporting period" means, for information that must be delivered on

(a) January 30, from July 1 to December 31 of the prior year, and

(b) July 30, from January 1 to June 30 of the current year.

Firms registered in Québec

5.32 A registered firm in Québec complies with Division 6 if it complies with sections 168.1.1 to 168.1.3 of the Québec Securities Act.

Division 7: Non-resident registrants

Notice to clients

5.33 A registered firm whose head office is not located in the local jurisdiction must provide its clients in the local jurisdiction

(a) a statement in writing disclosing the non-resident status of the registrant,

(b) the registrant's jurisdiction of residence,

(c) the name and address of the agent for service of process of the registrant in the local jurisdiction, and

(d) the nature of risks to clients that legal rights may not be enforceable in the local jurisdiction.

Compliance with requests

5.34 A registered firm whose head office is not located in the local jurisdiction must comply with requests under the securities regulatory authority's investigation powers and orders under the securities legislation in the jurisdiction in relation to the firm's dealings with clients in the jurisdiction to the extent those powers and orders would be enforceable against the firm if the firm were resident in the jurisdiction.

Custody of assets

5.35 (1) A registered firm whose head office is not located in a jurisdiction of Canada must make reasonable efforts to ensure that all client assets are held

(a) directly by the client,

(b) on behalf of the client by a custodian or sub-custodian that

(i) meets the guidelines prescribed for acting as a sub-custodian of the portfolio securities of a mutual fund in Part 6 of National Instrument 81-102 *Mutual Funds*, and

(ii) is subject to the Bank for International Settlements' framework for international convergence of capital measurement and capital standards, or

(c) on behalf of the client by a registered dealer that is a member of an SRO that is a member of Canadian Investor Protection Fund or other comparable compensation fund or contingency trust fund.

(2) Section 5.10 [*holding client assets in trust*] does not apply to a registered firm that is subject to subsection (1).

PART 6 - CONFLICTS OF INTEREST

Division 1: General

Identifying and responding to conflicts of interest

6.1 (1) A registered firm must make reasonable efforts to identify existing conflicts of interest and conflicts the registered firm, acting reasonably, would expect to arise between the firm, including each individual acting on the firm's behalf, and its clients.

(2) A registered firm must respond to a conflict of interest identified under subsection (1).

(3) If a client, acting reasonably, would expect to be informed of a conflict of interest identified under subsection (1), the registered firm must disclose the nature and extent of the conflict of interest to the client.

(4) This section does not apply to an investment fund manager in respect of an investment fund that is subject to National Instrument 81-107 *Independent Review Committee for Investment Funds*.

Prohibition on certain managed account transactions

6.2 **(1)** In this section, "responsible person" means, for a registered adviser,

(a) the adviser, and

(b) each of the following who has access to, or participates in formulating, an investment decision to be made on behalf of a client of the adviser or advice to be given to a client of the adviser:

(i) a partner, director, officer, employee or agent of the adviser,

(ii) an affiliate of the adviser,

(iii) a partner, director, officer, employee or agent of an affiliate of the adviser,

(iv) an associate of a person or company listed in subparagraph (i), (ii) or (iii).

(2) A registered adviser must not cause an investment portfolio managed by it to

(a) purchase or sell a security of an issuer in which a responsible person is a partner, officer, director, or employee, or for which a responsible person is an agent, unless this fact is disclosed to the client and the written consent of the client to the purchase is obtained before the purchase,

(b) purchase or sell a security in which a responsible person has direct or indirect beneficial ownership, or over which a responsible person exercises control or direction, unless this fact is disclosed to the client and the client consents to the purchase in writing before the purchase,

(c) purchase or sell a security from or to another investment portfolio managed by the adviser or a responsible person including an investment fund for which the adviser or responsible person acts as adviser, or

(d) provide a guarantee or loan to a responsible person.

Registrant relationships

6.3 An individual registered as a dealing, advising or associate advising representative of a registered firm must not act as an officer, partner or director of another registered firm that is not an affiliate of the first-mentioned registered firm.

Issuer disclosure statement

6.4 **(1)** In this section, "issuer disclosure statement" means, for a registered firm,

(a) a list of the related issuers of the registered firm,

(b) a concise statement of the nature of the relationship between the registered firm each related issuer of the registered firm, and

(c) in the course of a distribution, a concise statement of the nature of the relationship between the registered firm the connected issuers of the registered firm.

(2) A registered firm must maintain a current issuer disclosure statement.

(3) When a registrant opens an account for a client, the registrant must provide the client with a current issuer disclosure statement.

(4) If there is a significant change to a registered firm's issuer disclosure statement, the registered firm must make reasonable efforts to notify its clients of the change in a timely manner, and wherever practicable before the registrant next

(a) purchases or sells, for the client, a security of a related issuer, or in the course of a distribution, a connected issuer, or

(b) advises the client to purchase, sell or hold a security of a related issuer, or in the course of a distribution, a connected issuer.

(5) A registrant may notify a client under subsection (3) by providing the client with

(a) a revised issuer disclosure statement, or

(b) a written notice describing the change.

(6) For the purposes of this section, "related issuer" and "connected issuer" do not include a mutual fund that is an affiliate of a registered firm if the names of the registered firm and the mutual fund are sufficiently similar to disclose that they are affiliated.

(7) This section does not apply to a registered firm if it does not act as an adviser or a dealer in respect of,

(a) its own securities,

(b) securities of a related issuer of the registered firm, or

(c) in the course of a distribution, securities of a connected issuer of the registered firm.

(8) This section does not apply to a registered dealer in respect of a client if

(a) the dealer does not trade for the client other than to execute the client's order to purchase or sell a security,

(b) the dealer does not advise the client in respect of trades, and

(c) the restrictions described in paragraphs (a) and (b) are set out in the dealer's account agreement with the client.

Recommendations

6.5 A registered firm must not make a recommendation in any medium of communication to buy, sell or hold its own securities, securities of a related issuer or, in the course of a distribution, securities of a connected issuer of the registered firm, unless

(a) the recommendation is in a publication that

(i) is published or distributed by the registered firm regularly in the ordinary course of its business, and

(ii) includes in a conspicuous position and large type, a complete statement of the relationship or connection between the registered firm and the issuer,

(b) the registered firm is acting as an underwriter in a distribution of the securities,

(c) the recommendation is in respect of a security of a mutual fund that is an affiliate of the registered firm and the names of the registered firm and the fund are sufficiently similar to disclose that they are affiliated, or

(d) the recommendation is in respect of a security of a scholarship or educational plan or trust that is an affiliate of the registered firm and the names of the registered firm and the scholarship or educational plan or trust are sufficiently similar to disclose that they are affiliated.

Limitations on advising

6.6 (1) A registered firm must not act as an adviser in respect of a security of the registered firm, a related issuer of the registered firm or, in the course of a distribution, a connected issuer of the registered firm.

(2) Subsection (1) does not apply if

(a) the registered firm is acting as an adviser in respect of a fully-managed account and the transaction is made in accordance with subsection 4.1(4) of National Instrument 81-102 *Mutual Funds*,

(b) the registered firm is acting as an adviser in respect of an account that is not a fully-managed account and the registered firm, before or concurrently with providing the advice, makes a written or oral statement to the client of the relationship between the registered firm and the issuer of the securities,

(c) the client is a registered dealer, or

(d) the client is a related issuer of the registered firm.

Allocating investment opportunities fairly

6.7 (1) A registered adviser must ensure fairness in allocating investment opportunities among its clients.

(2) A registered adviser must provide a client with a copy of the written policies required under section 5.23 [*compliance system*] that respond to the requirement under subsection (1)

(a) when the adviser opens an account for the client, and

(b) if there is a significant change to the policies last provided to the client, the earlier of

(i) the 45th day after the date the policies were changed, or

(ii) as soon as practicable after next advising the client to purchase, sell or hold a security.

Acquiring a registered firm's securities or assets

6.8 (1) A person or company must give the regulator written notice at least 30 days before the acquisition if it proposes to acquire,

(a) directly or indirectly, beneficial ownership of, or control or direction over, ten per cent or more of the securities of a registered firm, or

(b) a substantial part of the assets of a registered firm.

(2) The notice required under subsection (1) must include all relevant facts regarding the acquisition to permit the regulator to determine if it is

(i) likely to give rise to conflicts of interest,

(ii) likely to hinder the registered firm in complying with securities legislation,

(iii) inconsistent with an adequate level of investor protection, or

(iv) otherwise prejudicial to the public interest.

(3) If, within 30 days of the regulator's receipt of a notice under subsection (1), the regulator notifies the person or company making the acquisition that the regulator objects to the acquisition, the acquisition must not occur until the regulator approves it.

(4) Following receipt of a notice of objection under subsection (3), the person or company who submitted the notice to the regulator may request the regulator to hold a hearing on the matter.

(5) Subsection (1) does not apply to

(a) an acquisition by a registered firm in the ordinary course of its business of trading in securities, or

(b) an amalgamation, merger, arrangement or reorganization in which the direct or indirect beneficial ownership of a registered firm does not change.

Settling securities transactions

6.9 A registered firm must not require a person or company to settle that person's or company's transaction with the registered firm through that person's or company's account at a Canadian financial institution as a condition, or on terms that would appear to a reasonable person to be a condition, of supplying a product or service, unless this method of settlement is reasonably necessary to provide the specific product or service that the person or company has requested.

Tied selling

6.10 No person or company shall require another person or company

(a) to buy, sell or hold particular securities as a condition, or on terms that would appear to a reasonable person to be a condition, of supplying or continuing to supply products or services, or

(b) to buy, sell or use any products or services as a condition, or on terms that would appear to a reasonable person to be a condition, of buying or selling particular securities.

Division 2: Referral arrangements

Definitions – referral arrangements

6.11 For the purposes of this section to section 6.15 [*application and transition to prior referral arrangements*]

"client" includes a prospective client;

"referral arrangement" means any arrangement in which a registrant agrees to pay or receive a referral fee; and

"referral fee" means any form of compensation, direct or indirect, paid for the referral of a client to or from a registrant.

Permitted referral arrangements

6.12 A registrant must not participate in a referral arrangement unless,

(a) before a client is referred by or to the registrant, the terms of the referral arrangement are set out in a written agreement between

(i) the registrant,

(ii) the person or company making or receiving the referral, and

(iii) if the registrant is a registered individual, the registered firm on whose behalf the registered individual acts,

(b) the registrant or, if the registrant acts on behalf of a registered firm, the registered firm, records all referral fees on its records, and

(c) the registrant ensures that the information prescribed by subsection 6.13(1) [*disclosing referral arrangements to clients*] is provided to the client in writing before the earlier of opening the client's

account or any services are provided to the client under the referral arrangement.

Disclosing referral arrangements to clients

6.13 (1) Written disclosure of the referral arrangement as required by subsection 6.12(c) [*permitted referral arrangements*] must include the following:

(a) the name of each party to the referral arrangement;

(b) the purpose and material terms of the referral arrangement, including the nature of the services to be provided by each party;

(c) any conflicts of interest resulting from the relationship between the parties to the referral arrangement and from any other element of the referral arrangement;

(d) the method of calculating the referral fee and, to the extent possible, the amount of the fee;

(e) the category of registration of each registrant that is a party to the agreement with a description of the activities that the registrant is authorized to engage in under that category and, giving consideration to the nature of the referral, the activities that the registrant is not permitted to engage in;

(f) if a referral is made to a registrant, a statement that all activity requiring registration resulting from the referral arrangement will be provided by the registrant receiving the referral; and

(g) any other information that a reasonable client would consider important in evaluating the referral arrangement.

(2) If there is a change to the information set out in subsection (1), the registrant must ensure that written disclosure of that change is provided to each client affected by the change as soon as practicable and no later than the 30th day before the date on which a referral fee is next paid or received.

Reasonable diligence when referring clients

6.14 A registrant that refers a client to another person or company must take reasonable steps to satisfy itself that the person or company has the appropriate qualifications to provide the services, and if applicable, is registered to provide those services.

Application and transition to prior referral arrangements

6.15 (1) Sections 6.12 [*permitted referral arrangements*] to 6.14 [*reasonable diligence when referring clients*] apply to a referral arrangement entered into before this Instrument came into force if a referral fee is paid under the referral arrangement after this Instrument comes into force.

(2) Subsection (1) does not apply until the 180th day after this Instrument comes into force.

PART 7 - SUSPENSION AND REVOCATION OF REGISTRATION

Activities requiring registration are prohibited

7.1 If the registration of a registered firm or a registered individual in a category is suspended, he, she or it must not act as a dealer, an adviser, or an investment fund manager in that category.

Suspension of registered firm

7.2 If the registration of a registered firm in a category is suspended, the registration of each registered dealing, advising or associate advising representative in that category is suspended.

Suspension of IDA approval

7.3 (1) If the IDA revokes or suspends a registered firm's membership, the firm's registration in the category of investment dealer is suspended.

(2) If the IDA revokes or suspends a registered individual's approval, the individual's registration in the category of investment dealer is suspended.

Suspension of MFDA approval

7.4 **(1)** If the MFDA revokes or suspends a registered firm's membership, the firm's registration in the category of mutual fund dealer is suspended.

(2) If the MFDA revokes or suspends a registered individual's approval, the individual's registration in the category of mutual fund dealer is suspended.

(3) This section does not apply in Québec.

Failure to pay fees

7.5 **(1)** A registered firm is suspended on the 30th day after the date its annual fees were due if the firm has not paid its annual fees.

(2) In subsection (1), "annual fees" means

(a) in Alberta, the fee required under section 8 of Alta. Reg. 115/95 – Securities Regulation,

(b) in British Columbia, the fee required under section 22 of *Securities Regulation B.C. Reg 196/97*,

(c) in Québec, the fee required under section 271.5 of the Québec Securities Regulation,

(d) in Ontario, the participation fee required under Ontario Securities Commission Rule 13-502 *Fees*, and

(e) in Saskatchewan, the annual registration fee required to be paid by a registrant under section 176 of *The Securities Regulations* (Saskatchewan).

Termination of employment, etc.

7.6 If a registered individual ceases to have an employment, partnership or agency relationship with a registered firm, the individual's registration with the registered firm is suspended on the date the relationship ceased.

Revocation of registration

7.7 If a registration has been suspended under this Part and it has not been reinstated, the registration is revoked on the second anniversary following the suspension.

Exception – hearing

7.8 Despite 7.7 [*revocation of registration*], if a hearing concerning a suspended registrant is commenced under the Act, the registration remains suspended until a decision has been made by the regulator or the securities regulatory authority.

PART 8 - EXEMPTIONS FROM REGISTRATION

Division 1: General

Interpretation

8.1 (1) In this Division, each of the following terms has the same meaning ascribed to the term in section 1.1 of National Instrument 45-106 *Prospectus and Registration Exemptions*: "director", "executive officer", "person" and "subsidiary".

(2) In this Division, an exemption from the dealer registration requirement is deemed to be an exemption from the underwriter registration requirement.

Investment fund distributing through dealer

8.2 The dealer registration requirement does not apply to an investment fund or the investment fund manager of the fund that distributes a security of the investment fund's own issue only through a registered dealer.

