The Ontario Securities Commission

OSC Bulletin

April 24, 2009

Volume 32, Issue 17

(2009), 32 OSCB

The Ontario Securities Commission administers the
Securities Act of Ontario (R.S.O. 1990, c. S.5) and the
Commodity Futures Act of Ontario (R.S.O. 1990, c. C.20)

The Ontario Securities Commission
Cadillac Fairview Tower
Suite 1903, Box 55
20 Queen Street West
Toronto, Ontario
M5H 3S8

416-593-8314 or Toll Free 1-877-785-1555

Published under the authority of the Commission by:
Carswell, a Thomson Reuters business
One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario
M1T 3V4

416-609-3800 or 1-800-387-5164

Contact Centre - Inquiries, Complaints:	Fax: 416-593-8122
Market Regulation Branch:	Fax: 416-595-8940
Compliance and Registrant Regulation Branch	
- Compliance:	Fax: 416-593-8240
- Registrant Regulation:	Fax: 416-593-8283
Corporate Finance Branch	
- Team 1:	Fax: 416-593-8244
- Team 2:	Fax: 416-593-3683
- Team 3:	Fax: 416-593-8252
- Insider Reporting:	Fax: 416-593-3666
- Mergers and Acquisitions:	Fax: 416-593-8177
Enforcement Branch:	Fax: 416-593-8321
Executive Offices:	Fax: 416-593-8241
General Counsel's Office:	Fax: 416-593-3681
Office of the Secretary:	Fax: 416-593-2318

THOMSON REUTERS

The OSC Bulletin is published weekly by Carswell, a Thomson Reuters business, under the authority of the Ontario Securities Commission.

Subscriptions are available from Carswell at the price of $649 per year.

Subscription prices include first class postage to Canadian addresses. Outside Canada, these airmail postage charges apply on a current subscription:

U.S.	$175
Outside North America	$400

Single issues of the printed Bulletin are available at $20 per copy as long as supplies are available.

Carswell also offers every issue of the Bulletin, from 1994 onwards, fully searchable on S*ecuritiesSource*™, Canada's pre-eminent web-based securities resource. *SecuritiesSource*™ also features comprehensive securities legislation, expert analysis, precedents and a weekly Newsletter. For more information on *SecuritiesSource*™, as well as ordering information, please go to:

http://www.westlawecarswell.com/SecuritiesSource/News/default.htm

or call Carswell Customer Relations at 1-800-387-5164 (416-609-3800 Toronto & Outside of Canada).

Claims from *bona fide* subscribers for missing issues will be honoured by Carswell up to one month from publication date.

Space is available in the Ontario Securities Commission Bulletin for advertisements. The publisher will accept advertising aimed at the securities industry or financial community in Canada. Advertisements are limited to tombstone announcements and professional business card announcements by members of, and suppliers to, the financial services industry.

ISSN 0226-9325
Except Chapter 7 ©CDS INC.

THOMSON REUTERS

One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario
M1T 3V4

Customer Relations
Toronto 1-416-609-3800
Elsewhere in Canada/U.S. 1-800-387-5164
Fax 1-416-298-5082
www.carswell.com
Email www.carswell.com/email

Table of Contents

Chapter 1

Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

APRIL 24, 2009

CURRENT PROCEEDINGS

BEFORE

ONTARIO SECURITIES COMMISSION

- -

Unless otherwise indicated in the date column, all hearings will take place at the following location:

The Harry S. Bray Hearing Room
Ontario Securities Commission
Cadillac Fairview Tower
Suite 1700, Box 55
20 Queen Street West
Toronto, Ontario
M5H 3S8

Telephone: 416-597-0681 Telecopier: 416-593-8348

CDS **TDX 76**

Late Mail depository on the 19th Floor until 6:00 p.m.

- -

THE COMMISSIONERS

W. David Wilson, Chair	—	WDW
James E. A. Turner, Vice Chair	—	JEAT
Lawrence E. Ritchie, Vice Chair	—	LER
Paul K. Bates	—	PKB
Mary G. Condon	—	MGC
Margot C. Howard	—	MCH
Kevin J. Kelly	—	KJK
Paulette L. Kennedy	—	PLK
David L. Knight, FCA	—	DLK
Patrick J. LeSage	—	PJL
Carol S. Perry	—	CSP
Suresh Thakrar, FIBC	—	ST
Wendell S. Wigle, Q.C.	—	WSW

SCHEDULED OSC HEARINGS

April 27, 2009 10:00 a.m.	**Al-Tar Energy Corp., Alberta Energy Corp., Drago Gold Corp., David C. Campbell, Abel Da Silva, Eric F. O'Brien and Julian M. Sylvester** s. 127 S. Horgan in attendance for Staff Panel: ST/CSP
April 27, 2009 2:00 p.m.	**M P Global Financial Ltd. and Joe Feng Deng** s. 127 M . Britton in attendance for Staff Panel: JEAT
April 28, 2009 2:30 p.m. April 29-30, 2009 10:00 a.m.	**Roger D. Rowan, Watt Carmichael Inc., Harry J. Carmichael and G. Michael McKenney** s. 127 J. Superina in attendance for Staff Panel: PJL/ST/DLK
April 29, 2009 2:00 p.m.	**Axcess Automation LLC, Axcess Management, LLC, Axcess Fund, Gordon Alan Driver and David Rutled** s. 127 M. Adams in attendance for Staff Panel: LER
May 1, 2009 10:00 a.m.	**Goldbridge Financial Inc., Wesley Wayne Weber and Shawn C. Lesperance** s. 127 J. Feasby in attendance for Staff Panel: JEAT

May 1, 2009 10:00 a.m.	**Xi Biofuels Inc., Biomaxx Systems Inc., Xiiva Holdings Inc. carrying on Business as Xiiva Holdings Inc., Xi Energy Company, Xi Energy and Xi Biofuels, Ronald Crowe and Vernon Smith** s. 127 M. Vaillancourt in attendance for Staff Panel: WSW/DLK
May 4, 2009 10:00 a.m.	**Norshield Asset Management (Canada) Ltd., Olympus United Group Inc., John Xanthoudakis, Dale Smith and Peter Kefalas** s. 127 M. Mackewn in attendance for Staff Panel: WSW/DLK/MCH
May 5, 2009 10:00 a.m.	**Berkshire Capital Limited, GP Berkshire Capital Limited, Panama Opportunity Fund and Ernest Anderson** s. 127 E. Cole in attendance for Staff Panel: WSW/ST
May 7, 2009 10:00 a.m.	**Neo Material Technologies Inc. and Pala Investments Holdings Limited and Its Wholly-owned subsidiary 0833824 B.C. Ltd.** s. 104 J. S. Angus in attendance for Staff Panel: TBA
May 7-15, 2009 10:00 a.m.	**MRS Sciences Inc. (formerly Morningside Capital Corp.), Americo DeRosa, Ronald Sherman, Edward Emmons and Ivan Cavric** s. 127 and 127(1) D. Ferris in attendance for Staff Panel: PJL/CSP
May 8, 2009 8:30 a.m.	**Teodosio Vincent Pangia and Transdermal Corp.** s. 127 J. Feasby in attendance for Staff Panel: LER/CSP
May 11, 2009 10:00 a.m.	**Rex Diamond Mining Corporation, Serge Muller and Benoit Holemans** s. 127 J. Waechter in attendance for Staff Panel: WSW/DLK/KJK
May 12, 2009 2:30 p.m.	**LandBankers International MX, S.A. De C.V.; Sierra Madre Holdings MX, S.A. De C.V.; L&B LandBanking Trust S.A. De C.V.; Brian J. Wolf Zacarias; Roger Fernando Ayuso Loyo, Alan Hemingway, Kelly Friesen, Sonja A. McAdam, Ed Moore, Kim Moore, Jason Rogers and Dave Urrutia** s. 127 M. Britton in attendance for Staff Panel: JEAT/ST
May 12, 2009 2:30 p.m.	**FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun** s. 127 A. Sonnen in attendance for Staff Panel: LER
May 15, 2009 2:00 p.m.	**Rajeev Thakur** s. 127 M. Britton in attendance for Staff Panel: TBA
May 19-22; June 17-19, 2009 10:00 a.m.	**Imagin Diagnostic Centres Inc., Patrick J. Rooney, Cynthia Jordan, Allan McCaffrey, Michael Shumacher, Christopher Smith, Melvyn Harris and Michael Zelyony** s. 127 and 127.1 H. Craig in attendance for Staff Panel: TBA

May 25, 27 – June 2, 2009 10:00 a.m.	**Global Partners Capital, Asia Pacific Energy Inc., 1666475 Ontario Inc. operating as "Asian Pacific Energy", Alex Pidgeon, Kit Ching Pan also known as Christine Pan, Hau Wai Cheung, also known as Peter Cheung, Tony Cheung, Mike Davidson, or Peter McDonald, Gurdip Singh Gahunia also known as Michael Gahunia or Shawn Miller, Basis Marcellinius Toussaint also known as Peter Beckford, and Rafique Jiwani also known as Ralph Jay** s. 127 M. Boswell in attendance for Staff Panel: TBA
May 26, 2009 2:30 p.m.	**Borealis International Inc., Synergy Group (2000) Inc., Integrated Business Concepts Inc., Canavista Corporate Services Inc., Canavista Financial Center Inc., Shane Smith, Andrew Lloyd, Paul Lloyd, Vince Villanti, Larry Haliday, Jean Breau, Joy Statham, David Prentice, Len Zielke, John Stephan, Ray Murphy, Alexander Poole, Derek Grigor and Earl Switenky** s. 127 and 127.1 Y. Chisholm in attendance for Staff Panel: TBA
May 26, 2009 2:30 p.m.	**Gold-Quest International, Health and Harmoney, Iain Buchanan and Lisa Buchanan** s. 127 H. Craig in attendance for Staff Panel: TBA
May 26, 2009 2:30 p.m.	**Gold-Quest International, 1725587 Ontario Inc. carrying on business as Health and Harmoney, Harmoney Club Inc., Donald Iain Buchanan, Lisa Buchanan and Sandra Gale** s. 127 H. Craig in attendance for Staff Panel: TBA
May 26, 2009 2:30 p.m.	**Paul Iannicca** s. 127 H. Craig in attendance for Staff Panel: TBA
June 1-3, 2009 10:00 a.m.	**Robert Kasner** s. 127 H. Craig in attendance for Staff Panel: TBA
June 3, 2009 10:00 a.m.	**Adrian Samuel Leemhuis, Future Growth Group Inc., Future Growth Fund Limited, Future Growth Global Fund Iimited, Future Growth Market Neutral Fund Limited, Future Growth World Fund and ASL Direct Inc.** s. 127(5) K. Daniels in attendance for Staff Panel: TBA
June 4, 2009 10:00 a.m.	**Shallow Oil & Gas Inc., Eric O'Brien, Abel Da Silva, Gurdip Singh Gahunia aka Michael Gahunia and Abraham Herbert Grossman aka Allen Grossman** s. 127(7) and 127(8) M. Boswell in attendance for Staff Panel: DLK/CSP/PLK
June 4, 2009 11:00 a.m.	**Abel Da Silva** s. 127 M. Boswell in attendance for Staff Panel: TBA
June 5, 2009 10:00 a.m.	**Andrew Keith Lech** s. 127(10) J. Feasby in attendance for Staff Panel: TBA

June 10, 2009
10:00 a.m.

Global Energy Group, Ltd. and New Gold Limited Partnerships

s. 127

H. Craig in attendance for Staff

Panel: TBA

June 15, 2009

Goldpoint Resources Corporation, Lino Novielli, Brian Moloney, Evanna Tomeli, Robert Black, Richard Wylie and Jack Anderson

s. 127(1) and 127(5)

M. Boswell in attendance for Staff

Panel: TBA

June 16, 2009
10:00 a.m.

Sextant Capital Management Inc., Sextant Capital GP Inc., Sextant Strategic Opportunities Hedge Fund L.P., Otto Spork, Robert Levack and Natalie Spork

s. 127

S. Kushneryk in attendance for Staff

Panel: TBA

June 22-26, 2009
10:00 a.m.

Biovail Corporation, Eugene N. Melnyk, Brian H. Crombie, John R. Miszuk and Kenneth G. Howling

s. 127(1) and 127.1

J. Superina, A. Clark in attendance for Staff

Panel: JEAT/DLK/PLK

July 6, 2009
10:00 a.m.

Lyndz Pharmaceuticals Inc., Lyndz Pharma Ltd., James Marketing Ltd., Michael Eatch and Rickey McKenzie

s. 127(1) and (5)

J. Feasby in attendance for Staff

Panel: TBA

July 10, 2009
10:00 a.m.

Uranium308 Resources Inc., Uranium308 Resources PLC., Michael Friedman, George Schwartz, Peter Robinson, Alan Marsh Shuman and Innovative Gifting Inc.

s. 127

M. Boswell in attendance for Staff

Panel: TBA

July 23, 2009
10:00 a.m.

W.J.N. Holdings Inc., MSI Canada Inc., 360 Degree Financial Services Inc., Dominion Investments Club Inc., Leveragepro Inc., Prosporex Investment Club Inc., Prosporex Investments Inc., Prosporex ltd., Prosporex Inc., Networth Financial Group Inc., Networth Marketing Solutions, Dominion Royal Credit Union, Dominion Royal Financial Inc., Wilton John Neale, Ezra Douse, Albert James, Elnonieth "Noni" James, David Whitely, Carlton Ivanhoe Lewis, Mark Anthony Scott, Sedwick Hill, Trudy Huynh, Dorlan Francis, Vincent Arthur, Christian Yeboah, Azucena Garcia and Angela Curry

s. 127

H. Daley in attendance for Staff

Panel: TBA

July 27-31;
August 5-14, 2009
10:00 a.m.

Shane Suman and Monie Rahman

s. 127 and 127(1)

C. Price in attendance for Staff

Panel: TBA

August 10-17;
19-21, 2009
10:00 a.m.

New Life Capital Corp., New Life Capital Investments Inc., New Life Capital Advantage Inc., New Life Capital Strategies Inc., 1660690 Ontario Ltd., L. Jeffrey Pogachar, Paola Lombardi and Alan S. Price

s. 127

S. Kushneryk in attendance for Staff

Panel: TBA

September 3, 2009 10:00 a.m.	**Brilliante Brasilcan Resources Corp., York Rio Resources Inc., Brian W. Aidelman, Jason Georgiadis, Richard Taylor and Victor York** s. 127 S. Horgan in attendance for Staff Panel: TBA
September 9, 2009 10:00 a.m.	**Oversea Chinese Fund Limited Partnership, Weizhen Tang and Associates Inc., Weizhen Tang Corp., and Weizhen Tang** s. 127 and 127.1 M. Britton in attendance for Staff Panel: LER
September 21-25, 2009 10:00 a.m.	**Swift Trade Inc. and Peter Beck** s. 127 S. Horgan in attendance for Staff Panel: TBA
September 30 – October 23, 2009 10:00a.m.	**Rene Pardo, Gary Usling, Lewis Taylor Sr., Lewis Taylor Jr., Jared Taylor, Colin Taylor and 1248136 Ontario Limited** s. 127 M. Britton in attendance for Staff Panel: TBA
November 16 – December 11, 2009 10:00 a.m.	**Sulja Bros. Building Supplies, Ltd. (Nevada), Sulja Bros. Building Supplies Ltd., Kore International Management Inc., Petar Vucicevich and Andrew DeVries** s. 127 and 127.1 M. Britton in attendance for Staff Panel: TBA
January 11, 2010 10:00 a.m.	**Firestar Capital Management Corp., Kamposse Financial Corp., Firestar Investment Management Group, Michael Ciavarella and Michael Mitton** s. 127 H. Craig in attendance for Staff Panel: TBA
TBA	**Yama Abdullah Yaqeen** s. 8(2) J. Superina in attendance for Staff Panel: TBA
TBA	**Microsourceonline Inc., Michael Peter Anzelmo, Vito Curalli, Jaime S. Lobo, Sumit Majumdar and Jeffrey David Mandell** s. 127 J. Waechter in attendance for Staff Panel: TBA
TBA	**Frank Dunn, Douglas Beatty, Michael Gollogly** s. 127 K. Daniels in attendance for Staff Panel: TBA
TBA	**Peter Sabourin, W. Jeffrey Haver, Greg Irwin, Patrick Keaveney, Shane Smith, Andrew Lloyd, Sandra Delahaye, Sabourin and Sun Inc., Sabourin and Sun (BVI) Inc., Sabourin and Sun Group of Companies Inc., Camdeton Trading Ltd. and Camdeton Trading S.A.** s. 127 and 127.1 Y. Chisholm in attendance for Staff Panel: JEAT/DLK/CSP

TBA **Juniper Fund Management Corporation, Juniper Income Fund, Juniper Equity Growth Fund and Roy Brown (a.k.a. Roy Brown-Rodrigues)**

s. 127 and 127.1

D. Ferris in attendance for Staff

Panel: TBA

TBA **Merax Resource Management Ltd. carrying on business as Crown Capital Partners, Richard Mellon and Alex Elin**

s. 127

H. Craig in attendance for Staff

Panel: JEAT/MC/ST

TBA **Irwin Boock, Stanton De Freitas, Jason Wong, Saudia Allie, Alena Dubinsky, Alex Khodjiants, Select American Transfer Co., Leasesmart, Inc., Advanced Growing Systems, Inc., International Energy Ltd., Nutrione Corporation, Pocketop Corporation, Asia Telecom Ltd., Pharm Control Ltd., Cambridge Resources Corporation, Compushare Transfer Corporation, Federated Purchaser, Inc., TCC Industries, Inc., First National Entertainment Corporation, WGI Holdings, Inc. and Enerbrite Technologies Group**

s. 127(1) and (5)

P. Foy in attendance for Staff

Panel: TBA

TBA **Gregory Galanis**

s. 127

P. Foy in attendance for Staff

Panel: TBA

TBA **Franklin Danny White, Naveed Ahmad Qureshi, WNBC The World Network Business Club Ltd., MMCL Mind Management Consulting, Capital Reserve Financial Group, and Capital Investments of America**

s. 127

C. Price in attendance for Staff

Panel: PJL/ST

TBA **Nest Acquisitions and Mergers and Caroline Frayssignes**

s. 127

C. Price in attendance for Staff

Panel: TBA

ADJOURNED SINE DIE

Global Privacy Management Trust and Robert Cranston

S. B. McLaughlin

Livent Inc., Garth H. Drabinsky, Myron I. Gottlieb, Gordon Eckstein, Robert Topol

Portus Alternative Asset Management Inc., Portus Asset Management Inc., Boaz Manor, Michael Mendelson, Michael Labanowich and John Ogg

Maitland Capital Ltd., Allen Grossman, Hanouch Ulfan, Leonard Waddingham, Ron Garner, Gord Valde, Marianne Hyacinthe, Diana Cassidy, Ron Catone, Steven Lanys, Roger McKenzie, Tom Mezinski, William Rouse and Jason Snow

Al-Tar Energy Corp., Alberta Energy Corp., Eric O'Brien, Bill Daniels, Bill Jakes, John Andrews, Julian Sylvester, Michael N. Whale, James S. Lushington, Ian W. Small, Tim Burton and Jim Hennesy

Global Partners Capital, WS Net Solution, Inc., Hau Wai Cheung, Christine Pan, Gurdip Singh Gahunia

Global Petroleum Strategies, LLC, Petroleum Unlimited, LLC, Aurora Escrow Services, LLC, John Andrew, Vincent Cataldi, Charlotte Chambers, Carl Dylan, James Eulo, Richard Garcia, Troy Gray, Jim Kaufman, Timothy Kaufman, Chris Harris, Morgan Kimmel, Roger A. Kimmel, Jr., Erik Luna, Mitch Malizio, Adam Mills, Jenna Pelusio, Rosemary Salveggi, Stephen J. Shore and Chris Spinler

1.1.2 Notice of Commission Approval – Amendments to MFDA Rule 1.2.1(d) Regarding Financial Planning Services as a Dual Occupation

MUTUAL FUND DEALERS ASSOCIATION OF CANADA (MFDA)

AMENDMENTS TO MFDA RULE 1.2.1(D) REGARDING FINANCIAL PLANNING SERVICES AS A DUAL OCCUPATION

NOTICE OF COMMISSION APPROVAL

The Ontario Securities Commission has approved amendments to MFDA Rule 1.2.1(d) regarding financial planning services as a dual occupation. In addition, the Alberta Securities Commission, Manitoba Securities Commission, New Brunswick Securities Commission, Nova Scotia Securities Commission and Saskatchewan Financial Services Commission approved, and the British Columbia Securities Commission did not object to the amendments. The amendments are intended to clarify the circumstances in which financial planning services can be conducted by an MFDA Approved Person as an outside business activity.

The MFDA's proposal was published for comment on June 27, 2008 at (2008) 31 OSCB 6693 and two comment letters were received. The MFDA's summary of comments and its response are being published in Chapter 13 of this Bulletin.

1.2 Notices of Hearing

1.2.1 Nest Acquisitions and Mergers and Caroline Frayssignes – ss. 127(7), 127(8)

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
NEST ACQUISITIONS AND MERGERS AND CAROLINE FRAYSSIGNES

NOTICE OF HEARING
Sections 127(7) and 127(8)

WHEREAS on April 8th, 2009, the Ontario Securities Commission (the "Commission") issued a temporary cease trade order pursuant to sections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), ordering: that all trading in securities by Nest Acquisitions and Mergers and Caroline Frayssignes shall cease (the "Temporary Order");

TAKE NOTICE THAT the Commission will hold a hearing pursuant to subsections 127(7) and (8) of the Act at the offices of the Commission, 20 Queen Street West, 17th Floor, commencing on April 22nd, 2009 at 2:00 p.m., or as soon thereafter as the hearing can be held:

TO CONSIDER whether it is in the public interest for the Commission:

1) to extend the Temporary Order pursuant to subsections 127(7) and (8) of the Act until the conclusion of the hearing, or until such further time as considered necessary by the Commission; and,

2) to make such further orders as the Commission considers appropriate;

BY REASON OF the allegations recited in the Temporary Order and by reason of such allegations and evidence as counsel may advise and the Commission may permit;

AND TAKE FURTHER NOTICE that any party to the proceedings may be represented by counsel at the hearing;

AND TAKE FURTHER NOTICE that upon failure of any party to attend at the time and place aforesaid, the hearing may proceed in the absence of that party and such party is not entitled to further notice of the proceeding.

DATED at Toronto this 15th day of April, 2009.

"John Stevenson"

1.2.2 Axcess Automation LLC et al. – ss. 127(7), 127(8)

**IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED**

AND

**IN THE MATTER OF
AXCESS AUTOMATION LLC, AXCESS FUND, LLC,
AXCESS FUND, L.P., GORDON ALAN DRIVER AND
DAVID RUTLEDGE**

**NOTICE OF HEARING
(Sections 127(7)and 127(8))**

WHEREAS on April 15, 2009, the Ontario Securities Commission (the "Commission") issued a temporary cease trade order pursuant to sections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") that the Respondents cease all trading;

TAKE NOTICE THAT the Commission will hold a hearing pursuant to subsections 127(7) and (8) of the Act at the offices of the Commission, 20 Queen Street West, 17th Floor, Hearing Room B, commencing on April 29, 2009 at 2:00 p.m., or as soon thereafter as the hearing can be held;

TO CONSIDER whether it is in the public interest for the Commission:

1) to extend the Temporary Order pursuant to subsections 127(7) and (8) of the Act until the conclusion of the hearing, or until such further time as considered necessary by the Commission;

2) to make such further orders as the Commission considers appropriate;

BY REASON OF the allegations as set out in the Temporary Order and such further additional allegations and evidence as counsel may advise and the Commission may permit;

AND TAKE FURTHER NOTICE that any party to the proceedings may be represented by counsel at the hearing;

AND TAKE FURTHER NOTICE that upon failure of any party to attend at the time and place aforesaid, the hearing may proceed in the absence of that party and such party is not entitled to further notice of the proceeding.

DATED at Toronto this 16th day of April, 2009

"Daisy G. Aranha"
per: John Stevenson

1.2.3 M P Global Financial Ltd. and Joe Feng Deng – ss. 127(1), 127(7)

**IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED**

AND

**IN THE MATTER OF
M P GLOBAL FINANCIAL LTD. AND
JOE FENG DENG**

**NOTICE OF HEARING
(Section 127(1) and Section 127(7))**

WHEREAS on the 13th day of April, 2009, the Ontario Securities Commission (the "Commission") ordered;

1. pursuant to clause 2 of subsection 127(1) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") that all trading in securities of M P Global Financial Ltd. ("MP Limited") shall cease;

2. pursuant to clause 2 of subsection (1) of the Act that all trading by Joe Feng Deng also known as Feng Deng, Yue Wen Deng and Deng Yue Wen ("Deng") shall cease; and

3. pursuant to clause 3 of subsection 127(1) of the Act that exemptions contained in Ontario securities law do not apply to Deng and MP Limited;

AND WHEREAS the Commission further ordered as part of the Temporary Order that, pursuant to subsection 127(6) of the Act, the Temporary Order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by the Commission;

TAKE NOTICE that the Commission will hold a hearing pursuant to sections 127(1) and 127(7) of the Act at its offices at 20 Queen Street West, 17th Floor, Hearing Room B, on Monday, the 27th day of April, 2009 at 2:00 p.m. or as soon thereafter as the hearing can be held;

TO CONSIDER whether, pursuant to sections 127(1) and 127(7) of the Act, it is in the public interest for the Commission to:

1. extend the Temporary Order made April 13, 2009 until the conclusion of the hearing in this matter, pursuant to section 127(7) of the Act or until such other time as ordered by the Commission; and

2. to make such further orders as the Commission deems appropriate;

BY REASON of the facts cited in the Temporary Order and such further additional allegations as counsel may advise and the Commission may permit;

AND TAKE FURTHER NOTICE that any party to the proceedings may be represented by counsel at the hearing;

AND TAKE FURTHER NOTICE that upon failure of any party to attend at the time and place aforesaid, the hearing may proceed in the absence of that party and such party is not entitled to any further notice of the proceeding.

DATED at Toronto this 14th day of April , 2009

"John Stevenson"
Secretary to the Commission

1.2.4 MRS Sciences Inc. (formerly Morningside Capital Corp.) et al. – ss. 127, 127(1)

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
MRS SCIENCES INC.
(FORMERLY MORNINGSIDE CAPITAL CORP.),
AMERICO DEROSA, RONALD SHERMAN,
EDWARD EMMONS, IVAN CAVRIC AND
PRIMEQUEST CAPITAL CORPORATION

AMENDED NOTICE OF HEARING
Sections 127 and 127(1)

TAKE NOTICE that the Commission will hold a hearing pursuant to section 127 of the *Securities Act*, at its offices at 20 Queen Street West, 17th Floor Hearing Room on Thursday, the 23rd day of April, 2009 at 9:00 a.m. or as soon thereafter as the hearing can be held:

TO CONSIDER whether, pursuant to section 127 and section 127.1 of the *Securities Act*, it is in the public interest for the Commission:

(i) at the conclusion of the hearing, to make an order pursuant to paragraph 2 of subsection 127(1) that trading in the securities of MRS Sciences Inc. cease until further order of this Commission;

(ii) at the conclusion of the hearing, to make an order against any or all of the Respondents that:

(a) trading in any securities of or by the Respondents cease permanently or for such period as is specified by the Commission, pursuant to paragraph 2 of subsection 127(1);

(b) any exemptions contained in Ontario securities law do not apply to the Respondents permanently or for such period as is specified by the Commission, pursuant to paragraph 3 of subsection 127(1);

(c) the Respondents be reprimanded, pursuant to paragraph 6 of subsection 127(1);

(d) the individual Respondents be prohibited from becoming or acting as a director or officer of any issuer pursuant to paragraph 8 of subsection 127(1);

(e) the Respondents be prohibited from telephoning residences within or outside Ontario for the purpose of trading in securities, pursuant to subsection 37(1);

(f) the Respondents pay an administrative penalty for failing to comply with Ontario securities law, pursuant to paragraph 9 of subsection 127(1);

(g) the Respondents disgorge to the Commission any amounts obtained as a result of non-compliance with Ontario securities law, pursuant to paragraph 10 of subsection 127(1); and

(h) the Respondents be ordered to pay the costs of the Commission investigation and the costs of, or related to, this hearing, pursuant to subsection 127.1; and

(iii) to make such further orders as the Commission considers appropriate.

BY REASON OF the allegations set out in the Amended Amended Statement of Allegations dated April 14, 2009 and such further additional allegations as counsel may advise and the Commission may permit;

AND TAKE FURTHER NOTICE that any party to the proceedings may be represented by counsel at the hearing;

AND TAKE FURTHER NOTICE that upon failure of any party to attend at the time and place aforesaid, the hearing may proceed in the absence of that party and such party is not entitled to any further notice of the proceeding.

DATED at Toronto this 15th day of April, 2009.

"John Stevenson"

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
MRS SCIENCES INC.
(FORMERLY MORNINGSIDE CAPITAL CORP.),
AMERICO DEROSA, RONALD SHERMAN,
EDWARD EMMONS, IVAN CAVRIC AND
PRIMEQUEST CAPITAL CORPORATION

AMENDED AMENDED STATEMENT
OF ALLEGATIONS OF STAFF OF THE
ONTARIO SECURITIES COMMISSION

Staff of the Ontario Securities Commission (the "Commission") make the following allegations:

THE PARTIES

1. MRS Sciences Inc., formerly named Morningside Capital Corp. (collectively referred to as "MRS") was an Ontario company incorporated on November 1, 2001. MRS was redomiciled to Nevada in or about July 2005, and merged with Biosource Solutions Inc., a Nevada corporation, as of July 5, 2006. MRS is not and has never been registered in any capacity with the Commission.

2. Americo DeRosa ("DeRosa") is the president, chief executive officer and sole director of MRS. DeRosa is not and has never been registered in any capacity with the Commission.

3. Ronald Sherman ("Sherman") was employed by and/or acted as corporate secretary for MRS. Sherman also acted as a salesperson for the sale of MRS shares. Sherman has been registered as a securities salesperson on numerous occasions from January 25, 1962 to May 7, 1996.

4. Ivan Cavric ("Cavric") was employed by and/or acted as vice-president and treasurer for MRS. Cavric was formerly registered with the Commission as a securities salesperson with six different dealers from February 3, 1992 to November 17, 2000.

5. Edward Emmons ("Emmons") was employed by and/or acted as vice-president for MRS. Emmons acted as a salesperson for the sale of MRS shares. Emmons has been registered with the Commission as a securities salesperson with four dealers from May 17, 1977 to November 13, 1996.

6. Primequest Capital Corporation ("Primequest") is an Ontario company incorporated on June 14, 1996 as Primequest Financial Group Inc.. Primequest Financial Group Inc. merged with or was renamed Primequest on May 3, 2002. Cavric

is the president, secretary, treasurer and sole director of Primequest.

SALE OF SHARES TO THE PUBLIC

7. In selling MRS shares to Ontario residents and residents of other jurisdictions, MRS has purported to rely upon the exemption for selling securities to accredited investors contained in OSC Rule 45-501 (now National Instrument 45-106) in circumstances where the exemption is not available.

8. MRS did not file any Form 45-501F1s – Report of Exempt Distribution with the Commission relating to the distribution of common shares of MRS to investors in Ontario or other jurisdictions as required by section 7.1 of OSC Rule 45-501 (now section 6.1 of OSC Rule 45-106).

9. MRS, through its officers, directors, employees and/or agents acting as salespersons, sold and offered MRS shares for sale to residents of Ontario and other jurisdictions.

10. Staff allege that from 2003 to 2005 inclusive, MRS sold MRS shares to approximately 230 investors in approximately 300 trades at prices of either $0.35 or $0.70 per share.

11. MRS hired Sherman, Emmons and others who acted as salespersons of MRS shares and received commissions on the sale of MRS shares.

12. Staff allege that Sherman and Emmons *Act*ed as securities salespersons and advisers contrary to the registration requirements found in section 25 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "*Act*").

13. The trades in MRS shares were trades in securities not previously issued and were therefore distributions.

14. No prospectus receipt has been issued to qualify the sale of MRS shares.

15. MRS and the individual respondents made representations regarding: (i) the future value of MRS shares; and (ii) MRS shares being listed on a stock exchange, with the intention of effecting trades in MRS shares.

MANIPULATION OF MRS SHARES

16. Cavric, Primequest and DeRosa entered into numerous trades in MRS shares between February 17, 2004 and November 2, 2004 inclusive, which were reported on Pink OTC Markets Inc. in the United States when they knew or ought to have known that the trades would create a misleading appearance as to the volume in trading in MRS shares and/or result in or contribute to an artificial price for MRS shares.

17. On numerous occasions, Cavric, Primequest and DeRosa, entered orders to buy and/or sell MRS shares in circumstances in which an off-setting order of substantially the same size and price had been placed by one of Cavric, Primequest or DeRosa resulting in some of the trades referred to in paragraph 16.

18. Trading by Cavric, DeRosa and Primequest in MRS shares were effected in a manner that caused or contributed to a general upward trend in price. As a result, the trades by Cavric, DeRosa and Primequest, directly or indirectly, had the effect of creating or contributing to: (i) a misleading appearance of trading *Act*ivity in; and/or (ii) an artificial price for MRS shares, contrary to section 3.1 of NI 23-101 and contrary to the public interest.

19. But for the trades by Cavric, DeRosa and Primequest, there would have been little or no trading in the shares of MRS on a public market between February 17, 2004 and November 2, 2004 inclusive.

CONDUCT CONTRARY TO THE *ACT* AND THE PUBLIC INTEREST

20. MRS, its directors, officers and its salespersons have made misleading representations to investors, including representations regarding the future listing and future value of MRS shares with the intention of effecting sales of MRS shares contrary to section 38 of the *Act* and contrary to the public interest.

21. None of MRS, DeRosa, Sherman, Emmons and Cavric is registered with the Commission. The respondents' have traded in securities and/or *Act*ed as securities salespersons and/or advisers contrary to section 25 of the *Act* and *Act*ed contrary to the public interest.

22. No prospectus receipt has been issued to qualify the sale of MRS shares contrary to section 53 of the *Act* and contrary to the public interest.

23. MRS and DeRosa also failed to file any reports of exempt distributions with the Commission contrary to section 7.1 of OSC Rule 45-501 (now section 6.1 of OSC Rule 45-106) and contrary to the public interest.

24. As an officer and director of MRS, DeRosa has authorized, permitted or acquiesced in breaches of sections 25, 38 and 53 of the *Act* by MRS and its salespersons contrary to subsection 129.2 of the *Act* and in doing so has engaged in conduct contrary to the public interest.

25. As officers of MRS, Cavric, Sherman and/or Emmons authorized, permitted or acquiesced in breaches of sections 25, 38 and 53 of the *Act* by MRS and its salespersons contrary to subsection 129.2 of the *Act* and in doing so has engaged in conduct contrary to the public interest.

26. Cavric, DeRosa and Primequest knew or ought to have known that the trades referred to above would or may result in or contribute to a misleading appearance as to: (i) the volume of MRS shares traded; and/or (ii) an artificial price for MRS shares.

27. The respondents' conduct led potential and existing MRS investors to believe that MRS shares had a value in the range of $1.00 to $2.25 per share.

28. The respondents' conduct was contrary to Ontario securities law and contrary to the public interest.

29. Such additional allegations as Staff may advise and the Commission may permit.

Dated at Toronto this 14th day of April, 2009

1.4 Notices from the Office of the Secretary

1.4.1 Nest Acquisitions and Mergers and Caroline Frayssignes

FOR IMMEDIATE RELEASE
April 16, 2009

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
NEST ACQUISITIONS AND MERGERS AND
CAROLINE FRAYSSIGNES

TORONTO – The Office of the Secretary issued a Notice of Hearing setting the matter down to be heard on April 22, 2009 at 2:00 p.m. in Hearing Room B, 20 Queen Street West, 17th Floor, to consider whether it is in the public interest for the Commission:

(1) to extend the Temporary Order pursuant to subsections 127(7) and (8) of the Act until the conclusion of the hearing, or until such further time as considered necessary by the Commission; and

(2) to make such further orders as the Commission considers appropriate.

A copy of the Notice of Hearing dated April 15, 2009 and Temporary Order dated April 8, 2009 are available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For media inquiries:
Wendy Dey
Director, Communications
& Public Affairs
416-593-8120

Laurie Gillett
Manager, Public Affairs
416-595-8913

Carolyn Shaw-Rimmington
Assistant Manager,
Public Affairs
416-593-2361

For investor inquiries:
OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.4.2 Axcess Automation LLC et al.

FOR IMMEDIATE RELEASE
April 16, 2009

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
AXCESS AUTOMATION LLC, AXCESS FUND, LLC, AXCESS FUND, L.P., GORDON ALAN DRIVER AND DAVID RUTLEDGE

TORONTO – The Office of the Secretary issued a Notice of Hearing today setting the matter down to be heard on April 29, 2009 at 2:00 p.m. to consider whether it is in the public interest for the Commission:

(1) to extend the Temporary Order pursuant to subsections 127(7) and (8) of the Act until the conclusion of the hearing, or until such further time as considered necessary by the Commission; and

(2) to make such further orders as the Commission considers appropriate.

A copy of the Notice of Hearing dated April 16, 2009 and Temporary Order dated April 15, 2009 are available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For media inquiries: Wendy Dey
Director, Communications
& Public Affairs
416-593-8120

Laurie Gillett
Manager, Public Affairs
416-595-8913

Carolyn Shaw-Rimmington
Assistant Manager,
Public Affairs
416-593-2361

For investor inquiries: OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.4.3 M P Global Financial Ltd. and Joe Feng Deng

FOR IMMEDIATE RELEASE
April 16, 2009

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
M P GLOBAL FINANCIAL LTD. AND JOE FENG DENG

TORONTO – The Office of the Secretary issued a Notice of Hearing setting the matter down to be heard on April 27, 2009 at 2:00 p.m. to consider whether it is in the public interest for the Commission:

(1) to extend the Temporary Order pursuant to subsections 127(7) and (8) of the Act until the conclusion of the hearing, or until such further time as considered necessary by the Commission; and

(2) to make such further orders as the Commission considers appropriate.

A copy of the Notice of Hearing dated April 14, 2009 and Temporary Order dated April 13, 2009 are available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For media inquiries: Wendy Dey
Director, Communications
& Public Affairs
416-593-8120

Laurie Gillett
Manager, Public Affairs
416-595-8913

Carolyn Shaw-Rimmington
Assistant Manager,
Public Affairs
416-593-2361

For investor inquiries: OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.4.4 MRS Sciences Inc. (formerly Morningside Capital Corp.) et al.

FOR IMMEDIATE RELEASE
April 16, 2009

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
MRS SCIENCES INC.
(FORMERLY MORNINGSIDE CAPITAL CORP.),
AMERICO DEROSA, RONALD SHERMAN,
EDWARD EMMONS, IVAN CAVRIC AND
PRIMEQUEST CAPITAL CORPORATION

TORONTO – The Office of the Secretary issued an Amended Notice of Hearing setting the matter down to be heard on April 23, 2009, at 9:00 a.m. or as soon thereafter as the hearing can be held in the above named matter.

A copy of the Amended Notice of Hearing dated April 15, 2009 and an Amended Amended Statement of Allegations of Staff of the Ontario Securities Commission dated April 14, 2009 are available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For media inquiries: Wendy Dey
Director, Communications
& Public Affairs
416-593-8120

Laurie Gillett
Manager, Public Affairs
416-595-8913

Carolyn Shaw-Rimmington
Assistant Manager,
Public Affairs
416-593-2361

For investor inquiries: OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.4.5 Patheon Inc.

FOR IMMEDIATE RELEASE
April 16, 2009

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
PATHEON INC.

AND

IN THE MATTER OF
AN OFFER TO PURCHASE FOR CASH ANY AND
ALL OF THE RESTRICTED VOTING SHARES OF
PATHEON INC. BY JLL PATHEON HOLDINGS LLC

AND

IN THE MATTER OF
AN APPLICATION BY THE SPECIAL COMMITTEE
OF THE BOARD OF DIRECTORS OF
PATHEON INC.FOR CERTAIN RELIEF UNDER
SECTIONS 104(1) AND 127

TORONTO – The Commission issued its Decision on the Application of JLL Patheon Holdings, LLC pursuant to s. 104(2) of the Securities Act and the Application of the Special Committee of Patheon Inc.

A copy of the Decision dated April 16, 2009 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For media inquiries: Wendy Dey
Director, Communications
& Public Affairs
416-593-8120

Laurie Gillett
Manager, Public Affairs
416-595-8913

Carolyn Shaw-Rimmington
Assistant Manager,
Public Affairs
416-593-2361

For investor inquiries: OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.4.6 Lyndz Pharmaceuticals Inc. et al.

FOR IMMEDIATE RELEASE
April 21, 2009

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5 AS AMENDED

AND

IN THE MATTER OF
LYNDZ PHARMACEUTICALS INC.,
LYNDZ PHARMA LTD., JAMES MARKETING LTD.,
MICHAEL EATCH AND RICKEY MCKENZIE

TORONTO – The Commission issued an Order extending the Temporary Order to July 7, 2009 in the above named matter.

This matter is set to return before the Commission on July 6, 2009 at 10:00 a.m.

A copy of the Order dated April 21, 2009 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For media inquiries: Wendy Dey
Director, Communications
& Public Affairs
416-593-8120

Laurie Gillett
Manager, Public Affairs
416-595-8913

Carolyn Shaw-Rimmington
Assistant Manager,
Public Affairs
416-593-2361

For investor inquiries: OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.4.7 Neo Material Technologies Inc. et al.

FOR IMMEDIATE RELEASE
April 21, 2009

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
NEO MATERIAL TECHNOLOGIES INC. AND
PALA INVESTMENTS HOLDINGS LIMITED AND
ITS WHOLLY-OWNED SUBSIDIARY
0833824 B.C. LTD.

TORONTO – On April 21, 2009, the Commission scheduled a hearing of the Application of Pala Investments Holdings Limited dated April 15, 2009 (the "Application"), to be held on May 7, 2009 at 10:00 a.m. at 20 Queen Street West, 17th Floor Hearing Room A.

A copy of the Application dated April 15, 2009 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For media inquiries: Wendy Dey
Director, Communications
& Public Affairs
416-593-8120

Laurie Gillett
Manager, Public Affairs
416-595-8913

Carolyn Shaw-Rimmington
Assistant Manager,
Public Affairs
416-593-2361

For investor inquiries: OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.4.8 Nest Acquisitions and Mergers and Caroline Frayssignes

FOR IMMEDIATE RELEASE
April 22, 2009

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5 AS AMENDED

AND

IN THE MATTER OF
NEST ACQUISITIONS AND MERGERS and
CAROLINE FRAYSSIGNES

TORONTO – The Commission issued an Order extending the Temporary Order to May 22, 2009 in the above named matter.

This matter is set to return before the Commission on May 21, 2009 at 2:00 p.m.

A copy of the Order dated April 22, 2009 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For media inquiries: Wendy Dey
Director, Communications
& Public Affairs
416-593-8120

Laurie Gillett
Manager, Public Affairs
416-595-8913

Carolyn Shaw-Rimmington
Assistant Manager,
Public Affairs
416-593-2361

For investor inquiries: OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Manulife Brompton Advantaged Bond Fund and MBB Trust

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption from National Instrument 81-106 Investment Fund Continuous Disclosure to permit investment funds that use specified derivatives to calculate their NAV on a weekly basis and not on a daily basis, subject to certain conditions.

Applicable Legislative Provisions

National Instrument 81-106 Investment Fund Continuous Disclosure, s. 14.2(3)(b).

March 27, 2009

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF
APPLICATIONS IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
MANULIFE BROMPTON ADVANTAGED BOND FUND
(the Fund)

AND

IN THE MATTER OF
MBB TRUST

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Fund and MBB Trust for a decision under the securities legislation of the Jurisdiction of the principal regulator (the Legislation) for relief from the requirement in section 14.2(3)(b) of National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106) that the net asset value of an investment fund must be calculated at least once every business day if the investment fund uses specified derivatives (the Exemption Sought).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

(a) the Ontario Securities Commission is the principal regulator for this application;

(b) the Fund has provided notice that Section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, British Columbia, Manitoba, Saskatchewan, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut; and

(c) MBB Trust has provided notice that Section 4.7(1) of MI 11-102 is intended to be relied upon in Quebec.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

This decision is based on the following facts represented by the Fund and MBB Trust:

1. The Fund and MBB Trust are investment trusts established under the laws of Ontario.

2. Brompton Funds Management Limited (the Manager) is the promoter and manager of the Fund and MBB Trust. The Manager will be responsible for providing or arranging for the provision of administrative services required by the Fund and MBB Trust. The head office of the Manager is located in Ontario.

3. The Fund filed a preliminary prospectus dated February 12, 2009 on SEDAR with respect to a public offering (the Offering) of Class A Units and Class F Units (collectively, the Fund Units) a receipt for which was issued by the Ontario Securities Commission on February 19, 2009. The Offering of the Fund Units is a one-time offering and the Fund will not continuously distribute the Fund Units.

4. MBB Trust filed a preliminary non-offering prospectus dated March 9, 2009 on SEDAR, a

receipt for which was issued by the Ontario Securities Commission on March 11, 2009.

5. The Fund's investment objectives are to provide holders of Fund Units (the Fund Unitholders) with attractive monthly tax-advantaged cash distributions together with the opportunity for capital appreciation. The Fund will seek to achieve its investment objectives through exposure to an actively managed bond portfolio (the Portfolio) consisting primarily of North American corporate bonds by entering into the Forward Agreement (as defined below). The Fund may also directly hold a small amount of the same securities as are held in the Portfolio.

6. MBB Trust was established to hold the Portfolio. MBB Trust's investment objectives are to provide holders of units of MBB Trust (each, a Trust Unit) with attractive monthly distributions together with the opportunity for capital appreciation. MBB Trust intends to use derivatives for hedging purposes, including hedging the Portfolio's U.S. dollar exposure to the Canadian dollar.

7. The Trust Units will not be offered to the public under a prospectus. A Canadian financial institution or one of its affiliates (the Counterparty) will be the beneficial owner of all of the Trust Units pursuant to an exempt distribution of Trust Units upon the closing of the Offering. The Fund will seek to achieve its investment objective by entering into a forward purchase and sale agreement (the Forward Agreement) with the Counterparty. Under the terms of the Forward Agreement, the Counterparty will agree to deliver to the Fund on the earlier of: (i) a date to be determined in the year 2029; or (ii) at the option of the Fund, on the annual redemption date that occurs in October, 2019 (such earlier date being the Forward Termination Date), a portfolio consisting of Canadian public issuers that are "Canadian securities" as defined under subsection 39(6) of the *Income Tax Act* (Canada) (the Canadian Securities Portfolio). The aggregate value of the Canadian Securities Portfolio will be equal to the redemption proceeds of the relevant number of Trust Units, net of any amount owing by the Fund to the Counterparty. The Forward Agreement provides that the Fund may settle the Forward Agreement, in whole or in part, prior to the Forward Termination Date: (i) to fund monthly distributions on the Fund Units; (ii) to fund redemptions and repurchases of Fund Units from time to time; (iii) to fund operating expenses and other liabilities of the Fund; and (iv) for any other reason. For the purposes of calculating the net asset value of the Fund, the value of the Forward Agreement at any time will be equivalent to the net asset value of MBB Trust.

8. The Trust Units will not be listed on a stock exchange. The Trust Units may be redeemed by the holders thereof at any time for a redemption price per Trust Unit equal to the net asset value per Trust Unit calculated as at the applicable redemption date, to enable the Fund and the Counterparty to pre-settle the Forward Agreement from time to time as set out in the paragraph above.

9. To provide liquidity for the Class A Units, an application requesting conditional listing approval has been made on behalf of the Fund to the Toronto Stock Exchange (the TSX). The TSX has conditionally approved the listing of the Class A Units subject to the Fund fulfilling all of the requirements of the TSX on or before May 13, 2009, including distribution to a minimum number of public Unitholders.

10. The Class F Units are designed for fee-based accounts and differ from the Class A Units in the following ways: (i) Class F Units will not be listed on a stock exchange; (ii) the fees payable to the syndicate of agents with respect to the Offering on the issuance of the Class F Units are lower than the Class A Units; and (iii) the service fee component of the management fee payable to the Manager, being 0.50% per annum of the net asset value attributable to the Class A Units, plus applicable taxes, is only payable with respect to the Class A Units. The Class F Units are convertible into Class A Units as described below and it is expected that liquidity for the Class F Units will be obtained by means of conversion into Class A Units and the sale of those Class A Units through the facilities of the TSX.

11. Class F Units may be converted in any month on the first business day of the month (the Conversion Date) by delivering a notice and surrendering such Class F Units by 5:00 p.m. (Toronto time) at least 10 business days prior to the Conversion Date. For each Class F Unit so converted, a holder will receive that number of Class A Units equal to the net asset value per Class F Unit as of the close of trading on the business day immediately preceding the Conversion Date divided by the net asset value per Class A Unit as of the close of trading on the business day immediately preceding the Conversion Date.

12. Class A Units and Class F Units may be redeemed on the second last business day of October of any year commencing in 2010 (the Annual Redemption Date), subject to certain conditions, at a redemption price per Fund Unit equal to 100% of the Net Assets per Unit (as defined in the prospectus of the Fund) of the relevant class, as applicable (less any costs associated with the redemption, including brokerage costs). The Net Assets per Unit of each class will be calculated on the Annual Redemption Date. For the purposes of calculating the Net

Assets per Unit, the value of the Forward Agreement will be determined on the basis that any bonds, debentures and other debt obligations that are owned by MBB Trust will be valued by taking the bid price on the Annual Redemption Date and any short position of MBB Trust will be valued by taking the ask price on the Annual Redemption Date, calculated on a fully diluted basis, if applicable.

13. In addition to such annual redemption right, Class A Units and Class F Units may be redeemed on the second last business day of each month, other than in the month of October, subject to certain conditions, at a redemption price computed by reference to the market price of the Class A Units on the applicable monthly redemption date (and less any costs associated with the redemption, including brokerage costs).

14. Under section 14.2(3)(b) of NI 81-106, an investment fund that is a reporting issuer that uses or holds specified derivatives, such as the Fund and MBB Trust intend to do, must calculate its net asset value on a daily basis.

15. The Fund will calculate its net asset value on the Thursday of each week (or if any Thursday is not a business day, the immediately preceding business day) and the last business day of each month. The Trust will calculate its net asset value on the same dates that the Fund calculates its net asset value and on any other day upon request of a holder of Trust Units.

16. The preliminary prospectus of the Fund discloses, and the final prospectus of the Fund will disclose, that the net asset value per Fund Unit of each class of Fund Units will be calculated and made available to the financial press for publication on a weekly basis and that the Manager will post the net asset value per Fund Unit of each class of Fund Units on its website.

17. The preliminary prospectus of the MBB Trust discloses, and the final prospectus of MBB Trust will disclose, that the net asset value per Trust Unit will be made available to holders of Trust Units upon request.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that:

(a) the final prospectus of the Fund discloses:

(i) that the net asset value per Fund Unit of each class of Fund Units is available to the public upon request; and

(ii) a website that the public can access to obtain the net asset value calculation per Fund Unit;

for so long as: (x) the Class A Units are listed on the TSX; and (y) the Fund calculates the net asset value per Fund Unit of each class of Fund Units at least weekly; and

(b) the final prospectus of MBB Trust discloses the net asset value calculation per Trust Unit will be provided to holders of Trust Units on request, for so long as (x) the Trust Units are not offered to the public; and (y) MBB Trust calculates the net asset value per Trust Unit at least weekly.

"Rhonda Goldberg"
Manager, Investment Funds Branch
Ontario Securities Commission

2.1.2 Suncor Energy Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – issuer granted exemptions from the prospectus requirement, dealer registration requirement and underwriter registration requirement in connection with trades of commercial paper/short term debt – sufficient to obtain one credit rating at or above a revised category from an approved credit rating agency – relief granted subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25, 53, 74(1).
National Instrument 45-106 Prospectus and Registration Exemptions.

April 9, 2009

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ALBERTA AND ONTARIO
(the Jurisdictions)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF
APPLICATIONS IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
SUNCOR ENERGY INC.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that trades of negotiable promissory notes or commercial paper, maturing not more than one year from the date of issue, of the Filer (**Commercial Paper**) be exempt from the dealer registration requirement, the underwriter registration requirement and the prospectus requirement of the Legislation (respectively, the **Dealer Registration Exemption Sought**, the **Underwriter Registration Exemption Sought**, the **Prospectus Exemption Sought** and, together, the **Exemptions Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

(a) the Alberta Securities Commission is the principal regulator for this application;

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland & Labrador, the Northwest Territories, the Yukon Territory and Nunavut; and

(c) this decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meanings in this decision, unless otherwise defined.

In this decision:

"financial intermediary" has the meaning ascribed to that term in Ontario Securities Commission Rule 14-501 *Definitions*;

"financial intermediary short-term debt registration exemption" means the exemption from the registration requirement, for a trade by a financial intermediary or a Schedule III bank, set out in clause 4.1(1)(a) of OSC Rule 45-501, or in a successor provision of OSC Rule 45-501, insofar as that clause or provision provides an exemption from the dealer registration requirement and the underwriter registration requirement for a trade of a type described in the short-term debt dealer registration exemption;

"market intermediary" has the meaning ascribed to that term in Ontario Securities Commission Rule 14-501 *Definitions*;

"NI 45-106" means National Instrument 45-106 *Prospectus and Registration Exemptions*;

"OSC Rule 45-501" means Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions*;

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

"short-term debt dealer registration exemption" means the exemption from the dealer registration requirement set out in subsection 2.35(1) of NI 45-106, or in a successor provision in NI 45-106; and

"short-term debt underwriter registration exemption" means the deemed exemption from the underwriter registration requirement contained in subsection 1.4(2) of NI 45-106, or in a successor provision in NI 45-106, insofar as the

deemed exemption relates to the short-term debt dealer registration exemption.

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer is a corporation governed by the *Canada Business Corporations Act* with a head office located in Calgary, Alberta.

2. The Filer is a reporting issuer in all of the jurisdictions of Canada and is not in default of any of its obligations under applicable securities legislation except for non-compliance with respect to trades of Commercial Paper from January 27, 2009, the date that the credit rating of the Commercial Paper was downgraded by Standard & Poor's, to March 30, 2009.

3. Subsections 1.4(2) and 2.35(1)(b) of NI 45-106 provide that exemptions from the dealer registration, underwriter registration and prospectus requirements of the Legislation for short-term debt (the **Commercial Paper Exemption**) are available only where such short-term debt "has an approved credit rating from an approved credit rating organization." NI 45-106 incorporates by reference the definitions for "approved credit rating" and "approved credit rating organization" that are used in National Instrument 81-102 *Mutual Funds* (**NI 81-102**).

4. The definition of "approved credit rating" in NI 81-102, requires, among other things, that (a) the rating assigned to such debt must be "at or above" certain prescribed short-term ratings, and (b) such debt must not have been assigned a rating by any "approved credit rating organization" that is not an "approved credit rating."

5. The Commercial Paper of the Filer has an "R-1 (low)" rating from Dominion Bond Rating Service Limited which meets the prescribed threshold in NI 81-102.

6. The Commercial Paper of the Filer does not meet the "approved credit rating" definition in NI 81-102 because it has an "A-2" rating from Standard & Poor's which is a lower rating than required by the Commercial Paper Exemption.

Decision

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemptions Sought are granted provided that:

1. The Commercial Paper:

   (a) matures not more than one year from the date of issue;

   (b) is not convertible or exchangeable into or accompanied by a right to purchase another security other than Commercial Paper; and

   (c) has a rating issued by one of the following rating organizations, or any of their successors, at or above one of the following rating categories or a rating category that replaces a category listed below:

Rating Organization	Rating
Dominion Bond Rating Service Limited	R-1 (low)
Fitch Ratings Ltd.	F2
Moody's Investors Service	P-2
Standard & Poor's	A-2

2. In Ontario, the Dealer Registration Exemption Sought and the Underwriter Registration Exemption Sought are not available in respect of a trade in Commercial Paper by a market intermediary (except for a trade in Commercial Paper with a registered dealer that is an affiliate of the market intermediary or a trade in Commercial Paper by a lawyer or accountant if the trade is incidental to the principal business of that lawyer or accountant) unless the market intermediary is:

   (a) a financial intermediary or Schedule III bank; or

   (b) a dealer registered under the securities legislation of Ontario, as a "limited market dealer", provided that:

      (i) under its registration, the dealer would be authorized to make the trade if the trade were a trade in a negotiable promissory note or commercial paper referred to in the short-term debt dealer registration exemption; and

      (ii) the trade is made on behalf of the dealer by an individual who is registered under the securities legislation of Ontario to trade on behalf of the dealer and, under that registration, would be authorized to make the trade if the trade were a trade in a negotiable promissory

note or commercial paper referred to in the short-term debt dealer registration exemption.

3. In Newfoundland and Labrador, the Dealer Registration Exemption Sought and the Underwriter Registration Exemption Sought are not available in respect of a trade in Commercial Paper by a market intermediary (except for a trade in Commercial Paper with a registered dealer that is an affiliate of the market intermediary or a trade in Commercial Paper by a lawyer or accountant if the trade is incidental to the principal business of that lawyer or accountant) unless the market intermediary is a dealer registered under the securities legislation of Newfoundland and Labrador as a "limited market dealer", provided that:

   (a) under its registration, the dealer would be authorized to make the trade if the trade were a trade in a negotiable promissory note or commercial paper referred to in the short-term debt dealer registration exemption; and

   (b) the trade is made on behalf of the dealer by an individual who is registered under the securities legislation of Newfoundland and Labrador to trade on behalf of the dealer and, under that registration, would be authorized to make the trade if the trade were a trade in a negotiable promissory note or commercial paper referred to in the short-term debt dealer registration exemption.

4. For each jurisdiction of Canada, the Prospectus Exemption Sought will terminate on the earlier of:

   (a) 90 days after the coming into force of any rule, other regulation or blanket order or ruling under the securities legislation of that jurisdiction of Canada that amends the conditions of the prospectus exemption contained in section 2.35 of NI 45-106 or provides an alternate exemption; and

   (b) June 30, 2012.

5. Except as provided in paragraph 6, below, for each jurisdiction of Canada, the Dealer Registration Exemption Sought and the Underwriter Registration Exemption Sought will terminate on the earlier of:

   (a) in the case of the Dealer Registration Exemption Sought, the date when the short-term debt dealer registration exemption ceases to be available in that jurisdiction of Canada;

   (b) in the case of the Underwriter Registration Exemption Sought, the date when the short-term debt underwriter registration exemption ceases to be available in that jurisdiction of Canada; and

   (c) June 30, 2012.

6. In Ontario, for a financial intermediary or Schedule III bank, the Dealer Registration Exemption Sought and the Underwriter Registration Exemption Sought will terminate on the earlier of:

   (a) the date when the financial intermediary short-term debt registration exemption ceases to be available in Ontario; and

   (b) June 30, 2012.

"Glenda A. Campbell, QC"
Alberta Securities Commission

"Stephen R. Murison"
Alberta Securities Commission

2.1.3 Northern Rivers Capital Management Inc. and Northern Rivers Evolution Fund

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Approval of mutual fund merger – approval required because merger does not meet the criteria for pre-approval – merger not a "qualifying exchange" or a tax-deferred transaction under the Income Tax Act – financial statements of continuing fund not required to be sent to unitholders of the terminating fund in connection with the current merger and future mergers provided the information circular sent for unitholder meeting clearly discloses the various ways unitholders can access the financial statements.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 5.5(1)(b), 5.6(1)(f)(ii).

April 16, 2009

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF
APPLICATIONS IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
NORTHERN RIVERS CAPITAL MANAGEMENT INC.
(the Filer)
AND
NORTHERN RIVERS EVOLUTION FUND

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer and the Northern Rivers Evolution Fund (the Terminating Fund) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the Legislation) for:

a) approval under paragraph 5.5(1)(b) of NI 81-102 of the merger (the Merger) of the Terminating Fund into the Northern Rivers Conservative Growth Fund (the Continuing Fund); and

b) relief from the financial statements delivery requirements contained in subsection 5.6(1)(f)(ii) of NI 81-102 in respect of:

   (i) the Merger; and

   (ii) all future mergers of mutual funds managed by the Filer or an affiliate of the Filer (the Future Mergers, which together with the Merger are referred to as the Mergers)

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

(a) the Ontario Securities Commission is the principal regulator for this application; and

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon, and Nunavut.

Interpretation

Defined terms contained in National Instrument 14-101 - *Definitions* have the same meaning in this decision unless they are defined in this decision. The following additional terms shall have the following meanings:

Current Simplified Prospectus means the simplified prospectus dated August 25, 2008, as amended, that qualifies the Funds for sale;

Fund or **Funds** means, individually or collectively, the Terminating Fund and the Continuing Fund;

Tax Act means the *Income Tax Act* (Canada).

Representations

This decision is based on the following facts represented by the Filer:

1) The Filer is a corporation established under the laws of Canada.

2) The Filer is the manager and trustee of each of the Funds. The head office of the Filer is located in Ontario.

3) Each of the Funds is an open-end investment trust established under the laws of Ontario by a declaration of trust.

4) The Filer intends to reorganize the Funds such that the Northern Rivers Evolution Fund will be merged into the Northern Rivers Conservative Growth Fund.

5) Securities of the Funds are currently qualified for sale by the Current Simplified Prospectus and an annual information form dated August 25, 2008, as amended, which have been filed and accepted in all of the provinces and territories of Canada (except Quebec).

6) Each of the Funds is a reporting issuer in all of the provinces and territories of Canada (except Quebec) and is not in default of securities legislation in any jurisdiction of Canada.

7) Other than circumstances in which the securities regulatory authority of the Jurisdiction has expressly exempted a Fund therefrom, each of the Funds follows the standard investment restrictions and practices established under the Legislation of the Jurisdiction.

8) The net asset value for the mutual fund units of each of the Funds is calculated on a daily basis on each day that the Toronto Stock Exchange is open for business.

9) No sales charges will be payable in connection with the acquisition by the Continuing Fund of the investment portfolio of the Terminating Fund.

10) The portfolios and other assets of the Terminating Fund to be acquired by the Continuing Fund arising from the Merger will be acceptable, on or prior to the effective date of the Merger, to the portfolio adviser of the Continuing Fund and will be consistent with the investment objectives of the Continuing Fund.

11) Unitholders of the Terminating Fund will continue to have the right to redeem units of the Terminating Fund for cash at any time up to the close of business on the business day immediately before the Merger.

12) A press release was issued on February 19, 2009. Amendments to the simplified prospectus and annual information form of the Terminating Fund with respect to the Merger were filed via SEDAR on February 20, 2009. A material change report was filed on February 26, 2009.

13) A notice of meeting, a management information circular and a proxy in connection with meetings of unitholders (collectively, the Meeting Materials) as well as the Current Simplified Prospectus, related to the Continuing Fund were mailed to unitholders of the Terminating Fund, commencing on or about March 17, 2009, and were filed via SEDAR.

14) Unitholders of the Terminating Fund approved the Merger at a meeting held on April 7, 2009.

15) The Terminating Fund will merge into the Continuing Fund on or about the close of business on April 30, 2009 and the Continuing Fund will continue as a publicly offered open-end mutual fund governed by the laws of Ontario.

16) The Terminating Fund will be wound up as soon as reasonably possible following the Merger.

17) The Filer will pay for the costs of the Merger. These costs consist mainly of brokerage charges associated with the merger-related trades that occur both before and after the date of the Mergers and legal, proxy solicitation, printing, mailing and regulatory fees.

18) Approval of the Merger is required because the Merger does not satisfy all of the criteria for pre-approved reorganizations and transfers set out in section 5.6 of NI 81-102 in the following ways:

(a) contrary to section 5.6(1)(b) of NI 81-102, the merger of the Northern Rivers Evolution Fund into the Northern Rivers Conservative Growth Fund will not be completed as a “qualifying exchange” within the meaning of section 132.2 of the Tax Act or a tax-deferred transaction under subsection 85(1), 85.1(1), 86(1) or 87(1) of the Tax Act; and

(b) contrary to section 5.6(1)(f)(ii) of NI 81-102, the most recent annual and interim financial statements for the Continuing Fund will not be sent to the unitholders of the Terminating Fund. Instead, the Filer will send to each unitholder of a Terminating Fund a management information circular fully describing the relevant merger, which will include a statement describing how unitholders can obtain the financial statements, management report of fund performance and annual information form for the relevant Continuing Fund.

19) The tax implications of the Merger as well as the differences between the Terminating Fund and the Continuing Fund are described in the Meeting Materials so that the unitholders of the Terminating Fund may consider this information before voting on the Merger.

20) The Filer believes that the Merger will benefit unitholders of the Terminating Fund and Continuing Fund for the following reasons:

(a) unitholders of the Terminating Fund and the Continuing Fund may enjoy increased economies of scale and may experience lower fund operating expenses (which are borne indirectly by unitholders) as part of a larger combined Continuing Fund;

(b) the Merger will eliminate the administrative and regulatory costs of operating the Terminating Fund as a separate mutual fund;

(c) the Continuing Fund will have a portfolio of greater value, allowing for increased portfolio diversification opportunities; and

(d) the Continuing Fund, as a result of its greater size, will benefit from its larger profile in the marketplace.

In addition, unitholders of the Terminating Fund will acquire units of the Continuing Fund that have a management fee that is equal to the management fee currently charged to units of the Terminating Fund.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the legislation is that the Approval Sought is granted, provided that in connection with the Mergers:

(a) the information circular sent to securityholders in connection with a Merger provides sufficient information about the Merger to permit securityholders to make an informed decision about the Merger;

(b) the information circular sent to securityholders in connection with a Merger prominently discloses that securityholders can obtain the most recent interim and annual financial statements of the applicable continuing fund by accessing the SEDAR website at www.sedar.com, by accessing the Filer's website, by calling the Filer's toll-free telephone number or by faxing a request to the Filer;

(c) upon request by a securityholder for financial statements, the Filer will make best efforts to provide the securityholder with financial statements of the Continuing Fund in a timely manner so that the securityholder can make an informed decision regarding a Merger; and

(d) the Terminating Fund and the Continuing Fund have an unqualified audit report in respect of their last completed financial period.

"Rhonda Goldberg"
Manager, Investment Funds
Ontario Securities Commission

2.1.4 EnCana Corporation

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – issuer granted exemptions from the prospectus requirement, dealer registration requirement and underwriter registration requirement in connection with trades of commercial paper/short term debt – sufficient to obtain one credit rating at or above a revised category from an approved credit rating agency – relief granted subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25, 53, 74(1).
National Instrument 45-106 Prospectus and Registration Exemptions.

April 3, 2009

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ALBERTA AND ONTARIO
(the Jurisdictions)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF
APPLICATIONS IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
ENCANA CORPORATION
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that trades of negotiable promissory notes or commercial paper, maturing not more than one year from the date of issue, of the Filer (**Commercial Paper)** be exempt from the dealer registration requirement, the underwriter registration requirement and the prospectus requirement of the Legislation (respectively, the **Dealer Registration Exemption Sought**, the **Underwriter Registration Exemption Sought**, the **Prospectus Exemption Sought** and, together, the **Exemptions Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

(a) the Alberta Securities Commission is the principal regulator for this application;

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick, Newfoundland and Labrador, Nova Scotia and Prince Edward Island; and

(c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

In this decision:

"financial intermediary" has the meaning ascribed to that term in Ontario Securities Commission Rule 14-501 *Definitions*;

"financial intermediary short-term debt registration exemption" means the exemption from the registration requirement, for a trade by a financial intermediary or a Schedule III bank, set out in clause 4.1(1)(a) of OSC Rule 45-501, or in a successor provision of OSC Rule 45-501, insofar as that clause or provision provides an exemption from the dealer registration requirement and the underwriter registration requirement for a trade of a type described in the short-term debt dealer registration exemption;

"market intermediary" has the meaning ascribed to that term in Ontario Securities Commission Rule 14-501 *Definitions*;

"NI 45-106" means National Instrument 45-106 *Prospectus and Registration Exemptions*;

"OSC Rule 45-501" means Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions*;

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

"short-term debt dealer registration exemption" means the exemption from the dealer registration set out in subsection 2.35(1) of NI 45-106, or in a successor provision in NI 45-106; and

"short-term debt underwriter registration exemption" means the deemed exemption from the underwriter registration requirement contained in subsection 1.4(2) of NI 45-106, or in a successor provision in NI 45-106, insofar as the deemed exemption relates to the short-term debt dealer registration exemption.

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer is a corporation governed by the *Canada Business Corporations Act* with a head office located in Calgary, Alberta.

2. The Filer is a reporting issuer in each of the Jurisdictions and is not on the list of reporting issuers in default in any of the Jurisdictions.

3. Subsections 1.4(2) and 2.35(1)(b) of NI 45-106 provide that exemptions from the dealer registration, underwriter registration and prospectus requirements of the Legislation for short-term debt (the **Commercial Paper Exemption**) are available only where such short-term debt "has an approved credit rating from an approved credit rating organization". NI 45-106 incorporates by reference the definitions for "approved credit rating" and "approved credit rating organization" that are used in National Instrument 81-102 *Mutual Funds* (**NI 81-102**).

4. The definition of "approved credit rating" in NI 81-102, requires, among other things, that (a) the rating assigned to such debt must be "at or above" certain prescribed short-term ratings, and (b) such debt must not have been assigned a rating by any "approved credit rating organization" that is not an "approved credit rating."

5. The Commercial Paper of the Filer has an "R-1(low)" rating from Dominion Bond Rating Service Limited and an "A-1(low)" rating from Standard & Poor's, both of which meet the prescribed threshold in NI 81-102.

6. The Commercial Paper of the Filer does not meet the "approved credit rating" definition in NI 81-102 because it has a "P-2" rating from Moody's Investors Service, which is a lower rating than required by the Commercial Paper Exemption.

7. The Dealer Registration Exemption Sought and the Prospectus Exemption Sought were granted under a prior decision dated April 11, 2006 (the **Prior Decision**). By its terms, the Prior Decision will terminate on the earlier of:

   (a) 90 days after the coming into force of any rule, other regulation or blanket order or ruling under the Legislation of the Jurisdiction that amends section 2.35 of NI 45-106 or provides an alternate exemption; and

(b) three years from the date of the Prior Decision.

Decision

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemptions Sought are granted provided that:

1. The Commercial Paper:

   (a) matures not more than one year from the date of issue;

   (b) is not convertible or exchangeable into or accompanied by a right to purchase another security other than Commercial Paper; and

   (c) has a rating issued by one of the following rating organizations, or any of their successors, at or above one of the following rating categories or a rating category that replaces a category listed below:

Rating Organization	Rating
Dominion Bond Rating Service Limited	R-1 (low)
Fitch Ratings Ltd.	F2
Moody's Investors Service	P-2
Standard & Poor's	A-2

2. In Ontario, the Dealer Registration Exemption Sought and the Underwriter Registration Exemption Sought are not available in respect of a trade in Commercial Paper by a market intermediary (except for a trade in Commercial Paper with a registered dealer that is an affiliate of the market intermediary or a trade in Commercial Paper by a lawyer or accountant if the trade is incidental to the principal business of that lawyer or accountant) unless the market intermediary is:

   (a) a financial intermediary or Schedule III bank; or

   (b) a dealer registered under the securities legislation of Ontario, as a "limited market dealer", provided that:

      (i) under its registration, the dealer would be authorized to make the trade if the trade were a trade in a negotiable promissory note or commercial paper referred to in the short-term debt dealer registration exemption; and

      (ii) the trade is made on behalf of the dealer by an individual who is registered under the securities legislation of Ontario to trade on behalf of the dealer and, under that registration, would be authorized to make the trade if the trade were a trade in a negotiable promissory note or commercial paper referred to in the short-term debt dealer registration exemption.