Issuer distributing through dealer

8.3 The dealer registration requirement does not apply to an issuer that is trading in securities for the purpose of distributing a security of its own issue for its own account if the trading is done only through a registered dealer.

Investment fund reinvestment

8.4 (1) Subject to subsections (3), (4) and (5), the dealer registration requirement does not apply to an investment fund or the investment fund manager of the fund trading

(a) a dividend or distribution out of earnings, surplus, capital or other sources payable in respect of the investments fund's securities are applied to the purchase of the security that is of the same class or series as the securities to which the dividends or distributions out of earnings, surplus, capital or other sources are attributable, or

(b) subject to subsection (2), the security holder makes an optional cash payment to purchase the security of the investment fund that is of the same class or series of securities described in paragraph (a) that trade on a marketplace.

(2) The aggregate number of securities issued under the optional cash payment referred to in paragraph (1)(b) must not exceed, in any fiscal year of the investment fund during which the trade takes place, two per cent of the issued and outstanding securities of the class to which the plan relates as at the beginning of the fiscal year.

(3) A plan that permits a trade described in subsection (1) must be available to every security holder in Canada to which the dividend or distribution is out of earnings, surplus, capital or other sources available.

(4) No sales charge is payable on a trade described in subsection (1).

(5) The most recent prospectus of the investment fund, if any, must set out

(a) details of any deferred or contingent sales charge or redemption fee that is payable at the time of the redemption of the security,

(b) any right that the security holder has to make an election to receive cash instead of securities on the payment of a dividend or making of a distribution by the investment fund, and

(c) instructions on how the right referred to in paragraph (b) can be exercised.

Additional investment in investment funds

8.5 The dealer registration requirement does not apply to an investment fund or the investment fund manager of the fund in respect of a trade in a security of the investment fund's own issue with a security holder of the investment fund if

(a) the security holder initially acquired securities of the investment fund as principal for an acquisition cost of not less than $150,000 paid in cash at the time of the trade,

(b) the trade is for a security of the same class or series as the securities initially acquired, as described in paragraph (a), and

(c) the security holder, as at the date of the trade, holds securities of the investment fund that have

(i) an acquisition cost of not less than $150,000, or

(ii) a net asset value of not less than $150,000.

Private investment fund - loan and trust pools

8.6 (1) The dealer registration requirement does not apply in respect of a trade in a security of an investment fund if the investment fund

(a) is administered by a trust company or trust corporation that is registered or authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada,

(b) has no promoter or manager other than the trust company or trust corporation referred to in paragraph (a), and

(c) co-mingles the money of different estates and trusts for the purpose of facilitating investment.

(2) Despite subsection (1), a trust company or trust corporation registered under the laws of Prince Edward Island that is not registered under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in another jurisdiction of Canada is not a trust company or trust corporation for the purpose of paragraph (1)(a).

(3) The investment fund manager registration requirement does not apply to a trust company or trust corporation that administers an investment fund referred to in subsection (1).

Private investment club – investment fund manager exemption

8.7 The investment fund manager registration requirement does not apply to a person or company that directs the business, operations or affairs of an investment fund if the investment fund

(a) has no more than 50 beneficial security holders,

(b) does not seek and has never sought to borrow money from the public,

(c) does not and has never distributed its securities to the public,

(d) does not pay or give any remuneration for investment advice or in respect of trades in securities, except normal brokerage fees, and

(e) for the purpose of financing the operations of the investment fund, requires holders to make contributions in proportion to the value of the securities held by them.

Mortgages

8.8 (1) In this section, "syndicated mortgage" means a mortgage in which two or more persons participate, directly or indirectly, as lenders in the debt obligation that is secured by the mortgage.

(2) Subject to subsection (3), the dealer registration requirement does not apply in respect of a trade in a mortgage on real property in a jurisdiction of Canada by a person who is registered or licensed, or exempted from registration or licensing, under mortgage brokerage or mortgage dealer legislation of that jurisdiction.

(3) In Alberta, British Columbia, Manitoba, Québec and Saskatchewan, subsection (2) does not apply in respect of a trade in a syndicated mortgage.

Personal Property Security legislation

8.9 The dealer registration requirement does not apply in respect of a trade in a security evidencing indebtedness secured by or under a security agreement, secured in accordance with personal property security legislation of a jurisdiction of Canada that provides for the granting of security in personal property.

Variable insurance contract

8.10 **(1)** In this section,

"contract", "group insurance", "insurance company", "life insurance" and "policy" have the respective meanings assigned to them in the legislation for a jurisdiction referenced in Appendix A of National Instrument 45-106 *Prospectus and Registration Exemptions*; and

"variable insurance contract" means a contract of life insurance under which the interest of the purchaser is valued for purposes of conversion or surrender by reference to the value of a proportionate interest in a specified portfolio of assets.

(2) The dealer registration requirement does not apply in respect of a trade in a variable insurance contract by an insurance company if the variable insurance contract is

(a) a contract of group insurance,

(b) a whole life insurance contract providing for the payment at maturity of an amount not less than 75 per cent of the premium paid up to age 75 years for a benefit payable at maturity,

(c) an arrangement for the investment of policy dividends and policy proceeds in a separate and distinct fund to which contributions are made only from policy dividends and policy proceeds, or

(d) a variable life annuity.

Schedule III banks and cooperative associations - evidence of deposit

8.11 The dealer registration requirement does not apply in respect of a trade in an evidence of deposit issued by a Schedule III bank or an association governed by the *Cooperative Credit Associations Act* (Canada).

Plan administrators

8.12 (1) The dealer registration requirement does not apply in respect of a trade of a security of an issuer by a trustee, custodian, or administrator acting on behalf of, or for the benefit of employees, executive officers, directors or consultants of the issuer or of a related entity of the issuer with

(a) the issuer,

(b) a current or former employee, executive officer, director or consultant of the issuer or a related entity of the issuer,

(c) a permitted assign of a person referred to in paragraph (b),

if the trade is pursuant to a plan of the issuer and the security is obtained directly from the issuer or from a current or former employee, executive officer, director or consultant of the issuer or of a related entity of the issuer or through a registered dealer.

(2) In this section,

"consultant" has the same meaning as in section 2.22 of National Instrument 45-106 *Prospectus and Registration Exemptions*;

"permitted assign" has the same meaning as in section 2.22 of National Instrument 45-106 *Prospectus and Registration Exemptions*;

"plan" means a plan or program established or maintained by an issuer providing for the acquisition of securities of the issuer by employees, executive officers, directors or consultants of the issuer or of a related entity of the issuer; and

"related entity" has the same meaning as in section 2.22 of National Instrument 45-106 *Prospectus and Registration Exemptions*.

Reinvestment plan

8.13 (1) Subject to subsections (3), (4) and (5), the dealer registration requirement does not apply in respect of the following trades by an issuer, or by a trustee, custodian or administrator acting for or on behalf of the issuer, to a security holder of the issuer if the trades are permitted by a plan of the issuer:

(a) a trade in a security of the issuer's own issue if a dividend or distribution out of earnings, surplus, capital or other sources

payable in respect of the issuer's securities is applied to the purchase of the security, and

(b) subject to subsection (2), a trade in a security of the issuer's own issue if the security holder makes an optional cash payment to purchase the security of the issuer that trades on a marketplace.

(2) The aggregate number of securities issued under the optional cash payment referred to in subsection (1)(b) must not exceed, in any financial year of the issuer during which the trade takes place, 2% of the issued and outstanding securities of the class to which the plan relates as at the beginning of the financial year.

(3) A plan that permits the trades described in subsection (1) must be available to every security holder in Canada to which the dividend or distribution out of earnings, surplus, capital or other sources is available.

(4) This section does not apply to a trade in a security of an investment fund.

(5) Subject to section 8.4.1 [*transition – reinvestment plan*] of National Instrument 45-106, if the security traded under a plan described in subsection (1) is of a different class or series than the security to which the dividend or distribution is attributable, the issuer or the trustee, custodian or administrator must have provided to each participant that is eligible to receive a security under the plan either a description of the material attributes and characteristics of the security traded under the plan or notice of a source from which the participant can obtain the information without charge.

Advising generally

8.14 (1) The adviser registration requirement does not apply to a person or company that engages in, or holds himself, herself or itself out as engaging in, the business of advising others, either through direct advice or through publications or other media, as to the investing in or the buying or selling of securities, including classes of securities and the securities of a class of issuers, not purporting to be tailored to the needs of the person or company receiving the advice.

(2) If a person or company that is exempt from the adviser registration requirement by reason of subsection (1) recommends buying, selling or holding a specified security, a class of securities or the securities of a class of issuers in which any

of the following has a financial or other interest, the adviser must disclose the interest concurrently with providing the advice:

(a) the adviser;

(b) any partner, director or officer of the adviser;

(c) any person or company that would be an insider of the adviser if the adviser were a reporting issuer.

(3) For the purpose of subsection (2), "financial or other interest" includes

(a) ownership, beneficial or otherwise, in the security or in another security issued by the same issuer,

(b) an option in the security, including the terms of the option,

(c) a commission or other compensation received, or expected to be received, from any person or company in connection with a trade in the security,

(d) a financial arrangement regarding the security with any person or company, and

(e) a financial arrangement with any underwriter or other person or company who has any interest in the securities.

International dealer

8.15 (1) In this section

"debt security" has the same meaning as in section 1.1 of National Instrument 45-106 *Prospectus and Registration Exemptions*;

"foreign security" means

(a) a security issued by an issuer incorporated, formed or created under the laws of a jurisdiction other than Canada or any province or territory of Canada, and

(b) a security issued by a country other than Canada or by any political division of the country;

"international dealer" means a dealer that is registered under the securities legislation of the foreign jurisdiction in which its head office or principal place of business is located in a category of registration that permits the dealer to carry on the activities in that jurisdiction that registration as a dealer would permit the dealer to carry on in the local jurisdiction.

(2) Subject to subsection (3), the registration requirement does not apply to an international dealer

(a) carrying on those activities, other than sales of securities, that are reasonably necessary to facilitate a distribution of securities that are offered primarily abroad,

(b) trading in debt securities with a permitted client in the course of a distribution, where the debt securities are offered primarily abroad and a prospectus has not been filed with a Canadian securities regulatory authority for the distribution,

(c) trading in a debt security that is a foreign security with a permitted client, other than in the course of the distribution by which the foreign debt security was issued,

(d) trading in foreign securities with a permitted client, except in the course of a distribution for which a prospectus has been filed with a Canadian securities regulatory authority,

(e) trading in foreign securities with an investment dealer, or

(f) trading in any securities with an investment dealer that is acting as principal

if the international dealer is acting as principal or as agent for the issuer of the securities, for another permitted client, or for a person that is not a resident of Canada.

(3) An international dealer may not rely on subsection (2) unless it has delivered to the securities regulatory authority an executed Form 35-101F1 *Submission to Jurisdiction and Appointment of Agent for Service.*

(4) An international dealer may not rely on subsection (2) to trade with a permitted unless it first notifies the client,

(i) that it is not registered in Canada,

(ii) of the international dealer's jurisdiction of residence,

(iii) of the name and address of the agent for service of process of the international dealer in the local jurisdiction, and

(iv) that there may be difficulty enforcing legal rights against the international dealer because it is resident outside Canada and all or substantially all of its assets are situated outside Canada.

(5) For the purpose of subsection (4), "permitted client" excludes a person or company referred to in paragraph (d) of the definition of permitted client in section 1.1.

International adviser

8.16 (1) In this section

"international adviser" means an adviser that

(a) has its head office or principal place of business in a foreign jurisdiction,

(b) is registered, or operates under an exemption from registration, under the securities legislation of the foreign jurisdiction in which its head office or principal place of business is located in a category of registration that permits it to carry on the activities in that jurisdiction that a registered adviser is permitted to carry on in the local jurisdiction, and

(c) engages in the business of an adviser in the foreign jurisdiction in which its head office or principal place of business is located.

(2) The adviser registration requirement does not apply to an international adviser that is acting as an adviser for a permitted client if

(a) it delivers to the securities regulatory authority, before relying on this subsection, an executed Form 31-103F2 *Submission to Jurisdiction and Appointment of Agent for Service*,

(b) it notifies the client, before advising the client,

(i) that it is not registered in Canada,

(ii) of the international adviser's jurisdiction of residence,

(iii) of the name and address of the agent for service of process of the international adviser in the local jurisdiction, and

(iv) that there may be difficulty enforcing legal rights against the international adviser because it is resident outside Canada and all or substantially all of its assets are situated outside Canada,

(c) it does not advise clients in Canada with respect to securities of Canadian issuers, unless providing advice on securities of a Canadian issuer is incidental to providing advice on securities of a foreign issuer, and

(d) during its most recent fiscal year, not more than ten per cent of the aggregate consolidated gross revenue of the international adviser, its affiliates and its affiliated partnerships is derived from the portfolio management activities of the international adviser, its affiliates and its affiliated partnerships in Canada.

Sub-advisers

8.17 The adviser registration requirement does not apply to a person or company, not ordinarily resident in the jurisdiction, in connection with that person or company acting as an adviser for a registered adviser, or for a dealer acting as a portfolio manager as permitted by section 2.5 [*exemption from adviser registration for IDA members with discretionary authority*], if

(a) the obligations and duties of the person or company so acting as an adviser are set out in a written agreement with the registrant,

(b) the registrant contractually agrees with its clients on whose behalf investment advice is or portfolio management services are to be provided to be responsible for any loss that arises out of the failure of the person or company so acting as an adviser

(i) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the registrant and each client of the registrant for whose benefit the advice is or portfolio management services are to be provided, or

(ii) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances,

(c) the registrant cannot be relieved by its clients from its responsibility for loss under paragraph (b),

(d) the person or company so acting as an adviser, if a resident of a jurisdiction, is registered as an adviser in the jurisdiction,

(e) the person or company so acting as an adviser has no direct contact with the registrant's clients unless the registrant is present, and

(f) in Manitoba, the person or company so acting as an adviser is not registered in any jurisdiction of Canada.

Self-directed registered educational savings plans

8.18 The dealer registration requirement does not apply to a trade in a self-directed RESP to a subscriber if

(a) the trade is made by

(i) a mutual fund dealer or a person who is registered as a dealing representative of a mutual fund dealer and who is acting on behalf of the mutual fund dealer, or

(ii) a Canadian financial institution or, in Ontario, a financial intermediary or a person who is an officer, salesperson or employee of a Canadian financial institution or, in Ontario, a financial intermediary and who is acting on behalf of the Canadian financial institution or, in Ontario, the financial intermediary, and

(b) the self-directed RESP restricts its investments in securities to securities in which the person or company who traded the self-directed RESP is permitted to trade.