3. In Newfoundland and Labrador, the Dealer Registration Exemption Sought and the Underwriter Registration Exemption Sought are not available in respect of a trade in Commercial Paper by a market intermediary (except for a trade in Commercial Paper with a registered dealer that is an affiliate of the market intermediary or a trade in Commercial Paper by a lawyer or accountant if the trade is incidental to the principal business of that lawyer or accountant) unless the market intermediary is a dealer registered under the securities legislation of Newfoundland and Labrador as a "limited market dealer", provided that:

   (a) under its registration, the dealer would be authorized to make the trade if the trade were a trade in a negotiable promissory note or commercial paper referred to in the short-term debt dealer registration exemption; and

   (b) the trade is made on behalf of the dealer by an individual who is registered under the securities legislation of Newfoundland and Labrador to trade on behalf of the dealer and, under that registration, would be authorized to make the trade if the trade were a trade in a negotiable promissory note or commercial paper referred to in the short-term debt dealer registration exemption.

4. The Prospectus Exemption Sought will terminate on the earlier of:

   (a) 90 days after the coming into force of any rule, other regulation or blanket order or ruling under the Legislation of the Jurisdiction that amends the conditions of the prospectus exemption contained in section 2.35 of NI 45-106 or provides an alternate exemption; and

   (b) June 30, 2012.

5. Except as provided in paragraph 6, below, in each Jurisdiction, the Dealer Registration Exemption Sought and the Underwriter Registration Exemption Sought will terminate on the earlier of:

   (a) in the case of the Dealer Registration Exemption Sought, the date when the short-term debt dealer registration exemption ceases to be available in that Jurisdiction;

   (b) in the case of the Underwriter Registration Exemption Sought, the date when the short-term debt underwriter registration exemption ceases to be available in that Jurisdiction; and

   (c) June 30, 2012.

6. In Ontario, for a financial intermediary or Schedule III bank, the Dealer Registration Exemption Sought and the Underwriter Registration Exemption Sought will terminate on the earlier of:

   (a) the date when the financial intermediary short-term debt registration exemption ceases to be available in Ontario; and

   (b) June 30, 2012.

"William S. Rice, QC"
Alberta Securities Commission

"Stephen R. Murison"
Alberta Securities Commission

2.1.5 Maritime Life Canadian Funding – s. 1(10)

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions – application for an order that the issuer is not a reporting issuer.

Ontario Statutes

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10).

April 15, 2009

Maritime Life Canadian Funding
c/o Computershare Trust Company of Canada,
on behalf of Montreal Trust Company of Canada, trustee
100 University Avenue, 8th Floor
Toronto, ON M5J 2YA

Dear Sirs/Mesdames:

Re: Maritime Life Canadian Funding (the Applicant) – application for a decision under the securities legislation of Ontario, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Prince Edward Island, Nova Scotia, Newfoundland and Labrador (the Jurisdictions) that the Applicant is not a reporting issuer

The Applicant has applied to the local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions for a decision under the securities legislation (the Legislation) of the Jurisdictions that the Applicant is not a reporting issuer.

As the Applicant has represented to the Decision Makers that:

   (a) the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 security holders in each of the jurisdictions in Canada and fewer than 51 security holders in total in Canada;

   (b) no securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 Marketplace Operation;

   (c) the Applicant is applying for a decision that it is not a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and

   (d) the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer,

each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met and orders that the Applicant is not a reporting issuer.

"Michael Brown"
Assistant Manager, Corporate Finance
Ontario Securities Commission

2.2. Orders

2.2.1 Axcess Automation LLC et al. – ss. 127(1), 127(5)

**IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED**

AND

**IN THE MATTER OF
AXCESS AUTOMATION LLC, AXCESS FUND, LLC,
AXCESS FUND, L.P., GORDON ALAN DRIVER AND
DAVID RUTLEDGE**

**TEMPORARY ORDER
Section 127(1) & 127(5)**

WHEREAS it appears to the Ontario Securities Commission (the "Commission") that:

1. Axcess Automation LLC ("Axcess") is a Nevada corporation located in Mission Viejo, California and has never been a reporting issuer in Ontario or registered to trade in securities in Ontario;

2. Axcess Fund Management, LLC ("Axcess Fund Management") is a Nevada limited liability company registered with the United States Commodity Futures and Trading Commission as a Commodity Pool Operator;

3. Axcess Fund Management has never been a reporting issuer in Ontario nor is it registered to trade in securities in Ontario;

4. Axcess Fund, L.P. ("Axcess Fund") is a purported hedge fund operated by Axcess Fund Management;

5. Gordon Alan Driver ("Driver") is a Canadian citizen who resides in both Ontario and Las Vegas, Nevada and has never been registered to trade in securities in Ontario;

6. David Rutledge ("Rutledge") is an Ontario resident and has never been registered to trade in securities in Ontario;

7. Axcess, Axcess Fund Management, Axcess Fund, Driver and Rutledge may have solicited investments from Ontario and United States residents totalling between $5 million and $10 million;

8. Axcess, Axcess Fund Management, Axcess Fund, Driver and Rutledge may have traded in securities without being registered to do so, contrary to section 25 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5 (the "Act");

AND WHEREAS the Commission is of the opinion that the time required to conclude a hearing could be prejudicial to the public interest as set out in section 127(5) of the Act;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this order;

AND WHEREAS by Authorization Order made April 1, 2008, pursuant to subsection 3.5(3) of the Act, the Commission authorized each of W. David Wilson, James E. A. Turner, Lawrence E. Ritchie, Paul K. Bates and David L. Knight, acting alone, to exercise the powers of the Commission to make Orders under section 127 of the Act;

IT IS ORDERED pursuant to clause 2 of subsection 127(1) of the Act that all trading by Axcess, Axcess Fund Management, Axcess Fund, Driver and Rutledge shall cease.

IT IS FURTHER ORDERED that pursuant to clause 3 of subsection 127(1) of the Act that the exemptions contained in Ontario securities law do not apply to Axcess, Axcess Fund Management, Axcess Fund, Driver and Rutledge.

IT IS FURTHER ORDERED that pursuant to subsection 127(6) of the Act this order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by order of the Commission.

DATED at Toronto this 15th day of April, 2009.

"David L. Knight"

2.2.2 M P Global Financial Ltd. and Joe Feng Deng – ss. 127(1), 127(5)

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
M P GLOBAL FINANCIAL LTD. AND
JOE FENG DENG

TEMPORARY ORDER
Section 127(1) & 127(5)

WHEREAS it appears to the Ontario Securities Commission (the "Commission") that:

1. M P Global Financial Ltd. ("MP Limited") a company incorporated in Ontario;

2. Joe Feng Deng also known as Feng Deng, Yue Wen Deng and Deng Yue Wen ("Deng") is an individual who resides in Ontario;

3. MP Limited and Deng traded securities without registration and without an exemption to the registration requirement contrary to section 25 of the *Securities Act*, R.S.O. 1990, c. S.5 (the "Act"); and

4. MP Limited and Deng may have traded securities without a prospectus having been filed and receipted by the Director contrary to section 53 of the Act.

AND WHEREAS the Commission is of the opinion that the time required to conclude a hearing could be prejudicial to the public interest as set out in s. 127(5) of the Act;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this order;

AND WHEREAS by Authorization Order made April 1, 2008, pursuant to subsection 3.5(3) of the Act, the Commission authorized each of W. David Wilson, James E. A. Turner, Lawrence E. Ritchie, Paul K. Bates and David L. Knight, acting alone, to exercise the powers of the Commission to make Orders under section 127 of the Act;

IT IS ORDERED pursuant to clause 2 of subsection 127(1) of the Act that all trading in securities of MP Limited shall cease.

IT IS FURTHER ORDERED pursuant to clause 2 of subsection 127(1) of the Act that all trading by Deng and MP Limited shall cease.

IT IS FURTHER ORDERED that pursuant to clause 3 of subsection 127(1) of the Act that the

exemptions contained in Ontario securities law do not apply to Deng and MP Limited.

IT IS FURTHER ORDERED that pursuant to subsection 127(6) of the Act this order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by order of the Commission.

Dated at Toronto this 13th day of April, 2009.

"David L. Knight"

2.2.3 Lyndz Pharmaceuticals Inc. et al. – ss. 127(1), 127(5)

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5 AS AMENDED

AND

IN THE MATTER OF
LYNDZ PHARMACEUTICALS INC.,
LYNDZ PHARMA LTD., JAMES MARKETING LTD.,
MICHAEL EATCH AND RICKEY MCKENZIE

TEMPORARY ORDER
Section 127(1) & 127(5)

WHEREAS on December 4, 2008, the Ontario Securities Commission (the "Commission") ordered pursuant to sections 127(1) and 127(5) of the Securities Act, R.S.O. 1990, c. S.5, as amended (the "Act") that immediately for a period of 15 days from the date thereof: (a) all trading in securities of Lyndz Pharmaceuticals Inc. shall cease; (b) all trading in securities by the Respondents shall cease; and (c) the exemptions contained in Ontario securities law do not apply to the Respondents (the "Temporary Order");

AND WHEREAS on December 8, 2008, the Commission issued a Notice of Hearing, accompanied by Staff's Statement of Allegations;

AND WHEREAS on December 17, 2008, the Temporary Order was continued to February 13, 2009;

AND WHEREAS on February 13, 2009, the Temporary Order was continued to April 22, 2009;

AND WHEREAS on April 21, 2009, a hearing was held in this matter;

AND WHEREAS counsel for Michael Eatch, Rickey McKenzie, Lyndz Pharmaceuticals Inc. and James Marketing Ltd. have consented to the continuation of the Temporary Order;

AND WHEREAS Lyndz Pharma Ltd did not appear;

AND UPON RECEIVING submissions from counsel for Staff of the Commission ("Staff");

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this order;

IT IS ORDERED THAT pursuant to s. 127(8) of the Act, the Temporary Order is continued to July 7, 2009; and,

IT IS FURTHER ORDERED THAT this matter is adjourned to July 6, 2009, at 10:00 am.

DATED at Toronto this 21st day of April, 2009.

"Wendell S. Wigle"

"Suresh Thakrar"

2.2.4 Aviva Investors Global Services Limited et al. – ss. 3.1(1), 80

Headnote

Non-resident advisers exempted from adviser registration requirement in subsection 22(1)(b) of the Commodity Futures Act (CFA) where the non-resident acts as an adviser to mutual funds or non-redeemable investment funds in respect of trading in certain commodity futures contracts and commodity futures options – Contracts and options are primarily traded on commodity futures exchanges outside of Canada and primarily cleared outside of Canada – Funds are established outside of Canada, but may distribute their securities to certain Ontario residents.

Exemption subject to conditions corresponding to the requirements for the exemption from the adviser registration requirement in the Securities Act contained in section 7.10 of OSC Rule 35-502 Non-Resident Advisers – Exemption also subject to requirements relating to the registration or licensing status of the non-resident adviser in its principal jurisdiction and disclosure to Ontario resident securityholders of the corresponding fund – Exemption order has a five-year "sunset date".

Assignment by Commission to the Director of the powers and duties vested in the Commission under subsection 78(1) of the CFA to vary the exemption order by specifically naming affiliates of the initial applicants as named applicants for the purposes of the exemption, following an affiliate notice and Director consent procedure specified in the decision.

Statutes Cited

Commodity Futures Act, R.S.O. 1990, c. C.20, as am., ss. 1(1), 3.1(1), 22, 22(1)(b), 78(1), 80.
Securities Act (Ontario), R.S.O. 1990, c. S.5, as am., s. 25.

National Instruments Cited

National Instrument 45-106 Prospectus and Registration Exemptions.

OSC Rules Cited

OSC Rule 35-502 Non Resident Advisers, s. 7.10.

OSC Notices Cited

Notice of Proposed Rule 35-502 International Advisers, (1998) 21 OSCB 2583.

IN THE MATTER OF
THE COMMODITY FUTURES ACT,
R.S.O. 1990, CHAPTER C.20, AS AMENDED
(the CFA)

AND

IN THE MATTER OF
AVIVA INVESTORS GLOBAL SERVICES LIMITED,
AVIVA INVESTORS NORTH AMERICA, INC.
AND
AVIVA INVESTORS LUXEMBOURG S.A.

AND

IN THE MATTER OF
THE ASSIGNMENT OF CERTAIN POWERS AND
DUTIES OF THE
ONTARIO SECURITIES COMMISSION

ORDER AND ASSIGNMENT
(Section 80 and Subsection 3.1(1) of the CFA)

UPON the application (the **Application**) to the Ontario Securities Commission (the **Commission**) by Aviva Investors Global Services Limited (**AIGSL**), Aviva Investors North America, Inc. (**AINA**), and Aviva Investors Luxembourg S.A. (**AIL**) (collectively, the **Aviva Applicants**), on their own behalf, and on behalf of Aviva Affiliates (as defined below) that file an Identifying Notice (as defined below) to become a Named Applicant (as defined below), for:

(a) an order of the Commission, pursuant to section 80 of the CFA (the **Order)**, that each of the Aviva Applicants, and each of the Aviva Affiliates that file an Identifying Notice to become a Named Applicant for the purposes of this Order (including their respective directors, partners, officers, employees or other individual representatives, acting on their behalf), is exempt, for a period of five years, from the adviser registration requirement in the CFA (as defined below) in connection with the Named Applicant acting as an adviser to one or more Funds (as defined below), in respect of Contracts (as defined below); and

(b) an assignment by the Commission, pursuant to subsection 3.1(1) of the CFA (the **Assignment**), to each Director (acting individually) of the powers and duties vested in the Commission under subsection 78(1) of the CFA, to vary the above order, from time to time, by specifically naming one or more of the Aviva Affiliates, that file an Identifying Notice, as a Named Applicant for the purposes of this Order;

AND WHEREAS for the purposes of this Order and Assignment (collectively, this **Decision**);

(i) the following terms shall have the following meanings:

"adviser registration requirement in the CFA" means the provisions of section 22 of the CFA that prohibit a person or company from acting as an adviser unless the person or company satisfies the applicable provisions of section 22 of the CFA;

"adviser registration requirement in the OSA" means the provisions of section 25 of the OSA that prohibit a person or company from acting as an adviser, as defined in the OSA, unless the person or company satisfies the applicable provisions of section 25 of the OSA;

"Aviva Affiliate" means an entity, other than the Aviva Applicants, that is an affiliate of one of the Aviva Applicants;

"Contract" means a commodity futures contract or a commodity futures option that is, in each case, primarily traded on one or more organized exchanges that are located outside of Canada and primarily cleared through one or more clearing corporations that are located outside of Canada;

"Director's Consent" means, for an Aviva Affiliate, the Director's Consent referred to in paragraph 3, below;

"Fund" means an investment fund;

"Identifying Notice" means, for an Aviva Affiliate, the Identifying Notice referred to in paragraph 2, below;

"Named Applicants" means:

(a) the Aviva Applicants; and

(b) Aviva Affiliates that have filed an Identifying Notice, to become a Named Applicant for the purposes of this Order, and for which the Director has issued a Director's Consent;

"Objection Notice" means, for an Aviva Affiliate, an objection notice, as described in paragraph 4, below, that is issued by the Director, following the filing by the Aviva Affiliate of an Identifying Notice, as described in paragraph 2, below;

"OSA" means the *Securities Act* (Ontario);

"OSC Rule 35-502" means Ontario Securities Commission Rule 35-502 *Non Resident Advisers*, made under the OSA; and

"prospectus requirement in the OSA" means the requirement in the OSA that prohibits a person or company from distributing a security unless a preliminary prospectus and prospectus for the security have been filed and receipts obtained for them;

(ii) terms used in this Decision that are defined in the OSA, and not otherwise defined in the Decision or in the CFA, shall have the same meaning as in the OSA, unless the context otherwise requires; and

AND UPON considering the Application and the recommendation of staff of the Commission;

AND UPON the Aviva Applicants having represented to the Commission that:

1. Each Aviva Applicant is, and any Aviva Affiliate that files an Identifying Notice for the purpose of becoming a Named Applicant in accordance with this Decision will, at the relevant time, be an entity organized under the laws of a jurisdiction outside of Canada. In particular:

   (a) AIGSL is a company formed under the laws of England and Wales;

   (b) AINA is a company formed under the laws of Iowa; and

   (c) AIL is a company formed under the laws of Luxembourg.

2. An Aviva Affiliate, that is not a Named Applicant, that proposes to rely on the exemption from the adviser registration requirement in the CFA provided in this Order will complete and file with the Commission (Attention: Manager, Registrant Regulation) two copies of a notice (the **Identifying Notice**, in the form of Part A of Schedule A to this Decision), applying to the Director, acting on behalf of the Commission under the below Assignment, to vary this Order to specifically name the Aviva Affiliate as a Named Applicant for the purposes of this Order. The Identifying Notice will be filed not less than ten (10) days before the date the Aviva Affiliate proposes to rely on the exemption set out in the Order.

3. If, in the Director's opinion, it would not be prejudicial to the public interest to specifically name an Aviva Affiliate as a Named Applicant for the purposes of this Order, the Director will, within ten (10) days after receiving an Identifying Notice from the Aviva Affiliate, issue to the Aviva Affiliate a written consent (the **Director's Consent**, in the form of Part B of the attached Schedule). However, an Aviva Affiliate will not be a Named Applicant for the purposes of this Order unless and until the corresponding Director's Consent is issued by the Director.

4. If, after reviewing an Identifying Notice for an Aviva Affiliate, the Director is not of the opinion that it would not be prejudicial to the public interest to specifically name such Aviva Affiliate as a Named Applicant for the purposes of this Order, the Director will issue to the Aviva Affiliate a written notice of objection (the **Objection Notice**), in which case the Aviva Affiliate will not be permitted to rely on the exemption from the adviser registration requirement in the CFA provided to Named Applicants in this Order, but may, by notice in writing sent by registered mail to the Secretary of the Commission within 30 days after receiving the Objection Notice, request and be entitled to a hearing and review by the Commission of the Director's objection.

5. Subsection 78(1) of the CFA provides that the Commission may, on the application of a person or company affected by the decision, make an order revoking or varying a decision of the Commission if, in the Commission's opinion, the order would not be prejudicial to the public interest. Further, subsection 3.1(1) of the CFA provides that a quorum of the Commission may assign any of its powers and duties under the CFA (except powers and duties under section 4 and Part IV) to the Director.

6. Any Funds in respect of which a Named Applicant may act as adviser (under the CFA) pursuant to this Order will be established outside of Canada. Securities of the Funds are and will be primarily offered outside of Canada to institutional investors and high net worth individuals. To the extent the securities of the Funds will be offered to Ontario residents, such investors will qualify as "accredited investors" for the purposes of National Instrument 45-106 *Prospectus and Registration Exemptions*.

7. None of the Funds in respect of which a Named Applicant may act as an adviser (under the CFA) pursuant to this Order has any intention of becoming a reporting issuer under the OSA or under the securities legislation of any other jurisdiction in Canada.

8. Paragraph 22(1)(b) of the CFA prohibits a person or company from acting as an adviser unless the person or company is registered as an adviser under the CFA, or is registered as a representative or as a partner or an officer of a registered adviser and is acting on behalf of such registered adviser, and otherwise satisfies the applicable requirements specified in section 22 of the CFA. Under the CFA, "adviser" means a person or company engaging in or holding himself, herself or itself out as engaging in the business of advising others as to trading in "contracts", and "contracts" is defined in subsection 1(1) of the CFA to mean "commodity futures contracts" and "commodity futures options" (with these latter terms also defined in subsection 1(1) of the CFA).

9. Where securities of a Fund are offered by the Fund to an Ontario resident, a Named Applicant that engages in the business of advising the Fund as to the investing in or the buying or selling of securities may, by so acting, be interpreted as acting as an adviser, as defined in the OSA, to the Ontario residents who acquire the securities offered by the Fund, as suggested in the Notice of the Commission dated October 2, 1998, requesting comments on the then proposed OSA Rule 35-502. Similarly, where securities of a Fund are offered to Ontario residents, a Named Applicant that engages in the business of advising the Fund as to trading in commodity futures contracts or commodity futures

options, may, by so acting, also be interpreted as acting as an adviser (as defined in the CFA) to the Ontario residents who acquire the securities offered by the Fund.

10. None of the Aviva Applicants is registered in any capacity under the CFA, and none of the Named Applicants will be registered under the CFA so long as the particular Named Applicant remains a Named Applicant for the purposes of this Order. If a Named Applicant advises any Funds (that has distributed its securities to any Ontario residents) as to investing in or the buying or selling securities, it will comply with the adviser registration requirement in the OSA. Currently, the Aviva Applicants are not registered in any capacity under the OSA, other than AINA, which is registered with the Commission as an international adviser (investment counsel and portfolio manager).

11. There is currently no rule or other regulation under the CFA that provides an exemption from the adviser registration requirement in the CFA for a person or company acting as an adviser, in respect of commodity futures options or commodity futures contracts, that corresponds to the exemption from the adviser registration requirement in the OSA for acting as an adviser, as defined in the OSA, in respect of securities, that is contained in section 7.10 of OSC Rule 35-502.

12. Section 7.10 of OSC Rule 35-502 provides that the adviser registration requirement in the OSA does not apply to a person or company acting as a portfolio adviser (as defined in the Rule) to a Fund (as defined in the Rule), if the securities of the Fund are:

    (a) primarily offered outside of Canada;

    (b) only distributed in Ontario through one or more registrants under the OSA; and

    (c) distributed in Ontario in reliance upon an exemption from the prospectus requirement in the OSA.

13. The Aviva Applicants are or will be appropriately registered or licensed or are or will be entitled to rely on appropriate exemptions from such registrations or licences to provide advice to the Funds pursuant to the applicable legislation of its principal jurisdiction. In particular:

    (a) AIGSL is authorized and regulated by the UK Financial Services authority to provide investment management services;

    (b) AINA is registered with the U.S. Securities and Exchange Commission as an investment advisor; and

    (c) AIL is authorized and regulated by the Commission de Surveillance du Secteur Financier.

AND UPON the Commission being of the opinion that to do so would not be prejudicial to the public interest;

IT IS ORDERED, pursuant to section 80 of the CFA, that each of the Named Applicants (including the respective directors, partners, officers, employees or other individual representatives of each of the Named Applicants, acting on behalf of the Named Applicant) is exempted from the adviser registration requirement in the CFA in connection with the Named Applicant acting as an adviser to one or more Funds, in respect of Contracts, provided that:

1. at the time the Named Applicant so acts as an adviser to any such Fund,

    A. the Named Applicant is not ordinarily resident of Ontario;

    B. the Named Applicant is appropriately registered or licensed, or entitled to rely upon appropriate exemptions from registration or licensing requirements, in order to provide to the Fund advice as to trading in the corresponding Contracts, pursuant to the applicable legislation of the Named Applicant's principal jurisdiction;

    C. securities of the Funds are:

        (i) primarily offered outside of Canada;

        (ii) only distributed in Ontario through one or more registrants under the OSA; and

        (iii) distributed in Ontario in reliance on an exemption from the prospectus requirement in the OSA;

    D. prior to their purchasing any securities of the Funds, all investors in the Funds who are resident in Ontario shall have received disclosure that includes:

(i) a statement to the effect that there may be difficulty in enforcing any legal rights against the Fund or the Named Applicant (including the individual representatives of the Named Applicant acting on behalf of the Named Applicant), because the Named Applicant is a resident outside of Canada and, to the extent applicable, all or substantially all of its assets are situated outside of Canada; and

(ii) a statement to the effect that the Named Applicant is not, or will not be, registered (or licensed) under the CFA and, as a result, investor protections that might otherwise be available to clients of a registered adviser under the CFA will not be available to purchasers of securities of the Fund; and

2. this Order shall expire five years after the date hereof;

AND UPON the Commission also being of the opinion that to do so would not be prejudicial to the public interest;

PURSUANT to subsection 3.1(1) of the CFA, the Commission hereby assigns to each Director, acting individually, the powers and duties vested in the Commission under subsection 78(1) of the CFA to:

(i) vary the above Order, from time to time, by specifically naming any one or more Aviva Affiliates that has filed an Identifying Notice, as described in paragraph 2, above, as a Named Applicant for the purposes of the Order, by issuing a Director's Consent, as described in paragraph 3, to the Aviva Affiliate; and

(ii) object, from time to time, to varying the above Order to specifically name any one or more Aviva Affiliates that has filed an Identifying Notice, as described in paragraph 2, above, as a Named Applicant, by issuing to the Aviva Affiliate an Objection Notice, as described in paragraph 4, above, provided, however, that, in the event of any such objection, the corresponding Aviva Affiliate may, by notice in writing sent by registered mail to the Secretary of the Commission, within 30 days after receiving the Objection Notice, request and be entitled to a hearing and review of the objection by the Commission.

April 21, 2009

"Carol S. Perry"
Commissioner
Ontario Securities Commission

"James E. A. Turner"
Commissioner
Ontario Securities Commission

SCHEDULE A

FORM OF IDENTIFYING NOTICE
AND
DIRECTOR'S CONSENT

Part A: Identifying Notice to the Commission

To: Ontario Securities Commission (the **Commission**)
Attention: Manager, Registrant Regulation

From: [Insert name and address] (the **Aviva Affiliate**)

Re: ***In the Matter of Aviva Investors Global Services Limited, Aviva Investors North America, Inc. and Aviva Investors Luxembourg S.A.***
(collectively, the Aviva Applicants)
OSC File No.: 2009/0106

The undersigned, being an authorized representative of the above Aviva Affiliate, hereby represents to the Commission that:

1. On April ___, 2009, the Commission issued an order (the **Order**), pursuant to section 80 of the *Commodity Futures Act* (Ontario) (the **CFA**), that each of the Named Applicants (as defined in the Decision containing the Order) is exempt from the adviser registration requirement in paragraph 22(1)(b) of the CFA in respect of the Named Applicant acting as an adviser to one or more of the Funds (as defined in the Decision), in respect of Contracts (as defined in the Decision), subject to certain terms and conditions specified in the Order.

2. The Aviva Affiliate has attached a copy of the Decision to this Identifying Notice.

3. The Aviva Affiliate is an affiliate of Applicant.

4. The Aviva Affiliate (whose name does not specifically appear in the Order) hereby applies to the Director, acting on behalf of the Commission under the Assignment in the Decision, to vary the Order to specifically name the Aviva Affiliate as a Named Applicant for the purposes of the Order, pursuant to section 78 of the CFA.

5. The Aviva Affiliate confirms the truth and accuracy of all the information set out in the Decision.

6. This Identifying Notice has been filed with the Commission not less than ten (10) days prior to the date on which the Aviva Affiliate proposes to rely on the exemption from the adviser registration requirement in the CFA provided to Named Applicants in the Order, subject to the terms and conditions specified in the Order.

7. The Aviva Affiliate has not, and will not, rely on such exemption unless and until it has received from the Director, a written Director's Consent, as provided in the form of Part B of Schedule A attached to the Decision.

Dated at _____ this ____ day of _____, 20___.

_____
Name:

_____
Title:

Part B: Director's Consent

To: _____ (the **Aviva Affiliate**)

From: Director
Ontario Securities Commission

Re: In the Matter of Aviva Investors Global Services Limited, Aviva Investors North America, Inc. and Aviva Investors Luxembourg S.A.
(collectively, the Aviva Applicants)
OSC File No.: 2009/0106

I acknowledge receipt from the Aviva Affiliate of its Identifying Notice, dated _____, 20___, by which the Aviva Affiliate has applied to the Director, acting on behalf of the Commission under the Assignment in the Decision attached to Identifying Notice, to specifically name the Aviva Affiliate as a Named Applicant for the purposes of the Order contained in the Decision.

Based on the representations contained in the Decision and in the Identifying Notice, and my being of the opinion that to do so would not be prejudicial to the public interest, on behalf of the Commission, as a Director for the purposes of the *Commodity Futures Act* (Ontario), I hereby vary the Order to specifically name the Aviva Affiliate as a Named Applicant for the purposes of the Order.

Dated at _____ this ____ day of _____, 20___.

ONTARIO SECURITIES COMMISSION

By:

_____
Name of Signatory

_____
Position of Signatory

2.2.5 Nest Acquisitions and Mergers and Caroline Frayssignes – ss. 127(1), 127(8)

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
NEST ACQUISITIONS AND MERGERS AND
CAROLINE FRAYSSIGNES

ORDER
(Sections 127(1) & 127(8) of the *Securities Act*)

WHEREAS on April 8, 2009, the Ontario Securities Commission (the "Commission") issued a temporary cease trade order (the "Temporary Order") pursuant to sections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") ordering that all trading in securities by Nest Acquisitions and Mergers ("Nest") and Caroline Frayssignes ("Frayssignes") shall cease;

AND WHEREAS on April 8, 2009, the Commission ordered that the Temporary Order shall expire on the 15th day after its making unless extended by order of the Commission;

AND WHEREAS on April 15, 2009, the Commission issued a Notice of Hearing to consider, among other things, the extension of the Temporary Order, to be held on April 22, 2009 at 2:00 p.m;

AND WHEREAS Staff served Nest and Frayssignes with the Notice of Hearing on April 16, 2009 by sending a copy by email to counsel for Nest and Frayssignes;

AND WHEREAS the Commission held a Hearing on April 22, 2009 and counsel for Staff and an agent for counsel for the respondents attended before the Commission;

AND WHEREAS counsel for Staff provided the Commission with a signed consent to an order extending the Temporary Order until April 21, 2009;

AND WHEREAS the Commission is of the opinion that the time required to conclude a hearing could be prejudicial to the public interest as set out in section 127(5) of the Act;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

AND WHEREAS upon considering the consent of the parties and pursuant to section 127(8) satisfactory information has not been provided to the Commission by any of the respondents;

IT IS HEREBY ORDERED pursuant to section 127(8) that the Temporary Order is extended until May 22, 2009.

IT IS FURTHER ORDERED that the hearing is adjourned to May 21, 2009 at 2:00 p.m.

DATED at Toronto this 22nd day of April 2009.

"Wendell S. Wigle"

"Margot C. Howard"

2.3 Rulings

2.3.1 BMO Harris Investment Management Inc. – s. 74(1)

Headnote

Relief from the dealer registration and prospectus requirements of the Act to permit the distribution of pooled fund securities to managed accounts held by non-accredited investors on an exempt basis - NI 45-106 containing carve-out for managed accounts in Ontario prohibiting BMO Harris from making exempt distributions of securities of its proprietary pooled funds to its managed account clients in Ontario unless managed account client qualifies as accredited investor or invests $150,000 - BMO Harris providing portfolio management services to high net worth clients - Not all managed account clients are accredited investors - BMO Harris permitted to make exempt distributions of proprietary pooled funds to its managed accounts, including those held by non-accredited investors, provided written notice is sent to clients advising them of the relief granted - Securities Act (Ontario).

Statute Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25, 53, 74(1).

Rules Cited

National Instrument 45-106 Prospectus and Registration Exemptions.

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED
(the "Act")

AND

IN THE MATTER OF
BMO HARRIS INVESTMENT MANAGEMENT INC.
(the "Filer")

RULING
(Subsection 74(1) of the Act)

Background

The Ontario Securities Commission (the "**Commission**") has received an application from the Filer, on behalf of itself and any open-ended investment fund that is not a reporting issuer and that is currently, or will be after the date of this ruling, established and managed by the Filer (together, the "**Funds**", individually, a "**Fund**") for a ruling, pursuant to subsection 74(1) of the Act, that distributions of securities of the Funds to managed accounts of Clients (as hereinafter defined) to which the Filer provides discretionary investment management services will not be subject to the dealer registration and prospectus requirements under sections 25 and 53 of the Act (the "**Dealer Registration and Prospectus Requirements**").

Interpretation

Defined terms contained in the Act and in National Instrument 14-101 *Definitions* have the same meaning in this ruling unless they are defined in this ruling.

Representations

This ruling is based on the following facts represented by the Filer:

1. The Filer is incorporated under the laws of Canada. Its head office is in Toronto.

2. The Filer is registered with the Commission as an Investment Counsel, Portfolio Manager, Commodity Futures Trading Manager, and Limited Market Dealer. The Filer has the equivalent of the Investment Counsel/Portfolio Manager registration in each of the other jurisdictions of Canada (the "**Other Jurisdictions**").

3. The Filer offers discretionary portfolio management services to individuals, corporations and other entities (each, a "Client") seeking wealth management or related services ("**Managed Services**") through a managed account. Except in certain limited circumstances, the Filer will provide Managed Services only to high net worth Canadians, generally with greater than $500,000 of investable assets. A small percentage of its "legacy accounts" (opened before 2000) are smaller than $500,000. A significant majority of the Filer's Managed Services Clients meet the "accredited investor" requirements of NI 45-106 *Prospectus and Registration Exemptions* ("**NI 45-106**"). Certain of the Managed Services Clients that hold the smaller accounts may not however qualify as accredited investors under NI 45-106.

4. The Managed Services are provided by investment counsellors of the Filer ("**Investment Counsellors**") who meet the proficiency requirements of an advising officer or advising representative (or associate advising officer or associate advising representative) under Ontario securities law.

5. Managed Services Clients are referred to the Filer from within the Bank of Montreal ("**BMO**") group of companies. The Filer employs personal wealth consultants who work with others within the BMO group of companies to assess clients for whom the services of the Filer would be appropriate and therefore obtain referrals from the retail and commercial banking unit of BMO. Referral fees are paid only to contacts within the BMO group of companies for the referral of a Client based on the value of the assets that the Client transfers to the Filer. The Filer does not currently pursue external referrals to any extent.

6. The Filer's Investment Counsellors ensure that an account application and a detailed managed account agreement ("**Managed Account Agreement**") are duly completed by a new Managed Services Client. The Managed Account Agreement authorizes the Filer to make investment decisions for the managed account and gives the Filer full discretionary authority to trade in securities for the managed account without obtaining the specific consent of the Client to the trade. The Managed Account Agreement further sets out how the managed account operates and informs the Client of the Filer's various rules, procedures and policies.

7. At the initial meeting between a new Managed Services Client and an Investment Counsellor, an Investment Policy Statement ("**IPS**") is established for the Client. The IPS provides the general investment goals and objectives of a Client and describes the strategies that the Filer shall employ to meet these objectives. This includes specific information on matters such as asset allocation, risk tolerance and liquidity requirements.

8. After the initial meeting, the Filer's Investment Counsellors offer to meet at least twice per year with their Managed Services Clients to review the performance of their account and their investment goals. In most cases, the larger the managed account, the more frequent the meetings.

9. Managed Services Clients are provided with a quarterly portfolio statement showing all transactions carried out in their account during the quarter. The Investment Counsellor is available to review and discuss with a new or existing Managed Services Client the first quarterly portfolio statement as well as any subsequent portfolio statement, as applicable, that is prepared for that Client.

10. The Filer has determined that to best fulfill its fiduciary duty to its Clients nation-wide, a portion of the asset mix in each Client's portfolio should be invested in what are commonly referred to as alternative investments, including non-prospectus qualified investment funds such as the Funds. The Filer's Clients have also expressed ever-increasing interest in having a portion of their accounts invested in such investment funds.

11. The Funds in which the Filer might invest on behalf of its Clients are, or will be, established and managed by the Filer. The Filer is, or will be, the adviser to the Funds with primary oversight over the management of their portfolios. The Filer may retain an arms-length sub-adviser for the Funds. The Funds may make direct investments in individual securities and/or in another investment fund(s) managed either by the Filer (or its affiliates) or arms length fund managers.

12. The Funds are, or will be, established by the Filer with a view to achieving efficiencies in the delivery of portfolio management services to its Clients' managed accounts. The Filer will not be paid any compensation with respect to the distribution of the Funds' securities to the managed accounts.

13. Investments in individual securities may not be appropriate for the Managed Services Clients with smaller managed accounts since they may not receive the same asset diversification benefits and may, as a result of the minimum commission charges, incur disproportionately higher brokerage commissions relative to the Clients with larger managed accounts.

14. To give all of its Managed Services Clients the benefit of asset diversification, access to investment products with a very high minimum investment threshold and economies of scale on brokerage commission charges, the Filer proposes to cause all of its Managed Services Clients, including those that do not qualify as accredited investors, to invest in securities of the Funds, subject to each Managed Services Client's risk tolerance.

15. Each Fund will pay all administration fees and expenses relating to its operation, including any management or performance fees paid to the Filer. Where the Filer invests on behalf of a managed account in Funds that would otherwise pay a management fee and/or performance-based fee to the Filer, the necessary steps will be taken to ensure that there will be no duplication of fees between a managed account and the Funds. Any sub-advisor to a Fund retained by the Filer will earn a fee charged to the Fund or paid by the Filer directly. Terms of the fee arrangements with a Client are currently, and in the future will be, detailed in the Managed Account Agreement.

16. While a managed account qualifies as an "accredited investor" in the Other Jurisdictions, NI 45-106 contains a carve out for managed accounts in Ontario when the securities being purchased by the managed account are those of an investment fund. Absent the relief being requested, the Funds are prohibited in Ontario from distributing, and the Filer is effectively prohibited from investing in, securities of the Funds for managed accounts it manages, in reliance upon the accredited investor exemption in NI 45-106 in circumstances where the individual Client who is the beneficial owner of the managed account is not otherwise qualified as an "accredited investor". Reliance upon the $150,000 minimum investment exemption available under NI 45-106 may not be appropriate for smaller managed accounts as this might require a disproportionately high percentage of the account to be invested in an investment fund.

17. Under the exempt distribution rule applicable in the Other Jurisdictions, there is no restriction on the ability of managed accounts to purchase investment fund securities on an exempt basis. Under NI 45-106, a managed account in the Other Jurisdictions can acquire securities of the Funds as an accredited investor.

Ruling

The Commission being satisfied that the relevant test contained in subsection 74(1) of the Act has been met, the Commission rules pursuant to subsection 74(1) of the Act that relief from the Dealer Registration and Prospectus Requirements is granted in connection with the distribution of securities of the Funds to Managed Services Clients provided that,

(a) this ruling will terminate upon the coming into force of any legislation or rule of the Commission exempting a trade by a fully managed account in Ontario in securities of investment funds from both the Dealer Registration and Prospectus Requirements;

(b) before making trades in securities of the Funds on behalf of a Client, the Filer provides the Client with 60 days prior written notice advising the Client of:

  (i) the filing of the Filer's application with the Commission,

  (ii) the nature of the relief granted under this ruling,

  (iii) the fact that the ruling permits the Client to invest in an investment fund product which the Client otherwise would not be allowed to invest in on an exempt basis through their managed account; and

(c) before a Client is referred to the Filer, the terms of the referral arrangement are set out in a written agreement between the Filer and the person or company receiving the referral, the Filer records all referral fees on its records, and the Filer ensures that before the earlier of opening the Client's account or any services are provided to the Client under the referral arrangement, the Client receives written disclosure of the referral arrangement that includes:

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

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

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

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

  (v) 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; and

  (vi) a statement that all activity requiring registration resulting from the referral arrangement will be provided by the Filer, and

  if there is a material change to the information set out in clauses (i) to (vi), the Filer must ensure that written disclosure of that change is provided to each Client affected by the change as soon as practicable and, in any event, no later than the 30th day before the date on which a referral fee is next paid or received.

"James E. A. Turner"
Vice-Chair

"Wendell S. Wigle"
Commissioner

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Patheon Inc.

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
PATHEON INC.

AND

IN THE MATTER OF
AN OFFER TO PURCHASE FOR CASH
ANY AND ALL OF THE RESTRICTED VOTING SHARES
OF PATHEON INC. BY JLL PATHEON HOLDINGS LLC

AND

IN THE MATTER OF
AN APPLICATION BY THE SPECIAL COMMITTEE OF
THE BOARD OF DIRECTORS OF PATHEON INC.
FOR CERTAIN RELIEF UNDER SECTIONS 104(1) AND 127

DECISION

Hearing:	April 15, 16, 2009		
Decision:	April 16, 2009		
Panel:	James E. A. Turner	–	Vice-Chair and Chair of the Panel
	Mary G. Condon	–	Commissioner
Counsel:	J. Sasha Angus Naizam Kanji Michael Tang	–	For the Ontario Securities Commission
	Katherine L. Kay Eliot N. Kolers Alex D. Rose Ron Ferguson David Weinberger	–	For JLL Patheon Holdings, LLC
	Luis Sarabia William Gula Patrick Moyer Philippe Rousseau	–	For The Special Committee of Patheon Inc.

DECISION

[1] The Ontario Securities Commission issued a decision today in the above matter. The Commission dismissed the application by the Special Committee of the Board of Directors of Patheon Inc. ("Patheon") dated April 6, 2009 provided JLL Patheon Holdings, LLC ("JLL") complies with the following terms and conditions:

1. JLL shall terminate its voting agreement dated March 10, 2009 with the group of shareholders of Patheon who acquired restricted voting shares of Patheon in connection with the acquisition by Patheon of MOVA Pharmaceuticals Corporation (the "MOVA Group");

2. JLL shall certify that no oral or written agreement, arrangement or understanding, formal or informal, direct or indirect, currently exists or will be entered into or agreed to during the period of JLL's take-over bid dated March 11, 2009 for the restricted voting shares of Patheon (the "Offer") and for a period of 120 days following the expiry of the Offer with any shareholder of Patheon in respect of (i) the Offer or any second-step or compulsory acquisition transaction following the Offer, or (ii) Patheon or any of its securities, including the acquisition or voting thereof other than in connection with a second-step or compulsory acquisition transaction in which all shareholders of Patheon are to receive the same consideration as the consideration under the Offer or all shareholders tendering to the Offer receive the same consideration as that paid to shareholders in such second-step or compulsory acquisition transaction;

3. The MOVA Group shall certify that no oral or written agreement, arrangement or understanding, formal or informal, direct or indirect, currently exists or will be entered into or agreed to with JLL during the period of the Offer and for a period of 120 days following the expiry of the Offer in respect of (i) the Offer or any second-step or compulsory acquisition transaction following the Offer, or (ii) Patheon or any of its securities, including the acquisition or voting thereof other than in connection with a second-step or compulsory acquisition transaction in which all shareholders of Patheon are to receive the same consideration as the consideration under the Offer or all shareholders tendering to the Offer receive the same consideration as that paid to shareholders in such second-step or compulsory acquisition transaction;

4. JLL shall amend the Offer circular to make full disclosure of the terms of this decision and of any consequential changes resulting from it;

5. JLL shall issue a news release no later than the date of mailing of the amendment to the Offer circular summarizing the matters referred to in paragraph 4; and

6. JLL shall extend its Offer such that the Offer remains open for acceptance by shareholders for a period ending not less than 15 days following the mailing of the amendment to the Offer circular referred to in paragraph 4.

Dated at Toronto this 16th day of April, 2009.

"James E. A. Turner"

"Mary G. Condon"

Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
Condor Gold Corp.	06 Apr 09	17 Apr 09	17 Apr 09	
Central Industries Corporation Inc.	08 Apr 09	20 Apr 09		22 Apr 09
PreMD Inc.	08 Apr 09	20 Apr 09	20 Apr 09	
Divcom Lighting Inc.	08 Apr 09	20 Apr 09	20 Apr 09	
MonoGen, Inc.	09 Apr 09	21 Apr 09	21 Apr 09	

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
Goldstake Explorations Inc.	08 Apr 09	20 Apr 09	20 Apr 09		
AbitibiBowater Inc.	06 Apr 09	17 Apr 09		20 Apr 09	

4.2.2 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
Coalcorp Mining Inc.	18 Feb 09	03 Mar 09	03 Mar 09		
Outlook Resources Inc.	31 Mar 09	13 Apr 09	13 Apr 09		
TriNorth Capital Inc.	01 Apr 09	14 Apr 09	14 Apr 09		
Orsu Metals Corporation	01 Apr 09	14 Apr 09	14 Apr 09		
Synergex Corporation	02 Apr 09	14 Apr 09	14 Apr 09		
Victhom Human Bionics Inc.	02 Apr 09	14 Apr 09	14 Apr 09		
High River Gold Mines Ltd.	03 Apr 09	15 Apr 09	15 Apr 09		
AbitibiBowater Inc.	06 Apr 09	17 Apr 09		20 Apr 09	
Goldstake Explorations Inc.	08 Apr 09	20 Apr 09	20 Apr 09		

This page intentionally left blank

Chapter 7

Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesScource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

Chapter 8

Notice of Exempt Financings

REPORTS OF TRADES SUBMITTED ON FORMS 45-106F1 AND 45-501F1

Transaction Date	# of Purchasers	Issuer/Security	Total Purchase Price ($)	# of Securities Distributed
03/10/2009	38	2115565 Ontario Inc. - Common Shares	6,985,000.00	34,925,000.00
03/27/2009	1	6990371 Canada Inc. - Notes	25,000.00	N/A
04/07/2009	5	American Electric Power Company, Inc. - Common Shares	23,163,840.00	60,000,000.00
03/30/2009	15	Amerix Precious Metals Corporation - Units	218,400.00	10,920,000.00
04/01/2009	30	Appleton Exploration Inc. - Units	700,746.00	N/A
04/14/2009	5	AppZero Corp. - Debentures	2,000,001.00	1.00
04/01/2009	11	Arizona Capital Fund Inc. - Bonds	145,500.00	1,455.00
04/03/2009	1	Bison Income Trust II - Units	600,000.00	60,000.00
04/06/2009	8	Bolero Resources Corp. - Units	96,210.00	3,207,000.00
03/31/2009	1	Burlington Partners I LP. - Limited Partnership Units	150,000.00	150.00
04/07/2009	12	Canaco Resources Inc. - Units	270,000.00	5,400,000.00
04/09/2009 to 04/19/2009	25	CMC Markets UK plc - Contracts for Differences	166,610.00	6.00
03/31/2009	1	Currie Rose Resources Inc. - Common Shares	12,500.00	250,000.00
04/01/2009	1	DHT maritime, Inc. - Common Shares	687,500.00	9,000,000.00
02/06/2009 to 02/24/2009	4	Diamonds Trust Series I - Common Shares	25,743,796.13	252,937.00
04/02/2009	1	Distil Interactive Ltd. - Debentures	200,000.00	200,000.00
04/08/2009	17	Enmax Corporation - Debentures	249,722,500.00	250,000.00
01/16/2004 to 12/24/2004	16	Farm Mutual Canadian Equity Pooled Fund - Units	4,057,500.00	N/A
05/05/2003 to 12/24/2003	30	Farm Mutual Canadian Equity Pooled Fund - Units	34,597,095.78	N/A
01/07/2005 to 09/09/2005	21	Farm Mutual Canadian Equity Pooled Fund - Units	7,357,500.00	N/A
01/01/2005 to 12/31/2005	21	Farm Mutual Canadian Equity Pooled Fund - Units	14,612,500.00	N/A
01/01/2006 to 12/31/2006	18	Farm Mutual Canadian Equity Pooled Fund - Units	4,967,999.41	N/A
01/01/2006 to	28	Farm Mutual Canadian Fixed Income Pooled	37,524,801.87	N/A

Transaction Date	# of Purchasers	Issuer/Security	Total Purchase Price ($)	# of Securities Distributed
12/31/2006		Fund - Units		
01/07/2005 to 09/09/2005	29	Farm Mutual Canadian Fixed Income Pooled Fund - Units	28,914,451.93	N/A
09/16/2005 to 12/30/2005	26	Farm Mutual Canadian Fixed Income Pooled Fund - Units	15,402,110.84	N/A
02/06/2004 to 12/24/2004	17	Farm Mutual Canadian Fixed Income Pooled Fund - Units	11,815,190.00	N/A
05/05/2003 to 12/24/2003	33	Farm Mutual Canadian Fixed Income Pooled Fund - Units	68,401,701.38	N/A
01/28/2009	1	Financial Select Sector SPDR - Common Shares	121,942.33	10,000.00
02/06/2009 to 02/27/2009	3	Financial Select Sector SPDR - Common Shares	981,905.03	101,600.00
04/08/2009	1	First Leaside Expansion Limited Partnership - Units	70,000.00	70,000.00
04/14/2009	1	First Leaside Fund - Trust Units	3,678.39	3,042.00
04/08/2009 to 04/14/2009	5	First Leaside Fund - Trust Units	60,022.00	60,022.00
04/08/2009 to 04/13/2009	2	First Leaside Fund - Trust Units	30,000.00	30,000.00
04/08/2009	1	First Leaside Premier Limited Partnership - Units	44,563.35	36,072.00
04/08/2009 to 04/13/2009	2	First Leaside Progressive Limited Partnership - Units	70,000.00	70,000.00
03/30/2009 to 04/03/2009	11	General Motors Acceptance Corporation of Canada, Limited - Notes	4,417,162.15	4,417,162.15
04/06/2009 to 04/09/2009	5	General Motors Acceptance Corporation of Canada, Limited - Notes	937,510.86	937.50
04/03/2009	3	GreenField Ethanol Inc. - Notes	1,503,909.99	1,503,909.99
04/03/2009	184	GreenField Factoring Inc. - Notes	6,074,479.20	6,074,479.00
04/01/2009 to 04/08/2009	22	Hansa Resources Limited - Common Shares	227,000.00	4,540,000.00
04/07/2009	1	Healthscreen Solutions Incorporated - Debentures	675,000.00	1,324,832.00
04/06/2009	1	Ingersoll-Rand Global Holding Company Limited - Notes	622,150.00	500,000.00
02/09/2009	1	ISHARES 100% HEDGED TO CAD 1 - Common Shares	14,358.43	770.00
01/28/2009	1	iShares CDN S&P/TSX 60 Index Fund - Common Shares	125,143.10	7,500.00
01/30/2009 to 02/19/2009	2	ISHARES CDN S&P/TSX 60 INDEX FUND - Common Shares	800,674.28	50,000.00
02/04/2009	2	iShares DJ US Real Estate - Common Shares	3,937,559.31	95,891.00

Transaction Date	# of Purchasers	Issuer/Security	Total Purchase Price ($)	# of Securities Distributed
01/06/2009 to 01/09/2009	1	ISHARES INC MSCI AUSTRALIA INDEX - Common Shares	51,737.36	3,000.00
02/06/2009 to 02/24/2009	1	ISHARES INC MSCI AUSTRALIA INDEX - Common Shares	137,675.50	9,000.00
02/02/2009	1	ISHARES INC MSCI FRANCE INDEX - Common Shares	176,288.86	8,000.00
02/02/2009	1	ISHARES INC MSCI GERMANY INDEX - Common Shares	311,504.83	16,000.00
02/02/2009	1	ISHARES INC MSCI GERMANY INDEX - Common Shares	311,504.83	16,000.00
02/03/2009 to 02/24/2009	1	ISHARES INC MSCI HONGKONG INDEX - Common Shares	106,023.56	8,500.00
01/09/2009 to 01/28/2009	2	ISHARES INC MSCI JAPAN INDEX - Common Shares	316,038.84	28,600.00
01/30/2009 to 02/24/2009	4	ISHARES INC MSCI JAPAN INDEX - Common Shares	1,238,951.73	115,100.00
01/30/2009 to 02/13/2009	2	ISHARES INC MSCI UNITED KINGDOM INDEX - Common Shares	255,323.20	18,225.00
02/24/2009	1	iShares MSCI Emerging Markets Index - Common Shares	16,565.45	600.00
01/22/2009 to 01/28/2009	2	ISHARES MSCI EMERGING MKTS INDEX - Common Shares	5,295,878.26	181,010.00
01/07/2009 to 01/28/2009	3	iShares Russell 2000 - Common Shares	18,489,257.52	325,300.00
01/30/2009 to 02/26/2009	3	iShares Russell 2000 - Common Shares	18,813,592.19	329,500.00
02/03/2009 to 02/26/2009	1	iShares Russell 2000 Growth - Common Shares	1,341,427.01	22,500.00
02/26/2009 to 02/27/2009	2	iShares Russell 2000 Index Fund - Common Shares	923,961.60	19,600.00
01/07/2009 to 01/28/2009	1	iShares Russell GROWTH - Common Shares	395,551.52	6,500.00
02/23/2009	1	ISHARES S&P 500 INDEX FUND - Common Shares	882,085.31	8,880.00
01/09/2009	1	ISHARES TR MSCI EAFE IDX - Common Shares	21,674.27	400.00
02/12/2009 to 02/26/2009	1	ISHARES TR MSCI EAFE IDX - Common Shares	2,537,954.72	55,400.00
01/30/2009 to 02/13/2009	1	ISHARES TR S&P EURO PLUS - Common Shares	169,456.86	5,000.00
04/01/2009	3	JG Capital Corp. - Common Shares	40,000.00	400,000.00
04/08/2009	18	KBP Capital Corp. - Bonds	534,500.00	5,345.00
04/08/2009	17	Keystone Business Park Inc. - Common Shares	534.50	5,345.00

Transaction Date	# of Purchasers	Issuer/Security	Total Purchase Price ($)	# of Securities Distributed
03/15/2009	2	Kingwest Avenue Portfolio - Units	2,228.47	115.82
03/31/2009	1	Kingwest Canadian Equity Portfolio - Units	96,000.00	12,460.90
04/07/2009 to 04/15/2009	15	La Camera Mining Inc. - Common Shares	1,370,000.00	3,425,000.00
04/01/2009	1	Lignol Energy Corporation - Common Shares	839,632.85	2,047,885.00
04/09/2009	3	Liquid Computing Corporation - Debentures	333,603.01	1.00
04/09/2009	3	Liquid Computing, Inc. - Debentures	216,391.41	1.00
04/14/2009	1	Marathon PGM Corporation - Common Shares	615,000.00	1,500,000.00
02/04/2009	1	MARKET VECTORS GOLD MINERS - Common Shares	21,457.09	500.00
02/06/2009	1	Materials Select Sector SPDR - Common Shares	1,066,830.01	37,800.00
03/30/2009	26	Mineral Deposits Limited - Common Shares	30,472,000.00	58,600,000.00
01/09/2009	1	MSCI EMU IDX FD - Common Shares	116,743.80	3,200.00
04/07/2009	1	New Solutions Financial (II) Corporation - Debentures	220,000.00	1.00
03/30/2009 to 03/31/2009	2	Newport Canadian Equity Fund - Units	18,500.00	180.76
03/30/2009 to 04/03/2009	115	Newport Fixed Income Fund - Units	2,803,501.50	27,661.11
03/31/2009	11	Newport Strategic Yield Fund Limited Partnership - Units	643,992.44	58,882.00
03/27/2009 to 04/03/2009	75	Newport Yield Fund - Units	2,219,857.14	22,850.50
03/31/2009 to 04/07/2009	27	Norsemont Mining Inc. - Common Shares	13,983,530.00	8,600,000.00
04/03/2009	6	NXA Inc. - Common Shares	580,754.08	24,577,802.00
04/16/2009	55	Oro Gold Resources Ltd. - Common Shares	882,021.95	5,880,146.00
04/07/2009	2	Peerset Inc. - Debentures	375,000.00	2.00
04/08/2009	2	Platinex Inc. - Common Shares	17,433.30	174,333.00
04/13/2009	42	Playfair Mining Ltd. - Common Shares	500,195.00	10,003,900.00
01/02/2009 to 01/28/2009	1	POWERSHARES DB CMDTYIDXTRACK UNIT - Common Shares	773,682.96	30,500.00
02/05/2009	1	POWERSHARES QQQ NASDAQ 100 - Common Shares	265,884.08	7,000.00
01/23/2009	1	POWERSHS DB MULTI SECT COMM TREDB - Common Shares	623,842.22	20,040.00
01/09/2009	4	Prinova, Inc. - Units	500,000.00	500,000.00

Transaction Date	# of Purchasers	Issuer/Security	Total Purchase Price ($)	# of Securities Distributed
02/25/2009	1	PROSHARES ULTRA S&P 500 - Common Shares	54,861.35	2,300.00
01/13/2009 to 01/21/2009	2	PRS ULT LEH 20+YR - Common Shares	4,176,162.94	82,140.00
03/31/2009	3	Range Gold Corp. - Units	125,000.00	2,500,000.00
03/27/2009	2	Range Royalty Limited Partnership - Units	137,500.00	11,000.00
03/27/2009 to 03/31/2009	9	Redux Duncan City Centre Limited Partnership - Limited Partnership Units	335,536.00	335,536.00
04/01/2009 to 04/09/2009	4	Sandspring Resources Ltd. - Common Shares	200,000.00	400,000.00
04/08/2009	1	Sentry Select Lazard Global Listed Infrastructure Fund - Units	22,045.00	5,000.00
03/26/2009 to 04/02/2009	5	Seventh Avenue Property Corporation - Mortgage	875,000.00	875.00
01/09/2009 to 01/29/2009	4	SPDR Gold Trust - Common Shares	1,481,580.47	14,487.00
02/02/2009 to 02/27/2009	3	SPDR GOLD TRUST - Common Shares	6,469,574.36	55,285.00
01/05/2009	1	SPDR METALS & MINING ETF - Common Shares	1,167,155.65	30,000.00
01/06/2009 to 01/07/2009	1	SPDR S&P DIVIDEND ETF - Common Shares	3,874,453.81	76,000.00
01/26/2009	2	SPDR S&P Homebuilders ETF - Common Shares	4,260,682.71	307,300.00
04/01/2009	2	Stacey Muirhead Limited Partnership - Limited Partnership Units	92,400.00	3,064.14
04/01/2009	1	Stacey Muirhead RSP Fund - Trust Units	2,500.00	291.39
02/02/2009 to 02/24/2009	6	S&P DEPOSITORY RECEIPT TR UNIT - Common Shares	64,486,021.97	622,676.00
01/08/2009 to 01/26/2009	8	S&P DEPOSITORY RECEIPTS TR UNIT - Common Shares	106,390,245.71	1,011,975.00
02/04/2009	1	Technology Select Sector SPDR - Common Shares	2,981,274.76	150,000.00
04/06/2009	1	Teradyne Inc. - Notes	248,860.00	200,000.00
04/06/2009	7	The Futura Loyalty Group Inc. - Units	400,000.00	10,000,000.00
03/31/2009	4	The McElvaine Investment Trust - Trust Units	21,546.00	1,961.86
01/31/2008 to 12/31/2008	531	Trident Global Opportunities Fund - Units	35,393,540.34	164,206.55
03/31/2009 to 04/02/2009	2	UB Technologies Inc. - Units	200,000.00	1,333,333.00
01/08/2009 to 01/21/2009	2	Vanguard Emerging Market Vipers - Common Shares	9,233,354.40	317,380.00

Transaction Date	# of Purchasers	Issuer/Security	Total Purchase Price ($)	# of Securities Distributed
02/12/2009 to 02/26/2009	1	Vanguard Europe - Common Shares	159,049.31	4,100.00
03/25/2009	1	VE Networks, Inc. - Notes	12,200.00	N/A
03/31/2009	19	Vertex Fund - Units	4,851,599.70	N/A
03/31/2009	16	Walton GA Arcade Meadows 1 Investment Corporation - Common Shares	488,360.00	48,836.00
04/03/2009	52	Walton GA Arcade Meadows 2 Investment Corporation - Limited Partnership Units	857,760.00	857,760.00
04/03/2009	40	Walton TX Amble Way Investment Corporation - Common Shares	723,020.00	72,302.00
04/03/2009	4	Walton TX Amble Way Limited Partnership - Limited Partnership Units	770,953.47	61,919.00
03/31/2009	21	Walton TX Garland Heights 1 Investment Corporation - Common Shares	255,750.00	25,575.00
04/03/2009	2	Zelos Therapeutics Inc. - Notes	186,392.87	1.00

Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Anvil Mining Limited
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated April 15, 2009
NP 11-202 Receipt dated April 15, 2009
Offering Price and Description:
$ * - * Common Shares Price: $ * per Common Share
Underwriter(s) or Distributor(s):
Paradigm Capital Inc.
BMO Nesbitt Burns Inc.
Raymond James Ltd.
Promoter(s):
-
Project #1404755

Issuer Name:
Mercator Minerals Ltd.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated April 21, 2009
NP 11-202 Receipt dated April 21, 2009
Offering Price and Description:
$35,000,000.45 30,434,783 Common Shares Price: $1.15 per Common Share
Underwriter(s) or Distributor(s):
Jennings Capital Inc.
Scotia Capital Inc.
Blackmont Capital Inc.
Haywood Securities Inc.
Acumen Capital Finance Partners Limited
Promoter(s):
-
Project #1407079

Issuer Name:
Bankers Petroleum Ltd.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated April 21, 2009
NP 11-202 Receipt dated April 21, 2009
Offering Price and Description:
$40,001,500.00 - 22,858,000 Common Shares Price: $1.75 per Offered Share
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
Thomas Weisel Partners Canada Inc.
Macquarie Capital Markets Canada Ltd.
BMO Nesbitt Burns Inc.
Genuity Capital Markets
Tristone Capital Inc.
Raymond James Ltd.
Promoter(s):
-
Project #1407110

Issuer Name:
Anvil Mining Limited
Principal Regulator - British Columbia
Type and Date:
Amended and Restated Preliminary Short Form Prospectus dated April 16, 2009
NP 11-202 Receipt dated April 16, 2009
Offering Price and Description:
26,100,000 Common Shares - C$1.15 per Common Share
Underwriter(s) or Distributor(s):
Paradigm Capital Inc.
BMO Nesbitt Burns Inc.
Raymond James Ltd.
Promoter(s):
-
Project #1404755

Issuer Name:
Aurizon Mines Ltd.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated April 14, 2009
NP 11-202 Receipt dated April 15, 2009
Offering Price and Description:
Approximately $50,000,000.00 - 9,708,800 Common Shares $5.15 per Common Share
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
Wellington West Capital Markets Inc.
BMO Nesbitt Burns Inc.
Dundee Securities Corporation
Clarus Securities Inc.
Macquarie Capital Markets Canada Ltd.
Promoter(s):
-
Project #1404442

Issuer Name:
Bell Aliant Regional Communications, Limited Partnership
Principal Regulator - Nova Scotia
Type and Date:
Preliminary Base Shelf Prospectus dated April 17, 2009
NP 11-202 Receipt dated April 17, 2009
Offering Price and Description:
$1,500,000,000 Medium Term Notes
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Beacon Securities Limited
CIBC World Markets Inc.
Casgrain & Company Limited
Desjardins Securities Inc.
National Bank Financial Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc.
Promoter(s):
-
Project #1405925

Issuer Name:
Blue Steel Chemicals Inc.
Principal Regulator - Alberta
Type and Date:
Amended and Restated Preliminary Long Form dated April 30, 2009
NP 11-202 Receipt dated April 15, 2009
Offering Price and Description:
Minimum Offering $1,000,000.00 (1,000,000 Common Shares); Maximum Offering $5,000,000.00 (5,000,000 Common Shares) Price: $1.00 per Common Share
Underwriter(s) or Distributor(s):
Research Capital Corporation
Promoter(s):
Sean Thomas
Paul (Warde) A. Thomas
Nick Blackerman
William M. Blackerman
Dave Cutler
Paul Svoboda
Keith Talbot
Project #1361522

Issuer Name:
Caldwell Balanced Fund
Caldwell Canada Fund
Caldwell Exchange Fund
Caldwell Income Fund
Principal Regulator - Ontario
Type and Date:
Amended and Restated Simplified Prospectuses and Annual Information dated April 17, 2009
NP 11-202 Receipt dated April 21, 2009
Offering Price and Description:
Mutual fund units at net asset value
Underwriter(s) or Distributor(s):
Caldwell Securities Ltd.
Promoter(s):
-
Project #1251407/1373979

Issuer Name:
Canadian Banc Capital Securities Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated April 15, 2009
NP 11-202 Receipt dated April 16, 2009
Offering Price and Description:
$ * - * Class A and F Units Price: $25.00 per Class A Unit and Class F Unit
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
National Bank Financial Inc.
TD Securities Inc.
HSBC Securities (Canada) Inc.
Richardson Partners Financial Limited
Dundee Securities Corporation
Wellington West Capital Markets Inc.
Blackmont Capital Inc.
Canaccord Capital Corporation
Desjardins Securities Inc.
GMP Securities L.P.
Manulife Securities Incorporated
Raymond James Ltd.
Research Capital Corporation
Promoter(s):
Connor, Clark & Lunn Capital Markets Inc.
Project #1405234

Issuer Name:
Claymore Gold Bullion Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated April 21, 2009
NP 11-202 Receipt dated April 21, 2009
Offering Price and Description:
$ * - * Units Price: $10.00 per Unit
Underwriter(s) or Distributor(s):
GMP Securities L.P.
TD Securities Inc.
Genuity Capital Markets
Canaccord Capital Corporation
Dundee Securities Corporation
Richardson Partners Financial Limited
Scotia Capital Inc.
Blackmont Capital Inc.
Desjardins Securities Inc.
Haywood Securities Inc.
Burgeonvest Securities Limited
FirstEnergy Capital Corp.
Research Capital Corporation
Rothenberg Capital Management Inc.
Wellington West Capital Markets Inc.
Promoter(s):
Claymore Investments, Inc.
Project #1406917

Issuer Name:
Enablence Technologies Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated April 15, 2009
NP 11-202 Receipt dated April 15, 2009
Offering Price and Description:
$ * - * Common Shares Price: $ * per Common Share
Underwriter(s) or Distributor(s):
Paradigm Capital Inc.
Haywood Securities Inc.
Raymond James Ltd.
Promoter(s):
-
Project #1404737

Issuer Name:
GHJ Capital Inc.
Type and Date:
Preliminary Long Form Non-Offering Prospectus dated April 15, 2009
Receipted on April 16, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1405154

Issuer Name:
Industrial Alliance Insurance and Financial Services Inc.
Principal Regulator - Quebec
Type and Date:
Preliminary Base Shelf Prospectus dated April 15, 2009
NP 11-202 Receipt dated April 16, 2009
Offering Price and Description:
$1,000,000,000.00:
Debt Securities
Class A Preferred Shares
Common Shares
Subscription Receipts
Warrants
Share Purchase Contracts
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1404937

Issuer Name:
Iteration Energy Ltd.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated April 20, 2009
NP 11-202 Receipt dated April 21, 2009
Offering Price and Description:
$50,048,000.00 -39,100,000 Common Shares Price: $1.28 per Common Share
Underwriter(s) or Distributor(s):
Cormark Securities Inc.
FirstEnergy Capital Corp.
Peters & Co. Limited
CIBC World Markets Inc.
Scotia Capital Inc.
Wellington West Capital Markets Inc.
Promoter(s):
-
Project #1406641

Issuer Name:
Marret High Yield Strategies Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated April 20, 2009
NP 11-202 Receipt dated April 21, 2009
Offering Price and Description:
$ * - * Class A Units and Class F Units Price: $10.00 per Class A Unit and $10.00 per Class F Unit
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
GMP Securities L.P.
CIBC World Markets Inc.
Scotia Capital Inc.
Dundee Securities Corporation
Canaccord Capital Corporation
Raymond James Ltd.
Blackmont Capital Inc.
Desjardins Securities Inc.
HSBC Securities (Canada) Inc.
Manulife Securities Incorporated
Wellington West Capital Markets Inc.
Research Capital Corporation
Promoter(s):
Marret Asset Management Inc.
Project #1406831

Issuer Name:
Navina/Lazard Strategic Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Non-Offering Prospectus dated April 14, 2009
NP 11-202 Receipt dated April 15, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Navina Capital Corp.
Project #1404655

Issuer Name:
Pender Corporate Bond Fund
Pender Small Cap Opportunities Fund
Principal Regulator - British Columbia
Type and Date:
Preliminary Simplified Prospectuses dated April 15, 2009
NP 11-202 Receipt dated April 16, 2009
Offering Price and Description:
Class A, F and I Units
Underwriter(s) or Distributor(s):
PenderFund Capital Management Ltd.
Promoter(s):
Penderfund Capital Management Ltd.
Project #1405101

Issuer Name:
Pengrowth Energy Trust
Principal Regulator - Alberta
Type and Date:
Preliminary Base Shelf Prospectus dated April 14, 2009
NP 11-202 Receipt dated April 15, 2009
Offering Price and Description:
$1,000,000,000.00:
Trust Units
Subscription Receipts
Warrants
Rights
Options
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1404603

Issuer Name:
Vista Gold Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Base Shelf Prospectus dated April 17, 2009
NP 11-202 Receipt dated April 20, 2009
Offering Price and Description:
US$200,000,000.00:
Common Shares
Debt Securities
Warrants
Subscription Receipts
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1406068

Issuer Name:
Bank of Montreal
Principal Regulator - Ontario
Type and Date:
Final Base Shelf Prospectus dated April 17, 2009
NP 11-202 Receipt dated April 20, 2009
Offering Price and Description:
$1,000,000,000.00 - Medium Term Notes (Principal At Risk Notes)
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Promoter(s):
-
Project #1401253

Issuer Name:
Caldwell High Income Equity Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated April 17, 2009
NP 11-202 Receipt dated April 21, 2009
Offering Price and Description:
Mutual fund units at net asset value
Underwriter(s) or Distributor(s):
Caldwell Securities Ltd.
Promoter(s):
-
Project #1373979

Issuer Name:
Celtic Exploration Ltd.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated April 16, 2009
NP 11-202 Receipt dated April 16, 2009
Offering Price and Description:
$31,800,000.00 - 2,400,000 Common Shares Price: $13.25 per Firm Share
Underwriter(s) or Distributor(s):
GMP Securities L.P.
FirstEnergy Capital Corp.
National Bank Financial Inc.
Peters & Co. Limited
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Genuity Capital Markets Limited
RBC Dominion Securities Inc.
Thomas Weisel Partners Canada Inc.
Macquarie Capital Markets Canada Ltd.
Tristone Capital Inc.
Promoter(s):
-
Project #1402909

Issuer Name:
Consolidated Thompson Iron Mines Limited
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated April 17, 2009
NP 11-202 Receipt dated April 17, 2009
Offering Price and Description:
$80,600,000.00 - 31,000,000 Common Shares Price: $2.60 per Common Share
Underwriter(s) or Distributor(s):
Macquarie Capital Markets Canada Ltd.
Canaccord Capital Corporation
GMP Securities L.P.
BMO Nesbitt Burns Inc.
Clarus Securities Inc.
Dundee Securities Corporation
Promoter(s):
-
Project #1402813

Issuer Name:
Credential® EnRich Income Pool
Credential® EnRich Canadian Equity Pool
Credential® EnRich US Equity Pool
Credential® EnRich International Equity Pool
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated April 7, 2009 to the Simplified Prospectuses and Annual Information Forms dated July 4, 2008
NP 11-202 Receipt dated April 17, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Credential Asset Management Inc.
Promoter(s):
-
Project #1402694/1279723

Issuer Name:
Class A and Class D Units (unless otherwise indicated) of:
Credential Money Market Fund (also Class F Units)
Credential Select Conservative Portfolio
Credential Select Balanced Portfolio
Credential Select Growth Portfolio
Credential Select High Growth Portfolio
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated April 7, 2009 to the Simplified Prospectuseses and Annual Information Forms dated June 25, 2008
NP 11-202 Receipt dated April 17, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Credential Asset Management Inc.
Promoter(s):
-
Project #14027001268507