Specified debt

8.19 (1) In this section, "permitted supranational agency" means

(a) the African Development Bank, established by the Agreement Establishing the African Development Bank which came into force on September 10, 1964, that Canada became a member of on December 30, 1982;

(b) the Asian Development Bank, established under a resolution adopted by the United Nations Economic and Social Commission for Asia and the Pacific in 1965;

(c) the Caribbean Development Bank, established by the Agreement Establishing the Caribbean Development Bank which came into force on January 26, 1970, as amended, that Canada is a founding member of;

(d) the European Bank for Reconstruction and Development, established by the Agreement Establishing the European Bank for Reconstruction and Development and approved by the *European Bank for Reconstruction and Development Agreement Act* (Canada), that Canada is a founding member of;

(e) the Inter-American Development Bank, established by the Agreement establishing the Inter-American Development Bank which became effective December 30, 1959, as amended from time to time, that Canada is a member of;

(f) the International Bank for Reconstruction and Development, established by the Agreement for an International Bank for Reconstruction and Development approved by the *Bretton Woods and Related Agreements Act* (Canada); and

(g) the International Finance Corporation, established by Articles of Agreement approved by the *Bretton Woods and Related Agreements Act* (Canada).

(2) The dealer registration requirement does not apply to a trade of a debt security

(a) of or guaranteed by the Government of Canada or the government of a jurisdiction of Canada,

(b) of or guaranteed by a government of a foreign jurisdiction if the debt security has an approved credit rating from an approved credit rating organization,

(c) of or guaranteed by any municipal corporation in Canada, or secured by or payable out of rates or taxes levied under the law of a jurisdiction of Canada on property in the jurisdiction and to be collected by or through the municipality in which the property is situated,

(d) of or guaranteed by a Canadian financial institution or a Schedule III bank, other than debt securities that are subordinate in right of payment to deposits held by the issuer or guarantor of those debt securities,

(e) of the Comité de gestion de la taxe scolaire de l'île de Montréal, or

(f) of or guaranteed by a permitted supranational agency if the debt securities are payable in the currency of Canada or the United States of America.

Division 2: Mobility exemptions

Definitions – mobility exemptions

8.20 In this Division,

"eligible client" means, for a person or company, a client of the person or company if the client

(a) is an individual and was a client of the person or company immediately before the client became a resident of the local jurisdiction, or

(b) is a spouse or child of a client referred to in paragraph (a);

"NI 31-101" means National Instrument 31-101 *National Registration System*;

"non-principal jurisdiction" means, for a person or company, each jurisdiction of Canada that is not the principal jurisdiction of the person or company;

"principal jurisdiction" means, for a person or company, the jurisdiction of the principal regulator;

"principal regulator" means

(a) for a person or company other than an individual, the securities regulatory authority or the regulator in the jurisdiction of Canada in which the person or company's head office is located, and

(b) for an individual, the securities regulatory authority or the regulator in the jurisdiction of Canada in which the individual's working office is located; and

"working office" has the same meaning as in NI 31-101.

Notice to non-principal regulator

8.21 (1) As soon as practicable after relying on an exemption under section 8.23 [*mobility exemption – registered firm*] or section 8.24 [*mobility exemption – registered individual*], the person or company must file a completed Form 31-103F3.

(2) Subsection (1) does not apply if the person or company is required to file Form 31-101F1 or Form 31-101F2 under NI 31-101.

Notice of change of principal regulator

8.22 (1) A person or company relying on section 8.23 [*mobility exemption – registered firm*] or section 8.24 [*mobility exemption – registered individual*] must file a completed Form 31-103F3, as soon as practicable, if

(a) for a person or company, other than an individual, the person or company changes its head office to another principal jurisdiction, or

(b) for an individual, the location of the individual's working office changes to another principal jurisdiction.

(2) Subsection (1) does not apply if a person or company is required to file Form 31-101F2 under NI 31-101.

Mobility exemption – registered firm

8.23 If the local jurisdiction is a non-principal jurisdiction, the registration requirement does not apply to a person or company if the person or company

(a) is registered as a dealer or adviser in its principal jurisdiction,

(b) is trading or advising in securities with an eligible client,

(c) does not trade or advise in securities in the local jurisdiction other than as it is permitted to in its principal jurisdiction according to its category of registration,

(d) has 10 or fewer eligible clients in the local jurisdiction, and

(e) complies with section 8.25 [*mobility exemption conditions*].

Mobility exemption – registered individual

8.24 If the local jurisdiction is a non-principal jurisdiction, the registration requirement does not apply to an individual if

(a) the individual is registered in his or her principal jurisdiction as a dealing, advising or associate advising representative,

(b) the individual's registered firm is registered in its principal jurisdiction,

(c) the individual is trading or advising in securities with an eligible client,

(d) the individual does not trade or advise in securities in the local jurisdiction other than as it is permitted to in its principal jurisdiction according to its category of registration,

(e) in the local jurisdiction, the individual trades or advises in securities for no more than five eligible clients, and

(f) the individual complies with section 8.25 [*mobility exemption conditions*].

Mobility exemption conditions

8.25 For the purposes of paragraphs 8.23(e) and 8.24(f) the person or company must

(a) disclose to an eligible client, before it relies on an exemption in section 8.23 [*mobility exemption – registered firm*] or 8.24 [*mobility exemption – registered individual*], that the person or company

(i) is exempt from registration in the local jurisdiction, and

(ii) is not subject to requirements otherwise applicable under local securities legislation, and

(b) act fairly, honestly and in good faith in the course of its dealings with an eligible client.

PART 9 - EXEMPTION

Exemption

9.1 (1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario only the regulator may grant such an exemption.

(3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

PART 10 - TRANSITION

Change of registration categories – firms

10.1 **(1)** On the date this Instrument comes into force, a person or company registered in a category referred to in

(a) column 1 of Appendix C [*new category names – firms*], opposite the name of the local jurisdiction, is deemed to be registered as an investment dealer,

(b) column 2 of Appendix C [*new category names – firms*], opposite the name of the local jurisdiction, is deemed to be registered as a mutual fund dealer,

(c) column 3 of Appendix C [*new category names – firms*], opposite the name of the local jurisdiction, is deemed to be registered as a scholarship plan dealer,

(d) column 4 of Appendix C [*new category names – firms*], opposite the name of the local jurisdiction, is deemed to be registered as a restricted dealer,

(e) column 5 of Appendix C [*new category names – firms*], opposite the name of the local jurisdiction, is deemed to be registered as a portfolio manager, and

(f) column 6 of Appendix C [*new category names – firms*], opposite the name of the local jurisdiction, is deemed to be registered as a restricted portfolio manager.

(2) In Ontario and Newfoundland and Labrador, a person or company registered as a limited market dealer or an international dealer on the date this Instrument comes into force is deemed to be registered as an exempt market dealer.

Change of registration categories – individuals

10.2 On the date this Instrument comes into force, an individual registered in a category referred to in

(a) column 1 of Appendix D [*new category names – individuals*], opposite the name of the local jurisdiction, is deemed to be registered as a dealing representative,

(b) column 2 of Appendix D [*new category names – individuals*], opposite the name of the local jurisdiction, is deemed to be registered as an advising representative, and

(c) column 3 of Appendix D [*new category names – individuals*], opposite the name of the local jurisdiction, is deemed to be registered as an associate advising representative.

Registration of investment fund managers

10.3 (1) The requirement to register as an investment fund manager does not apply to a person or company that is acting as an investment fund manager on the date this Instrument comes into force

(a) until six months after this Instrument comes into force, or

(b) if the person or company applies for registration as an investment fund manager within six months of this Instrument coming into force, until the regulator has accepted or refused the registration.

(2) Despite paragraph 4.18(2)(c) [*capital requirement*], for the purpose of calculating excess working capital, the minimum capital is $50,000 for a registered dealer or registered adviser that is acting as an investment fund manager on the date this Instrument comes into force.

(3) Subsection (2) expires six months after this Instrument comes into force.

(4) Section 4.23 [*insurance – investment fund manager*] does not apply to a registered dealer or registered adviser that is acting as an investment fund manager on the date this Instrument comes into force.

(5) Subsection (4) expires six months after this Instrument comes into force.

Registration of exempt market dealers

10.4 (1) In this section, "a dealer in the exempt market" means

(a) a dealer who trades in securities referred to in subparagraph 2.1(1)(d)(i) (A), (B) or (C), or

(b) a person or company who acts as an underwriter in respect of a distribution of securities that may be made under an exemption from the prospectus requirement.

(2) Despite section 2.1 [*dealer and underwriter categories*], a person or company that is a registered firm on the date this Instrument comes into force and is a dealer in the exempt market on that date, is not required to register as an exempt market dealer

(a) until six months after this Instrument comes into force, or

(b) if the dealer applies for registration as an exempt market dealer within six months of this Instrument coming into force, until the regulator has accepted or refused the registration.

(3) Despite section 2.7 [*individual categories*], an individual who is a registered individual on the date this Instrument comes into force and is a dealer in the exempt market on that date, is not required to register as a dealing representative of an exempt market dealer

(a) until six months after this Instrument comes into force, or

(b) if the individual applies to be registered as a dealing representative of an exempt market dealer within six months of this Instrument coming into force, until the regulator has accepted or refused the registration.

(4) A person or company that is not registered under securities legislation and is a dealer in the exempt market on the date this Instrument comes into force, is exempt from the dealer registration requirement and the underwriter registration requirement

(a) until six months after this Instrument comes into force, or

(b) if the person or company applies for registration as an exempt market dealer, or a dealing representative of an exempt market dealer within six months of this Instrument coming into force, until the regulator has accepted or refused the registration.

(5) Despite section 4.16 [*grandfathered registrants*], an individual who is a dealer in the exempt market on the date this Instrument comes into force is exempt from section 4.9 [*exempt market dealer – dealing representative*] until 12 months after this Instrument comes into force.

Registration of ultimate designated persons

10.5 If a person or company is a registered firm on the date this Instrument comes into force, section 2.9 [*ultimate designated person*] does not apply to the firm

(a) until one month after this Instrument comes into force, or

(b) if an individual applies to be registered as the ultimate designated person of the firm within one month of this Instrument coming into force, until the regulator has accepted or refused the registration.

Registration of chief compliance officers

10.6 (1) If a person or company is a registered firm on the date this Instrument comes into force, section 2.10 [*chief compliance officer*] does not apply to the firm

(a) until one month after this Instrument comes into force, or

(b) if an individual applies to be registered as the chief compliance officer of the firm within one month of this Instrument coming into force, until the regulator has accepted or refused the registration.

(2) If an individual applies, within one month of this Instrument coming into force, to be registered as the chief compliance officer of a person or company that is a registered firm on the date this Instrument comes into force, Division 1 [*proficiency requirements*] of Part 4 does not apply in respect of the individual.

(3) Despite subsection (2), if an individual applies, within six months of this Instrument coming into force, to be registered as the chief compliance officer of a person or company that is acting as an investment fund manager on the date this Instrument

comes into force, section 4.15 [*investment fund manager – chief compliance officer*] does not apply in respect of the individual until 12 months after this Instrument comes into force.

(4) Despite subsection (2), if an individual applies, within six months of this Instrument coming into force, to be registered as the chief compliance officer of a person or company that is a dealer in the exempt market on the date this Instrument comes into force, section 4.10 [*exempt market dealer – chief compliance officer*] does not apply in respect of the individual until 12 months after this Instrument comes into force.

(5) In subsection (4), "a dealer in the exempt market" means

(a) a dealer who trades in securities referred to in subparagraph 2.1(1)(d)(i) (A), (B) or (C), or

(b) a person or company who acts as an underwriter in respect of a distribution of securities that may be made under an exemption from the prospectus requirement.

Relationship disclosure information

10.7 (1) Section 5.4 [*providing relationship disclosure information*] does not apply to a person or company that is a registrant on the date this Instrument comes into force.

(2) Subsection (1) expires 6 months after this Instrument comes into force.

Complaint handling

10.8 (1) In each jurisdiction of Canada except Québec, a person or company that is a registered firm on the date this Instrument comes into force is exempt from section 5.29 [*dispute resolution service*] and section 5.31 [*reporting to the securities regulatory authority*].

(2) Subsection (1) expires 6 months after this Instrument comes into force.

Referral arrangements

10.9 (1) Division 2 [*referral arrangements*] of Part 6 does not apply to a person or company that is a registrant on the date this Instrument comes into force.

(2) Subsection (1) expires 6 months after this Instrument comes into force.

Capital requirements

10.10 (1) A person or company that is a registered firm on the date this Instrument comes into force is exempt from sections 4.18 [*capital requirement*] to 4.20 [*subordination agreement – notice requirement*] if it complies with each provision listed in Appendix E [*non-harmonized capital requirements*] across from the name of the local jurisdiction.

(2) Subsection (1) expires 12 months after this Instrument comes into force.

Insurance requirements

10.11 (1) A person or company that is a registered firm on the date this Instrument comes into force is exempt from sections 4.21 [*insurance – dealer*] to 4.25 [*notice of change, claim or cancellation*] if it complies with each provision listed in Appendix F - [*non-harmonized insurance requirements*] across from the name of the local jurisdiction.

(2) Subsection (1) expires 6 months after this Instrument comes into force.

PART 11 - EFFECTIVE DATE

Effective date

11.1 This instrument comes into force on [●].

Form 31-103F1 Calculation of excess working capital

_____

Firm Name

Capital Calculation

(as at _____ with comparative figures as at _____)

	Component	Current period	Prior period
1.	Current assets		
2.	Less current assets not readily convertible into cash (*e.g.*, prepaid expenses)		
3.	Adjusted current assets Line 1 minus line 2 =		
4.	Current liabilities		
5.	Add 100 per cent of long-term related party debt unless the firm and the lender have executed a subordination agreement in the form set out in Appendix B and the firm has delivered a copy of the agreement to the regulator		
6.	Adjusted current liabilities Line 4 plus line 5 =		
7.	Adjusted working capital Line 3 minus line 6 =		
8.	Less minimum capital		
9.	Less market risk		
10.	Less any deductible under the firm's bonding or insurance policy		
11.	Less Guarantees		
12.	Less unresolved differences		
13.	**Excess working capital**		

Notes:

This form must be prepared on an unconsolidated basis.

Line 8. Minimum Capital – The amount on this line must be not less than (a) $25,000 for an adviser, (b) $50,000 for a dealer, and (c) $100,000 for an investment fund manager.

Line 9. Market Risk – The amount on this line must be calculated according to the instructions set out in Schedule 1 to this Form.

Line 11. Guarantees – If the registered firm is guaranteeing the liability of another party, the total amount of the guarantee must be included in the capital calculation.

Line 12. Unresolved differences – Any unresolved differences that could result in a loss from either firm or client assets must be included in the capital calculation.

The examples below are intended to provide guidance as to how to calculate unresolved differences:

(i) If there is an unresolved difference relating to client securities, the amount to be reported on Line 12 will be equal to the market value of the client securities that are short, plus the applicable margin rate for those securities.

(ii) If there is an unresolved difference relating to the registrant's investments, the amount to be reported on Line 12 will be equal to the market value of the investments (securities) that are short.

(iii) If there is an unresolved difference relating to cash, the amount to be reported on Line 12 will be equal to the amount of the shortfall in cash.

Management Certification

Registered Firm Name: _____

We have examined the attached capital calculation and certify that the firm is in compliance with the capital requirements as at _____.