Issuer Name:
Cumberland Capital Appreciation Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated March 31, 2009 to the Simplified Prospectus and Annual Information Form dated July 11, 2008
NP 11-202 Receipt dated April 20, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Cumberland Private Wealth Management Inc.
Promoter(s):
Cumberland Investment Management Inc.
Project #1284239

Issuer Name:
Empire Company Limited
Principal Regulator - Nova Scotia
Type and Date:
Final Short Form Prospectus dated April 16, 2009
NP 11-202 Receipt dated April 17, 2009
Offering Price and Description:
$125,021,750.00 - 2,513,000 Non-Voting Class A Shares
Price: $49.75 per Class A Share
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
TD Securities Inc.
National Bank Financial Inc.
CIBC World Markets Inc.
Beacon Securities Limited
Jennings Capital Inc.
Promoter(s):
-
Project #1402828

Issuer Name:
Equinox Minerals Limited
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated April 16, 2009
NP 11-202 Receipt dated April 16, 2009
Offering Price and Description:
Cdn$160,020,000.00 - 88,900,000 Common Shares -
Price: Cdn$1.80 per Common Share
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
Goldman Sachs Canada Inc.
Cormark Securities Inc.
GMP Securities L.P.
Paradigm Capital Inc.
Raymond James Ltd.
Macquarie Capital Markets Canada Ltd.
UBS Securities Canada Inc.
Promoter(s):
-
Project #1401771

Issuer Name:
Ethical Income Fund
Ethical Monthly Income Fund
Ethical Balanced Fund
Ethical Canadian Dividend Fund
Ethical Canadian Index Fund
Ethical Canadian Stock Fund
Ethical Growth Fund
Ethical Special Equity Fund
Ethical American Multi-Strategy Fund
Ethical Global Dividend Fund
Ethical Global Equity Fund
Ethical International Equity Fund
Ethical Advantage 2010 Fund
Ethical Advantage 2015 Fund
Ethical Advantage 2020 Fund
Ethical Advantage 2030 Fund
Ethical Advantage 2040 Fund
(Class A, Class D and Class F Units)
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated April 7, 2009 to the Simplified Prospectuses and Annual Information Forms dated June 27, 2008
NP 11-202 Receipt dated April 17, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Credential Asset Management Inc.
Credential Asset Management
Promoter(s):
-
Project #1402701/1272349

Issuer Name:
InterOil Corporation
Type and Date:
Final Base Shelf Prospectus dated April 17, 2009
Receipted on April 17, 2009
Offering Price and Description:
652,931 Common Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1381426

Issuer Name:
iShares Alternatives Completion Portfolio Builder Fund
iShares Conservative Core Portfolio Builder Fund
iShares Global Completion Portfolio Builder Fund
iShares Growth Core Portfolio Builder Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated April 17, 2009 to the Long Form Prospectus dated November 7, 2008
NP 11-202 Receipt dated April 21, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Barclays Global Investors Canada Limited
Promoter(s):
-
Project #1329255

Issuer Name:
iShares CDN S&P®/TSX® 60 Index Fund
iShares CDN S&P/TSX Capped Composite Index Fund
iShares CDN S&P/TSX Completion Index Fund
iShares CDN S&P/TSX SmallCap Index Fund
iShares CDN S&P/TSX Capped Energy Index Fund
iShares CDN S&P/TSX Capped Financials Index Fund
iShares CDN S&P/TSX Capped Information Technology Index Fund
iShares CDN S&P/TSX Capped REIT Index Fund
iShares CDN S&P/TSX Capped Materials Index Fund
iShares CDN S&P/TSX Income Trust Index Fund
iShares CDN Dow Jones Canada Select Dividend Index Fund
iShares CDN Dow Jones Canada Select Growth Index Fund
iShares CDN Dow Jones Canada Select Value Index Fund
iShares CDN Jantzi Social Index Fund
iShares CDN DEX Short Term Bond Index Fund
iShares CDN DEX All Corporate Bond Index Fund
iShares CDN DEX All Government Bond Index Fund
iShares CDN DEX Long Term Bond Index Fund
iShares CDN DEX Universe Bond Index Fund
iShares CDN DEX Real Return Bond Index Fund
iShares CDN S&P/TSX Global Gold Index Fund
iShares CDN S&P 500 Hedged to Canadian Dollars Index Fund
iShares CDN MSCI EAFE® 100% Hedged to CAD Dollars Index Fund
iShares CDN Russell 2000® Index – Canadian Dollar Hedged Index Fund
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated April 17, 2009
NP 11-202 Receipt dated April 20, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Barclays Global Investors Canada Limited
Promoter(s):
-
Project #1386516

Issuer Name:
JBZ Capital Inc.
Principal Regulator - British Columbia
Type and Date:
Final CPC Prospectus dated April 14, 2009
NP 11-202 Receipt dated April 15, 2009
Offering Price and Description:
Minimum Offering: $250,000.00 or 2,500,000 Common Shares; Maximum Offering: $500,000.00 or 5,000,000 Common Shares Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
Promoter(s):
Conor Pacific Canada Inc.
Project #1375340

Issuer Name:
Lundin Mining Corporation
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated April 20, 2009
NP 11-202 Receipt dated April 20, 2009
Offering Price and Description:
Cdn$164,000,000.00 - 80,000,000 Common Shares Price: Cdn$2.05 per Common Share
Underwriter(s) or Distributor(s):
GMP Securities L.P.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
Canaccord Capital Corporation
Cormark Securities Inc.
Dundee Securities Corporation
Haywood Securities Inc.
Macquarie Capital Markets Canada Ltd.
Promoter(s):
-
Project #1403347

Issuer Name:
Northwest Money Market Fund (Series A units and Series I units)
Northwest Canadian Equity Fund (Series A units, Series F units and Series I units)
Northwest Canadian Bond Fund (Series A units, Series F units and Series I units)
Northwest Canadian Dividend Fund (Series A units, Series F units and Series I units)
Northwest Growth and Income Fund (Series A units, Series F units and Series I units)
Northwest Global Equity Fund (Series A units, Series F units and Series I units)
Northwest U.S. Equity Fund (Series A units, Series F units and Series I units)
Northwest EAFE Fund (Series A units, Series F units and Series I units)
Northwest Global Growth and Income Fund (Series A units, Series F units and Series I units)
Northwest Specialty High Yield Bond Fund (Series A units, Series F units and Series I units)
Northwest Specialty Global High Yield Bond Fund (Series A units, Series F units and Series I units)
Northwest Specialty Equity Fund (Series A units, Series F units and Series I units)
Northwest Specialty Innovations Fund (Series A units, Series F units and Series I units)
Northwest Specialty Growth Fund Inc. (Series A units, Series F units and Series I shares)
Northwest Quadrant Conservative Portfolio (Series A units and Series F units)
Northwest Quadrant Income Portfolio (Series A units and Series F units)
Northwest Quadrant Balanced Portfolio (Series A units and Series F units)
Northwest Quadrant Balanced Growth Portfolio (Series A units and Series F units)
Northwest Quadrant Growth Portfolio (Series A units and Series F units)
Northwest Quadrant Global Growth Portfolio (Series A units and Series F units)
Northwest Quadrant Global Equity Portfolio (Series A units and Series F units)
Northwest Quadrant All Equity Portfolio (Series A and Series F units)
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated April 7, 2009 to the Simplified Prospectuses and Annual Information Forms (NI 81-101) dated June 25, 2008
NP 11-202 Receipt dated April 17, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
n/a
Promoter(s):
Northwest & Ethical Investments L.P.
Project #1270159

Issuer Name:
Northwest Short Term Corporate Class (Series A shares)
Northwest Canadian Equity Corporate Class (Series A shares)
Northwest Canadian Dividend Corporate Class (Series A shares)
Northwest Growth and Income Corporate Class (Series A shares)
Northwest U.S. Equity Corporate Class (Series A shares)
Northwest EAFE Corporate Class (Series A shares)
Northwest Global Equity Corporate Class (Series A shares)
Northwest Global Growth and Income Corporate Class (Series A shares)
Northwest Specialty Equity Corporate Class (Series A shares)
Northwest Specialty Innovations Corporate Class (Series A shares)
Northwest Quadrant Balanced Growth Corporate Class Portfolio
(Series A shares and Series F shares)
Northwest Quadrant Growth Corporate Class Portfolio
(Series A shares and Series F shares)
Northwest Quadrant Global Growth Corporate Class Portfolio
(Series A shares and Series F shares)
Northwest Quadrant Global Equity Corporate Class Portfolio
(Series A shares and Series F shares)
Northwest Quadrant All Equity Corporate Class Portfolio
(Series A shares and Series F shares)
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated April 7, 2009 to the Simplified Prospectuses and Annual Information Forms dated November 3, 2008
NP 11-202 Receipt dated April 17, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Noethwest & Ethical Investments Inc.
Project #1324863

Issuer Name:
Pinnacle Balanced Growth Portfolio
Pinnacle Balanced Income Portfolio
Pinnacle Conservative Balanced Growth Portfolio
Pinnacle Conservative Growth Portfolio
Pinnacle Growth Portfolio
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses and Annual Information Forms dated April 20, 2009
NP 11-202 Receipt dated April 21, 2009
Offering Price and Description:
Mutual Fund Securities @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1390150

Issuer Name:
Sandstorm Resources Ltd.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated April 16, 2009
NP 11-202 Receipt dated April 16, 2009
Offering Price and Description:
$44,000,000.00 - 110,000,000 Subscription Receipts Price: $0.40 per Subscription Receipt
Underwriter(s) or Distributor(s):
Paradigm Capital Inc.
GMP Securities L.P.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Promoter(s):
Marcel de Groot
David E. De Witt
Project #1386230

Issuer Name:
UBS (Canada) High Yield Debt Fund
Type and Date:
Final Simplified Prospectus and Annual Information Form dated April 16, 2009
Receipted on April 17, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
UBS Global Asset Management (Canada) Inc.
Project #1371932

This page intentionally left blank

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Charles and Quinn Inc.	Limited Market Dealer	April 21, 2009

This page intentionally left blank

Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 MFDA Hearing Panel Reschedules Next Appearance in the Matter of Wayne Larson

NEWS RELEASE
For immediate release

MFDA HEARING PANEL
RESCHEDULES NEXT APPEARANCE
IN THE MATTER OF WAYNE LARSON

April 15, 2009 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") commenced a disciplinary proceeding in respect of Wayne Larson by Notice of Hearing dated July 2, 2008.

The appearance by teleconference previously scheduled for April 30, 2009 has been rescheduled to May 22, 2009 at 12:00 p.m. (Mountain) before a Hearing Panel of the MFDA's Prairie Regional Council at the offices of the MFDA located at 800 - 6th Avenue S.W., Suite 850, Calgary, Alberta. The purpose of this appearance is to schedule the date for the commencement of the hearing on the merits and to address any other procedural matters.

This appearance is open to the public, except as may be required for the protection of confidential matters. Members of the public in attendance will be able to listen to the proceeding by teleconference.

A copy of the Notice of Hearing is available on the MFDA website at www.mfda.ca.

The MFDA is the self-regulatory organization for Canadian mutual fund dealers, regulating the operations, standards of practice and business conduct of its 150 Members and their approximately 75,000 Approved Persons with a mandate to protect investors and the public interest.

For further information, please contact:
Yvette MacDougall
Hearings Coordinator
416-943-4606 or ymacdougall@mfda.ca

13.1.2 MFDA Hearing Panel Approves Settlement Agreement with Melvin R. Penney

NEWS RELEASE
For immediate release

MFDA HEARING PANEL
APPROVES SETTLEMENT AGREEMENT
WITH MELVIN R. PENNEY

April 15, 2009 (Toronto, Ontario) – A Settlement Hearing in the matter of Melvin R. Penney was held today before a Hearing Panel of the Atlantic Regional Council of the Mutual Fund Dealers Association of Canada ("MFDA") in Moncton, New Brunswick. The Hearing Panel approved the Settlement Agreement between the MFDA and Mr. Penney. The following is a summary of the Orders made by the Hearing Panel:

- Mr. Penney shall pay a fine of $5,000;
- Mr. Penney's authority to conduct securities related business with any MFDA Member is suspended for 2 years; and
- If Mr. Penney fails to pay the fine in full by January 15, 2010 he shall, without further notice, be permanently prohibited from conducting securities related business with any MFDA Member.

The Hearing Panel advised that it would issue written reasons for its decision in due course.

A copy of the Settlement Agreement is available on the MFDA website at www.mfda.ca.

The MFDA is the self-regulatory organization for Canadian mutual fund dealers, regulating the operations, standards of practice and business conduct of its 150 Members and their approximately 75,000 Approved Persons with a mandate to protect investors and the public interest.

For further information, please contact:
Shaun Devlin
Vice-President, Enforcement
416-943-4672 or sdevlin@mfda.ca

13.1.3 MFDA Issues Notice of Hearing Regarding Douglas D. Malech

NEWS RELEASE
For immediate release

MFDA ISSUES NOTICE OF HEARING REGARDING DOUGLAS D. MALECH

April 20, 2009 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") today announced that it has commenced disciplinary proceedings against Douglas D. Malech (the "Respondent").

MFDA staff alleges in its Notice of Hearing that Mr. Malech engaged in the following conduct contrary to the By-laws, Rules or Policies of the MFDA:

> **Allegation #1:** In or about November 2007, the Respondent failed to deal fairly, honestly and in good faith with client A.M. by misappropriating from her approximately $10,000, contrary to MFDA Rule 2.1.1.

The first appearance in this matter will take place by teleconference before a Hearing Panel of the MFDA's Prairie Regional Council in the Hearing Room located at 800 – 6th Avenue S.W., Suite 850, Calgary, Alberta on June 4, 2009 at 10:00 a.m. (Mountain), or as soon thereafter as the appearance can be held.

The purpose of the first appearance is to schedule the date for the commencement of the hearing of this matter on its merits and to address any other procedural matters. The first appearance is open to the public, except as may be required for the protection of confidential matters. Members of the public attending the first appearance will be able to listen to the proceeding by teleconference.

A copy of the Notice of Hearing is available on the MFDA website at www.mfda.ca.

The MFDA is the self-regulatory organization for Canadian mutual fund dealers, regulating the operations, standards of practice and business conduct of its 150 Members and their approximately 75,000 Approved Persons with a mandate to protect investors and the public interest.

For further information, please contact:
Shaun Devlin
Vice-President, Enforcement
416-943-4672 or sdevlin@mfda.ca

13.1.4 MFDA Adjourns Hearing in the Matter of Keybase Financial Group Inc. and Dax Sukhraj

NEWS RELEASE
For immediate release

MFDA ADJOURNS HEARING N THE MATTER OF KEYBASE FINANCIAL GROUP INC. AND DAX SUKHRAJ

April 20, 2009 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") commenced a disciplinary proceeding in respect of Keybase Financial Group Inc. and Dax Sukhraj by Notice of Hearing dated July 24, 2008.

Upon hearing the submissions of the parties at the commencement of the hearing on the merits today, the Hearing Panel adjourned the hearing on consent of the parties to Wednesday, April 22, 2009 at 10:00 a.m. (Eastern), or as soon thereafter as the hearing can recommence.

A copy of the Notice of Hearing is available on the MFDA website at www.mfda.ca.

The MFDA is the self-regulatory organization for Canadian mutual fund dealers, regulating the operations, standards of practice and business conduct of its 150 Members and their approximately 75,000 Approved Persons with a mandate to protect investors and the public interest.

For further information, please contact:
Yvette MacDougall
Hearings Coordinator
416-943-4606 or ymacdougall@mfda.ca

13.1.5 MFDA Issues Notice of Application Regarding Hill & Crawford Investment Management Group Ltd. and Albert Rodney Hill

NEWS RELEASE
For immediate release

MFDA ISSUES NOTICE OF APPLICATION REGARDING HILL & CRAWFORD INVESTMENT MANAGEMENT GROUP LTD. AND ALBERT RODNEY HILL

April 20, 2009 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") today announced that it has issued a Notice of Application under section 24.3 of MFDA By-law No. 1 in respect of Hill & Crawford Investment Management Group Ltd. ("HCIM") and Albert Rodney Hill ("Hill").

The Notice of Application states that MFDA Staff will be seeking, among other things, an order immediately suspending HCIM's Membership in the MFDA and Hill's authority to conduct securities related business with HCIM.

The application will be heard by a hearing panel of the MFDA's Central Regional Council in the Hearing Room located at the offices of the MFDA, 121 King Street West, Suite 1000, Toronto, Ontario on April 22, 2009 at 10:00 a.m. (Eastern), or as soon thereafter as the appearance can be held. The appearance is open to the public, except as may be required for the protection of confidential matters.

A copy of the Notice of Application is available on the MFDA website at www.mfda.ca.

The MFDA is the self-regulatory organization for Canadian mutual fund dealers, regulating the operations, standards of practice and business conduct of its 150 Members and their approximately 75,000 Approved Persons with a mandate to protect investors and the public interest.

For further information, please contact:
Shaun Devlin
Vice-President, Enforcement
416-943-4672 or sdevlin@mfda.ca

13.1.6 MFDA Issues Notice of Hearing Regarding Barry L. Adams

NEWS RELEASE
For immediate release

MFDA ISSUES NOTICE OF HEARING
REGARDING BARRY L. ADAMS

April 20, 2009 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") today announced that it has commenced disciplinary proceedings against Barry L. Adams (the "Respondent").

MFDA staff alleges in its Notice of Hearing that Mr. Adams engaged in the following conduct contrary to the By-laws, Rules or Policies of the MFDA:

> **Allegation #1:** Between February 16, 2007 and April 30, 2007, the Respondent engaged in securities related business that was not carried on for the account of the Member or through the facilities of the Member by recommending and facilitating investments in a prohibited real estate investment product, contrary to MFDA Rules 1.1.1 and 2.1.1.
>
> **Allegation #2:** Between February 16, 2007 and April 30, 2007, the Respondent engaged in outside business activity that was not disclosed to and approved by the Member by recommending and facilitating the purchase of a prohibited real estate investment product, contrary to MFDA Rules 1.2.1(d) and 2.1.1.

The first appearance in this matter will take place by teleconference before a Hearing Panel of the MFDA's Atlantic Regional Council on June 12, 2009 at 2:00 p.m. (Atlantic) or as soon thereafter as the appearance can be held. The purpose of the first appearance is to schedule the date for the commencement of the hearing of this matter on its merits and to address any other procedural matters.

The first appearance is open to the public, except as may be required for the protection of confidential matters. Members of the public who would like to listen to the teleconference for the first appearance should contact Yvette MacDougall, MFDA Hearings Coordinator, at 416-943-4606 or by email at ymacdougall@mfda.ca by June 5, 2009 to obtain particulars. The hearing on the merits will take place at a location in Saint John, New Brunswick at a time and place to be announced.

A copy of the Notice of Hearing is available on the MFDA website at www.mfda.ca.

The MFDA is the self-regulatory organization for Canadian mutual fund dealers, regulating the operations, standards of practice and business conduct of its 150 Members and their approximately 75,000 Approved Persons with a mandate to protect investors and the public interest.

For further information, please contact:
Shaun Devlin
Vice-President, Enforcement
416-943-4672 or sdevlin@mfda.ca

13.1.7 IIROC Rules Notice – Request for Comments – Revisions to the Definition of "Securities Related Activities"

IIROC RULES NOTICE

REQUEST FOR COMMENTS

REVISIONS TO THE DEFINITION OF "SECURITIES RELATED ACTIVITIES"

Summary of nature and purpose of proposed Rule

On December 10, 2008, the Board of Directors (the Board) of the Investment Industry Regulatory Organization of Canada (IIROC) approved the publication for comment of proposed amendments (Proposed Amendments) to the Dealer Member Rules (the Rules) that would revise the definition of "securities related activities" and repeal the definition of "securities related business".

Specifically, the Proposed Amendments set out in Attachment A would:

- clarify the definition of the term "securities related activities" set out in Dealer Member Rule 1.1 to ensure that it specifically refers to all investment products; and

- repeal the defined term "securities related business" currently set out in IIROC Dealer Member Rule 39.2 and replace all existing references to the term with "securities related activities".

The primary objective of the Proposed Amendments is to clearly articulate that IIROC registered representative recommended transactions for any investment product (which includes products defined as securities under provincial legislation as well as principal protected notes, guaranteed investment certificates and other like products) must be conducted within and recorded on the books of an IIROC Dealer Member. It is important that all securities related activities be recorded on the books of the Dealer in order that IIROC can effectively regulate those activities. This is not considered to be change but rather a clarification of existing IIROC Dealer Member requirements.

The secondary objective of the Proposed Amendments is to harmonize the requirements for agent and employee salespersons to conduct certain activities within an IIROC Dealer Member and to record such activities on the books of the IIROC Dealer Member. This will be accomplished by repealing the defined term "securities related business".

Issues and specific Proposed Amendments

IIROC currently utilizes two defined terms in determining the activities and business lines that are considered to be securities related and that must be conducted within and recorded on the books of the Dealer Member. IIROC Dealer Member Rules define both "securities related activities" and "securities related business" as follows:

> "Securities Related Activities" means acting as a securities dealer and carrying on any business which is incidental to or a necessary part of such activities provided that the Board of Directors may, from time to time, include in, or exclude from this definition any activities and change those included or excluded; [Dealer Member Rule Section 1.1]
>
> For the purposes of this Rule "securities related business" means any business or activity (whether or not carried on for gain) engaged in, directly or indirectly, which constitutes trading or advising in securities or exchange contracts (including commodity futures contracts and commodity futures options) for the purposes of applicable securities legislation and exchange contracts legislation in any jurisdiction in Canada, including for greater certainty, sales pursuant to exemptions under that legislation. [Dealer Member Rule Section 39.2]

The "securities related business" definition was adopted by the IDA (now IIROC) in May of 2003 when IIROC Dealer Member Rule 39 was revised to allow the use of the principal agent business structure. The adoption of this definition was required by the IDA's recognizing regulators at the time to ensure that scope of activities performed within the IIROC principal agent structure was consistent with those within the MFDA principal agent structure.

The current definition of securities related business in Rule 39.2 is restricted to trading in securities or commodity futures under applicable Canadian securities legislation. In comparison, the current definition of securities related activities in Rule 1.1 is general in nature and includes a provision permitting the IIROC Board to include or exclude a particular activity.

IIROC is of the opinion that a single definition of activities considered securities related should apply throughout the Dealer Member Rules and that the narrower "securities related business" definition set out in By-law 39.2 should be repealed. Furthermore, amendments are proposed to the current wording of "securities related activities" to clearly articulate IIROC's

existing view that trading or advising in any investment product is a securities related activity that must be recorded on the books of the Dealer Member.

As a result, it is proposed that the revised definition of "securities related activities" set out in Rule 1.1 will:

- apply whether the Approved Person is in an employee / employer or agent / principal relationship with the Dealer Member; and

- clarify that trading or advising in any investment product is considered a securities related activity.

To accomplish these objectives the Proposed Amendments seek to repeal the defined term "securities related business" set out in Dealer Member Rule 39.2 and to amend the definition of "securities related activities" that appears in IIROC Dealer Member Rule 1.1 as follows:

> "Securities Related Activities" means:
>
> (1) acting as a securities dealer,
>
> (2) trading or advising in any other investment product, and
>
> (3) carrying on any business (whether or not carried on for gain) which is incidental to or a necessary part of such activities
>
> provided that the Board of Directors may, from time to time, include in, or exclude from this definition any activities and change those included or excluded;

References to "securities related business" will also be changed throughout IIROC Dealer Member Rule 39 to "securities related activities".

The Board Resolution setting out the Proposed Amendments and a black-line copy of the Dealer Member Rules affected by these amendments are set out in Attachments A and B. A draft IIROC Rules Guidance Notice listing activities that will be included within the scope of the revised "securities related activities" definition is set out in Attachment C.

Proposed Rule classification

In deciding to propose these amendments, IIROC identified that there was a need:

- to clarify that the registrant sale of any investment product must be conducted within and recorded on the books of an IIROC Dealer Member; and

- to harmonize the activities that must be conducted in an IIROC Dealer Member between agent and employee registrants.

To address both of these needs was assessed as being in the public interest and, as a result, the Board has determined that the Proposed Amendments are a Public Comment Rule proposal.

Effects of the proposed Rule on market structure, Dealer Members, non-Dealer Members, competition and costs of compliance

Statements have been made elsewhere as to the nature and purpose of the Proposed Amendments.

The effect of the Proposed Amendments is to make consistent the activities that are considered to be securities related between the employer / employee and principal / agent structures. The amendments grant Member firms and their salespeople the option of choosing the most effective structure for their business activities.

The Proposed Amendments do not impose any burden or constraint on competition or innovation that is not necessary or appropriate in furtherance of IIROC's regulatory objectives. They do not impose costs or restrictions on the activities of market participants (including Dealer Members and non-Dealer Members) that are disproportionate to the goals of the regulatory objectives sought to be realized.

Technological implications and implementation plan

The Proposed Amendments will have no impact on Dealer Member's systems. As such, it is intended that these amendments will be implemented immediately after approval is received from IIROC's recognizing regulators.

Request for public comment

Comments are sought on the Proposed Amendments. Comments should be made in writing. Each comment letter should be delivered by June 23, 2009 (60 days from the publication date of this notice) to the attention of:

Richard J. Corner
Vice-President, Member Regulation Policy,
Investment Industry Regulatory Organization of Canada,
Suite 1600, 121 King Street West,
Toronto, Ontario,
M5H 3T9

Those submitting comment letters should be aware that a copy of their comment letter will be made publicly available on the IIROC website (**www.iiroc.ca** under the heading "IIROC Rulebook - Dealer Member Rules - Policy Proposals and Comment Letters Received").

Questions may be referred to:

Richard J. Corner
Vice-President, Member Regulation Policy
Investment Industry Regulatory Organization of Canada
(416) 943-6908
rcorner@iiroc.ca

Attachments

Attachment A – Board Resolution proposing amendments to IIROC Dealer Member Rules 1.1 and 39.2

Attachment B – Black-line copy of IIROC Dealer Member Rules 1.1 and 39.2 reflecting amendments

Attachment C – Draft Rules Guidance Notice

Attachment A

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

DEFINITION OF SECURITIES RELATED ACTIVITIES - RULES 1.1 AND 39

BOARD RESOLUTION

THE BOARD OF DIRECTORS of the Investment Industry Regulatory Organization of Canada hereby approves on this 10th day of December, 2008, the publication for public comment of the English and French versions of the following proposed amendments to the Rules and Forms of the Corporation:

1. Dealer Member Rule Section 1.1 is amended by repealing and replacing the definition of Securities Related Activities with the following:

"1.1. In these Rules unless the context otherwise requires, the expression…

"Securities Related Activities" means:

(1) acting as a securities dealer,

(2) trading or advising in any other investment product, and

(3) carrying on any business (whether or not carried on for gain) which is incidental to or a necessary part of such activities

provided that the Board of Directors may, from time to time, include in, or exclude from this definition any activities and change those included or excluded;"

2. Dealer Member Rule Sections 39.1 through 39.4 are repealed and replaced as follows:

"39.1. All Rules and Forms of the Corporation that refer to the term employee shall be deemed to refer as well to the term agent and all references to the term employment shall be deemed to refer as well to the term agency relationship, where applicable.

39.2. Repealed.

39.3. The relationship between the Dealer Member and any person conducting securities related activities on behalf of the Dealer Member may be that of:

(a) an employee, or

(b) an agent who is not an employee,

but may not be that of an incorporated salesperson.

39.4. Where a Dealer Member structures its business relationship with a person conducting securities related activities on behalf of the Dealer Member using the principal / agent relationship contemplated in subsection 39.3(b), the Dealer Member shall ensure that:

(a) the business relationship is not contrary to the provisions of applicable legislation;

(b) such agent is registered or licensed in the manner necessary, and is in good standing, under the applicable legislation in the province or territory where the agent proposes to act;

(c) the Dealer Member shall be responsible for, and shall supervise the conduct of the agent in respect of the business including compliance with applicable legislation and the Rules and Forms of the Corporation, including the by-laws, rulings, policies, rules, regulations, orders and directions of any self-regulatory organization or similar authority to which the Dealer Member is subject;

(d) the Dealer Member shall be liable to clients (and other third parties) for the acts and omissions of the agent relating to the Dealer Member's business as if the agent were an employee of the Dealer Member;

(e) the agent is in compliance with applicable legislation and the Rules and Forms of the Corporation, including the by-laws, rulings, policies, rules, regulations, orders and directions of any self-regulatory organization or similar authority to which the Dealer Member is subject;

(f) the financial institution bond and insurance policies required to be maintained by the Dealer Member pursuant to Rules 17 and 400 cover and relate to the conduct of the agent;

(g) all books and records prepared and maintained by the agent in respect of the business of the Dealer Member shall be in accordance with Rules 17 and 200 and all applicable legislation and shall be the property of the Dealer Member and shall be available for review by and delivery to the Dealer Member at all times and upon termination of the agreement referred to in paragraph (n);

(h) the Dealer Member shall, at all times, have access to the premises of the agent where the agent conducts securities related activities on behalf of the Dealer Member;

(i) in the event of a compliance issue arising in respect of a client or clients, the Dealer Member shall be entitled to take control of all future dealings with the client or clients;

(j) all securities related activities conducted by the agent in the name of the Dealer Member is subject to Rule 29.7A;

(k) the agent shall not conduct securities related activities with or on behalf of any person other than the Dealer Member;

(l) if the agent is engaged in or carrying on any business activity other than business conducted on behalf of the Dealer Member, including any business or activity which is subject to regulation by any regulatory authority other than a securities commission, compliance with the terms of the agreement referred to in paragraph (n) shall be monitored and enforced directly by the Dealer Member and not by or through any other person including another employer or principal of the agent;

(m) the terms or basis on which the agent may be engaged in or carry on any business or activity other than the business conducted on behalf of the Dealer Member shall not prevent or impair the ability of the Dealer Member or the Corporation from monitoring and enforcing compliance by the agent with the terms of the agreement referred to in paragraph (n) or the Rules and Forms of the Corporation; and

(n) the Dealer Member and the agent shall enter into an agreement in writing which shall be provided to the Corporation prior to engaging in the principal/agent relationship and shall contain terms which include the provisions of paragraph (a) to (m), inclusive, and which do not include provisions which are inconsistent with paragraph (a) to (m), and shall provide the Corporation with a certificate by an officer or director of such Dealer Member and upon request by the Corporation shall provide an opinion of counsel confirming the agreement is in compliance with such provisions;

(o) the Dealer Member and the Corporation shall enter into an agreement in writing prior to the Dealer Member engaging in the principal/agent relationship, which shall contain terms which include the provisions of paragraphs (c) and (d) that specifically relate to the Dealer Member's responsibility for and supervision of the agent to ensure the agent's compliance with applicable legislation and the Rules and Forms of the Corporation, including the by-laws, rulings, policies, rules, regulations, orders and directions of any self-regulatory organization or similar authority to which the Dealer Member is subject and relate to the Dealer Member's liability to clients (and other third parties) for the acts and omissions of the agent relating to the Dealer Member's business as if the agent were an employee of the Dealer Member;

(p) the agreements referred to in paragraphs (n) and (o) shall be in a form satisfactory to the Corporation;

(q) the Dealer Member and the agent shall be responsible for ensuring all arrangements between them comply with applicable tax laws and for providing satisfactory evidence to the Corporation of such compliance."

Attachment B

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

DEFINITION OF SECURITIES RELATED ACTIVITIES - RULES 1.1 AND 39

BLACK-LINE COPY

Dealer Member Rule Section 1.1

1.1. In these Rules unless the context otherwise requires, the expression...

"Securities Related Activities" means:

(1) acting as a securities dealer,

(2) trading or advising in any other investment product, and

(3) carrying on any business (whether or not carried on for gain) which is incidental to or a necessary part of such activities

provided that the Board of Directors may, from time to time, include in, or exclude from this definition any activities and change those included or excluded;

Dealer Member Rule Sections 39.1 through 39.4

39.1. All Rules and Forms of the Corporation that refer to the term employee shall be deemed to refer as well to the term agent and all references to the term employment shall be deemed to refer as well to the term agency relationship, where applicable.

39.2. Repealed. ~~For the purposes of this Rule "securities related business" means any business or activity (whether or not carried on for gain) engaged in, directly or indirectly, which constitutes trading or advising in securities or exchange contracts (including commodity futures contracts and commodity futures options) for the purposes of applicable securities legislation and exchange contracts legislation in any jurisdiction in Canada, including for greater certainty, sales pursuant to exemptions under that legislation.~~

39.3. The relationship between the Dealer Member and any person conducting securities related activities~~business~~ on behalf of the Dealer Member may be that of:

(a) an employee, or

(b) an agent who is not an employee,

but may not be that of an incorporated salesperson.

39.4. Where a Dealer Member structures its business relationship with a person conducting securities related activities ~~business~~ on behalf of the Dealer Member using the principal / agent relationship contemplated in subsection ~~paragraph~~ 39.3(b), the Dealer Member shall ensure that:

(a) the business relationship is not contrary to the provisions of applicable legislation;

(b) such agent is registered or licensed in the manner necessary, and is in good standing, under the applicable legislation in the province or territory where the agent proposes to act;

(c) the Dealer Member shall be responsible for, and shall supervise the conduct of the agent in respect of the business including compliance with applicable legislation and the Rules and Forms of the Corporation, including the by-laws, rulings, policies, rules, regulations, orders and directions of any self-regulatory organization or similar authority to which the Dealer Member is subject;

(d) the Dealer Member shall be liable to clients (and other third parties) for the acts and omissions of the agent relating to the Dealer Member's business as if the agent were an employee of the Dealer Member;

(e) the agent is in compliance with applicable legislation and the Rules and Forms of the Corporation, ~~–~~including the by-laws, rulings, policies, rules, regulations, orders and directions of any self-regulatory organization or similar authority to which the Dealer Member is subject;

(f) the financial institution bond and insurance policies required to be maintained by the Dealer Member pursuant to Rules ~~Rule~~ 17 and ~~Rule~~ 400 cover and relate to the conduct of the agent;

(g) all books and records prepared and maintained by the agent in respect of the business of the Dealer Member shall be in accordance with Rules 17 and ~~Rule~~ 200 and all applicable legislation and shall be the property of the Dealer Member and shall be available for review by and delivery to the Dealer Member at all times and upon termination of the agreement referred to in paragraph (n);

(h) the Dealer Member shall, at all times, have access to the premises of the agent where the agent conducts securities related activities ~~business~~ on behalf of the Dealer Member;

(i) in the event of a compliance issue arising in respect of a client or clients, the Dealer Member shall be entitled to take control of all future dealings with the client or clients;

(j) all securities related activities ~~business~~ conducted by the agent ~~is~~ in the name of the Dealer Member is subject to Rule 29.7A;

(k) the agent shall not conduct securities related activities ~~business~~ with or on behalf of any person other than the Dealer Member;

(l) if the agent is engaged in or carrying on any business activity other than business conducted on behalf of the Dealer Member, including any business or activity which is subject to regulation by any regulatory authority other than a securities commission, compliance with the terms of the agreement referred to in paragraph (n) shall be monitored and enforced directly by the Dealer Member and not by or through any other person including another employer or principal of the agent;

(m) the terms or basis on which the agent may be engaged in or carry on any business or activity other than the business conducted on behalf of the Dealer Member shall not prevent or impair the ability of the Dealer Member or the Corporation from monitoring and enforcing compliance by the agent with the terms of the agreement referred to in paragraph (n) or the Rules and Forms of the Corporation; and

(n) the Dealer Member and the agent shall enter into an agreement in writing which shall be provided to the Corporation prior to engaging in the principal/agent relationship and shall contain terms which include the provisions of paragraph (a) to (m), inclusive, and which do not include provisions which are inconsistent with paragraph (a) to (m), and shall provide the Corporation with a certificate by an officer or director of such Dealer Member and upon request by the Corporation shall provide an opinion of counsel confirming the agreement is in compliance with such provisions;

(o) the Dealer Member and the Corporation shall enter into an agreement in writing prior to the Dealer Member engaging in the principal/agent relationship, which shall contain terms which include the provisions of paragraphs (c) and (d) that specifically relate to the Dealer Member's responsibility for and supervision of the agent to ensure the agent's compliance with applicable legislation and the Rules and Forms of the Corporation, including the by-laws, rulings, policies, rules, regulations, orders and directions of any self-regulatory organization or similar authority to which the Dealer Member is subject and relate to the Dealer Member's liability to clients (and other third parties) for the acts and omissions of the agent relating to the Dealer Member's business as if the agent were an employee of the Dealer Member;

(p) the agreements referred to in paragraphs (n) and (o) shall be in a form satisfactory to the Corporation;

(q) the Dealer Member and the agent shall be responsible for ensuring all arrangements between them comply with applicable tax laws and for providing satisfactory evidence to the Corporation of such compliance.

Attachment C

IIROC RULES NOTICE

GUIDANCE NOTE

INTERPRETATION OF THE DEFINITION OF "SECURITIES RELATED ACTIVITIES"

Background

On [insert date] IIROC announced amendments to the Dealer Member Rules to revise the definition of "securities related activities" through the issuance of IIROC Notice 09-xxxx. These amendments were implemented effective [insert rule effective date]. The remainder of this notice discusses the effect of these amendments and provides guidance to Dealer Members as to which activities are now considered to be "securities related activities".

Effect of amendments to definition

Prior to the recent definition revisions, IIROC utilized two defined terms in determining the activities and business lines that were considered to be securities related and that must be conducted within and recorded on the books of the Dealer Member. IIROC Dealer Member Rules defined both "securities related activities" and "securities related business" as follows:

> "Securities Related Activities" means acting as a securities dealer[1] and carrying on any business which is incidental to or a necessary part of such activities provided that the Board of Directors may, from time to time, include in, or exclude from this definition any activities and change those included or excluded; [Dealer Member Rule Section 1.1]
>
> For the purposes of this Rule "securities related business" means any business or activity (whether or not carried on for gain) engaged in, directly or indirectly, which constitutes trading or advising in securities or exchange contracts (including commodity futures contracts and commodity futures options) for the purposes of applicable securities legislation and exchange contracts legislation in any jurisdiction in Canada, including for greater certainty, sales pursuant to exemptions under that legislation. [Dealer Member Rule Section 39.2]

Neither definition specifically mentioned investment products, although the IDA (now IIROC) had previously issued guidance that required that certain transactions involving investment products, such as guaranteed investment certificates, be considered to be "securities related activities".

The "securities related business" definition was adopted by the IDA (now IIROC) in May of 2003 when IIROC Dealer Member Rule 39 was revised to allow the use of the principal agent business structure.

The effects of the recent move to a single "securities related activities" definition are:

- to clarify that registrant transactions involving any investment product must be conducted within and recorded on the books of an IIROC Dealer Member; and
- to harmonize the activities that must be conducted in an IIROC Dealer Member between agent and employee registrants.

List of activities within the scope of the "securities related activities" definition

To assist Dealer Members, a list of activities within the scope of the "securities related activities" definition has been prepared and is enclosed as Appendix A. This list is not exhaustive and as a result other activities may also be considered to be "securities related activities" upon IIROC staff review and IIROC Board of Director approval. This list will be updated from time to time as new investment products/services are introduced or the sales practices of existing investment products/services change.

[1] "Securities dealer" is defined to mean "an individual, firm or corporation acting as dealer (principal) or broker (agent) in carrying out transactions in securities and commodity futures contracts or options on behalf of clients and includes, without limitation, acting as an underwriter or adviser;" [Dealer Member Rule Section 1.1]

Questions may be referred to:

Richard J. Corner
Vice-President, Member Regulation Policy
Investment Industry Regulatory Organization of Canada
(416) 943-6908
rcorner@iiroc.ca

Appendices

Appendix A – List of activities within the scope of the “securities related activities” definition

Appendix A

List of activities within the scope of the "securities related activities" definition

The following activities are considered to be securities related activities:

1. Acting as a dealer (principal) or broker (agent) in carrying out transactions on behalf of clients in any of the following investment products:

    a. Listed and unlisted equity securities, including trust units

    b. Listed and unlisted index products, including participation units

    c. Equity security and index product derivatives, including warrants, rights and options, futures and forward contracts and swap agreements

    d. Exchange traded fund, hedge fund and mutual fund securities

    e. Debt securities, including bonds, debentures and notes (including principal protected notes)

    f. Debt security derivatives, including options, futures and forward contracts and swap agreements

    g. Canadian and foreign chartered bank deposit certificates (including guaranteed investment certificates)

    h. Foreign currency contracts

    i. Precious metal bullion and precious metal certificates

    j. Listed commodity futures contracts and options on futures contracts.

2. The preparation of financial plans on behalf of clients.

13.1.8 Proposed Amendments to MFDA Rule 2.2 (Client Accounts), Policy No. 2 *Minimum Standards for Account Supervision*, Rule 2.8 (Client Communications) and Rule 5.3 (Client Reporting)

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

PROPOSED AMENDMENTS TO

MFDA RULE 2.2 (CLIENT ACCOUNTS), POLICY NO. 2
***MINIMUM STANDARDS FOR ACCOUNT SUPERVISION*,**
RULE 2.8 (CLIENT COMMUNICATIONS) AND
RULE 5.3 (CLIENT REPORTING)

I. OVERVIEW

On May 22, 2008, the MFDA Board of Directors approved a number of amendments to MFDA Rule 2.2, Policy No. 2, Rule 2.8 and Rule 5.3.

The amendments to Rule 2 and Policy No. 2 were proposed to clarify the nature of the client/advisor relationship and expand the disclosure to be provided to clients on account opening. In addition, these amendments are intended to help ensure that client accounts are reviewed at relevant times and remain consistent with the client's needs and objectives. The Rule 2 and Policy No. 2 amendments also clarify procedures that Members and Approved Persons must follow in order to satisfy their obligations in respect of the collection and maintenance of know-your client ("KYC") information, investment suitability and account supervision.

The amendments to Rule 2.8 and 5.3 were proposed to clarify the supervisory obligations of Members in relation to performance reporting provided directly to clients by Approved Persons and to ensure that all clients are provided with a minimum level of information with respect to the performance of investments in their accounts.

On June 13, 2008, the British Columbia Securities Commission and the Ontario Securities Commission published the proposed amendments to MFDA Rule 2.2, Policy No. 2, Rule 2.8 and Rule 5.3 for a 90-day public comment period that expired on September 11, 2008. Sixteen submissions were received in respect of the proposed amendments to Rule 2.2 and Policy No. 2 and eleven commenters also made submissions in respect of the proposed amendments to Rule 2.8 and Rule 5.3.

The proposed amendments are now being republished for comment as a result of additional changes made in response to comments received and in an effort to ensure that the Client Relationship Model ("CRM") proposals of the MFDA and the Investment Industry Regulatory Organization of Canada ("IIROC") minimize differences to the extent possible and achieve the same regulatory objectives. The amendments, as originally proposed, are being republished with the proposed revisions.

The Canadian Securities Regulators ("CSA") is now finalizing the requirements in National Instrument 31-103 ('NI 31-103") and reminds the self-regulatory organizations ("SROs") and their Members that once it is in effect, all registrants will be required to comply with the principle for relationship disclosure in that instrument. The principle in the CSA's most current version of NI 31-103 is that all registrants must provide their clients with information a reasonable client would consider important on account opening. The CSA has confirmed to the SROs that their CRM requirements must remain consistent with the finalized principle in NI 31-103.

The CSA is also developing a principle for performance reporting for the first round of amendments to NI 31-103. The CSA expects the SROs to ensure that their requirements for performance reporting are consistent with that principle.

A. Current Rule

MFDA Rule 2.2 addresses the basic business conduct and client record requirements that Members must satisfy with respect to client accounts maintained by the Member. The current Rule prescribes:

- the requirement to collect KYC information when an account is opened;
- the requirement to ensure that recommendations made for the client's account are suitable;
- the requirement to complete a new account application form for each account;
- the requirement that each account be approved by a designated individual; and
- the requirement to document material updates to KYC information.

MFDA Policy No. 2 establishes minimum industry standards for supervision of client accounts and expands upon the basic requirements contained in Rule 2. Policy No. 2 provides guidance with respect to account opening documentation to be maintained and supervisory procedures to be completed at the branch and head office levels.

MFDA Rule 2.8.3 requires that where a client communication refers to a rate of return, the client must be advised as to the methodology employed in calculating the rate of return noted in the communication.

MFDA Rule 5.3 prescribes the minimum reporting requirements that Members must provide on client accounts and standards with respect to frequency for delivery and content of client statements.

B. The Issues

Since September 2004, staff of the MFDA, the Investment Dealers Association of Canada ("IDA" – now IIROC) and the CSA have been involved in working groups focused on the implementation of various aspects of the CRM. One of the core principles addressed in the CRM focuses on the need for a clear definition of the relationship between the client and the financial services provider and the roles and responsibilities that each party will assume when an investment account is opened. Clients must be provided with adequate information regarding the client/dealer relationship at the time the relationship is established in order to understand the basic obligations of their dealer and what to expect as far as service levels.

The working groups involved in the CRM project also examined the issue of dealer responsibilities in ensuring that a client's investments remain consistent with the client's needs and objectives. In light of the investor protection issues involved, the MFDA supported the position that a regulatory response to this issue was necessary.

Another core principle the CRM seeks to address is the gap in current regulatory requirements with respect to mandatory periodic reporting of account performance to clients. While some Members do provide performance reporting to clients, such reports are not currently required under MFDA Rules and Policies.

While current MFDA Rules and Policies address some aspects of the regulatory objectives of the CRM project, amendments were required to more fully respond to the concerns raised. The amendments, as originally proposed and revised, are aimed at addressing these concerns.

In addition, the MFDA also became aware of a number of other issues with respect to procedures employed by some Members in discharging their supervisory duties in connection with their clients' accounts. As some of the changes to be implemented under CRM relate to issues of supervision and involve the same Rules and Policies, these changes were brought forward with the CRM proposal.

In the course of completing compliance reviews, the MFDA has noted inconsistencies and potentially misleading information in performance reports provided to clients directly by some Approved Persons. Some Members have adopted policies and procedures whereby the Member does not properly supervise performance reports generated by Approved Persons, but simply disclaims responsibility for the content of these reports. The MFDA is of the view that such policies are inconsistent with business conduct requirements under MFDA By-laws, Rules and Policies. The amendments, as originally proposed and revised, are aimed at addressing this concern.

C. Objectives

The amendments to Rule 2 and Policy No. 2 were proposed to clarify the nature of the client/advisor relationship and expand the disclosure to be provided to clients on account opening. In addition, these amendments are intended to help ensure that client accounts are reviewed at relevant times and remain consistent with the client's needs and objectives. The Rule 2 and Policy No. 2 amendments also clarify procedures that Members and Approved Persons must follow in order to satisfy their obligations in respect of the collection and maintenance of KYC information, investment suitability and account supervision.

The amendments to Rule 2.8 and 5.3 were proposed to clarify the supervisory obligations of Members in relation to performance reporting provided directly to clients by Approved Persons and to ensure that all clients are provided with a minimum level of information with respect to the performance of investments in their accounts.

D. Effect of Proposed Amendments

The amendments to Rule 2.2 were proposed to require that investors be provided with certain fundamental information at the time that an account is opened. This will help to ensure that clients are aware of the role and responsibilities of the Member and what to expect as far as services and costs. While some Members may already provide such information to clients as part of their business processes, the proposed amendments would effectively set a new minimum standard of relationship disclosure for clients of all Members. Amendments to Rule 2.2 were also proposed to clarify the duty of Members and Approved Persons to assess the suitability of investments in each client account when various triggering events occur.

The amendments to Policy No. 2 were proposed to clarify the responsibilities of Members and Approved Persons in discharging their suitability obligations. These changes address issues regarding the KYC information that must be collected for each client, the maintenance of information on file and minimum standards that must be observed with respect to account supervision procedures. Some Members may be required to amend their current procedures to meet the new requirements.

The proposed amendment to Rule 5.3 now includes a requirement to provide the gain or loss in the account as at the end of the period covered by the report. This amendment will allow for the provision of meaningful information and convenience to investors as it totals the amounts already required under the Rule.

Rule 2.8.3 was amended to clarify the Member's supervisory requirements regarding client communications that disclose a rate of return. Members that allow Approved Persons to provide such information to clients may be required to make changes to existing supervisory procedures.

II. DETAILED ANALYSIS

A. Relevant History

Summary of Public Comments Received on Amendments to Rule 2.2, Policy No. 2, Rule 2.8 and Rule 5.3

As noted above, proposed amendments to Rule 2.2, Policy No. 2, Rule 2.8 and Rule 5.3 were initially published for comment on June 13, 2008. Sixteen submissions were received with respect to the proposed amendments to Rule 2.2 and Policy No. 2. Eleven commenters also made submissions in respect of the proposed amendments to Rules 2.8 and 5.3.

The proposed amendments are being republished for comment as a result of additional changes made in response to comments received and in an effort to ensure that the CRM proposals of the MFDA and IIROC achieve the same regulatory objectives and minimize differences as much as possible. The proposed amendments, as revised, are consistent in purpose with those originally published for comment on June 13, 2008.

B. Proposed Amendments

The following is a summary of key amendments made to Rule 2.2, Policy No. 2, Rule 5.3 and Rule 2.8 in response to comments received. Other minor amendments have also been made in response to comments and for the purpose of clarifying existing requirements.

Rule 2.2

- **Rule 2.2.1(a) ("Know-Your-Client"):** Several commenters expressed concern with the inclusion of the reference "as prescribed by the Corporation from time to time" in relation to essential facts that must be obtained by the Member from the client. It was suggested that arbitrary changes to the essential facts may require modification of forms, back-office systems, salesperson behaviour and unnecessary and expensive recollection of client information. The reference to "as may be prescribed by the Corporation from time to time" has been removed from Rule 2.2.1(a). The minimum information that must be collected on account opening is set out in Policy No. 2. Any amendments to these requirements would be subject to the SRO Rule review and approval process that would involve approval by the Board of Directors, CSA review and approval and the publication of any proposed amendments for public comment;

- **Rule 2.2.3 and Policy No. 2 (Timeline for Approval of New Account/KYC Information):** The proposed amendments to Policy No. 2 required that new account or KYC information be approved by the individual designated as responsible for the opening of new accounts under Rule 2.2.3 *no later than one business day after the date that the account is opened*. In response to comments, the proposed amendments, as revised, now require such approval *no later than one business day after the initial transaction date*;

- **Rule 2.2.4(a) (Updating Client Information):** Several commenters noted that a "material change in client information", defined in Rule 2.2.4(a) to include information that could "reasonably result" in changes to the stated risk tolerance, time horizon or investment objectives of the client, cannot itself trigger a suitability review. It was suggested that a material change in client information must result in an actual change to risk tolerance, time horizon and investment objectives before a suitability review can be triggered. In response to such comments, the definition of "material change in client information" has been amended by removal of the words "could reasonably" so that it captures only information that actually results in changes to the stated risk tolerance, time horizon or investment objectives of the client;

- **Rule 2.2.4(d) and Policy No. 2 (Changes to Know-Your-Client Information):** Proposed Rule 2.2.4(d) required that a client signature be obtained to evidence any change to client name, address and banking information. Commenters noted that there were other sufficiently stringent internal controls, mainly employed by related financial institutions, which would satisfy the objective of ensuring the client authorized changes to name, address, or banking information. In response to these comments, the proposed amendments now require either a client signature or other internal controls sufficient to authenticate the client's identity and verify the client's authorization;

- **Rule 2.2.5 (Relationship Disclosure):** Proposed Rule 2.2.5 requires that, on account opening, all clients be provided with certain core information about the nature of their relationship with the Member and its Approved Persons. In response to comments requesting clarification regarding certain content requirements for the relationship disclosure, MFDA staff will be issuing a Member Regulation Notice to provide additional guidance as to the level of detail to be set out in the relationship disclosure document.

Policy No. 2

II. Opening New Accounts – Documentation of Client Account Information

- **Requirement for Registered Salesperson to Maintain a Copy of the NAAF (section 2):** This section has been amended to require all Approved Persons that service the client's account to have access to information and documentation relating to the client's account as required;

- **Information Required for Joint Accounts (section 3):** Clarification with respect to which information must be collected for each owner and which information can be collected on a combined basis for the joint account has been added;

- **Change of Registered Salesperson/Requirement to Review KYC (section 11):** In response to comments noting that a review of KYC information is already addressed by the Rule 2.2.1 requirement to review suitability, the requirement for a suitability review under this section has been deleted.

II. Opening New Accounts – Changes to Know-Your-Client Information

- **Requirement to Provide Client with All the Updated KYC Information (section 8):** This section has been amended to more specifically require that the client be provided with a document or documents specifying current risk tolerance, investment objectives, time horizon and net worth that applies to the client's account.

IV. Branch Office Supervision – Daily Activity

- **$1000 Threshold for Investment in Moderate-High or High-Risk Investments (section 2):** Commenters expressed the view that the prescribed trade thresholds for branch reviews were too low, in particular the $1000 threshold for branch manager review of moderate-high to high risk investments and $5000 threshold for trades and redemptions in low risk investments. In response to such comments, the trade review threshold for moderate-high or high risk investments has been increased from $1000 to $2500. In addition, the $5000 trade review threshold for trades and redemptions in all other investments has been increased to $10,000. These limits will be reviewed from time to time to ensure that they remain relevant.

- **Branch Manager Suitability Review where Material Change in Client Information (section 5):** Commenters indicated that the requirement for the branch manager to review the suitability of investments in each client account upon a material change to client's KYC information is onerous and suggested that, in light of the fact that the Approved Person is responsible for assessing the suitability of investments upon a material change, such review should only be performed on a sample basis at the branch level. In response to comments, Policy No. 2 has been amended to require the branch manager to perform a suitability review on a sample basis where a material change results in a significant decrease in the client's risk tolerance, time horizon, income or net worth or more conservative investment objectives.

V. Head Office Supervision – Daily Reviews

- **Trade Review Thresholds (section 1):** In response to comments that the proposed trade review threshold for low risk investments is too low, it has been increased to $50,000 from $10,000. In addition, the Policy has been clarified to note that the reference to exempt securities was not intended to include GICs;

- **Suitability Review where Material Change in Client Information (section 5):** In response to comments, the requirement for head office to review, on a sample basis, the suitability of investments in accounts where there has been a material change in client information has been removed.

VI. Identification of Trends in Trading Activity

- **Timeline for Completion of Head Office Supervisory Reviews (section 3):** In response to comments expressing concern with the proposed 21-day deadline, the amendments, as revised, adopt a requirement that reviews be completed within 30 days of the last day of the period being reviewed.

Rule 5.3

- **"Total Assets Deposited/Withdrawn" (Rule 5.3.5(a)(ii)/(iii)):** The proposed amendments, as revised, now include a requirement, in new subsection 5.3.5(a)(v), to provide the gain or loss in the account as at the end of the period covered by the report. This figure offers meaningful information and convenience to investors as it totals the amounts already required under subsections 5.3.5(a)(i)-(iv) and, in providing this total, is consistent with the approach adopted by IIROC in its CRM proposal.

Rule 2.8.3

- **Clarification of Standard Acceptable Industry Practice (Rule 2.8.3):** No revisions have been made to the proposed amendments published for comment in June 2008. A number of commenters requested clarification on what are considered to be standard acceptable industry practices in Rule 2.8.3. Members are currently given flexibility with respect to reporting rates of return, provided a consistently applied standard industry method is used and a clear explanation of the method used is included on the performance statement. Standard industry practices include time weighted returns such as Global Investment Performance Standards, Modified Dietz or a dollar weighted return method (Internal Rate of Return). MFDA staff will be issuing a Member Regulation Notice to provide additional guidance with respect to standard industry practices in calculating rates of return.

C. Issues and Alternatives Considered

As noted, the proposed amendments, as revised, have been made after consideration of issues raised by commenters. With respect to CRM, the MFDA, in reviewing its proposal, has considered the IIROC CRM proposal and met with IIROC staff on a number of occasions to engage in a detailed review of both SRO proposals with a view to minimizing differences and ensuring that they achieve the same regulatory objectives.

As discussed below, there are certain areas in which the MFDA and IIROC have adopted different approaches to achieve the objectives under CRM. Some of these result from differences in the business of MFDA and IIROC Members or the different ways in which our existing rules are structured. In certain instances, matters addressed in the proposed IIROC Rules will be addressed or expanded upon by the MFDA in Member Regulation Notices.

Format of Relationship Disclosure

The IIROC proposal specifies the content of relationship disclosure, requires that it be included in a document entitled "Relationship Disclosure" and allows for other disclosure already provided in other sources to be incorporated by reference. Proposed MFDA Rule 2.2.5 prescribes the core elements of disclosure that must be provided to clients on account opening, which may be provided in one document or several. This approach has been adopted to allow Members flexibility in how they incorporate the required disclosure on their existing forms.

Content of Relationship Disclosure

The IIROC proposal requires that the relationship disclosure document contain a statement indicating whether or not the provision of account percentage return information will be an option available to the client as part of the account service offering. The MFDA is of the view that requiring that clients be provided with a description of the content and frequency of reporting that they will receive by default addresses the issue of services that will not be offered and so achieves the same regulatory objective.

The IIROC proposal would also require specific disclosure as to whether or not client accounts will be reviewed at times other than the regulatory minimum (such as in the event of a market disruption). MFDA Rule 2.2.5 generally requires a description of the Member's suitability obligation to clients. As part of such disclosure, clients should be advised that the overall risk of their account may change over time as a result of fluctuations in the market, which may or may not (depending on the Member's

procedures) result in an assessment of the suitability of investments in the client's account. Further details with respect to this disclosure requirement in Rule 2.2.5 will be provided in a MFDA Member Regulation Notice.

The IIROC proposal would require a description of all costs the client will or may incur in making and holding investments by type of investment product. MFDA Rule 2.2.5 requires a description of the nature of compensation that may be paid to the Member with a reference to other sources for more specific information. Notwithstanding the difference in wording between the two proposals, both the IIROC and the MFDA requirement contemplate high level disclosure of the compensation paid to the Member firm with respect to different types of investment products that the Member may sell as well as a statement that there may be other costs charged by the issuer or product manufacturer depending on the investment product. The general description in the relationship disclosure with respect to how the Member is compensated and the possibility of other costs associated with making or holding investments is intended to supplement more specific product disclosure with respect to fees and costs available through the prospectus or offering memorandum.

Account Performance Reporting

The IIROC CRM proposal requires customer account cost reports, for all accounts other than those held by institutional customers, which itemize security position cost information. The MFDA does not propose to adopt any additional requirements in this area and is of the view that its existing requirements appropriately and adequately address the regulatory objective of providing clients with sufficient information to assess the performance of their account. Under current MFDA requirements, cost information must be provided at the time of the transaction on both the account statement and trade confirmation. In addition, we note that over 80% of mutual fund assets administered by MFDA Members are registered in client name. We understand that while data with respect to cost information is currently maintained by fund managers, this information is not available at the dealer level on an accurate or consistent basis for reporting purposes.

The IIROC CRM proposal requires, for all accounts other than those held by institutional customers, customer account performance information disclosing the annual and cumulative realized and unrealized income and capital gains on the customer's account. This account performance information must be sent to customers annually, at a minimum. This requirement is addressed in MFDA Rule 5.3.5 (Account Performance Reporting) in proposed new subsection 5.3.5(a)(v) which requires the account performance reporting to include gain or loss in the account as at the end of the period covered by the report. The MFDA proposal would require performance information for the annual period rather than on an annual and cumulative basis. MFDA staff has received comments from Members that requiring this information on a cumulative basis would require significant systems changes at great cost to the industry. To the extent that cumulative reporting would entail greater costs to Members that would ultimately be passed on to clients, the MFDA is of the view that requiring performance information on an annual basis provides the appropriate level of reporting and strikes a proper balance between managing cost considerations and providing clients with core information with respect to account performance.

Requirements in Proposed IIROC Rules that will be Addressed by the MFDA in Member Regulation Notices

There are a number of areas addressed in the IIROC proposal by way of Rules that are already generally addressed under other MFDA Rules. MFDA staff will be issuing Member Regulation Notices to provide further guidance in these areas. Areas identified for further guidance include the following:

- format of relationship disclosure
- content of relationship disclosure
- supervisory review/approval of relationship disclosure
- maintaining evidence of disclosure
- account performance reporting – standard industry practices in calculating rates of return.

D. Systems and Procedures Impact of Amendments

Commenters have indicated that significant changes may be necessary to their existing systems and procedures in order to comply with the proposed requirements and have recommended establishing sufficient transition periods to meet the new obligations.

The MFDA will seek to establish transition periods based on the amount of time required to make individual systems and/or procedure changes that may become necessary as a result of the proposed amendments. Accordingly, commenting parties are asked to provide specific input with respect to the appropriate length of transition periods for system, procedure or form changes that may be required for: (i) new account documentation requirements under the relationship disclosure prescribed in proposed Rule 2.2.5; (ii) each of the following proposed requirements under Policy No. 2: account supervision requirements, suitability

assessments, trade supervision requirements and trade review thresholds; and (iii) proposed performance reporting requirements under Rule 5.3.

E. Best Interests of the Capital Markets

The Board has determined that the proposed Rule amendments are in the best interests of the capital markets.

F. Public Interest Objective

The proposed amendments, as revised, are in the public interest and have been made in response to public comments and a review of the MFDA and IIROC CRM proposals to ensure that they minimize differences as much as possible and achieve the same regulatory objectives.

III. COMMENTARY

A. Filing in Other Jurisdictions

The proposed Rule amendments will be filed for approval with the Alberta, British Columbia, New Brunswick, Manitoba, Nova Scotia, and Ontario Securities Commissions and the Saskatchewan Financial Services Commission.

B. Effectiveness

The proposed amendments are simple and effective.

C. Process

The proposed amendments were developed by MFDA staff in response to input received during the first publication for comment and discussions with IIROC staff, in respect of minimizing the differences between the CRM proposals of the two SROs. The proposed amendments have been approved by the MFDA Board of Directors.

D. Effective Date

The proposed amendments will be effective on a date to be subsequently determined by the MFDA.

IV. SOURCES

MFDA Rule 2.2, Policy No. 2, Rule 2.8 and Rule 5.3
IIROC CRM proposal

V. REQUIREMENT TO PUBLISH FOR COMMENT

The MFDA is required to publish for comment the proposed amendments so that the issues referred to above may be considered by the Recognizing Regulators.

The MFDA has determined that the entry into force of the proposed amendments would be in the public interest and is not detrimental to the capital markets. Comments are sought on the proposed amendments. Comments should be made in writing. One copy of each comment letter should be delivered within 90 days of the publication of this notice, addressed to the attention of the Corporate Secretary, Mutual Fund Dealers Association of Canada, 121 King St. West, Suite 1600, Toronto, Ontario, M5H 3T9 and one copy addressed to the attention of Sarah Corrigall-Brown, Senior Legal Counsel, British Columbia Securities Commission, 701 West Georgia Street, P.O. Box 10142, Pacific Centre, Vancouver, British Columbia, V7Y 1L2.

Those submitting comment letters should be aware that a copy of their comment letter will be made publicly available on the MFDA website at www.mfda.ca.

Questions may be referred to:

Aamir Mirza
Senior Legal & Policy Counsel
(416) 945-5128
amirza@mfda.ca

Schedule A

Mutual Fund Dealers Association of Canada

Client Accounts (Rule 2.2)
(Amendments to Version Published for Comment on June 13, 2008)

On March 5, 2009, the Board of Directors of the Mutual Fund Dealers Association of Canada made the following amendments to Rule 2.2:

2.2 CLIENT ACCOUNTS

2.2.1 **"Know-Your-Client".** Each Member and Approved Person shall use due diligence:

(a) to learn the essential facts, ~~as may be prescribed by the Corporation from time to time~~, relative to each client and to each order or account accepted;

(b) to ensure that the acceptance of any order for any account is within the bounds of good business practice;

(c) to ensure that each order accepted or recommendation made for any account of a client is suitable for the client based on the essential facts relative to the client and any investments within the account;

(d) to ensure that, notwithstanding the provisions of paragraph (c), where a transaction proposed by a client is not suitable for the client based on the essential facts relative to the client and the investments in the account, the Member or Approved Person has so advised the client before execution thereof and the Member or Approved Person has maintained evidence of such advice;

(e) to ensure that the suitability of the investments within each client's account is assessed:

(i) whenever the client transfers assets into an account at the Member;

(ii) whenever the Member or Approved Person becomes aware of a material change in client information, as defined in Rule 2.2.4; or

(iii) by the Approved Person where there has been a change in the Approved Person responsible for the client's account at the Member; and

(f) to ensure that, where investments in a client's account are determined to be unsuitable, the Member or Approved Person so advises the client and makes recommendations to address any inconsistencies between investments in the account and the essential facts relative to the client and the Member or Approved Person maintains evidence of such advice and recommendations.

2.2.2 **New Accounts.**

(a) Each new account for a client must be opened by the Member within a reasonable time of the client's instruction to do so. Account numbers must not be assigned unless they are accompanied by the proper name and address for the client.

(b) A New Account Application Form must be completed for each new account of a client. If the New Account Application Form does not include know-your-client information, this must be documented on a separate Know-Your-Client form. Such form or forms shall be duly completed to conform with the requirements of Rule 2.2.1 and shall be signed by the client and dated.

2.2.3 **New Account Approval.** Each Member shall designate a trading partner, director or officer or, in the case of a branch office, a branch manager reporting directly to the designated partner, director or officer, who shall be responsible for approval of the opening of new accounts and the supervision of account activity. The designated person shall, no later than one business day after the initial transaction date, approve the opening of such account and a record of such approval shall be maintained in accordance with Rule 5.

2.2.4 **Updating Client Information**

(a) **Definition.** In this Rule, "**material change in client information**" means any information that ~~could reasonably~~ results in changes to the stated risk tolerance, time horizon or investment objectives of the client or would have a significant impact on the net worth or income of the client.

(b) The ~~F~~form documenting know-your-client information must be updated to include any material change in client information whenever a Member or Approved Person ~~or other employee or agent~~ becomes aware of such change including pursuant to Rule 2.2.4(e).

(c) Subject to paragraph (d), the Member must maintain evidence of client instructions regarding any material changes in client information and all such changes must be approved by the individual designated in accordance with Rule 2.2.3 as responsible for the approval of the opening of new accounts.

(d) A client signature or other internal controls sufficient to authenticate the client's identity and verify the client's authorization must be ~~obtained~~ used to evidence any change in client name, client address or client banking information.

(e) Without reducing the responsibility of Members in Rule 2.2.1, all Members must at least annually, in writing, request each client to notify the Member if there has been any material change in client information previously provided to the Member or the client's circumstances have materially changed. The date of such request and the date upon which any such client information is received and recorded or amended must be retained.

2.2.5 **Relationship Disclosure.** For each new account opened, the Member shall provide written disclosure to the client:

(a) describing the nature of the advisory relationship;

(b) describing the products and services offered by the Member;

(c) describing the Member's procedures regarding the receipt and handling of client cash and cheques. In the case of a Level 2 dealer, the disclosure must include an explanation that all client cheques shall be payable to the issuer or carrying dealer, as applicable;

(d) describing the Member's obligation to ensure that each order accepted or recommendation made for any account of a client is suitable for the client in accordance with Rule 2.2.1 and advising when the Member will assess the suitability of the investments in the client's account;

(e) defining the various terms with respect to the know-your-client information collected by the Member and describing how this information will be used in assessing investments in the account;

(f) describing the content and frequency of reporting for the account; and

(g) describing the nature of the compensation that may be paid to the Member and referring the client to other sources for more specific information.

Schedule B

Mutual Fund Dealers Association of Canada

Minimum Standards for Account Supervision (Policy No. 2)
(Amendments to Version Published for Comment on June 13, 2008)

On March 5, 2009, the Board of Directors of the Mutual Fund Dealers Association of Canada made the following amendments to Policy No. 2:

MFDA Policy No. 2

Minimum Standards for Account Supervision

Introduction

This Policy establishes minimum industry standards for account supervision. These standards represent the minimum requirements necessary to ensure that a Member has procedures in place to properly supervise account activity. This Policy does not:

(a) relieve Members from complying with specific MFDA By-laws, Rules and Policies and securities legislation applicable to particular trades or accounts; or

(b) preclude Members from establishing a higher standard of supervision, and in certain situations a higher standard may be necessary to ensure proper supervision.

To ensure that a Member has met all applicable standards, Members are required to know and comply with MFDA By-laws, Rules and Policies as well as applicable securities legislation which may apply in any given circumstance. The following principles have been used to develop these minimum standards:

(a) The term "review" in this Policy has been used to mean a preliminary screening designed to detect items for further investigation or an examination of unusual trading activity or both. It does not mean that every trade must be reviewed. The reviewer must use reasonable judgement in selecting the items for further investigation.

(b) It has been assumed that Members have or will provide the necessary resources and qualified supervisors to meet these standards.

(c) The initial compliance with the know-your-client rule and suitability of investment requirements is primarily the responsibility of the registered salesperson. The supervisory standards in this Policy relating to know-your-client and suitability are intended to provide supervisors with a checklist against which to monitor the handling of these responsibilities by the registered salesperson.

Members that seek to adopt policies and procedures relating to branch and head office supervision or the allocation of supervisory activities that differ from those contained in this Policy must demonstrate that all of the principles and objectives ~~and~~of the minimum standards set out in this Policy have been properly satisfied. Further, any such alternative policies and procedures must adequately address the risk management issues of the Member and must be pre-approved by MFDA staff before implementation.

I. ESTABLISHING AND MAINTAINING PROCEDURES

Effective self-regulation begins with the Member establishing and maintaining a supervisory environment which both fosters the business objectives of the Member and maintains the self-regulatory process. To that end a Member must establish and maintain procedures which are supervised by qualified individuals. A major aspect of self-regulation is the ongoing education of staff in all areas of sales compliance.

Establishing Procedures

1. Members must appoint designated individuals who have the necessary knowledge of industry regulations and Member policies to properly perform the duties.

2. Written policies must be established to document supervision requirements.

3. Written instructions must be supplied to all supervisors and alternates to advise them on what is expected of them.

4. All policies established or amended should have senior management approval.

Maintaining Procedures

1. Evidence of supervisory reviews must be maintained. Evidence of the review, such as inquiries made, replies received, date of completion etc. must be maintained for seven years and on-site for one year.

2. An on-going review of sales compliance procedures and practices must be undertaken both at head office and at branch offices.

Delegation of Procedures

1. Tasks and procedures may be delegated to a knowledgeable and qualified individual but not responsibility.

2. The Member must advise supervisors of those specific functions which cannot be delegated, such as approval of new accounts.

3. The supervisor delegating the task must ensure that these tasks are being performed adequately and that exceptions are brought to his/her attention.

4. Those who are delegated tasks must have the qualifications and required proficiency to perform the tasks and should be advised in writing of their duties. The general expectation is that tasks be delegated only to individuals with the same proficiency as the delegating supervisor. In certain limited circumstances, it may be acceptable to delegate specialized tasks to an individual that has not satisfied the proficiency requirements provided that the individual has equivalent training, education or experience related to the function being performed. The Member must consider the responsibilities and functions to be performed in relation to the delegated tasks and make a determination as to appropriate equivalent qualifications and proficiency. The Member must be able to demonstrate to MFDA staff that the equivalency standard has been met. Tasks related to trade supervision can only be delegated to individuals that possess the proficiency of a branch manager or compliance officer.