Name and Title	**Signature**	**Date**
1. _____	_____	_____

_____

2. _____ _____
_____

_____

Schedule 1 of Form 31-103F1 *Calculation*
of excess working capital
(*calculating line 9 [market risk]*)

1. All securities are to be valued at market as of the reporting date. The margin rates to be used are those outlined below:

(a) Bonds, Debentures, Treasury Bills and Notes

(i) Bonds, debentures, treasury bills and other securities of or guaranteed by the Government of Canada, of the United Kingdom, of the United States of America or guaranteed by any province of Canada:

within 1 year	1% of market value multiplied by the fraction determined by dividing the number of days to maturity by 365
over 1 year	5% of market value

(ii) All other bonds, debentures and notes:

within 1 year	3% of market value multiplied by the fraction determined by dividing the number of days to maturity by 365
over 1 year	10% of market value

(b) Bank Paper

Deposit certificates, promissory notes or debentures issued by a Canadian chartered bank (and of Canadian chartered bank acceptances) maturing:

within 1 year	2% of market value multiplied by the fraction determined by dividing the number of days to maturity by 365
over 1 year	10% of market value

(c) Mutual Funds

Securities of mutual funds qualified by prospectus for sale in any province of Canada must be margined at the following rates:

Money Market Funds (as defined in National Instrument 81-102) – 5% of market value.

All Other Mutual Funds – 50% of market value.

(d) Stocks

On securities (other than bonds and debentures) including rights and warrants listed on any recognized stock exchange in Canada or the United States:

Long Positions – Margin Required

Securities selling at $2.00 or more – 50% of market value

Securities selling at $1.75 to $1.99 – 60% of market value

Securities selling at $1.50 to $1.74 – 80% of market value

Securities selling under $1.50 to 100% of market value

Short Positions – Credit Required

Securities selling at $2.00 or more – 150% of market value

Securities selling at $1.50 to $1.99 - $3.00 per share

Securities selling at $0.25 to $1.49 – 200% of market value

Securities selling at less than $0.25 – market value plus $0.25 per shares

(e) F**or all other securities** – 100% of market value.

Form 31-103F2
Submission to jurisdiction and appointment of agent for service

(sections 8.15 [international dealer] and 8.16[international adviser])

1. Name of registered firm (the "Registered Firm"):

2. Jurisdiction of incorporation of the Registered Firm:

3. Name of agent for service of process (the "Agent for Service"):

4. Address for service of process on the Agent for Service:

5. The Registered Firm designates and appoints the Agent for Service at the address stated above as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal or other proceeding (a "Proceeding") arising out of or relating to or concerning the Registered Firm's activities in the local jurisdiction and irrevocably waives any right to raise as a defense in any such proceeding any alleged lack of jurisdiction to bring such Proceeding.

6. The Registered Firm irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial and administrative tribunals of the local jurisdiction and any administrative proceeding in the local jurisdiction, in any Proceeding arising out of or related to or concerning the Registered Firm's activities in the local jurisdiction.

7. Until six years after the Registered Firm ceases to be registered, the Registered Firm must file

a. a new Submission to Jurisdiction and Appointment of Agent for Service in this form no later than the 30th day before the date this Submission to Jurisdiction and Appointment of Agent for Service is terminated; and

b. an amended Submission to Jurisdiction and Appointment of Agent for Service no later than the 30th day before any change in the name or above address of the Agent for Service.

8. This Submission to Jurisdiction and Appointment of Agent for Service is governed by and construed in accordance with the laws of the local jurisdiction.

Dated:

(Signature of Registered Firm or authorized signatory)

(Name and Title of authorized signatory)

Acceptance

The undersigned accepts the appointment as Agent for Service of (Insert name of Registered Firm) under the terms and conditions of the foregoing Submission to Jurisdiction and Appointment of Agent for Service.

Dated:
(Signature of Agent for Service or authorized signatory)

(Name and Title of authorized signatory)

Form 31-103F3

Notice of principal regulator

(section 8.21 [notice to non-principal regulator] and section 8.22 [notice of change of principal regulator])

1. Date: _____

2. Information about person or company

NRD # (if applicable): _____

Name: _____

3. Principal regulator

The securities regulatory authority or regulator in the following jurisdiction is the principal regulator for the person or company: _____

4. Previous notice filed

If the person or company has previously filed a Form 31-103F3, indicate the principal regulator noted in the previous notice: _____

5. Reasons for principal regulator

The principal regulator for the person or company is its principal regulator

(a) based on the location of its head office (for a registered firm) or working office (for a registered individual) (check box), or ☐

(b) on the following basis provide details:

_____

_____

_____

Appendix A – Bonding and insurance clauses

(section 4.21 [insurance – dealer], section 4.22 [insurance – adviser] and section 4.23 [insurance – investment fund manager])

Clause	Name of Clause	Details
A	Fidelity	This clause insures against any loss through dishonest or fraudulent act of employees.
B	On Premises	This clause insures against any loss of money and securities or other property through robbery, burglary, theft, hold-up, or other fraudulent means, mysterious disappearance, damage or destruction while within any of the insured's offices, the offices of any banking institution or clearing house or within any recognized place of safe-deposit.
C	In Transit	This clause insures against any loss of money and securities or other property through robbery, burglary, theft, hold-up, misplacement, mysterious disappearance, damage or destruction, while in transit in the custody of any employee or any person acting as messenger except while in the mail or with a carrier for hire other than an armoured motor vehicle company.
D	Forgery or Alterations	This clause insures against any loss through forgery or alteration of any cheques, drafts, promissory notes or other written orders or directions to pay sums in money, excluding securities.
E	Securities	This clause insures against any loss through having purchased or acquired, sold or delivered, or extended any credit or acted upon securities or other written instruments which prove to have been forged, counterfeited, raised or altered, or lost or stolen, or through having guaranteed in writing or witnessed any signatures upon any transfers, assignments or other documents or written instruments.

Appendix B – Subordination Agreement

(Line 5 of Form 31-103F1 Calculation of excess working capital)

The subordination agreement made this ____ day of _____, 20___

Between:

_____
(hereinafter called the "Lender")

- and

_____
(hereinafter called the "Registrant")

WHEREAS the Registrant is engaged in business as a _____ and such business is carried on in the City/Town of _____ , Province of _____ .

WHEREAS ON THE _____DAY OF _____ , 20__ , the Registrant borrowed from
the Lender a sum of $_____ , repayable with interest at the rate of ____ per annum (hereinafter called the "loan"), the sum being needed for the carrying on of the business of the Registrant;

NOW THEREFORE, this agreement witnesses that, in consideration of $1 paid by the parties to each other, receipt of this sum being acknowledged by each of the parties, the parties agree as follows:

1. The loan and all monies payable in respect thereof are hereby declared to be subordinate to, and the repayment of the loan, and all monies repayable in respect thereof, is hereby postponed to all claims of other present and future creditors of the Registrant, to the extent that all such creditors shall in the event of the dissolution, winding-up, liquidation, insolvency or bankruptcy of the Registrant be paid their existing claims in full in priority to the claims of the Lender and before the Lender shall have any claim upon any property belonging or which belonged to the Registrant or shall have any right to receive any payment in respect to the loan.

2. The Registrant must notify the Director of the Provincial Securities Commission prior to repayment of the loan or any part thereof. The Director may require further documentation after receiving this notification from the Registrant.

3. Interest can be paid at the agreed upon rate and time provided that the payment of such interest does not result in a capital deficiency.

4. During the term of this agreement, any loan or advance or posting of security for a loan or advance by the Registrant to the Lender, shall be deemed to be a payment on account of the loan which is the subject of this agreement.

5. In this agreement "Registrant" shall include every successor thereof and every successor to the Registrant or of any such successor or to any part of such business and every firm which contains the Registrant or any partner thereof.

6. This agreement shall be binding upon and to the benefit of the parties hereto and their respective legal representatives.

7. The agreement shall remain in full force and effect until it is terminated. This agreement may be only terminated by the Lender once notification pursuant to clause 2 of this agreement is received by the Director of the Provincial Securities Commission.

DATED AT _____ , in the Province of _____,

the _____day of_____ , 20____.

In the Presence of:

Name: _____

On behalf of: _____

(Lender)

Name: _____

On behalf of: _____

(Registrant)

Notes:
(1) This form should be executed in triplicate with one duly executed copy to be delivered to the Provincial Securities Commission.
(2) A breach of this subordination agreement will be considered by the Provincial Securities Commission sufficient cause for immediate suspension of registration.

APPENDIX C – New category names - firms

(Section 10.1 [change of registration categories – firms])

	Column 1 *[investment dealer]*	Column 2 *[mutual fund dealer]*	Column 3 *[scholarship plan dealer]*	Column 4 *[restricted dealer]*	Column 5 *[portfolio manager]*	Column 6 *[restricted portfolio manager]*
Alberta	investment dealer	mutual fund dealer	scholarship plan dealer	*[blank]*	investment counsel or portfolio manager	*[blank]*
British Columbia	investment dealer	mutual fund dealer	scholarship plan dealer	exchange contracts dealer, special limited dealer	investment counsel or portfolio manager	*[blank]*
Manitoba	investment dealer	mutual fund dealer	scholarship plan dealer	*[blank]*	investment counsel or portfolio manager	*[blank]*
New Brunswick	investment dealer	mutual fund dealer	scholarship plan dealer	*[blank]*	investment counsel and portfolio manager	*[blank]*
Newfoundland & Labrador	investment dealer	mutual fund dealer	scholarship plan dealer	*[blank]*	investment counsel or portfolio manager	*[blank]*
Nova Scotia	investment dealer	mutual fund dealer	scholarship plan dealer	*[blank]*	investment counsel or portfolio manager	*[blank]*
Ontario	investment dealer	mutual fund dealer	scholarship plan dealer	*[blank]*	investment counsel or portfolio manager	*[blank]*
Prince Edward Island	investment dealer	mutual fund dealer	scholarship plan dealer	*[blank]*	investment counsel or portfolio manager	*[blank]*

	Column 1 *[investment dealer]*	Column 2 *[mutual fund dealer]*	Column 3 *[scholarship plan dealer]*	Column 4 *[restricted dealer]*	Column 5 *[portfolio manager]*	Column 6 *[restricted portfolio manager]*
Québec	- unrestricted practice dealer - unrestricted practice dealer (introducing broker) -unrestricted practice dealer (International Financial Centre) -discount broker	firm in group-savings-plan brokerage	scholarship plan dealer	- Québec Business investment company (QBIC) Debt securities dealer - restricted practice Dealer - firm in investment contract brokerage - unrestricted practice dealer (Nasdaq)	-unrestricted practice adviser -unrestricted practice adviser (International Financial Centre)	- restricted practice advisor
Saskatchewan	investment dealer	mutual fund dealer	scholarship plan dealer	*[blank]*	investment counsel or portfolio manager	*[blank]*
Northwest Territories	investment dealer	mutual fund dealer	scholarship plan dealer	*[blank]*	investment counsel or portfolio manager	*[blank]*
Nunavut	investment dealer	mutual fund dealer	scholarship plan dealer	*[blank]*	investment counsel or portfolio manager	*[blank]*
Yukon	broker	broker	scholarship plan dealer	*[blank]*	broker	*[blank]*

APPENDIX D – New category names - individuals

(Section 10.2 [change of registration categories – individuals])

	Column 1 *[dealing representative]*	Column 2 *[advising representative]*	Column 3 *[associate advising representative]*
Alberta	Officer (Trading), Salesperson, Salesperson/Branch Manager	Officer (Advising), Advising Employee	Junior Officer (Advising)
British Columbia	Salesperson, trading partner, trading director, trading officer	Advising employee, advising partner, advising director, advising officer	
Manitoba			
New Brunswick	- salesperson - officer (trading) - partner (trading)	- representative (advising) - officer (advising) - partner (advising) - sole proprietor (advising)	- associate officer (advising) - associate partner (advising) - associate representative (advising)
Newfoundland & Labrador			
Nova Scotia	- salesperson - officer – trading - partner- trading - director - trading	- officer- advising - officer – counselling - partner- advising - partner- counselling - director- advising - director- counselling	
Ontario	Salesperson, Officer (Trading), Partner (Trading), Sole Proprietor	Advising Representative, Officer (Advising), Partner (Advising), Sole Proprietor	
Prince Edward Island			

	Column 1 *[dealing representative]*	Column 2 *[advising representative]*	Column 3 *[associate advising representative]*
Québec	Representative, Representative - Group Savings Plan (SalesPerson), Representative - Scholarship Plan (SalesPerson)	Representative (Portfolio Manager), Representative (Advise), Representative Options, Representative Futures	
Saskatchewan	Officer (Trading), Partner (Trading), Salesperson	Officer (Advising), Partner (Advising), Employee (Advising)	
Northwest Territories			
Nunavut			
Yukon			

APPENDIX E – Non-harmonized capital requirements

(Section 10.10 [capital requirements])

Alberta	Sections 23 and 24 of the *Alberta Securities Commission Rules (General)*
British Columbia	Sections 19, 20, 24 and 25 of the *Securities Rules*. Sections 2.1(i), 2.3(i), 8.3, 9.4, 10.3, 12.3, 13.3, 14.4, 15.4 and 16.3 of BC Policy 31-601 *Registration Requirements*.
Manitoba	
New Brunswick	
Newfoundland & Labrador	
Nova Scotia	
Ontario	Sections 96, 97, 107, 108, 109, 111 of the Ontario Regulation 1015 made under the *Securities Act*, as those sections read on [date that is 1 day before their revocation].
Prince Edward Island	
Québec	Sections 207 to 209, 211 and 212 of the Québec Securities Regulation
Saskatchewan	Sections 19 and 24 of *The Securities Regulations* (Saskatchewan) as they read immediately prior to the implementation of this regulation
Northwest Territories	
Nunavut	
Yukon	

APPENDIX F – Non-harmonized insurance requirements

(Section 10.11 [insurance requirements])

Alberta	Sections 25 and 26 of the *Alberta Securities Commission Rules (General)*
British Columbia	Sections 21 and 22 of the *Securities Rules*. Sections 2.1(h), 2.2(g), 2.3(h) and 2.5(h) of BC Policy 31-601 *Registration Requirements*.
Manitoba	
New Brunswick	
Newfoundland & Labrador	
Nova Scotia	
Ontario	Sections 96, 97, 107, 108, 109, 111 of the Ontario Regulation 1015 made under the *Securities Act*, as those sections read immediately before revocation.
Prince Edward Island	
Québec	Section 213 and 214 of the Québec Securities Regulation.
Saskatchewan	Section 33 of *The Securities Act, 1988* (Saskatchewan) as it read immediately prior to the implementation of this regulation. Sections 20, 21 and 22 of *The Securities Regulations* (Saskatchewan) as they read immediately prior to the implementation of this regulation.
Northwest Territories	
Nunavut	
Yukon	

Companion Policy 31-103CP

Registration Requirements

Table of Contents

Companion Policy 31-103CP

Registration Requirements

PART 1 - DEFINITIONS AND INTERPRETATION

1.1 Introduction

This Companion Policy sets out how the Canadian Securities Administrators (the CSA or we) interpret or apply the provisions of National Instrument 31-103 *Registration Requirements* (NI 31-103) and related securities legislation.