Education

1. The Member's current policies and procedures manual must be made available to all sales and supervisory personnel.

2. Introductory training and continuing education should be provided for all registered salespersons. For training and enhanced supervisory requirements for newly registered salespersons, please refer to the MFDA Policy No.1 entitled “New Registrant Training and Supervision Policy.”

3. Relevant information contained in compliance-related MFDA Member Regulation Notices and Bulletins and compliance-related notices from other applicable regulatory bodies must be communicated to registered salespersons and employees. Procedures relating to the method and timing of distribution of compliance-related information must be clearly detailed in the Member's written procedures. Members should ensure that they maintain evidence of compliance with such procedures.

II. OPENING NEW ACCOUNTS

To comply with the "Know-Your-Client" and suitability requirements set out in MFDA Rule 2, each Member must establish procedures to maintain accurate and complete information on each client. The first step towards compliance with this rule is completing proper documentation when opening new accounts. Accurate completion of the documentation when opening a new account allows both the registered salesperson and the supervisory staff to conduct the necessary reviews to ensure that recommendations made for any account are appropriate for the client and in keeping with investment objectives. Maintaining accurate and current documentation will allow the registered salesperson and the supervisory staff to ensure that all recommendations made for any account are and continue to be appropriate for a client's investment objectives.

Documentation of Client Account Information

1. A New Account Application Form (“NAAF”) must be completed for each new account.

2. A complete set of documentation relating to each client’s account must be maintained by the Member. Approved Persons must have access to information and documentation relating to the client’s account as required to service the account. ~~The registered salesperson must also maintain a copy of the NAAF.~~ In the case of a Level 1 Introducing Dealer and corresponding Carrying Dealer, both Members must maintain a copy of each client's NAAF.

3. For each account of a client that is a natural person, the Member must obtain information sufficient to allow for the operation of the account and sufficient to determine the essential facts relative to each client ~~(the "know your client" or "KYC" information)~~, which would include, at a minimum, the following information:

(a) name;

(b) type of account;

(c) residential address and contact information;

(d) date of birth;

(e) employment information;

(f) number of dependants;

(g) other persons with trading authorization on the account;

(h) other persons with a financial interest in the account;

(i) investment knowledge;

(j) risk tolerance;

(k) investment objectives;

(l) time horizon;

(m) income;

(n) calculation of net worth (including details of liquid assets~~, fixed assets and liabilities~~);

~~(o)~~(o) information required by other laws and regulations applicable to the Member's business as amended from time to time including information required for relevant tax reporting; information required for compliance with the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations and any authorization necessary to provide information to the MFDA under applicable privacy legislation.

~~(p) information required for compliance with the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, as amended from time to time:~~

~~(q) authorization to provide personal information to the MFDA under applicable privacy legislation.~~

The preceding provides a list of minimum requirements. The Member may require clients to provide any additional information that it considers relevant. In the case of accounts jointly owned by two or more persons, information required under subparagraphs (a), (c), (d), (e), (f) and (i) must ~~the minimum information noted above should~~ be collected with respect to each owner.~~, with the exception of the information required under subparagraphs (b), [g], (h), (i), (j), (k), and (l) and (m)~~. Income and net worth may be collected for each owner or on a combined basis as long as it is clear which method has been used.

~~3.~~4. For each account of a client that is a corporation, trust or other type of legal entity, the Member must obtain information sufficient to allow for the operation of the account and sufficient to determine the essential facts relative to the client, which would include, at a minimum, the following information:

(a) legal name;

(b) head office address and contact information;

(c) type of legal entity (i.e. corporation, trust, etc.);

(d) form and details regarding the organization of the legal entity (i.e. articles of incorporation, trust deed, or other constating documents)

(e) nature of business;

(f) persons authorized to provide instructions on the account and details of any restrictions on their authority;

(g) investment knowledge of the persons to provide instructions on the account;

(h) risk tolerance;

(i) investment objectives;

(j) time horizon;

(k) income;

(l) calculation of net worth (including details of liquid assets~~, fixed assets and liabilities~~);

(m) information required by other laws and regulations applicable to the Member's business as amended from time to time including information required for relevant tax reporting; information required for compliance with the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations and any authorization necessary to provide information to the MFDA under applicable privacy legislation.

~~(m) information required for relevant tax reporting;~~

~~(m) information required for compliance with the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations,* as amended from time to time;~~

~~(n) authorization to provide personal information to the MFDA under applicable privacy legislation.~~

The preceding provides a list of minimum requirements. The Member may require clients to provide any additional information that it considers relevant.

5. For supervisory purposes, registered accounts, leveraged accounts and accounts of any registered salesperson's family member operating under a limited trading authorization or operating under a power of attorney in favour of the registered salesperson must be readily identifiable.

6. If the NAAF does not include KYC information, this must be documented on a separate KYC form(s). Such form(s) must be signed by the client and dated. A copy of the completed NAAF and KYC form, if separate from the NAAF, must be provided to the client.

7. The Member must have internal controls and policies and procedures in place with respect to the entry of KYC information on their back office systems. Such controls should provide an effective means to detect and prevent inconsistencies between the KYC information used for account supervision with that provided by the client.

8. Except as noted in the following paragraph, NAAF's must be prepared and completed for all new clients prior to the opening of new client accounts. The new account or KYC information must be approved by the individual designated as responsible for the opening of new accounts under Rule 2.2.3~~ no later than one business day after the date that the account is opened~~ no later than one business day after the initial transaction date. Records of all such approvals must be maintained in accordance with Rule 5.

9. Notwithstanding the preceding paragraph, NAAF's for clients of a registered salesperson transferring to the Member must be prepared and completed within a reasonable time (but in any event no later than the time of the first trade). The new accounts or KYC information for clients of the transferring salesperson must be approved by the individual designated as responsible for the opening of new accounts under Rule 2.2.3 no later than one business day after the date that the NAAF is completed. Records of all such approvals must be maintained in accordance with Rule 5.

10. In the event that a NAAF is not completed prior to or within a reasonable time after opening an account, as required by this Policy, the Member must have policies and procedures to restrict transactions on such accounts to liquidating trades until a fully completed NAAF is received.

~~11. When there is a change of registered salesperson responsible for a client's account at a Member, the new registered salesperson must review the information on the NAAF and any separate KYC form to ensure it is current and record the date of such review on the form or forms.~~

Changes to Know-Your-Client Information

1. The ~~registered salesperson~~ Approved Person or Member must update the KYC information whenever they become aware of a material change in client information as defined in Rule 2.2.4(a).

2. On account opening, the Member should advise the client to promptly notify the Member of any material changes in the client information, as defined in Rule 2.2.4(a), previously provided to the Member and provide examples of the types of information that should be regularly updated.

3. In accordance with Rule 2.2.4(e), Members must also, on an annual basis, request in writing that clients notify them if there has been any material change in client information, as defined in Rule 2.2.4(a), previously provided, or if the client's circumstances have materially changed.

4. Access to amend KYC information must be controlled and instructions to make any such amendments must be properly documented.

5. A client signature, which may include an electronic signature, or other internal controls sufficient to authenticate the client's identity and verify the client's authorization must be ~~obtained~~ used to evidence any change in client name, client address or client banking information.

6. ~~Other m~~Material changes to client information, as defined in Rule 2.2.4(a), may be evidenced by a client signature, which may include an electronic signature or, alternatively, such changes may be evidenced by maintaining notes in the client file detailing the client's instructions to change the information and verified by providing written confirmation to the client with details of the instructions and providing an opportunity for the client to make corrections to any changes that have been made.

7. All material changes in client information, as defined in Rule 2.2.4(a), must be approved by the individual designated as responsible for the opening of new accounts under Rule 2.2.3 no later than one business day after the date on which notice of the change in information is received from the client. When approving material changes, branch managers should be reviewing the previous KYC information to assess whether the change appears reasonable. Branch managers should be aware of situations where material changes may have been made to justify unsuitable trades or leveraging. For example, branch managers should investigate further material changes that accompany trades in higher risk investments or leveraging or changes made within a short period of time (for example 6 months). Records of all such approvals must be maintained in accordance with Rule 5.

8. Where any material changes have been made to the information contained in the NAAF or KYC form(s), the client must promptly be provided with a document or documents specifying the current risk tolerance, investment objectives, time horizon, income and net worth ~~all KYC information~~ that applies to the client's account.

9. The last date upon which the KYC information has been updated or confirmed by the client must be indicated in the client's file and on the Member's back office system.

Pending/Supporting Documents

1. Members must have procedures in place to ensure supporting documents are received within a reasonable period of time of opening the account.

2. Supporting documentation that is not received or is incomplete must be noted, filed in a pending documentation file and reviewed on a periodic basis.

3. Failure to obtain required documentation within 25 days of the opening of the account must result in positive actions being taken.

Client Communications

1. All hold mail must be authorized by the client in writing and be controlled, reviewed on a regular basis and maintained by the responsible supervisor. Hold mail should never be permitted to occur over a prolonged period of time (i.e. in excess of 6 months).

2. Returned mail is to be promptly investigated and controlled.

III. ASSESSING SUITABILITY OF INVESTMENTS AND LEVERAGING STRATEGIES

1. In accordance with Rule 2.2.1, Members and registered salespersons are responsible for the suitability of each recommendation made for an account of a client and must assess the suitability of the investments in each client's account under the circumstances described in Rule 2.2.1(e).

2. Members must have policies and procedures with respect to their suitability obligations, including criteria for the purpose of assessing the suitability of a client's use of leveraging and describing appropriate client circumstances for recommending the use of leverage.

3. The Member's policies and procedures must describe the information required to be maintained in the client file to facilitate proper Member supervision. Whenever the Member or registered salesperson recommends or becomes aware that a client is using a leverage strategy, the Member or registered salesperson must either maintain copies of the lending documents or make sufficient inquiries to obtain details of the loan, including interest rate, terms for repayment and the outstanding loan value. Where the Member or registered salesperson assists the client in completing the loan application, the Member must maintain copies of lending documents in the file, including copies of the loan application.

4. The Member's criteria for selecting trades for review, the inquiry and resolution process, supervisory documentation requirements, and the escalation and disciplinary process must be documented and clearly communicated to all registered salespersons and all relevant employees. Registered salespersons must be advised of the criteria the Member uses in assessing suitability, actions the Member will take when a trade has been flagged for review and appropriate options for resolution.

5. Registered salespersons must assess the suitability of investments in each client account within a reasonable time, but in any event no later than the time of the next trade, whenever:

   - the client transfers to the Member or transfers assets into an account at the Member;
   - the Member or registered salesperson becomes aware of a material change in the client's KYC information; and
   - the client account has been re-assigned to the registered salesperson from another registrant at the Member.

   The determination of "reasonable time" in a particular instance will depend on the circumstances surrounding the event that gives rise to the requirement to perform the suitability assessment. For example, with respect to client transfers, the volume of accounts to be reviewed may be a relevant factor in determining reasonable time.

6. Should a registered salesperson identify unsuitable investments in a client's account, the registered salesperson must advise the client and take appropriate steps to determine if there has been any change to client circumstances that would warrant altering the KYC information. It is inappropriate to alter the KYC information in order to match the investments in the client's account. If there is no change to the KYC information, or if investments in the account continue to be unsuitable after the KYC information has been amended, the registered salesperson should discuss any inconsistencies with the client and provide recommendations as to rebalancing investments in the account. Transactions in the account must only be made in accordance with client instructions and any recommendations made with respect to the rebalancing of the account must be properly recorded.

7. Registered salespersons must maintain evidence of completion of all suitability assessments performed and any follow up action taken with respect to such assessments.

IV. BRANCH OFFICE SUPERVISION

Each branch manager must undertake certain activities within the branch for purposes of assessing compliance with the Member's policies and procedures and regulatory requirements. These activities should be designed to identify failures to adhere to required policies and procedures and provide a means of revealing and addressing undesirable account activity.

Daily Activity

1. All new account applications and updates to client information must be reviewed and approved in accordance with this Policy.

2. The branch manager (or alternate) must review the previous day's trading for unsuitable trades and any other unusual trading activity using any convenient means. This review must include, at a minimum, all:

- initial trades;
- trades in exempt securities (excluding guaranteed investment certificates);
- leveraged trades/leverage recommendations for open accounts;
- trades over $~~1,000~~2,500 in moderate-high or high risk investments;
- trades over $5,000 in moderate or medium risk investments;
- trades in accounts of family members of registered salespersons operating under a power of attorney in favour of the registered salesperson; and
- trades and redemptions over $~~5,000~~10,000 ~~for~~in all other investments.

For the purposes of this section, "trades" does not include redemptions except where specifically referenced.

3. When reviewing redemptions, branch managers should seek to identify and assess:
   - the suitability of the redemption with regard to the composition of the remaining portfolio;
   - the impact and appropriateness of any redemption charges;
   - possible outside business activity where money may be leaving the Member for reinvestment into other potentially inappropriate or unauthorized investments; and
   - potential churning, including situations where redemption proceeds are being held on a temporary basis pending reinvestment.
4. The branch manager (or alternate) is responsible for following up on unusual trades identified by head office.
5. The branch manager must assess the suitability of investments in each client account where the Member becomes aware of a material change in the client's KYC information that results in a significant decrease in the client's risk tolerance, time horizon, income or net worth or more conservative investment objectives. The suitability assessment must be performed no later than one business day after the date on which notice of the change in information is received from the client.
6. In addition to transactional activity, branch managers must also keep themselves informed as to other client-related compliance matters such as complaints.

V. HEAD OFFICE SUPERVISION

A two-tier structure is required to adequately supervise client account activity. While the head office or regional area level of supervision by its nature cannot be in the same depth as branch level supervision, it should cover the same elements. Head office review should be focused on unusual activity or reviews that cannot be carried out at the branch level. Head office reviews must include procedures to effectively detect unsuitable investments and excessive trading in client accounts.

Daily Reviews

1. In addition to the trading review criteria for branch managers, head office must conduct daily reviews of account activity which must include, at a minimum, all:
   - trades over $5,000 in exempt securities (excluding guaranteed investment certificates), moderate-high or high risk investments, or leveraged trades/recommendations ~~in~~for open accounts;
   - trades and redemptions over $10,000 in moderate or medium risk mutual funds; and
   - trades over $~~10,000~~50,000 ~~for~~in all other investments (excluding money market funds).~~; and~~
   - ~~redemptions greater than $10,000.~~

   For the purposes of this section, "trades" does not include redemptions except where specifically referenced.

2. There must be closer supervision of trading by registered salespersons who have had a history of questionable conduct. Questionable conduct may include trading activity that frequently raises questions in account reviews, frequent or serious complaints, regulatory investigations or failure to take remedial action on account problems identified.

3. Daily reviews should be completed within one business day unless precluded by unusual circumstances.

4. Daily reviews should be conducted of client accounts of producing branch managers.

5. On a sample basis, the Member must review the suitability of investments in accounts where clients have transferred assets into an account ~~or where there has been a material change in client information~~. The Member must have policies and procedures regarding sample size and selection, which should be based on the risk level associated with the account, focusing on accounts that hold higher risk investments, exempt securities or products not ~~normally~~ sold by the Member, accounts that are operated under a power of attorney in favour of a registered salesperson and accounts employing a leverage strategy. The Member's reviews must be completed within a reasonable time.

VI. IDENTIFICATION OF TRENDS IN TRADING ACTIVITY

1. ~~In addition to performing daily reviews,~~ Members must establish policies and procedures to identify trends or patterns that may be of concern including:

   - excessive trading or switching between funds indicating possible unauthorized trading, lack of suitability or possible issues of churning (for example, redemptions made within 3 months of a purchase, DSC purchases made within 3 months of a DSC redemption or accounts where there are more than 5 trades per month);
   - excessive switches between no load funds and deferred sales charge or front load funds;
   - excessive switches between deferred sales charge funds and front load funds; and
   - excessive switches where a switch fee is charged.

2. Head office supervisory review procedures must include, at a minimum, the following criteria:

   - a review of all accounts generating commissions greater than $1,500 within the month;
   - a quarterly review of reports on assets under administration ("AUA") comparing current AUA to AUA at the same time the prior year;
   - a quarterly review of commission reports for the previous 12 month period comparing commissions received in the current year to commissions received for the same period in the prior year.

   Significant increases in commissions or AUA beyond those caused by market fluctuations may indicate issues with churning or leveraging strategies.

   Significant decreases may indicate potential inappropriate outside business activity.

3. Reviews should be completed within ~~21~~30 days of the last day of the period being reviewed unless precluded by unusual circumstances.

Schedule C

Mutual Fund Dealers Association of Canada

Client Reporting (Rule 5.3)
(Amendments to Version Published for Comment on June 13, 2008)

On March 5, 2009, the Board of Directors of the Mutual Fund Dealers Association of Canada made the following amendments to MFDA Rule 5.3:

5.3 CLIENT REPORTING

5.3.1 **Delivery of Account Statement**

(a) Each Member shall, in a timely manner send an account statement to each client in accordance with the following minimum standards:

(i) once every 12 months for a client name account;

(ii) once a month for nominee name accounts of clients where there is an entry during the month and a cash balance or security position; and

(iii) quarterly for nominee name accounts where no entry has occurred in the account and there is a cash balance or security position at the end of the quarter.

(b) A Member may not rely on any other person (including an Approved Person) to send account statements as required by this Rule.

(c) Notwithstanding the provisions of 5.3.1(b), a Member may rely on the trustee administering a self-directed registered plan to send the account statement required by paragraph (a)(i) where the following conditions are met:

(i) The Member does not act as agent for the trustee for the registered plans;

(ii) The trustee meets the definition of “Acceptable Institution” as defined in Form 1;

(iii) There is a services agreement in place between the Member and the trustee which complies with the requirements of MFDA Rule 1.1.3 and provides that the trustee is responsible for sending account statements to clients of the Member that comply with the requirements of MFDA Rule 5;

(iv) There is clear disclosure about which trades are placed by the Member;

(v) Clear disclosure must be provided on the account statement regarding which securities positions referred to on the statement are eligible for coverage by the MFDA Investor Protection Corporation and which are not (once the Corporation is offering coverage);

(vi) The Member’s full legal name must appear on the account statement together with the name of the trustee; and

(vii) The Member must receive copies of the statements, or have other systems in place, to ensure that the information contained on the statements matches its own information regarding the transactions it executes.

(d) Notwithstanding the provisions of Rule 5.3.1(b), where a Member is affiliated with a fund manager and in connection with a specific client account is selling only the mutual fund securities of an issuer managed by such affiliated fund manager for that client account, the Member may rely on the affiliated fund manager to send the account statement required by paragraph (a)(i) for that specific account.

5.3.2 **Automatic Payment Plans.** Notwithstanding the provisions of Rule 5.3.1(a)(ii), where a Member holds client assets in nominee name and the only entry in the client's account in a month relates to the client's participation in:

(a) any automatic payment plan that provides for systematic trading in the securities of a mutual fund on a monthly or more frequent basis, or

(b) other automatic entries such as dividends and reinvested distributions,

the Member shall send an account statement to the client quarterly.

5.3.3 **Content of Account Statement.** Each account statement must contain the following information:

(a) for nominee name accounts or accounts where the Member acts as an agent for the trustee for the purposes of administering a self-directed registered retirement savings or similar plan:

(i) the opening balance;

(ii) all debits and credits;

(iii) the closing balance;

(iv) the quantity and description of each security purchased, sold or transferred and the dates of each transaction, and;

(v) the quantity, description and market value of each security position held for the account;

(b) for client name accounts:

(i) all debits and credits;

(ii) the quantity and description of each security purchased, sold or transferred and the dates of each transaction; and

(iii) for automatic payment plan transactions, the date the plan was initiated, a description of the security and the initial payment amount made under the plan.

(c) for all accounts:

(i) the type of account;

(ii) the account number;

(iii) the period covered by the statement;

(iv) the name of the Approved Person(s) servicing the account, if applicable; and

(v) the name, address and telephone number of the Member.

5.3.4 **Member Business Only.** Only transactions executed by the Member may appear on the statement of account required pursuant to Rule 5.3.3.

5.3.5 **Account Performance Reporting.** The Member must provide information to clients on an annual basis with respect to the performance of the client's account at the Member.

(a) Subject to paragraphs (b) and (c), the account performance reporting must include the following information for the annual period:

(i) the total market value of the account as at the start of the period covered by the report;

(ii) total assets deposited to the account during the period covered by the report;

(iii) total assets withdrawn from the account during the period covered by the report;

(iv) the total market value of the account as at the end of the period covered by the report;

(v) gain or loss in the account as at the end of the period covered by the report.

(b) Notwithstanding the provisions of paragraph (a), where market values cannot be readily and reliably determined by the Member in respect of security positions held in the account, such values shall not be

included in the report and the Member must disclose to the client in the report the security positions for which values have not been included and why the information has not been included in the report.

(c) A Member need not send the information contained in paragraph (a) where the Member sends a client communication that contains an annualized percentage rate of return for the client's account in accordance with the requirements of Rule 2.8.3.

13.1.9 Summary of Public Comments Respecting Proposed Amendments to MFDA Rule 2.2 (Client Accounts) and MFDA Policy No. 2 *Minimum Standards for Account Supervision*

SUMMARY OF PUBLIC COMMENTS RESPECTING
PROPOSED AMENDMENTS TO MFDA RULE 2.2 (CLIENT ACCOUNTS) AND
MFDA POLICY NO. 2 *MINIMUM STANDARDS FOR ACCOUNT SUPERVISION*

On June 13, 2008, the British Columbia Securities Commission published proposed amendments to MFDA Rule 2.2 (Client Accounts) and MFDA Policy No. 2 *Minimum Standards for Account Supervision* (the "**Proposed Amendments**") for a 90-day public comment period that expired on September 11, 2008.

16 submissions were received during the public comment period:

1. Advocis
2. Assante Wealth Management ("Assante")
3. Association of Canadian Compliance Professionals ("ACCP")
4. BMO Investments Inc. ("BMO")
5. Borden Ladner Gervais LLP ("BLG")
6. Canfin Magellan Investments Inc. ("Canfin")
7. Federation of Mutual Fund Dealers ("Federation")
8. IGM Financial Inc. ("IGM")
9. Independent Financial Brokers of Canada ("IFB")
10. Independent Planning Group ("IPG")
11. The Investment Funds Institute of Canada ("IFIC")
12. The Investment Industry Association of Canada ("IIAC")
13. Primerica Financial Services (Canada) Ltd. ("PFSL")
14. Royal Mutual Funds Inc. and Phillips, Hager & North Investments Funds Ltd. ("RMFI")
15. Scotia Securities Inc. ("SSI")
16. Worldsource Financial Management Inc. ("Worldsource")

Copies of comment submissions may be viewed on the MFDA's website at: www.mfda.ca.

The following is a summary of the comments received, together with the MFDA's responses.

General Comments

1. Need for a Principles-Based Approach/Outcomes-Based Approach

A number of commenters expressed the view that the amendments should be less prescriptive and more principles-based which would allow Members the flexibility to comply and manage risk in a manner appropriate for their individual business models and operating systems.

Advocis expressed support for the fact that the Proposed Amendments to Rule 2.2 have been drafted with attention to achieving outcomes. Advocis also expressed support for the principles-based requirements with respect to relationship disclosure under proposed Rule 2.2.5.

MFDA Response

MFDA staff acknowledges that certain regulatory requirements were more principles-based prior to the development of the Proposed Amendments. Where MFDA staff has prescribed requirements in greater detail, for example with respect to the trade review thresholds proposed in Policy No. 2, this has been in response to issues identified through MFDA compliance and enforcement activity. Inadequate trade supervision and product due diligence are two of the most common deficiencies identified during compliance examinations of Members. Suitability is the most common subject matter of complaints received by the MFDA. The MFDA's regulatory experience to date has demonstrated that the current principles-based approach has not been effective in addressing these ongoing concerns. The Proposed Amendments are also intended to respond to requests from Members for more direction and establish transparent and objective minimum standards for the industry and a consistent level of investor protection. The Proposed Amendments seek to adopt a principles-based approach where this is appropriate, for example, as noted by the commenter, proposed Rule 2.2.5 sets out requirements for disclosure that are principles-based. In addition, even where the Proposed Amendments introduce prescriptive requirements, such as in Policy No. 2, MFDA staff remains open to considering alternate approaches to meeting such requirements where it can be demonstrated that such approaches meet the minimum standards set out in the Policy.

2. Need for a Cost/Benefit Analysis

IFIC and SSI expressed the view that an MFDA cost-benefit analysis is required to assess the increased operational workload and the additional costs of compliance due to the amendments.

Advocis commented that greater detail is required to justify undertaking amendments to Policies and Rules. Advocis submitted that a cost-benefit analysis is critical in determining if the benefits to be derived from the proposed regulatory intervention outweigh its costs and therefore such analysis should have been performed.

The Federation expressed concern that Members will be required to implement additional compliance procedures as a consequence of the Proposed Amendments, which will not result in improved supervision as Members will be focused on satisfying Rule requirements rather than implementing a sound compliance regime, with no identifiable benefit to the consumer, the industry or the regulatory process.

MFDA Response

As noted above, the regulatory concerns identified by the MFDA's compliance and enforcement activities, as well as the number of complaints received by the MFDA in relation to suitability concerns, have indicated that clarification for Members in this area should be a regulatory priority for the MFDA. Investment suitability has also been identified as a regulatory priority by the Canadian Securities Administrators ("CSA") who have recently undertaken their own policy initiatives in this area. Further, based on the information received from compliance examinations to date, more than 80% of Members have policies and procedures that are in compliance with either the proposed branch review thresholds or the proposed head office review thresholds. MFDA staff does not believe the Proposed Amendments go beyond the measures necessary to ensure that the regulatory concerns identified have been addressed.

MFDA staff has developed the Proposed Amendments over the past three years based on numerous consultations with the industry through Member Regulation Forums, the MFDA Policy Advisory Committee and other ad hoc industry meetings and practical, first-hand experience gained by MFDA staff during the course of their compliance and enforcement activities. MFDA Members were also consulted by way of industry subcommittees which were established in 2006 and presented with the original draft of the amendments for comment. In the course of these consultations, many suggestions were brought forward and discussed. Alternative viewpoints and suggestions from Members, regulators and other industry participants were also discussed at length in these consultations and input received was factored into the Proposed Amendments. Issues of cost to implement the Proposed Amendments were discussed during industry consultations. MFDA staff believes that the Proposed Amendments strike an appropriate balance between managing costs considerations and appropriately addressing the regulatory issues identified by the MFDA.

3. System Changes Required

Assante commented that there are many systems changes that Members will be required to make in order to comply with the new requirements. It indicated that there may be difficulty in creating a compliance system to accommodate these requirements and that this may not have been taken into consideration when the proposals were drafted.

MFDA Response

MFDA staff is aware that systems changes may be required to implement the Proposed Amendments. This issue will be addressed through the provision of appropriate transition periods and MFDA staff has canvassed Members with respect to their views as to adequate transition timelines.

4. Harmonization with Other Regulators

A number of commenters noted differences between the MFDA's Proposed Amendments and those of the Investment Industry Regulatory Organization of Canada ("IIROC") and other regulators, in particular proposals under National Instrument 31-103 *Registration Requirements* ("NI 31-103") and the requirements of the Point of Sale initiative of the Joint Forum of Financial Market Regulators. These commenters stressed the importance of harmonization to avoid inconsistency, duplication and overlap for the industry and also to ensure that investors are subject to similar standards of disclosure and protection.

MFDA Response

MFDA staff acknowledges the industry concerns with respect to the need for harmonization. MFDA staff, in reviewing its proposal, has considered the IIROC Client Relationship Model ("CRM") proposal and met with IIROC staff on a number of occasions to engage in a detailed review of both self-regulatory organizations' ("SRO") proposals with a view to minimizing differences and ensuring that they achieve the same regulatory objectives. As discussed in the Notice published with the Proposed Amendments, there are certain areas in which the MFDA and IIROC have adopted different approaches to achieve the objectives under CRM. Some of these result from differences in the business of MFDA and IIROC Members or the different ways in which our existing Rules are structured. MFDA staff has also engaged in discussions with CSA staff with a view to ensuring that requirements under proposed NI 31-103 are consistent with those proposed under SRO Rules.

5. Input from Approved Persons and Consumers Required

The IFB commented that there is no indication that the MFDA sought input from advisors in developing the Proposed Amendments. It also suggested that the MFDA consider the results from an investor survey recently issued by the Joint Standing Committee on Retail Investor Issues which asked investors what information they want and need when making an investment decision and how investment products should be regulated.

Advocis expressed concern that there is inadequate early participation in the policy process by non-Members.

MFDA Response

The current process in which MFDA Rule proposals are published for a period of public comment is intended to solicit and encourage participation in the policy process by non-Members. In order to facilitate meaningful input, it is necessary to draft a proposal as a starting point for discussion. All comments received during the public comment process are reviewed and considered by MFDA staff and, to the extent that such comments result in material changes, the draft proposals are published for another period of public comment.

6. Carrying Dealers

IGM recommended that the amendments specifically state that the requirements only apply to introducing dealers and not to carrying dealer except: (i) in the case of a Level 1 introducing dealer, or (ii) where the carrying dealer has agreed to perform specific compliance functions and then only with respect to the compliance functions the carrying dealer has agreed to perform.

MFDA Response

MFDA Rule 1.1.6 currently provides that the introducing dealer shall be responsible for compliance with MFDA Rules for each account introduced to the carrying dealer subject to the carrying dealer being also responsible for functions it agrees to perform under the introducing/carrying dealer arrangement.

7. Coordination of Timing with Member Regulation Notice MR-0069 – Suitability Guidelines

Advocis questioned whether Member Regulation Notice MR-0069 **–** *Suitability Guidelines ("*MR-0069"), which is consistent with Proposed Amendments to Policy No. 2, needs to be replaced by Policy No. 2 at this time. Advocis submitted that there should be sufficient time allowed to first determine if the Notice achieves the MFDA's desired outcome before resorting to another regulatory tool. Advocis expressed the view that, from a regulatory development perspective, the MFDA will not be able to determine if a change in Member and/or Approved Person actions are the result of the Notice or the Proposed Amendments.

MFDA Response

Policy No. 2 is not intended to replace MR-0069. As noted in the introduction to MR-0069, the information in the Notice reflects both existing regulatory obligations and guidelines in certain areas some of which have resulted in the proposed Policy and Rule amendments. The Proposed Amendments are inconsistent in certain respects (e.g. trade review thresholds) with the guidelines set out in MR-0069. When the Proposed Amendments are approved, MR-0069 will be updated accordingly.

Specific Comments

I. Rule 2.2 (Client Accounts)

A. Rule 2.2.1 (Know-Your-Client and Suitability)

1. General Comments

IIAC noted that the Proposed Amendments requiring that the suitability of investments in a client's account be assessed when certain trigger events occur would have a significant impact on Member firms. In particular, in order to ensure that a suitability review is conducted when one of the trigger events occurs, Members would need to have systems designed to monitor the triggers and ensure the suitability review did in fact occur and was documented in some fashion. IIAC recommended that an ongoing suitability requirement be implemented as a best practice recommendation rather than a strict regulatory requirement.

PFSL commented that the Proposed Amendments will create a significant increase in the frequency of suitability assessments as well as the information that is to be collected for these assessments and go beyond what is required to ensure suitability. PFSL urged the MFDA to verify that the information required to be collected is pertinent to a suitability assessment and to ensure that these requirements do not duplicate other existing obligations. PFSL also noted that suitability assessments should only be performed at relevant opportunities, such as following a material change, at the time of a transaction or any other instance in which concern regarding the suitability of an account could arise.

PFSL added that a significant increase in the number of suitability assessments along with other new regulatory requirements could result in more firms establishing minimum account sizes in order to maintain the viability of their services and that the costs of such measures could impact the access of more moderate investors to affordable financial services and products.

Advocis commented that prescribing the events triggering a suitability review in the Rule is ineffective, as there could be other potential situations not contained in the Rule, which may reasonably be viewed as triggers. Advocis recommended adopting a principles-based approach in the Rule and describing the details as to types of events triggering a review in a Notice.

MFDA Response

Proposed Rule 2.2.1(e) requires overall account reviews at critical times when such assessments will be most meaningful. The review requirement is linked to events where an assessment is relevant in the circumstances. It is currently industry best practice to perform suitability assessments on certain key trigger events. Further, MFDA staff has historically interpreted Rules of general application that require fair and honest dealings with clients to include a suitability obligation. The amendments to Rule 2.2.1 are intended to codify and clarify this expectation. Members are not precluded from assessing the suitability of investments in client accounts at other times (in addition to the trigger events set out in Rule 2.2.1) as a best practice.

It is acknowledged that systems changes will be required to comply with the Proposed Amendments. Accordingly, the MFDA will be considering appropriate transition periods for the implementation of the requirements to ensure that Members are provided with sufficient time to comply.

2. Removal of "from Time to Time" (Rule 2.2.1(a))

IFIC, SSI, Canfin, BMO and IGM recommended the removal of "from time to time" from Rule 2.2.1(a). It was suggested that arbitrary changes to the essential facts may require modification of forms, back-office systems, salesperson behaviour and unnecessary and expensive re-collection of client information. IGM commented that any modifications made to these requirements should go through the public comment process.

BMO recommended that Members be given flexibility to look at their own core client base to determine what KYC information they will collect, rather than having these matters prescribed by the MFDA. BMO noted that if the MFDA were to prescribe the minimum information to be collected, Members would be forced to collect information that may not be relevant to the majority of their clients. BMO expressed the view that the wording of Rule 2.2.1(a) should remain in its current form, as it gives Members enough principled guidance while taking into consideration their own business models.

MFDA Response

The reference to "as may be prescribed by the Corporation from time to time" has been removed from Rule 2.2.1(a). The minimum information that must be collected on account opening is set out in Policy No. 2. Any amendments to these requirements would be subject to the SRO Rule review and approval process that would involve approval by the Board of Directors, CSA review and approval and the publication of any proposed amendments for public comment.

The requirements set out in Policy No. 2 represent the minimum information necessary to operate the account and know the client. While there may be specific situations where it is possible to assess suitability without certain information, it would be difficult from a compliance monitoring perspective to carve out exceptions on an account basis. For example, a client may purchase a simple Guaranteed Investment Certificate ("GIC") when they open an account, making it seem unnecessary, at the time, to collect detailed information with respect to net worth, but later decide to purchase a higher risk mutual fund. If the information is not collected on account opening, it may be difficult to obtain it later.

3. Essential Facts (Rule 2.2.1)

RMFI commented that the requirement for each Member and Approved Person to use due diligence to ensure that each order accepted or recommendation made for any account of a client is suitable for the client based on "essential facts relative to the client" is unduly broad. RMFI suggested that the requirement should refer to "KYC" information, which is the commonly used term as understood by Members and also referred to in MFDA Policy No. 2.

MFDA Response

The requirement for the Member and Approved Person to use due diligence to "learn the essential facts" is a general statement of the principles-based obligation to collect the facts necessary to know the client and assess suitability. Such facts will include, but may not necessarily be limited to, the enumerated items set out in Policy No. 2. Depending on the circumstances, the Member or Approved Person may need to collect other information to fully understand the client's investment needs and objectives.

4. Suitability Assessment Triggers (Rule 2.2.1(e))

(a) Timeline for Review – Assets Transferred in/Change in Approved Person

IFIC, Canfin, SSI and Worldsource expressed the view that, where there is a transfer of assets into an account at the Member or a change in the Approved Person responsible for the client's account, there should be adequate time for the review to occur. IFIC and SSI suggested that the review should be required prior to the first transaction in the account following the change, with allowance for automated transactions to continue.