Registrants should refer to securities legislation of their local jurisdiction and to other CSA instruments for additional requirements that may apply to them. Registrants must also comply with applicable self-regulatory organization (SRO) requirements.

1.2 Definitions

Unless defined in NI 31-103, terms used in NI 31-103 and this Companion Policy have the meaning given to them in local securities legislation or in National Instrument 14-101 *Definitions*. In NI 31-103, "day" has its ordinary meaning, except where business days are specified. All references in this Companion Policy to sections, Parts and Divisions are to NI 31-103, unless otherwise noted.

1.3 Business trigger for registration[1]

As a starting principle, anyone who is in the business of trading[2] or advising in securities should be subject to the registration requirement, regardless of the type of security, the name used to describe the business or how the business is organized.

The following section describes the factors that are relevant in determining whether a person or company is trading or advising in securities for a business purpose. For the most part, they are taken from case law and regulatory decisions that have interpreted the business purpose test in the context of securities matters.

We look at the type of activity and whether it is conducted as a business when determining whether the registration requirement applies to the person or company conducting the activity.

---

[1] The discussion in this section does not apply in Manitoba, where the trade trigger for dealer registration will continue to apply without change.

[2] In Québec, "trading in securities" also refers to distributing a security or any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of those activities.

The first step is to assess whether the activity is:

- trading in securities
- advising in securities, or
- acting as an investment fund manager

We will always consider a person or company that is acting as an investment fund manager to be conducting that activity as a business. Registration will therefore be required unless an exemption has been provided.

If the activity is trading or advising in securities, further analysis is required to assess whether the activity is conducted as a business. We consider the factors set out below, among others.

In general, any person or company that performs the activities discussed in paragraphs (a) or (b) is in the business of trading or advising in securities. No one of the activities in paragraphs (c), (d) and (e) will necessarily determine whether a person or company is in the business of trading or advising in securities.

(a) ***Directly or indirectly holding oneself out as being in the business of the activity***
Merely holding oneself out as being willing to engage in trading or advising in securities is sufficient to be engaged in the business for the purposes of securities legislation. This is because holding out induces the client to rely on the dealer or adviser.

Engaging in practices similar to those used by registrants also reflects a business purpose. Examples include promoting securities and making disclaimers or stating by any other means that the person or company will buy or sell securities. Carrying on any of these activities at the start-up stage may be considered carrying on a business.

(b) ***Acting in an intermediary capacity or as a market maker***
Acting in an intermediary capacity between a seller and a buyer of securities or making a market in securities constitute trading for a business purpose.

(c) ***Directly or indirectly carrying on the activity with repetition, regularity or continuity***
Frequent transactions are a common indicator that a person is engaged in a business. We consider a person who regularly trades or advises in any manner that could produce profits to be engaged in a business. The activity does not have to be the person's sole or even primary endeavour for that person to be in the business. However, whether a person has other sources of income and how much time the person spends on the activity are also relevant factors.

(d) ***Being, or expecting to be, remunerated or otherwise compensated for the activity***

Receiving, or expecting to receive, compensation for carrying on the activity, whether transaction or value based, reflects a business purpose. It does not matter if the person actually receives compensation or what form the compensation takes. Having the capacity or the ability to carry on the activity to produce profit is also a relevant factor.

However, carrying on an activity with no expectation of compensation may suggest that it is not for a business purpose.

(e) ***Directly or indirectly soliciting others in connection with the activity***

Contacting others to solicit securities transactions or to offer advice reflects a business purpose. Solicitation includes contacting others by any means, including advertising that proposes buying or selling securities or participating in a securities transaction, or that offers services or advice for these purposes.

We do not consider an entity setting up a website for third parties to post information on investment opportunities, such as a bulletin board, to be in the business of advising or trading in securities if that entity has no other role in any trades that may take place between parties who use the bulletin board.

1.4 Applying the business trigger factors

This section explains how the business trigger factors might apply to some common situations.

1.4.1 Securities issuers

In general, securities issuers with an active non-securities business are not also in the business of trading in securities, even when distributing their own securities directly to investors. This is because, even when taking raising capital into account, most issuers:

- trade in securities infrequently
- are not remunerated, or do not expect to be remunerated, for trading in securities
- do not act in an intermediary capacity
- do not produce, or intend to produce, distinct profit from trading in securities
- do not hold themselves out as being in the business of trading in securities

However, securities issuers may be in the business of trading securities if they:

- regularly trade in securities
- hold themselves out as being in the business of trading in securities

- employ or otherwise contract with persons to perform activities on their behalf that are similar to those performed by a registrant (other than underwriting in the normal course of a distribution or trading for their own account)

Section 8.3 provides securities issuers whose activities fall within the business trigger with an exemption from the dealer registration requirement if they distribute their securities:

- solely for their own account

- solely through a registered dealer that is registered in the appropriate category

Securities issuers are in most cases subject to the prospectus requirements in securities legislation. Regulators have the discretionary authority to require an underwriter for a prospectus distribution.

1.4.2 Mortgage investment companies

Mortgage investment companies (MICs) are securities issuers. In many cases, they are in the business of trading in securities and are therefore required to register in an appropriate dealer category.

While MICs can have various business models, they typically:

- solicit investors actively

- trade in securities frequently

- do not expect to be remunerated for issuing their own securities to investors, but may act as intermediaries to the extent that their business model is based on obtaining a return on the further investment of their investors' funds in securities (the mortgages)

- select mortgage investments, rather than develop the underlying real estate

- only allow investors to withdraw their capital by exercising redemption rights through the MIC

1.4.3 Venture capital

A wide range of potentially registerable activities can be described as "venture capital" investing. While we cannot give specific guidance for every possible situation, we have found that considering the expectations and reliance of investors can be particularly relevant when applying the business trigger factors to venture capital.

For example, whether the general partner (GP) of a limited partnership (LP) that acquires securities would have to register as an adviser depends on:

- the application of the business trigger factors to the business purpose of the LP
- the types of services the GP provides to the LP
- the expectations of the limited partners

If the purpose of the LP is to invest in a trading portfolio of securities and the limited partners are relying on the GP's expertise in selecting the securities and deciding when to buy and sell them, we would require the GP to register as an adviser.

If the limited partners are relying on the GP for expertise other than providing advice on selecting investments in securities, we may not require the GP to register as an adviser. This would be the case where a GP's role is to select small private companies that the GP will actively manage and develop. We would view the purchase and eventual sale of the securities as incidental to the GP's activities on behalf of the LP.

1.4.4 Principal trading activities

Trading for own account
In most instances, we would not consider persons or companies to be in the business of trading in securities if their main or sole trading activity is trading for their own account. For example, individuals, day traders and pension funds that regularly buy or sell securities for their own account, through a registered dealer or otherwise, would not need to register.

Applying the business trigger factors discussed in section 1.3 of this Companion Policy, these persons or companies would not be in the business of trading securities because they:

- are not remunerated for undertaking the activity
- do not solicit others in connection with the activity
- do not act as an intermediary, or
- do not hold themselves out as being in the business of trading in securities

Trading for a registered firm
Principal trading carried on by a registered firm is inherently different from that carried on by a business that is not otherwise required to register. Registered firms and those who trade on their behalf have a unique position in, and direct access to, the markets. They also have obligations to clients. There is often the potential for conflicts of interest in these circumstances.

In addition, principal trading can have a significant impact on a firm's financial viability, which introduces systemic risks. It is therefore appropriate that individuals who conduct

principal trading for a registered firm be subject to the registration requirement, even if they do not trade for clients.

1.4.5 Activities not commonly in the business of trading or advising in securities

One-time activities
In general, we do not require registration for trading activities:

- by an individual or other person that is acting as a trustee, executor, administrator, personal or other legal representative
- relating to selling goods or supplying services between affiliated companies
- relating to the sale of a business

In some cases, these are one-time activities that do not reflect a business purpose. In other cases, the overall activities may be of a business nature, but trading or advising in securities is incidental to the primary purpose of the business.

Incidental activities
Activity that is incidental to the primary business of a firm may suggest that there is no business purpose in the activity in itself.

For example, merger and acquisition specialists advising the parties to a transaction between corporations are not normally required to register as advisers in connection with that activity, even though the transaction may result in trades in securities. The business purpose in this example is to effect the transaction. Any advice with respect to trades in the securities is incidental to that purpose and is limited to the parties to the transaction.

In general, professionals such as lawyers, accountants, engineers, geologists and teachers, who provide advice in the normal course of their professional operations, are not in the business of advising in securities. For the most part, any advice they may give will be incidental to their professional activities. However, in each case it is important to consider the advising activity with reference to the business trigger factors.

Normally, these professionals are not in the business of advising securities because they do not:

- repeatedly advise in securities
- receive separate remuneration for their advising services
- solicit clients on the basis of their advising services
- hold themselves out as being in the business of advising in securities

However, we would consider a professional to be in the business of advising in securities if securities advice is a primary reason for the client's relationship with the professional.

This is the case if the professional regularly provides advice on securities and solicits clients based on these advising services.

PART 2 - CATEGORIES OF REGISTRATION

2.1 General

Securities legislation distinguishes among investment fund managers and categories of dealers and advisers.

The categories of registration for firms serve two main purposes:

- to specify the type of business that the firm may conduct and, therefore, the types of business that the firm is not registered to conduct and may not carry on

- to provide a framework for the requirements the registrant must meet

Individual categories set out the qualifications necessary for an individual to perform particular roles on behalf of a registered firm.

This Part explains categories of registration that were introduced in NI 31-103.

2.2 Exempt market dealer

Section 2.1 restricts an exempt market dealer to trading in:

- securities distributed under an exemption from the prospectus requirement,

- securities distributed under a prospectus despite the fact that a prospectus exemption was available,

- securities that, if the trade were a distribution, may have been distributed under an exemption from the prospectus requirement, or

- any security, if the trade is (i) on behalf of a client of the exempt market dealer, (ii) the security was acquired by the client in a circumstance for which there would be a prospectus exemption if the trade formed part of a distribution, and (iii) the trade is with a registered dealer

For example, an exempt market dealer may trade in prospectus-qualified securities with accredited investors. Also an exempt market dealer can, under subsection 2.1(1)(d)(i)C), trade in a security if such trade does not constitute a distribution within the meaning of NI 45-106 provided that, if it were a distribution, it could have been made under an exemption from the prospectus requirement.

2.3 Restricted dealer

This category permits specialized dealers that would not necessarily qualify for unrestricted dealer registration to carry on business under terms and conditions imposed

by the local regulator. We will only register restricted dealers if there is a compelling case for permitting the proposed trading to take place outside of one of the other registration categories.

For example, an issuer might use this category if it must register because it is in the business of trading in securities but cannot rely on the exemption in section 8.3. In this case, the regulator would restrict the issuer's registration to trading in securities of its own issue and exclusively for its own account.

Terms and conditions for restricted dealers will be coordinated among the CSA jurisdictions.

2.4 Trading in securities – exemption for advisers

Firms that are registered advisers routinely create pooled funds as a way to efficiently invest money deposited to their clients' accounts. In doing so, they enter into the business of trading in securities because this trading activity is more than incidental to their business as advisers. However, requiring an adviser that has bona fide fully-managed accounts to also register as a dealer would not achieve any material benefits from a regulatory point of view.

The exemption in section 2.2 relieves a registered adviser that is actively managing its clients' accounts with discretionary authority from having to register as a dealer to distribute units of its pooled funds into the clients' accounts. The exemption is available both to registered advisers and those who qualify for the international portfolio manager exemption under section 8.15.

There is an anti-avoidance provision in subsection 2.2(2). The exemption is not intended to apply to an adviser that operates an investment fund as a core or principal business activity. This may be the case if an adviser:

- has only a small number of funds into which most of its client accounts are invested
- dedicates more time to managing its funds than managing client accounts
- focuses on designing and managing its funds, rather than on understanding the investment needs of its clients and tailoring the fully-managed portfolios to their needs

In this situation, advisers should consider whether the prospectus requirement and the requirement to register as an investment fund manager apply.

2.5 Advising in securities

Those who provide specific advice are required to register as an adviser. Specific advice is tailored to the needs and circumstances of the client and concerns one or more specific securities. The most obvious example of specific advice is discretionary account management.

Section 8.14 contains an exemption from registering as an adviser for those who provide generic advice. Generic advice is not tailored to the needs and circumstances of the person or company receiving the advice, although it may refer to specific securities.

Generic advice about specific securities may be delivered through investment newsletters and articles in general circulation newspapers and magazines or through websites, e-mail, internet chat rooms and bulletin boards, as long as it does not claim to be tailored to the needs and circumstances of any recipient.

Generic advice can also be given at conferences. However, if a purpose of the conference is to solicit specific securities transactions, we may consider the advice to be specific or may consider the individual giving it to be engaged in trading activity in that the real purpose of the advice is to generate trades by members of the audience.

2.6 Restricted portfolio manager

The advising activities of a restricted portfolio manager are limited by terms and conditions that the regulator imposes on its registration. This category is intended to permit persons or companies to advise in specific securities, classes of securities or the securities of a class of issuers.

For example, an individual who has extensive expertise in oil and gas issuers, but does not have the prescribed proficiency of a portfolio manager advising representative might be registered as an advising representative of a restricted portfolio manager whose terms and conditions on registration permit it to advise solely in securities of oil and gas issuers.

Terms and conditions for restricted portfolio managers will be coordinated among the CSA jurisdictions.

2.7 Associate advising representative

An individual who does not meet the education and experience requirements for registration as an advising representative may be registered as an associate advising representative. This category is primarily intended to be an apprentice category for individuals who intend to become full advising representatives but who do not meet the education or experience requirements.

This category allows an individual to work at a registered adviser while completing the proficiency requirements for an advising representative. For example, it would allow a former advising representative to work in an advising capacity while acquiring the relevant working experience that is required for an advising representative under section 4.11.

However, there is no requirement for an associate advising representative to subsequently register as a full advising representative. This category accommodates, for example, an individual who has a client relationship role that includes specific advice, but who is not managing clients' portfolios without supervision.

As required by section 2.8, advice provided by an associate advising representative must be approved by an advising representative. The appropriate processes for approving the advice of an associate advising representative will depend on the circumstances, including the individual's level of experience. The registered firm must:

- document its policies and procedures for meeting these obligations and maintain specific records where advice is approved, as provided in sections 5.15 and 5.23

- notify the regulator of the designation of an advising representative for approving the advice of an associate no later than the 5th business day following the date of the designation

2.8 Investment fund manager

Investment fund manager is defined in section 2.6 as "a person or company that is permitted to direct the business, operations and affairs of an investment fund". An investment fund manager generally organizes the fund and contractually accepts responsibility for its management and administration. It does not act as a portfolio manager for the fund.

Administering an investment fund may include information gathering, performance reporting and handling client assets. The fund, trust or company broadly delegates these responsibilities to the investment fund manager under a management agreement. Most agreements allow the fund manager to sub-delegate these responsibilities to other service providers. An investment fund manager remains fully liable for any sub-delegated responsibilities.

We do not expect an investment fund manager to register in every jurisdiction where a fund is distributed. Investment fund managers are required to register only in the jurisdiction where the person or company that directs the management of the fund is located, which in most cases will be where their head office is located. However, if an investment fund manager directs the management of funds from locations in more than one jurisdiction, it must register in each of them. If an investment fund manager is located outside Canada, there is no requirement for it to be registered in Canada, unless it is directing the management of a fund from inside Canada.

2.8.1 Marketing and wholesaling activities of investment fund managers

In general, investment fund managers will have to register as a dealer if they carry on marketing and wholesaling activities, such as:

- advertising the fund to the general public

- promoting the fund to registered dealers

- distributing the fund to registered dealers which then sell securities of the fund to investors

Investment fund managers do not have to register as a dealer if their marketing and wholesaling activities are incidental to their activities as an investment fund manager. In this case:

- the marketing and wholesaling activities must relate to investment funds managed by the investment fund manager, not a third party, and

- the funds must be distributed to investors through a dealer, not directly by the investment fund manager

2.9 Chief compliance officer and ultimate designated person

Sections 2.9 and 2.10 require registered firms to designate a chief compliance officer (CCO) and ultimate designated person (UDP). The CCO and UDP must be registered and perform the compliance functions prescribed in sections 5.24 and 5.25.

While the CCO and UDP have specific compliance functions, they are not solely responsible for compliance – it is the responsibility of the firm as a whole. A good compliance system will include provisions for alternates designated to act in the absence of the UDP or CCO.

2.9.1 UDP

The UDP is the chief executive officer or sole proprietor of the registered firm, or the senior officer responsible for the division in the firm that carries on the activity that requires registration. The role of the UDP is to lead the compliance efforts of the firm. This involves promoting a culture of compliance and overseeing the effectiveness of the firm's compliance system. The UDP is not necessarily required to be involved in the day-to-day management of the compliance group. There is no proficiency requirement for the UDP.

2.9.2 CCO

The CCO is an operating officer whose role is to lead the monitoring component of the registered firm's compliance system. This includes establishing or keeping up-to-date policies and procedures for the firm's compliance system, and managing the firm's compliance monitoring activities and compliance reporting according to those policies and procedures. The CCO may, in the firm's discretion, also have authority to take supervisory action to resolve compliance issues.

The CCO must meet the applicable proficiency requirements set out in Part 4. There is no requirement for any other compliance staff to be designated or registered unless they are also advising or trading. The CCO may determine what knowledge and skills are necessary or desirable for individuals who report to the CCO.

A firm that is registered in multiple categories is only required to have one CCO. In this case, the CCO must meet the most stringent of the proficiency requirements of the firm's various categories of registration.

In especially large firms, the scale and kind of activities undertaken by different operating divisions may warrant the designation of more than one CCO. We will consider applications, on a case-by-case basis, for situations where the CCO of one registered firm may act as the CCO of another registered firm.

2.9.3 The same person as UDP and CCO

The appropriate size and structure of a registered firm's compliance group will depend on the size and scope of the firm's operations. The UDP and the CCO may be the same person, if that person meets the requirements for both registration categories. In our view, separating the functions is the best practice, but we recognize that this might not be practical for some registered firms.

2.9.4 UDP or CCO as adviser or dealer

The UDP and CCO may also be registered in trading or advising categories. For example, a small registered firm might conclude that one individual can adequately function as UDP and CCO, while also conducting advising and trading activities. A large registered firm with diverse operations may require a large team of compliance professionals with several divisional heads of compliance reporting to a CCO dedicated entirely to a compliance role.

2.10 Multiple registrations

2.10.1 Multiple firm categories

A firm may carry on trading activities in several types of securities. In this case, it must register in all applicable dealer categories as set out in section 2.1. For example, a mutual fund dealer may only trade in prospectus-exempt securities if it also registers as an exempt market dealer. Similarly, a portfolio manager that manages an investment fund may have to register as a portfolio manager and an investment fund manager.

2.10.2 Multiple individual categories

An individual who performs more than one activity requiring registration on behalf of a registered firm must register in all applicable categories. For example, an advising representative of a portfolio manager who is also the firm's CCO must register in the categories of advising representative and CCO. This individual must meet the proficiency requirements of both registration categories.

2.10.3 Individual registered in a firm category

In some cases, an individual may be registered in both a firm and individual category. For example, a sole proprietor who is registered in the firm category of portfolio manager will also be registered in the individual category of advising representative.

2.10.4 Multiple registration categories: solvency requirements

The solvency requirements for firms, as set out in Part 4, Division 2, are not cumulative. If a firm is registered in multiple categories, it must meet the highest capital requirement of its various categories of registration.

2.10.5 Multiple registration categories: conduct requirements

When a firm or individual registered in multiple categories carries on a registerable activity, it must comply with the conduct requirements that apply to that activity. For example, in most circumstances, a registrant in the categories of exempt market dealer and mutual fund dealer must comply with the relationship disclosure requirements in section 5.4 before recommending a mutual fund trade to a permitted client. However, when the registrant is trading an exempt security to a permitted client, the registrant does not have to comply with the relationship disclosure requirement.

PART 3 - SRO MEMBERSHIP

3.1 Requirement for SRO membership

A person or company applying for registration as an investment dealer must be a member of the Investment Dealers Association of Canada (IDA). An individual applying for registration as a representative of a registered investment dealer must be an approved person of the IDA.

Except in Québec, a person or company applying for registration as a mutual fund dealer must be a member of the Mutual Fund Dealers Association of Canada (MFDA) and an individual applying for registration as a representative of a mutual fund dealer must be an approved person of the MFDA.

Mutual fund dealers (except those registered in Québec only), investment dealers and their registered individuals will be automatically suspended under sections 7.3 or 7.4 if they do not maintain their status as members or approved persons in good standing with the applicable SRO.

PART 4 - FIT AND PROPER REQUIREMENTS

4.1 General

The regulator will not register an applicant if the applicant does not appear to be fit and proper, or “suitable”, for registration. Every registrant has an ongoing requirement to maintain suitability for registration. The regulator may review a registrant’s suitability at any time.

Securities legislation gives the regulator discretionary authority to impose terms and conditions on a registration. The regulator will impose terms and conditions if it determines that an applicant or registrant is suitable only for restricted registration. The regulator may suspend or revoke the registration if it determines that a registrant has become unsuitable for registration.

There are three fundamental criteria for assessing a person or company's suitability for registration:

(a) ***Integrity***
The applicant or registrant must display integrity and be of honest character.

(b) ***Proficiency***
Applicants must meet the applicable education and experience requirements prescribed by securities legislation and demonstrate knowledge of securities legislation. Registrants must also ensure that they develop and maintain a level of knowledge and ethics training that keeps pace with new products and services that they may offer.

(c) ***Solvency***
The regulator will assess the overall financial situation of the applicant or registrant. Depending on the circumstances, the regulator may consider the registrant's or applicant's contingent liabilities. An applicant that is insolvent will be considered unsuitable for registration. An applicant that has a history of bankruptcy usually will not be suitable for registration. If a registrant becomes bankrupt or insolvent, the regulator may take that into account when assessing the registrant's continuing suitability, as further discussed in section 4.6 of this Companion Policy.

The regulator will also consider whether an individual's ability to discharge the responsibilities of a registrant might be affected by:

- other employment or partnerships
- service as a member of a board of directors
- potential conflicts of interest

4.2 IDA proficiency requirements

Part 4 does not prescribe proficiency requirements for investment dealer representatives who are approved by the IDA. The IDA prescribes the minimum entry and ongoing proficiency requirements for dealing representatives of its members. Accordingly, subsection 3.1(2) requires that a dealing representative of an investment dealer must be approved by the IDA. However, satisfying IDA proficiency requirements is a key factor for the regulator in determining suitability of these individuals.

4.3 Examination-based proficiency requirements

Part 4 prescribes examination-based, rather than course-based, education requirements, where possible. For example, an applicant is not required to complete the Canadian Securities Course but must pass the Canadian Securities Examination. It is up to the individual to determine what courses or other preparation, if any, is appropriate for him or her.

4.4 Relevant experience

The regulator will consider granting an exemption from any of the prescribed proficiency requirements in Part 4, Division 1 if it is satisfied that an individual has qualifications or relevant experience that are equivalent to, or more appropriate in the circumstances, than the prescribed proficiency requirements.

The 12 and 24 months of relevant experience referred to in subsection 4.4(2) and sections 4.11 and 4.12 respectively does not have to be consecutive. It can be a cumulative total during the 36-month period before the date the individual applied for registration.

Relevant experience under subsection 4.4(2) may include experience from working in:

- a registered dealer or registered adviser
- an investment fund manager firm
- related investment fields, such as investment banking, securities trading on behalf of a financial institution, securities research, portfolio management, investment advisory services or supervision of those activities
- legal, accounting and consulting practices related to securities legislation
- providing other professional services to the securities industry
- a securities-related business in a foreign jurisdiction

Relevant investment management experience under section 4.11 may include employment:

- as a registered dealing representative with a registered dealer firm
- under the supervision of:
    - an unregistered investment manager of a Canadian financial institution
    - an adviser that is registered in another jurisdiction of Canada or a foreign jurisdiction, or

- an adviser that is not required to be registered under the laws of the jurisdiction in Canada or foreign jurisdiction where the adviser carries on business

4.5 Restricted dealer and restricted adviser – proficiency for representatives

The regulator will decide on a case-by-case basis what education and experience are required for registration as:

- a dealing representative or CCO of a restricted dealer
- an advising representative or CCO of a restricted adviser

The regulator will determine these requirements when it assesses the individual's suitability for registration.

4.6 Bankruptcy or insolvency after registration

The regulator will review the circumstances of a registrant's bankruptcy or insolvency on a case-by-case basis. If the regulator finds evidence that activities, such as unethical conduct or gross error in business judgment, led to the bankruptcy, it may suspend or terminate the registrant's registration. In other situations, the regulator may impose terms and conditions on the registrant's registration, such as close supervision of the individual and delivering progress reports to the regulator.

4.7 Capital and insurance requirements

Initial and ongoing capital requirements are intended to ensure a registered firm can meet the demands of its counterparties and, if necessary, wind down its business in an orderly fashion without loss to its clients. Registrants must calculate their excess working capital using Form 31-103F1 *Calculation of excess working capital*. Excess working capital must never be less than zero.

Registrants are also required to maintain bonding or insurance that provides for a "double aggregate limit" or a "full reinstatement of coverage".

A double aggregate limit provision covers the registrant for twice the amount of the single loss limit for any number of losses in the year. The coverage for any one loss may not exceed the single loss limit. For example, if an adviser maintains a financial institution bond of $50,000 with a double aggregate limit, the adviser's coverage is $50,000 for any one claim and $100,000 for all claims during the year.

A full reinstatement of coverage provision means that the policy has no total loss limit. However, the total claimed for any one loss cannot exceed the amount of the policy's single loss limit. For example, if an adviser maintains a financial institution bond of $50,000 with a full reinstatement of coverage provision, the adviser's maximum coverage is $50,000 for any one claim and there is no limit to the total amount that can be claimed under the bond.

4.7.1 Capital, insurance, and client assets

The capital and insurance requirements applicable to an exempt market dealer, and the insurance requirements applicable to an adviser, depend in part on whether the dealer or adviser handles, holds or has access to client assets, including cheques or similar instruments. This is the case when the dealer or adviser:

- holds clients' securities certificates or cash for any period of time
- has the authority (e.g. power of attorney) to withdraw funds or securities from clients' accounts
- accepts funds from clients (e.g. a cheque made payable to the registrant)
- handles client cheques in transit (e.g. a cheque made payable to a third-party issuer)
- accepts clients' funds from a custodian (e.g. clients' funds are deposited in the registrant's bank accounts prior to issuing a cheque to the clients)
- acts in the capacity of a trustee for clients
- has, in any capacity, legal ownership of, or access to, the client funds or securities
- has authority to debit client accounts to pay bills other than investment management fees

4.8 Financial records

Subsection 4.32(1) requires registered firms to prepare financial statements in accordance with generally accepted accounting principles, except that the statements are to be prepared on an unconsolidated basis.

Section 5600 of the CICA Handbook provides guidance for auditors signing an audit report concerning financial statements prepared in accordance with regulatory or legislative requirements.

4.9 Criminal charges

If a registrant is charged with a crime, in particular fraud or theft, the regulator may take action to suspend the registration without waiting for the results of the criminal proceedings. The regulator will normally consider the facts giving rise to criminal charges in a hearing that is closed to the public. In these cases, the registrant's right to a fair trial before the criminal courts outweighs the desirability of adhering to the principle that all hearings be open to the public.

4.10 Foreign head office

When determining whether a firm whose head office is in a foreign jurisdiction is, and remains, suitable for registration, we will consider:

- whether the firm maintains registration or regulatory organization membership that is appropriate for the securities business being carried out in the foreign jurisdiction

- whether the firm continues to engage in the securities business for which the registration or membership is required in the foreign jurisdiction

The registered firm must notify the regulator in accordance with National Instrument 33-109 *Registration Information* (NI 31-109) of any change in this information.

PART 5 - CONDUCT RULES

5.1 Account opening and recordkeeping

Each record required under subsection 5.2(1) abd section 5.15 should clearly indicate the person or company and the account to which the record refers. Information in a record can cover only the accounts of the same accountholder or group. For example, registrants should obtain separate information for an individual's personal accounts and for accounts of a legal entity that the individual wholly owns or jointly holds with another party. Registrants should also obtain all required proxy documents.

Where applicable, the financial details should note whether the information is for an individual client or a family. This includes spousal income and net worth. The financial details for legal entity accounts should note whether the information refers to the entity or the owner(s) of the entity.

Investment knowledge or experience for multi-party or legal entity accounts should note whose investment knowledge or experience is being described.

If a client is opening more than one account, the investment objectives and risk tolerance should indicate whether they apply to a particular account or to the client's whole portfolio across accounts.

All information relating to suitability should be in a form that makes it usable in the registered firm's supervision systems.

If the registered firm permits clients to complete new account forms themselves, the forms should use language that is clear and avoids terminology that may be unfamiliar to unsophisticated clients.

5.2 Know-your-client

The know-your-client (KYC) obligation in section 5.3 is an exercise in due diligence that protects the client, the registrant and the integrity of the capital markets. KYC forms the

basis for investment suitability determinations and identifying, among other things, violations of trading rules and persons or companies that may want to trade illegally.

Registrants should collect the following information about clients that are not individuals:

- the nature of the client's business or other purposes of the entity
- control structure
- beneficial ownership

If it is unduly difficult for a registrant to determine beneficial ownership, as part of determining identity as required by subsection 5.3(4), the registrant should consider carefully why this might be so and whether it would be appropriate to closely scrutinize account activity until the beneficial owners are identified or to decline to accept the client.

To determine suitability, registrants should, at a minimum, collect the following information about each client:

- investment objectives
- investment knowledge and experience
- risk tolerance
- investment time horizon
- current investment holdings
- employment status
- income level
- net worth

Under subsection 5.3(3), registrants are required to make reasonable efforts to keep the KYC information of their clients current. Registrants should at all times have a reasonable basis for believing that they are acting on current KYC information.

We would interpret "current" in the context of the obligation to have sufficiently up-to-date information to support a suitability determination. This means, for example, that a portfolio manager with discretionary authority should update its client's KYC information frequently, but a dealer who only occasionally recommends trades to a client would only be expected to ensure that client's KYC information is up-to-date at the time of a recommendation.

5.3 Relationship disclosure information

5.3.1 Content of relationship disclosure information

The relationship disclosure information required under section 5.4 is not required to take the form of a separate document specially prepared for this purpose. The requirement may be met by providing a client with separate documents which, together, give the client the prescribed information. A registered firm should also provide its clients with any other information that the registered firm determines is necessary to clearly set out essential relationship information.

5.3.2 Promoting client understanding

Registered firms should promote their clients' understanding of the relationship and encourage their clients to:

- provide full and accurate information to the firm and the registered individuals acting on behalf of the firm
- promptly inform the firm of a change to any information that could reasonably result in a change to the types of investments appropriate for the client, such as a change to the client's income, investment objectives, risk tolerance, time horizon or net worth
- carefully review all account documentation, sales literature and other documents provided by the firm
- understand the potential risks and returns on investments
- ask questions and request information from the firm to resolve questions about the account, transactions, investments or the relationship with the firm or a registered individual acting on behalf of the firm
- pay for securities purchases by the settlement date
- regularly review portfolio holdings and performance
- consult professionals, such as a lawyer or an accountant, for legal or tax advice, where appropriate

A client's ability to meet some of these expectations will depend to some extent on the quality of the information provided by the firm.

5.4 Suitability of investments

To meet the obligation in section 5.5 to determine suitability of an investment for a client, registered individuals must understand all products that they are trading for, or recommending to, the client. This includes the structure, features and full costs of each product and any eligibility requirements (for example, whether the product is restricted to accredited investors).

Under subsections 5.5(3) and 5.5(4), there is no obligation to make a suitability determination for certain clients who are deemed not to need or want the protections that a suitability determination provides. Permitted clients are treated differently depending on the type of registrant who is trading or advising. For example, exempt market dealers are not required to determine suitability for permitted clients because of the nature of the business relationship. However, nothing precludes an exempt market dealer from providing a suitability determination if a permitted client asks for one.

Under subsection 5.5(5), permitted clients of other registrants may waive suitability determinations. Registrants should ensure that these clients are fully informed of the consequences of waiving suitability before they do so. Registrants should properly document and retain the waiver in their record-keeping system.

Section 3.3 also provides exemptions from the investment suitability obligation for SRO members. These exemptions generally apply to discount broker activity or to certain institutional clients.

5.5 Recordkeeping – general

In most circumstances, registered firms should maintain the following records to satisfy subsection 5.15(1)(a):

- material contracts
- reconciliations of bank statements and securities positions
- notes of oral communications with a client
- all e-mail, regular mail, fax and other written communications with clients

5.6 Activity and relationship records

5.6.1 Activity records

Activity records record information about buy or sell transactions, referrals, margin transactions and any other activities relating to a client's account.

They include records of all actions leading to trade execution, settlement and clearance, such as trades on exchanges, alternative trading systems, over-the-counter markets, debt markets, and distributions and trades in the prospectus-exempt market.

Examples of activity records are:

- trade confirmation statements
- summary information about account activity
- communications between a registrant and its client about particular transactions

- records of transactions resulting from securities a client holds, such as dividends or interest paid, or dividend reinvestment program activity

In determining whether a record is an activity record, firms should also consider the recordkeeping requirements in National Instrument 23-101 *Trading Rules*.

A trade should be reported in the currency in which it was executed. Where foreign currency is executed through a Canadian account, the exchange rate should be reported to the client.

A sub-adviser to an adviser or a dealer executing trades directed by an adviser or another dealer should consider the other registrant to be its client for purposes of providing activity records.

5.6.2 Relationship records

Relationship records record information about a registered firm's relationship with its client and relationships that any representatives have with that client.

Relationship records include:

- communication between the firm and its clients, such as:
    - disclosure provided to clients
    - agreements between the registrant and its clients
- account opening information
- change of status information provided by the client
- disclosure and other relationship information provided by the firm
- margin account agreements
- communications that do not relate to a particular transaction
- conflicts records

5.7 Third party access to records

Registered firms should have proper safeguards in place to ensure that there is no unauthorized access to information, particularly confidential client information. Registered firms should be particularly vigilant if they maintain books and records in a location that employees of a third party can access.

5.8 Complying with recordkeeping requirements

Registered firms should consider conducting regular internal tests to determine whether their records comply with applicable securities legislation.

The regulator or the securities regulatory authority is authorized under securities legislation to access, examine and take copies of a registered firm's records. The regulator or the securities regulatory authority may conduct regular and spot compliance reviews of registered firms.

5.9 Compliance system

5.9.1 Purpose of compliance system

The purpose of the compliance system mandated under section 5.23 is to protect both clients and registrants, which contributes to greater investor confidence and participation in our capital markets. An effective compliance system provides reasonable assurance that the registered firm is meeting, and will continue to meet, all requirements of applicable securities laws and SRO rules.

A registered firm's compliance system should:

- ensure that everyone in the firm, including the board of directors or partners, management, employees and agents (whether or not they are registered) understands the standards of conduct for their role
- be reasonably likely to identify non-compliance at an early stage
- provide effective mechanisms for correcting non-compliant conduct in a timely manner

Compliance is a firm-wide responsibility. The existence of the UDP and CCO, and in larger registered firms, a dedicated compliance monitoring group and individuals inside or outside that group with specific compliance and/or supervisory responsibilities, does not relieve others in the firm of the obligation to report and act on compliance issues.

5.9.2 Elements of an effective compliance system

Registered firms must operate an effective compliance system in order to remain suitable for registration. An effective compliance system has two inter-related elements: day-to-day supervision and systemic monitoring.

Day-to-day supervision includes:

- identifying specific cases of non-compliance
- taking action to remedy them
- minimizing the risk of non-compliant behaviour in key areas of the registered firm's operations

Minimizing risk usually involves activities such as approving new account documents, monitoring and in some cases, approving transactions, approving marketing material and preventing inappropriate use or disclosure of non-public information.

Systemic monitoring involves assessing, advising on and reporting on the effectiveness of the registered firm's compliance system. This includes ensuring that day-to-day supervision at the firm is reasonably effective in identifying compliance deficiencies and promptly remedying them. It also includes ensuring that policies and procedures are kept up to date and that everyone at the firm generally understands and complies with them.

More specific components of an effective compliance system include:

- the visible commitment of senior management and the board of directors or partners
- sufficient resources to operate effectively
- detailed written policies and procedures that:
    - set out the firm's standards of conduct for regulatory compliance
    - set out the systems for monitoring and enforcing compliance with those standards
    - clearly outline who is expected to do what, when and how
    - are readily accessible by everyone who is expected to know and follow them
    - are kept up to date with changes in regulatory requirements and the firm's business practices
- the designation of individuals to monitor the firm's compliance, identify any incidents of non-compliance and take supervisory action to correct them, including those assigned to fill those positions temporarily during absences (all of these individuals must have the qualifications and authority to carry out the responsibilities assigned to them)
- training to ensure that everyone at the firm understands the standards of conduct and his or her role in the compliance system, including ongoing communication and training on changes in regulatory requirements or the firm's policies and procedures
- records of activities conducted to identify and correct compliance deficiencies
- where compliance deficiencies have been identified, records of the action taken to remedy them

5.9.3 Setting up a compliance system

It is up to each registered firm to determine the most appropriate compliance system for its operations. For example, in some firms, the compliance-monitoring group may be

authorized to take supervisory action, but in others it may not. Policies and procedures alone do not make an acceptable compliance system.

Registered firms should consider their size, scope of operations, products, types of clients or counterparties, risks and compensating controls, and any other relevant factors. Some of the elements noted in section 5.9.2 of the Companion Policy may be unnecessary or unworkable in smaller registered firms. However, all registered firms must have systems, policies and procedures to ensure they comply with the regulatory requirements under subsection 5.23(2).

We encourage firms to meet or exceed industry best practices to assist them in complying with regulatory requirements. The CSA or its member regulators may from time-to-time publish recommendations for best practices for various categories of registration. The SROs also do this for their members.

5.9.4 Supervision

Managers or others designated by their registered firm with authority to supervise specified registered individuals have a responsibility on behalf of the firm to take all reasonable measures to ensure that each of these individuals:

- acts honestly and in good faith toward clients
- complies with securities legislation and firm policies and procedures
- maintains an appropriate level of proficiency on an on-going basis

The effectiveness of a registered firm in identifying and remedying compliance deficiencies is an important element in assessing its continuing suitability for unrestricted registration.

5.10 Outsourcing

Registrants may only outsource non-core “back office” activities that are not registerable. Outsourcing can be a cost-effective alternative to the registered firm conducting those operations in-house. It can also be a way to access specialized expertise that would otherwise be unavailable. However, registered firms are fully liable and accountable for all functions that they outsource to a service provider. A written, legally binding contract should include the expectations of the parties to an outsourcing arrangement.

Prudent business practice requires registered firms to conduct a due diligence analysis of prospective third-party service providers to assess their reputation, financial stability, relevant internal controls and overall ability to deliver the services. This includes third-party service providers that are affiliates of the firm.

Registered firms should:

- ensure that third-party service providers have adequate safeguards for keeping information confidential and, where appropriate, disaster recovery capabilities

- conduct ongoing reviews of the quality of outsourced services

- develop business continuity plans for the possibility that third-party service providers may not deliver their services in a satisfactory manner, which could lead to disruption of a firm's business and negative consequences for its clients

- note that other legal requirements, such as privacy laws, may apply when entering into outsourcing arrangements

The regulator, the registered firm and the firm's auditors should have the same access to the work product of a third-party service provider as they would if the firm performed the activities. We expect firms to ensure that this access is provided and to include a provision for it in their contractual arrangements if necessary.

5.11 Responsibility to prevent client confusion

As part of its duty toward clients, registrants should ensure that their clients understand which legal entity they are dealing with, especially if more than one financial services firm is carrying on business in the same location. Registrants may use various methods, including signage and disclosure, to differentiate themselves. A registrant should carry on all registerable activities in the name of the registrant. Contracts, confirmation and account statements, among other documents, should contain the full legal name of the registrant.

5.12 Client complaints

5.12.1 Firms registered in Québec

Registered firms in Québec comply with Division 6 if they comply with sections 168.1.1 to 168.1.3 of the Québec *Securities Act*, which has provided a substantially similar regime since 2002.

The following guidance applies to firms registered in any jurisdiction, including Québec.

5.12.2 Definition of complaints

A complaint may be made orally or in writing. A matter is a complaint if it:

- is a reproach against a registered firm

- identifies a real or potential harm that a person or company has experienced, or may experience, because of the actions of a registered firm or it representatives

- is a request for the registered firm to take remedial action

Registered firms must document and effectively and fairly respond to every complaint, not just those relating to possible violations of securities legislation. An effective complaint system deals with all formal and informal complaints or disputes internally or refers them to the appropriate external person or process in a timely and fair manner.

5.12.3 Dispute resolution service

Registered firms must participate in an independent dispute resolution service for complaints relating to any trading or advising activity of the firm or its representatives.

Registrants should be fully aware of all applicable processes for dealing with complaints. They should disclose to all clients all dispute resolution mechanisms available for pursuing different types of complaints. Dispute resolution mechanisms include those prescribed by the applicable SRO.

In Québec, registrants must inform each complainant, in writing and without delay, that if the complainant is dissatisfied with the handling of the complaint or with the outcome, the complainant may request the registrant to forward a copy of the complaint file to the Autorité des marchés financiers. A copy of the complaint file must, upon request by a complainant, be forwarded to the Autorité des marchés financiers which examines the complaint and may, if it considers it appropriate, act as a mediator if the parties agree.

5.12.4 Disclosure of complaints

Some registrants are also registered or licensed to do business in other sectors, such as insurance. These registrants should inform their clients of the complaint resolution mechanisms for each sector in which they do business and how to use them.

5.12.5 Handling of complaints

Registered firms should acknowledge receipt of the complaint to the complainant within 10 business days.

Sales supervisors or compliance staff should handle the complaint promptly. In most cases, registered firms should provide a substantive response to a complaint within three months of receiving it.

Registered firms should ensure that the CCO and appropriate supervisors are aware of all complaints. They should also ensure that procedures are in place to inform senior management about all complaints of serious misconduct and of all legal actions.

Registered firms should document all complaints made against them and their representatives, and all legal actions or other dispute resolution proceedings relating to these complaints. They should keep a current record of complaints, and retain it for seven years from the date of the complaint.

Complaint records should include the following information:

- date of the complaint
- nature of the complaint
- complainant's name
- name of the person who is the subject of the complaint
- financial product or service that is the subject of the complaint
- date and nature of the decision made about the complaint

PART 6 - CONFLICTS OF INTEREST

6.1 Definition of conflict of interest

6.1.1 General

Conflicts of interest are circumstances where the interests of different parties, such as the interests of clients and those of a registrant, are inconsistent or divergent. This definition of conflicts of interest is not intended to capture inconsequential matters.

The obligations in section 6.1 apply to all conflicts of interest, even when there is a specific section that also applies to the conflict.

6.2 Responding to conflicts of interest

6.2.1 Mechanisms

When responding to any conflict of interest, registrants should consider their standard of care for dealing with clients.

Registrants will generally use three mechanisms to respond to conflicts of interest:

(a) ***Avoidance***
Registrants should avoid all conflicts of interest that are prohibited by law. If a conflict of interest is not prohibited by law, registrants should avoid it if it is sufficiently contrary to the interests of a client that there can be no other reasonable response.

(b) ***Control***
If a registered firm does not avoid a conflict of interest, it should consider what internal structures or policies and procedures it should use or have to respond to the conflict of interest reasonably.

(c) ***Disclosure***
If a registrant does not avoid the conflict of interest, it must consider if it is required to disclose the conflict.

6.2.2 Consistency

Registrants should apply consistent criteria when responding to similar types of conflicts of interest.

6.2.3 Conflicts of interest between clients

If there is a conflict of interest between a registered firm's clients, the firm should be fair to all clients. Firms should have internal systems to evaluate the balance struck between these interests.

For example, there can be a conflict of interest between the interests of investment banking clients, who want the highest price, lowest interest rate or best terms in general for their issuances of securities, and the interests of the retail clients who will buy the product. The firm should consider whether the product meets the needs of retail clients and is competitive with alternatives available in the market.

6.3 Avoiding conflicts of interest

Some conflicts of interest are so contrary to another person's or company's interest that a registrant cannot use controls and/or disclosure to respond to them. In these cases, the registrant should avoid the conflict, stop providing the service or stop dealing with the client. A registered firm's conflicts management policies and procedures should allow the firm and its staff to identify conflicts of interest that should be avoided.

If a registrant allows serious conflicts of interest to continue, there is a high risk of harm to clients or to the market. Registrants should determine the level of risk a conflict of interest raises. If the risk of harming a client or the integrity of the markets is too high, the conflict needs to be avoided.

6.4 Controlling conflicts of interest

6.4.1 General

Depending on the conflict of interest, registered firms may control the conflict using methods such as:

- assigning a different representative to provide the service to the particular client
- creating a group or committee to review, develop or approve responses
- monitoring market activity
- blocking certain internal communication with information barriers

6.4.2 Organizational structures

Registered firms should ensure that their organizational structures, reporting lines, and physical layout enable them to control conflicts of interest effectively.

For example, the following situations would likely raise a conflict of interest:

- advisory staff reporting to marketing staff
- compliance or internal audit staff reporting to a business unit
- registered representatives and investment banking staff in the same physical location

Robust information barriers may help registered firms control these types of conflicts of interest.

6.4.3 Remuneration

Registered firms should consider whether any particular benefits, compensation or remuneration practices are inconsistent with their obligations to clients, especially if the firm relies heavily on commission-based remuneration.

6.4.4 Multiple roles for individuals

Conflicts of interest can arise when representatives serve on a board of directors. Examples include conflicting fiduciary duties owed to the company and to a registered firm or client, possible receipt of inside information and conflicting demands on the representative's time.

Registered firms should consider:

- requiring their representatives to seek permission from the firm to serve on the board of directors of a public issuer or restricted issuer
- having policies for board participation that identify the circumstances where the activity would not be in the best interests of the firm and its clients

6.4.5 Outside business activities

When individuals are involved in outside business activities, conflicts of interest can arise, for example, from any associated compensation or because of the nature of the relationship between the individual and the outside entity. Before approving any of these activities, registered firms should consider potential conflicts of interest. If the firm cannot properly control a potential conflict of interest, it should not permit the outside activity.

6.5 Disclosing conflicts of interest

6.5.1 General

Registered firms should make appropriate disclosure of conflicts of interest to their clients. While disclosure alone will often not be enough, it is an integral part of responding to conflicts of interest. Registered firms should ensure that their clients are adequately informed about any conflicts of interest that may affect the services the firm provides to them. Generic disclosure is unlikely to satisfy the registered firm's obligations to respond to conflicts properly.

Disclosure about conflicts of interest should:

- be prominent, specific, clear and meaningful to the client, so that the client can understand the conflict of interest and how it could affect the service the client is being offered

- usually occur before or when the service is provided, so that the client has a reasonable amount of time to assess it

Registered firms should ensure that they do not:

- give partial disclosure that misleads their clients

- obscure conflicts of interest in overly detailed disclosure

6.5.2 Timing

Registered firms should disclose a conflict of interest to their clients before an action, such as a transaction occurs. If it is impossible to do so, the registered firm should disclose the conflict to its clients as soon as possible afterwards.

6.5.3 When disclosure is inappropriate

There are some situations in which disclosing a particular conflict of interest is inappropriate. Examples include conflicts of interest that involve confidential or commercially sensitive information, or that amount to "inside information" under the insider trading provisions.

In these situations, registered firms will need to assess whether they can provide any disclosures and whether there are mechanisms to respond to the conflict of interest adequately. The firm may have to decline to provide the service to avoid the conflict of interest.

Registered firms may disclose material, non-public information only if it is in the necessary course of business. Otherwise, it would be considered "tipping". Registered firms should have specific procedures for responding to conflicts of interest that involve inside information.

6.6 Registrant relationships

The regulator may exercise his or her discretion to register an individual as a dealing, advising or associate advising representative of a registered firm and as a representative of another affiliated registered firm.

6.7 Issuer disclosure statement

The nature of the relationship between a registered firm and a related issuer and, in the course of a distribution, a connected issuer, can vary. The requirement to describe the nature of those relationships can be satisfied by describing, as applicable:

- an ownership interest
- an overlap of individuals
- a commercial interest
- a family relationship
- any other relevant interest

To satisfy the requirement to describe a connected issuer in the course of a distribution, registered firms may find it useful to provide examples of connected issuers and a description of the nature of the relationship with the firm.

The description of the nature of these relationships in the issuer disclosure statement should not be boilerplate disclosure that could apply to any registrant. The description should be tailored to the particular registered firm, so that the description is meaningful to the firm's clients.

6.8 Allocating investment opportunities fairly

If the investment process involves allocating investment opportunities, an adviser's fairness policy should, at a minimum, disclose the method used to allocate:

- price and commission among clients when trades are bunched or blocked
- block trades and initial public offerings among client accounts and among clients that are partially filled, such as pro-rata

The adviser's fairness policy should also address any other situation where investment opportunities must be allocated.

6.9 Acquiring securities or assets of a registered firm

For purposes of section 6.8, the book of business of a registered firm would be "a substantial part of the assets" of the registered firm.

6.10 Relationship pricing

We are aware that industry participants offer financial incentives or advantages to certain clients. This practice is commonly referred to as “relationship pricing”.

The tied selling provision in section 6.10 is intended to prevent certain abusive sales practices. It is not intended to prohibit relationship pricing or other beneficial selling arrangements similar to relationship pricing.

In our view, section 6.10 would be contravened if, for example, a financial institution refused to make a loan unless the client acquired securities of mutual funds that are sponsored by the financial institution, and the client otherwise met the financial institution’s criteria for making loans.

6.11 Referral arrangements

6.11.1 Application

Section 6.11 defines “referral arrangement” in broad terms. The definition is not limited to referrals for providing financial services or services requiring registration. It also includes receiving a referral fee for providing a client name and contact information to a person or company.

A party to a referral arrangement may need to be registered depending on the activities that party carries out. Registrants cannot use a referral arrangement to assign or contract out of their regulatory obligations.

“Referral fee” is also broadly defined. It includes sharing or splitting any commission resulting from the purchase or sale of a security.

6.11.2 Clients

A client who is referred to a person or company becomes the client of that person or company for the purposes of the trading or advising services provided under the referral arrangement.

The person or company receiving the referral must be registered in an appropriate category or must undertake trading or advising activities under an applicable registration exemption. Section 6.14 requires the registrant making the referral to satisfy itself that this is the case.

The registrant receiving a referral must meet all of its obligations as a registrant toward its referred clients, including know-your-client and suitability determinations.

Registrants involved in referral arrangements should manage any related conflicts of interest in accordance with the applicable provisions of Part 6, Division 1. For example, if the proposed referral fee seems excessive in relation to the service to be provided, the registered firm should assess whether this may create a conflict that could motivate its representatives to act contrary to their duties toward their clients.

6.11.3 Written agreement

The requirement in section 6.12 that parties to a referral arrangement set out its terms in a written agreement is intended to ensure that each party's roles and responsibilities are made clear.

We expect referral arrangements to include:

- the roles and responsibilities of each party
- limitations on any party to the referral arrangement that is not a registrant to ensure that it is not engaging in any activities requiring registration
- the method of calculating the referral fee and, to the extent possible, the amount of the fee
- the disclosure to be provided to referred clients
- who provides the disclosure to referred clients
- who is responsible for communicating with referred clients

Registered firms are required to be parties to referral agreements entered into by their representatives. This ensures that they are aware of these arrangements so they can adequately supervise their representatives and monitor compliance. This does not preclude the individual registrant from also being a party to the agreement.

6.11.4 Disclosure to clients

The disclosure of information to clients required under section 6.13 is intended to help clients make an informed decision about the referral arrangement and to assess any conflicts of interest.

In providing the prescribed disclosure, registrants should take reasonable steps to ensure that clients understand:

- which entity they are dealing with
- what they can expect that entity to provide to them
- the registrant's key responsibilities to them
- the limitations of the registrant's registration category and any relevant terms and conditions imposed on its registration
- the extent of the referrer's financial interest in the referral arrangement

- the nature of any potential or actual conflict of interest that arises from the referral arrangement

PART 7 - SUSPENSION AND REVOCATION OF REGISTRATION

7.1 General

There is no annual or other renewal requirement for registration. Registration remains effective until it is suspended or terminated by a triggering event. Triggering events for terminating registration include:

- an individual ceasing to have a sponsoring firm
- the regulator accepting a request from the registrant to surrender registration
- the regulator suspending or revoking registration

“Suspension” is a restricted state of registration. A suspended registrant must cease the registerable activity but otherwise remains a registrant, subject to the jurisdiction of the securities regulatory authority. “Reinstatement” means that a suspension on a registration has been lifted. “Revocation” means that a registration has been terminated. As a result, the firm or individual must submit a new application to become a registrant again.

Registrants may be entitled to an opportunity to be heard before a decision is made to suspend or revoke registration.

7.2 Termination of a registered individual

If a registered firm terminates the employment, partnership or agency relationship of a registered individual for any reason (for example, the individual resigns, is dismissed or retires), the firm has five days after the effective date of the individual’s termination to file the prescribed notice of termination (Form 33-109F1).

If the notice of termination indicates that the individual resigned or was dismissed for a reason other than retirement or completing a temporary employment contract, the former sponsoring firm has 30 days from the date of termination to file additional prescribed information about the reasons for the termination. This information is necessary for the regulator to determine if there are any concerns about the individual’s conduct that may be relevant to his or her ongoing suitability for registration.

7.3 Automatic suspension

An individual must have a sponsoring firm to be an active registrant. Individuals who voluntarily or involuntarily leave their sponsoring firm are automatically suspended, effective on the day that they cease to have the firm’s authority to act on its behalf.

If the registration of a firm is suspended or revoked, the registration of each of its individual dealing or advising representatives is automatically suspended. There is no opportunity to be heard in the case of an automatic suspension.

Certain registration categories require registered firms to be a member of a specified SRO. Individuals acting on behalf of SRO member firms may also be required to be an approved person of the SRO. If an SRO revokes or suspends the membership of a registered firm or approval of an individual, the firm or individual's registration in the category requiring SRO membership or approval will be automatically suspended. This will not apply to mutual fund dealers registered only in Québec.

Where an individual been suspended by his or her SRO for reasons that do not involve significant regulatory concerns and the SRO has subsequently reinstated his or her approval, we will reinstate the individual's registration as quickly as possible. An example of this would be the routine suspension of IDA approved persons who have missed a deadline to upgrade their proficiency under IDA rules. The IDA reinstates such individuals' approved person status as soon as the required courses have been completed.

If a firm or individual is registered in multiple categories, the regulator will consider on a case-by-case basis whether to suspend the firm's or individual's other registration(s) or to impose terms and conditions, subject to an opportunity to be heard.

7.4 Reinstatement

If an individual joins a new sponsoring firm within 90 days of leaving registered employment and is seeking registration in the same category as previously held, the individual's registration will be automatically reinstated, subject to certain conditions set out in NI 33-109. This process allows a qualified individual who transfers directly from one sponsoring firm to another to start engaging in activities requiring registration from the first day with the new sponsoring firm.

In other circumstances, a suspended individual who has found a new sponsoring firm will have to apply for reinstatement under the process set out in NI 33-109.

Despite automatic reinstatement or any other procedure, maintaining suitability for registration is an ongoing requirement and the regulator has discretionary authority to suspend or revoke an individual's registration or restrict it with terms and conditions at any time. The regulator may do this, for example, if it receives information through the form 33-109F1 Notice of Termination filed by the individual's former sponsoring firm or other sources that causes the regulator to question the individual's continued suitability for registration. In these situations, individuals will be given an opportunity to be heard before a decision is made to suspend or revoke registration or to impose terms and conditions.

7.5 Surrender of registration

If a registrant intends to cease activity requiring registration, it may apply to surrender its registration. A registration is revoked when the regulator gives notice that it has accepted its surrender. The individual or firm remains registered until it receives this notice.

7.5.1 Registered firms

Before accepting a registered firm's surrender, the regulator will require evidence that the firm's clients have been dealt with appropriately. This is not necessary for a registered individual who applies to surrender registration. In this case, the sponsoring firm will continue to be responsible for meeting obligations to clients who may have been served by the individual.

When considering a registered firm's application to surrender its registration, the regulator may consider whether:

- the firm has ceased carrying on activity requiring registration or proposes an effective date within 6 months of the date of the application to surrender (revocation of registration to take effect on or after that date as notified by the regulator)

- the firm has, at the time of filing the application to surrender, satisfied any previously outstanding fees and filings

- the application to surrender registration:

    - discloses the firm's reasons for ceasing to carry on activity requiring registration

    - provides satisfactory evidence that the firm has given all of its clients reasonable notice of its intention to cease carrying on activity requiring registration, including an explanation of how it will affect them in practical terms

    - includes copies of the firm's most recent unaudited financial statements

    - provides satisfactory evidence that it has given appropriate notice to the SRO, if applicable

- the regulator has received, or waived receipt of, the following from the firm in satisfactory form, supported by an officer's or partner's certificate and auditor's comfort letter:

    - evidence that the firm has resolved all outstanding client complaints (including litigation, judgments and liens) or made reasonable arrangements to deal with and fund any payments relating to them, as well as any subsequent client complaints, settlements or liabilities

    - confirmation that all money or securities owed to clients has been returned or transferred to another registrant, where possible according to client instructions

    - up-to-date audited financial statements

- evidence that the firm has satisfied the SRO's requirements for withdrawing membership, if applicable

In determining whether it would be prejudicial to the public interest to accept the surrender of registration, the regulator will refer to all information the registered firm has provided and any other regulatory concerns that relate to the firm, including terms and conditions on registration that have not been met and compliance issues, among other things. The regulator also has the authority to act in the public interest by suspending the registration of a registered firm that has applied to surrender it.

7.5.2 Registered individuals

Registered individuals who want to terminate their registration do not have to apply to surrender it. They may simply resign from their sponsoring firm. However, individuals may choose to apply to surrender registration using Form 33-109F2 if, for example, they are registered in multiple jurisdictions and want to have their registration revoked in one jurisdiction only.

PART 8 - EXEMPTIONS FROM REGISTRATION

8.1 International dealers and international advisers

When international dealers or advisers relying on the registration exemptions in subsections 8.15(2) and 8.16(2) stop carrying on business in the jurisdiction, they should give notice by sending an e-mail to the securities regulatory authority in the jurisdiction where they are trading or advising in securities in reliance on the registration exemption as soon as possible after they stop carrying on business in the jurisdiction.

The e-mail addresses of the relevant jurisdictions are listed in Form 31-101F2.

8.2 Mobility exemption

In limited circumstances, the mobility exemption in Part 8, Division 2 allows registrants to continue dealing with clients (and certain of their family members) who move to a different jurisdiction, without registering in that other jurisdiction. The availability of the mobility exemption is triggered when the client moves to another jurisdiction.

The registered firm's compliance system must have appropriate policies and procedures for supervising individual representatives relying on a mobility exemption. Registered firms must also keep appropriate records to demonstrate compliance with the conditions of the mobility exemption.