MFDA Response

Policy No. 2 requires the Approved Person to assess the suitability of investments in each client account within a reasonable time, but in any event no later than the time of the next trade. The determination of reasonable time in a particular instance will depend on the circumstances surrounding the event giving rise to the requirement to perform the suitability assessment. For example, with respect to client transfers, the volume of accounts to be reviewed may be a relevant factor in determining reasonable time. Where an Approved Person is transferring a large book of business to the Member, it may be reasonable to ensure that the suitability assessments are done within a year if there are no trades on the accounts. If; however, one client transfers assets into an account at the Member from another dealer or financial institution, it is reasonable to expect that the suitability assessment would be done relatively quickly. If the timeline for review was based solely on the timing of the first trade on the account after the transfer, there would be no change to the frequency of suitability assessments required currently under MFDA Rules.

With respect to the suggestion that an allowance be made for automated transactions to continue without a suitability assessment being made, there is no exception from suitability obligations under current MFDA Rules or securities legislation with respect to trades made under automatic payment plans.

(b) Member Review – Assets Transferred in

BMO requested clarification with respect to the suitability review trigger in Rule 2.2.1(e)(i). As the preamble to Rule 2.2.1 states that "Each Member and Approved Person shall use due diligence", subsection (e)(i) suggests that the Member itself is required to do something over and above the Approved Person's suitability review at the time the transfer-in instruction is made. BMO indicated that it does not believe that the MFDA intended for the Member to perform a suitability review separate and apart from the Approved Person's review for every transfer-in and suggested that this could be clarified by inserting the words "*by the Approved Person*" at the beginning of subsection (e)(i), similar to subsection (e)(iii).

MFDA Response

Approved Persons are required to review the suitability of investments in the client's account whenever the client transfers assets into an account at the Member. Policy No. 2; however, also requires that Members, on a sample basis, review the suitability of investments in accounts where clients have transferred assets into an account. Accordingly, the wording of Rule 2.2.1(e)(i) has not been amended.

(c) Material Change Trigger for Suitability Review

BMO urged the MFDA to reconsider the wording of Rule 2.2.1(e)(ii). Given the definition of "*material change in client information"*, which is defined as information that could reasonably result in changes to the stated risk tolerance, time horizon, or investment objectives of the client or that would have a significant impact on the net worth or income of the client, BMO noted that a material change in client information cannot itself trigger a suitability review. BMO expressed the view that the material change in client information must result in an *actual* change to risk tolerance, time horizon or investment objectives before a suitability review can be triggered. BMO recommended that the material change only trigger a re-evaluation and update of the client's risk tolerance, time horizon or investment objectives.

MFDA Response

MFDA staff acknowledges the concerns expressed by the commenter and has amended the definition of "material change in client information" to remove the reference to "could reasonably result". The amended definition reads as follows:

"material change in client information" means any information that results in changes to the stated risk tolerance, time horizon or investment objectives of the client or would have a significant impact on the net worth or income of the client."

(d) Meaning of "Transfer" of Assets by a Client

RMFI suggested that the MFDA clarify what constitutes the "transfer" of assets by a client in Rule 2.2.1(e)(i). Specifically, RMFI questioned if a "transfer" includes a deposit or if a "transfer" only involves the movement of assets from an account at one dealer to an account at another dealer.

MFDA Response

Transfer of assets would include the deposit of assets by a client into an account at the dealer as well as the transfer of assets from an account at one dealer to an account at another dealer. The Approved Person must perform a suitability assessment in all cases where clients have transferred assets into an account at the dealer and the Member's head office must also perform a suitability review on a sample basis focusing on the risk level of the account in accordance with the factors set out in Policy No. 2.

(e) Suitability Assessment where Change in Approved Person

IFIC, Canfin, PFSL, IGM and Worldsource expressed the view that the requirement under Rule 2.2.1(e)(iii) for a formal, documented suitability review where there has been a change in the Approved Person is unnecessary and should be removed. It was submitted that, in these cases, to the best of the dealer's knowledge, nothing has changed that might render the investments unsuitable and a provision requiring a new representative to familiarize him/herself with the file already exists in the Rules and is manageable. PFSL noted that this requirement will increase the advisor's workload, while adding costs and inconvenience that will ultimately be borne by clients.

SSI, noting that it does not assign accounts to individual Approved Persons, recommended that the words "*if applicable"* be added to Rule 2.2.1(e)(iii).

MFDA Response

Under current Policy No. 2, Approved Persons are already required to review the client's KYC information where they have been assigned responsibility for a client's account. At the same time, they should also be reviewing the investments in the client's account to assess suitability. Rule 2.2.1(e)(iii) is intended to formalize and codify an existing practice by requiring that Approved Persons document their review. If accounts are not assigned to individual Approved Persons, the requirement in Rule 2.2.1(e)(iii) does not apply.

5. Advising Clients of Unsuitable Investments (Rule 2.2.1(f))

BLG commented that the due diligence obligations in assessing the suitability of each investment in the client's account, as proposed by Rule 2.2.1(e), could prove onerous or effectively impossible to meet in the case of certain prospectus-exempt and/or registration-exempt securities. BLG noted that if a Member and Approved Person are unable to assess the suitability of a transferred investment in order to comply with section 2.2.1(e), they will be unable to comply with section 2.2.1(f) as drafted. BLG submitted that Members and Approved Persons should be exempt from sections (e) and (f) of Rule 2.2.1 for transferred investments provided that written notice is promptly sent to the client advising which of the transferred investments are not subject to a suitability assessment. In the alternative, Members and Approved Persons should be specifically permitted, after performing and recording a reasonable level of due diligence, to classify transferred investments as "high risk" or "speculative" for purposes of assessing suitability where the information that is needed to assess suitability is not readily available.

BMO expressed the view that the reference in Rule 2.2.1(f) to "*…where investments in a client's account are determined to be unsuitable…*" appears to suggest that Members have an ongoing obligation to review suitability of a client's investments even without a trigger having taken place.

MFDA Response

It is recognized that it may be difficult in some circumstances for Members to assess a product transferred into a client's account if they have never sold it. If Members have concerns with respect to a product that a client is holding, they have the option of advising the client that they will not accept the transferred investment. In the alternative, they may, as suggested by the commenter, classify the transferred investment as "high risk" or "speculative" for purposes of assessing suitability. If information with respect to the transferred investment is not readily available, it is likely because the investment is not liquid. Accordingly, classifying the investment as "high risk" or "speculative" would be reasonable in these circumstances.

Rule 2.2.1(f) applies whenever the Member or Approved Persons performs a suitability assessment. There is no ongoing obligation to assess suitability of a client's investment without a trigger having taken place. However, if the Member or Approved Person chooses to perform a suitability assessment without a trigger having taken place, section (f) still applies.

B. Rule 2.2.2 (New Accounts*)*

IFIC, IGM and Canfin recommended that the Rule clarify that the obligation to open an account within a reasonable time arises only when the account application is received in good order. RMFI commented that the requirement that each new account for a client be opened by the Member within a reasonable time of the client's instructions should reflect that there may be uncontrollable delays when the client has not met other regulatory requirements such as anti-money laundering and terrorist financing requirements, or if the documentation received is not otherwise in good order.

IFIC and the ACCP requested clarification as to when an account is considered open.

MFDA Response

The obligation to open an account within a reasonable time arises when the account application is received in good order. Policy No. 2 provides that New Account Application Forms ("NAAFs") must be prepared and completed for all clients prior to the opening of new client accounts. NAAFs for clients of Approved Persons transferring to the Member must be prepared and completed within a reasonable time (but in any event no later than the time of the first trade). In these cases, the account can be opened with the client's name and address on the dealer change form pending completion of the NAAF. It is recognized that there may be uncontrollable delays where the client has not met other regulatory requirements and this may be taken into account when determining reasonable time for the purpose of the Rule.

An account is considered open when the necessary approvals have been obtained and an account number has been assigned.

C. Rule 2.2.3 (New Account Approval)

IFIC and Canfin recommended that the original wording of Rule 2.2.3 be maintained given that, as per standard industry practice, approval of forms is completed prior to or promptly after completion of any initial transaction. IFIC recommended replacing "no later than one business day after the date that the account is opened" with "within a reasonable time (but in any event no later than the time of the first trade)".

The ACCP commented that Members currently approve a new account along with the initial transaction, which results in a comparison of the essential facts of a client and the essential facts of the order. It submitted that account approval without the details of the initial transaction represents an unnecessary step and results in an incomplete review that would warrant a second review at the time of the transaction.

BMO noted that Rule 2.2.3 and Policy No. 2 require new accounts to be approved no later than one business day after they are opened. BMO indicated that, based on the new requirements for daily trade surveillance, all initial trades will have to be reviewed, resulting in the account having to be reviewed twice – once at account opening and again at completion of an initial trade if it occurs at a later date. BMO stated that it does not believe that all initial trades need to be approved by the branch manager. BMO added that, if the MFDA's proposed trade review thresholds are maintained, all initial trades falling within these thresholds will be reviewed and that there is no reason for initial trades to be subject to a more onerous level of scrutiny than subsequent trades. BMO also noted that if a new account is opened separately from when the client makes the initial trade (for example if the client chooses to postpone making trading instructions), there would be no way to link the trade back to the new account or identify it as the first trade on the account.

MFDA Response

MFDA staff acknowledges the concerns expressed by the commenters and has revised the Proposed Amendments to Rule 2.2.3 to clarify that new accounts must be approved no later than one business day after the initial transaction date. In light of the revised requirement with respect to the timing of new account approval, it is appropriate that the branch manager also approve the initial trade at the same time. When reviewing the NAAF, the branch manager must also consider the initial trade to ensure that it is consistent with the client's KYC information.

D. Rule 2.2.4 (Updating Client Information)

1. Scope of Material Change

IFIC and Canfin commented that, while having material changes in KYC information such as risk tolerance examined by an Approved Person is appropriate, requiring all material changes to be approved by the designated individual under Rule 2.2.4 (c) is unnecessary. IFIC and Canfin suggested clarification by adding "as defined in 2.2.4 (a)" following "material change in client information".

MFDA Response

The definition of "material change in client information" in paragraph (a) of Rule 2.2.4 applies to all of the requirements in Rule 2.2.4. Accordingly, the requirement for supervisory staff approval of material changes in paragraph (c) of Rule 2.2.4 is already limited to the changes defined in paragraph (a).

2. Requirements Regarding Updating Client Information Too Restrictive

A number of commenters expressed the view that the requirements with respect to updating client information in Rule 2.2.4 are too restrictive and already subject to internal risk management controls of Members. Worldsource commented that the proposed process for updating KYC information in Rule 2.2.4 is impractical for Members that handle updates through a call center. The commenters recommended that the Rule contain only principles and allow Members flexibility to manage risk.

PFSL expressed the view that the Rule is overly prescriptive in that it establishes the use of client signatures as the only acceptable method of managing risk. PFSL noted that client signatures are not the most effective means of authenticating client instructions and, therefore, it is not appropriate to limit authentication mechanisms to client signatures.

Advocis commented that the client signature requirement for changes to client address and banking information will increase compliance responsibilities and that the broader policy concern underlying this requirement is not clear.

SSI noted that the primary obligation should be on the Member to have adequate controls in place to ensure client updates to material changes are accurately recorded and approved by the client and that the obligation to confirm any changes should, in the normal course, take place at the time of the next client interaction with the dealer. SSI added that requiring the approval of all material changes by the designated individual is unnecessary and would be inefficient for a large integrated financial services group. SSI submitted that it should be able to rely on change controls implemented by its parent, or by other wholly-owned subsidiaries, provided timely access controls are agreed to.

BMO urged the MFDA to reconsider the prescriptive nature of this section, particularly as it relates to the need for a client signature for a change in client address. BMO noted that, like other dealers that are members of large financial groups, it is able to leverage off the robust and sophisticated technological tools of the financial group and, as a result, does not collect client signatures to initiate address changes but rather uses an enterprise-wide database that allows for the performance of profile maintenance activities (such as address updates) at the enterprise level. BMO proposed that, in cases where a Member is able to utilize a technological process that minimizes paper, uses electronic "documentation" and strikes an appropriate balance between preventative and detective controls, including a reliable audit trail, the MFDA should be open to considering it as a suitable alternative to collecting a client signature.

MFDA Response

Through compliance and enforcement activity, MFDA staff has identified situations where unverified changes in client address and banking information have facilitated fraud and misdirection and misappropriation of mail, including redemption cheques. The requirement to properly verify client address changes is necessary in light of the risk of fraud and misappropriation. Rule 2.2.4(d) has been amended to include other internal controls that are sufficient to authenticate the client's identity and verify the client's authorization. The client signature requirement, however, is not limited to physical, hard copy signatures but also includes electronic signatures such as telephonic recordings or the use of a password protected web access system. As further discussed in MFDA Member Regulation Notice MR-0016 – Electronic Signatures, an electronic signature does not have to look

like a physical signature in order to be valid and binding. For example, the signature can be a code, sound or symbol of any kind and could be part of or separate from the document it signs as long as the association with the document is clear.

3. Update to KYC Information Triggered by Client Instructions Only

BLG noted that paragraph (c) of Rule 2.2.4, which provides that all changes to KYC information are to be based on client instructions alone and that the Member must maintain evidence of such instructions, is inconsistent with the wording in paragraphs (a) and (b). BLG noted that the definition of "material change in client information" in Rule 2.2.4(a) is not limited to information provided by the client and confirmed by client instructions as it refers to "any information that could reasonably result in changes."

BLG commented that Rule 2.2.4(b) does not refer to client instructions and expands the obligation to update KYC information to "any material change in client information whenever a Member or Approved Person *or other employee or agent* (emphasis added) becomes aware of such change including pursuant to Rule 2.2.4(c)". BLG expressed the view that unless such employee or agent has specific responsibility for maintaining or updating KYC information, only the Member and the client's Approved Person should have such an obligation. BLG also noted that Policy No. 2, which requires the registered salesperson or Member to update the KYC information, is inconsistent with Rule 2.2 that imposes the obligation whenever an Approved Person, Member, an employee or agent becomes aware of a material change.

IGM expressed the view that the obligation to update KYC information should be triggered only where the client advises the Member or Approved Person of the change and that KYC information should not be updated without client acknowledgement.

BLG also suggested that the responsibility of the client to inform the Member and Approved Person of material changes should be provided for in Rule 2.2.5(e). The IFB was also of the view that there should be some recognition of client responsibility in communicating material changes to the advisor or firm.

MFDA Response

We acknowledge the comment with respect to Rule 2.2.4(c). As noted above, the definition of "material change in client information" has been revised to remove the reference to "could reasonably result". With respect to the discrepancy between the language of Rule 2.2 and Policy No. 2, Rule 2.2.4(b) has been amended to remove the reference to "other employee or agent". "Approved Person" in MFDA By-law No.1 has been broadly interpreted by MFDA staff to include employees or agents who conduct or participate in the dealer business of the Member. Accordingly, the obligation with respect to updating KYC information in Rule 2.2.4 applies to any relevant employee or agent, such as a compliance staff or other branch or head office staff, who has any involvement with the client's account. Policy No. 2 has also been amended to reference "Approved Person" rather than registered salesperson to conform with the wording of Rule 2.2.4(b).

For the purpose of greater clarity, if a Member or Approved Person becomes aware of any information that could result in a material change to client information, the Member or Approved Person will be expected to discuss that information with the client and, where the client has confirmed the need for change, to update the client's KYC information accordingly. The client's KYC information must not be updated without confirmation by the client. As set out in Policy No. 2, the client's confirmation may be evidenced by a client signature or by maintaining notes in the client's file with details of the client's instructions and providing the client with the opportunity to make corrections to the changes made.

With respect to the suggestion to amend Rule 2.2.5(e) to provide for the responsibility of clients to inform Members of material changes, we note that the MFDA cannot enforce regulatory obligations on clients. Policy No. 2 does provide that Members should advise clients on account opening to promptly notify the Member of any material changes in client information previously provided to the Member and provide examples of information that should be regularly updated. In addition, Rule 2.2.4 currently requires Members, at least annually, in writing, to request each client to notify the Member if there has been any material change in client information previously provided to the Member.

E. Rule 2.2.5 (Relationship Disclosure)

1. General Comments

IIAC expressed support for the removal of requirements included in previous MFDA draft proposals that are duplicative with disclosure required under securities legislation, other MFDA Rules and other ongoing regulatory initiatives. IIAC also commended the MFDA for its more flexible approach to relationship disclosure. In particular, IIAC noted that permitting Members to provide the relevant client disclosure in either one document or several recognizes that some Members already meet the proposed requirements. However, IIAC suggested that an industry-wide relationship disclosure document would eliminate the need for separate relationship disclosure documents or a combined document for different accounts and proposed an alternative model.

The IFB expressed the view that the content and procedures related to relationship disclosure and KYC do not recognize the different levels of service a client can choose to have with an advisor and a firm. The IFB suggested that a client who wishes to invest a nominal amount in a mutual fund to make a one-time contribution to a RRSP will likely find the level of detail prescribed unnecessary and objectionable. The IFB commented that clients should not be forced to divulge detailed personal financial information when they find it to be inappropriate and that there should be an opt-out provision that would clearly state that more detailed information is not being collected at the client's direction. The IFB expressed support for a principles-based approach to disclosure whereby various categories of disclosure are set out with discretion to choose information relevant to the particular client or client's account.

MFDA Response

With respect to the comment that clients should be permitted to opt out from providing detailed personal financial information when they find it inappropriate, MFDA's compliance and enforcement experience to date indicates that the information specified is the minimum required to assess suitability and operate the account. This information is essential to discharging the fundamental obligation to assess suitability and its collection is also required under provincial securities legislation.

With respect to suggestions that the MFDA adopt a flexible, principles-based approach, Rule 2.2.5, as proposed, already achieves this as it sets out general principles that establish a minimum standard of disclosure, which Members may choose to customize.

2. Delivery on Account Opening

Assante commented that while the provision of written relationship disclosure is beneficial to clients, where the client establishes multiple accounts over a time period (i.e. 6 months), there is no added benefit to receiving this information at each account opening. It suggested that, provided there has not been a change to the required information, an allowance be made to provide it once on an annual basis.

MFDA Response

The relationship disclosure is intended to provide clients with information about the role and responsibilities of the Member and how the account will be operated. When a new account is opened, the client should be informed as to whether the relationship that applies to the new account and the manner in which the new account will be operated are the same or different from those of accounts that the client may have with the Member. This disclosure requirement applies at account opening and there is no ongoing requirement to provide such disclosure on an annual basis.

3. Nature of the Advisory Relationship (Rule 2.2.5(a))

IFIC and SSI requested clarification and explanation as to what constitutes a description of the nature of the advisory relationship.

MFDA Response

This section contemplates a brief description of how the advisory relationship operates, which may include a statement that the client is responsible for making investment decisions but can rely on the advice given by the Approved Person and that the Approved Person is responsible for the advice and ensuring that it is suitable based on the client's investment needs and objectives. MFDA staff will be issuing a Member Regulation Notice to provide additional guidance with respect to the level of detail to be set out in the relationship disclosure document.

4. Description of Products and Services Offered (Rule 2.2.5 (b))

IFIC, SSI, IGM and Canfin commented that the requirement to disclose all products and services offered by the Member is confusing. IFIC, IGM and Canfin requested clarification that Rule 2.2.5(b) refers only to generic descriptions of products and services rather than product-specific descriptions.

MFDA Response

The requirements of this section refer to generic descriptions (i.e. product type/class sold: mutual funds, GICs, exempt products, etc). Where Members only sell proprietary products or mutual funds of a related issuer, this should also be disclosed. MFDA staff will be issuing a Member Regulation Notice to provide additional guidance with respect to the level of detail to be set out in the relationship disclosure document.

5. Suitability of Orders Accepted/Recommendations Made (Rule 2.2.5(d))

BLG commented that the description of the Member's obligation in Rule 2.2.5(d) to ensure that each order accepted for any account must be suitable does not consider that an order that is not recommended can be accepted provided that the Approved Person cautions the client that the investment to be purchased is not suitable under Rule 2.2.1(d).

MFDA Response

The wording of Rule 2.2.5(d) has been revised to reference the Member's obligations to assess investment suitability in accordance with Rule 2.2.1. MFDA staff will provide further guidance with respect to this issue in a Member Regulation Notice.

6. Defining KYC Terms (Rule 2.2.5(e))

IFIC and SSI recommended removing Rule 2.2.5(e). IFIC and SSI suggested that the requirement for advisors to define the various terms with respect to KYC through written disclosure simply increases the volume of materials to be provided at account opening. PFSL commented that generic and easily understandable disclosure of the importance of suitability and KYC information would be of greater value to clients.

RMFI indicated that, while it agrees that it would be beneficial to clients to define certain terms (i.e. risk tolerance categories and investment objectives), not all KYC information requires definition as such terms are, in most cases, self-explanatory (i.e. income). RMFI also suggested that firms should be permitted to have flexibility to define KYC terms in a manner that corresponds to their sales process.

MFDA Response

The requirements of this section do not contemplate defining all KYC terms, as it is acknowledged that certain terms, such as age, are self-explanatory. "Risk tolerance", "investment objectives" and "time horizon" are examples of key KYC terms that should be defined. MFDA staff has found that Members and clients may attribute different meanings to these terms, which may prevent clients from understanding the basis on which their investments will be assessed.

MFDA staff agrees that Members must define KYC terms in a manner that corresponds to their sales process. The KYC terms set out and defined in Appendix 1 (Example of KYC Information) of MR-0069 are intended as examples to provide guidance to Members with respect to the type of terms to be defined and level of detail expected.

7. Description of Compensation/Reference to Other Sources of Information (Rule 2.2.5(g))

BMO expressed the view that Rule 2.2.5(g) is not clear and asked for clarification as to whether "referring the client to other sources for more specific information" means that Members must provide additional sources of information relating to the nature of compensation paid to the Member, or that the Member must provide information on how to contact the Member generally. If the latter is intended, BMO noted that this is more suited as a separate point (h) rather than being included in (g).

MFDA Response

Members may satisfy the requirements of this section by referring a client to existing sources of information, e.g. the prospectus, point of sale disclosure document or offering memorandum. In addition, clients may also be advised to speak to their Approved Person for more information about the nature of compensation paid to the Member. MFDA staff will be issuing a Member Regulation Notice to provide additional guidance with respect to the level of detail to be set out in the relationship disclosure document.

II. Policy No. 2 *Minimum Standards for Account Supervision*

1. Deviation from Policy No. 2

A number of commenters expressed the view that the requirement for MFDA pre-approval of all alternative policies and procedures is unnecessary and burdensome and will destroy the diversity of the channel and limit the ability to respond to new risks according to the circumstances of the firm.

Advocis commented that the MFDA pre-approval requirement should be removed given that development or amendment of all internal policies and procedures must obtain approval from senior management of the Member thus making senior management responsible for determining if their internal policies meet the requirements stated in MFDA Policy.

RMFI also suggested removing the phrase "minimum standards" from the requirement that Members seeking to have alternative policies approved must demonstrate that all of the principles, objectives and minimum standards set out in Policy No. 2 must be

properly satisfied. RMFI indicated that alternative policies and procedures will likely have different minimum standards to effectively address the specific risk management issues of the Member.

MFDA Response

The new section in the Introduction to Policy No. 2, which provides that Members may adopt alternative policies and procedures that differ from those in the Policy with the pre-approval of MFDA staff, was requested by members of the MFDA Policy Advisory Committee to allow Members flexibility in complying with the minimum thresholds. For example, there are certain Members that have a suitability framework that assesses, at the time of each trade, whether the trade will result in the portfolio varying from the KYC information on file for the client. Accordingly, thresholds are not particularly relevant in this case and MFDA staff would consider this method as complying with the minimum standards of the Policy.

Pre-approval of alternative approaches is required in order to achieve a level-playing field among Members and to establish a consistent level of investor protection. In light of the fact that all Members have been subject to at least two examinations, providing pre-approval to Members with alternative arrangements is a fairly simple and straightforward process. Further, historically, Members who wish to change their suitability framework generally approach MFDA staff in advance as a prudent business practice to ensure that they are not incurring time and cost on a new structure that might not comply with MFDA requirements. The requirement for pre-approval of alternative policies and procedures codifies existing practice and does not impose any new requirements. Further, the pre-approval requirement would generally apply to changes to material aspects of a Member's supervisory system such as changes to the Member's trade review thresholds that deviate from the minimum standards set in the Policy.

Members are provided with flexibility in meeting the minimum standards and it is acknowledged that there may be differing approaches to achieving the same regulatory result; however, it is necessary to retain the notion of "minimum standards" in order to ensure consistency in the level of investor protection.

2. Establishing and Maintaining Procedures – Delegation of Procedures

IFIC and Canfin expressed the view that this section serves no useful purpose and should be removed as the principle of delegating tasks and procedures, but not accountability, to a knowledgeable and qualified individual is covered in section 1 of the Rule. PFSL noted that the first sentence would suffice to communicate the intention of the principle.

IPG expressed the view that it is onerous and costly to expect only branch managers to perform trade suitability review tasks. It was suggested that, while responsibility for suitability of trades ultimately belongs to the salespersons and branch managers, tasks are generally delegated to administrators. IPG also requested clarification with respect to the definition of a "task" and what tasks unlicensed administrators are permitted to perform with respect to trade suitability administration.

MFDA Response

This section was drafted in response to requests from Members for clarification with respect to what tasks can be delegated and the required proficiency to perform a delegated task. The purpose of this section is to confirm the general principle that tasks must be delegated to individuals with the same proficiency as the delegating supervisor. The section also provides flexibility where the Member can demonstrate that the individual performing the delegated task has equivalent training, education or experience related to the function being performed.

Through compliance reviews, MFDA staff has identified situations where individuals are performing tasks related to trade supervision without the requisite knowledge or experience. These types of tasks must be performed by individuals that possess the proficiency of a branch manager or compliance officer, although these individuals need not be registered in these categories. Branch managers, for example, are required to possess two years experience as a salesperson, which allows for a full understanding of the activities that they are supervising. MFDA staff believes that trades cannot be properly reviewed unless an individual has the type of experience and understanding that branch managers and compliance officers have of trade suitability procedures.

3. Education

IFIC, IGM, SSI and Canfin suggested that compliance-related information need not be circulated to all employees and recommended restoring the original wording specifying that information "must be communicated to registered salespersons and relevant employees". IGM commented that sending this information to all employees would serve no useful purpose, particularly for a large dealer where many employees perform administrative functions. Assante expressed the view that removing the word "relevant" means that many employees will receive unnecessary notices and bulletins that are unrelated to their job function and this may cause confusion and misunderstanding.

MFDA Response

The wording of the section has been revised in response to comments received from Members through the Rule Review Survey, which suggested that the requirement to circulate information contained in compliance-related bulletins to all Approved Persons was not appropriate as not all information will be applicable to the Member's business, nor will it be applicable to all Approved Persons. The revisions to this section qualify the information that must be circulated by adding the word "relevant". The intention of the revised wording is to clarify that only information that is relevant to a salesperson or employee must be sent to that individual salesperson or employee. For example, financial compliance bulletins generally will only be relevant to accounting staff and senior management.

4. Documentation of Client Account Information

(a) Requirement for Approved Person to Maintain Copy of NAAF (section 2)

SSI noted that, as it does not assign accounts to Approved Persons, the requirement for the salesperson to maintain a copy of the NAAF should be only "*if applicable"*.

MFDA Response

We have amended the Policy to generally require that Approved Persons have access to the documentation and information as required to service the client's account.

(b) Specifying Income and Net Worth (sections 4(k) and (l))

SSI recommended that section 4(k) specify whether net income is being reported and that section 4(l) be amended to read "*calculation of total and liquid net worth"*.

MFDA Response

Income may be obtained on either a net or gross basis, as long as it is specified which figure is being used. There has been confusion with respect to the meaning of liquid net worth. Further, we believe the key components are liquid assets and total net worth and have amended the Policy accordingly.

(c) Employment Information (section 3(e))

BLG suggested that section 3(e) should specify the "employment information" to be obtained. BMO added that, with the exception of information in respect of occupation, it does not believe that information relating to all aspects of a client's employment offers any further substantive knowledge to the Approved Person that would ensure that mutual fund investing, or a specific transaction, is suitable for the client and in keeping with the client's investment objectives.

MFDA Response

Sufficient inquiries should be made to obtain information necessary to properly service and administer the account. For example, information that would impact on the suitability of investment recommendations, such as whether the client's employment is seasonal, part-time or full-time, should be collected.

(d) Dependants (section 3(f))

With respect to the requirement in section 3(f) to provide the number of dependants, IFIC, SSI, BMO and Canfin requested clarification as to how this information will be beneficial in determining and assessing client suitability and recommended its removal. BMO indicated that such information would be more appropriate in a financial planning context where trust, estate and succession planning services may be provided.

MFDA Response

While this requirement does have a financial planning component, the number of dependants is also important in the determination of the amount of income available for investing.

(e) Information Required by Other Legislation (sections 3(g)(h)(o)(p))

IFIC, SSI and Canfin recommended removal of the requirement in section 3(g) and 3(h) to obtain information regarding other persons with trading authorization on the account and other persons with a financial interest in the account. It was noted that

these requirements already exist under current anti-money laundering rules and are therefore unnecessary to be included in an MFDA Rule.

IFIC, Advocis, PFSL, RMFI, Worldsource and Canfin recommended removal of the requirements to provide information required for relevant tax reporting and for compliance with the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulation*, as this information is already subject to federal laws and is therefore unnecessary to be included in an MFDA Rule. PFSL also noted that the requirement to provide the nature of the business in item 4(e) was duplicative with requirements under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulation.*

MFDA Response

Through compliance reviews, MFDA staff has identified situations where Members were unaware of requirements under other relevant legislation. Accordingly, these items were included with the intention of assisting Members by providing a complete checklist of client information required on account opening.

(f) Net Worth (section 3(n))

IFIC, RMFI and SSI recommended that the Rule not specify details of net worth calculations and expressed the view that clients may not be comfortable providing this information as such details are not relevant to assessing KYC. IFIC and SSI suggested changing the requirement to provide details of liquid assets, fixed assets and liabilities to only require calculation(s) of liquid and total net worth. With respect to section 3(n), PFSL suggested that "liquid net worth" would be more appropriate than a calculation of net worth in assessing the suitability of most investments.

BMO submitted that net worth should be depicted on the application form using reasonable ranges with more detailed information being collected when needed, such as at the time of a leveraged trade or the completion of a financial plan. BMO also noted that requiring detailed net worth information for even the smallest mutual fund purchase will lead to privacy concerns on the basis that the degree of specificity in the collection of the client's personal information is disproportionate to the information required for the service they are requesting. BMO added that, typically, investors do not have detailed calculations on hand and will provide approximations in order to proceed with a transaction in a timely fashion, making the information no more valuable or accurate than if the client had selected a reasonable range.

IGM suggested that Members should only be required to obtain a breakdown of client net worth between liquid and total net worth in the event that the client is considering a leverage investment.

MFDA Response

As a general matter, we note that there is significant confusion among Members as to what "liquid net worth" means. The Policy has been amended to require, at a minimum, details of liquid assets and total net worth. It is noted that ranges may be used as long as they are sufficiently narrow to be meaningful. When assessing suitability, the lowest end of the range should be used. The calculation of net worth is very important not only where leverage is used or considered but also in determining the suitability of investments generally. For example, where clients are considering risky investment strategies or investments with a long-term maturity date, it would be important to consider whether the client has sufficient liquid assets to cover their obligations and any potential risk.

(g) Joint Accounts

IFIC, BMO, SSI and IGM recommended that, in the case of a joint account, risk tolerance be assessed on an account rather than individual basis, as otherwise it would be difficult to open a joint account where individual risk tolerance levels conflicted.

RMFI commented that, in joint accounts, flexibility should be provided so that KYC information could be assessed at either the investor or account level.

MFDA Response

The exclusion of risk tolerance from the list of items that must be collected on an account basis for joint accounts was a drafting oversight that has been amended accordingly.

With respect to joint accounts, certain KYC information such as age and investment knowledge should be collected for each individual account holder. Annual income and net worth can be collected for each individual or on a combined basis as long as it is clear which method has been used. Investment objectives, time horizon and risk tolerance; however, should relate to the account and should not be collected separately for each individual account holder.

(h) Investment Knowledge – Legal Entities (section 4(g))

With respect to the requirement to obtain information concerning the investment knowledge of the persons responsible for providing instructions on the account in section 4(g), IFIC, SSI and Canfin requested clarification as to whose investment knowledge is to be assessed (i.e. decision makers, or owners) and what is to be done in the case of conflicting investment knowledge. IFIC suggested modifying this requirement to read, "investment knowledge of the entity".

MFDA Response

A corporation, trust or other type of legal entity itself does not have the capacity to possess knowledge or make decisions. As such, the investment knowledge of the persons responsible for making the investment decisions for the legal entity must be assessed. Other KYC information would relate to the beneficial owner.

(i) Personal Information – Privacy Legislation (section 3(q))

IFIC, SSI and Canfin requested clarification of what constitutes "personal information" with respect to the requirement to provide authorization to disclose personal information to the MFDA under applicable privacy legislation. SSI added that clarification is required as to the scope of information that the client may expect to have divulged and under what circumstances.

With respect to section 4(o), SSI requested clarification as to what constitutes personal information for a non-personal entity or to whom the subsection applies.

MFDA Response

The Policy has been amended to generally reference the requirement to provide authorization to disclose information to the MFDA under applicable privacy legislation. With respect to what constitutes "personal information" and the scope of information that the client may be expected to disclose, Members should refer to the applicable provincial privacy legislation or federal legislation to determine their obligations.

5. Identification of Certain Types of Accounts for Supervisory Purposes (section 5)

IFIC, PFSL and SSI suggested amending this section to limit the identification of the accounts to those known to the Member as registered accounts, leveraged accounts and accounts operating under a limited trading authorization or power of attorney. IFIC, PFSL and SSI commented that a power of attorney, for example, could be attached to an account without a Member's knowledge.

IGM commented that the obligation to identify accounts operating under a power of attorney or limited trading authorization in favour of a registered salesperson should arise only where the Member had knowledge of the status of the account, and not retroactively, since this is a new requirement. IGM expressed the view that this requirement should apply only to accounts opened after the date the requirement comes into force.

Assante commented that the term "family members" is not defined in the Policy.

MFDA Response

This requirement applies to limited cases where an Approved Person holds a power of attorney for a client that is an immediate family member of the Approved Person and does not extend to every account operating under a power of attorney. This is a limited exception to the general prohibition on Members and Approved Persons accepting a power of attorney from clients in Rule 2.3.1. Rule 2.3.1(b) provides that the exception is subject to other conditions as prescribed by the Corporation. Member Regulation Notice MR-0031 – Powers of Attorney – Rule 2.3.1 – Exception for Family Members of Approved Persons ("MR-0031"), issued in October 2004, sets out compliance controls that must be complied with where this exception is relied upon. These compliance controls include the requirement that Members identify, on their records, accounts for which an Approved Person holds a general power of attorney. Recent amendments to Rule 2.3.1 also clarify the requirement for Approved Persons to notify the Member of the acceptance of a power of attorney from a family member and Members should have policies and procedures to ensure that this notification requirement is complied with. Accordingly, Members should have knowledge of such accounts to the extent that they permit their Approved Persons to accept a power of attorney from family members.

The term "family member" is referred to and defined in Rule 2.3.1(b) and in MR-0031 as "spouse, parent or child".

6. Controls for Entry of KYC Information (section 7)

IGM suggested that the requirement to detect and prevent inconsistencies between the KYC information used for account supervision and the KYC information provided by the client should be revised to read: "Such controls should provide an effective means to ensure that any updates to KYC information are recorded on the back office systems properly and accurately."

MFDA Response

This section is intended to apply to KYC updates as well as KYC information collected on account opening and, as such, MFDA staff believes that it is appropriate to specifically address this concern with the suggested wording.

7. Timelines for Completing and Approving the NAAF – Transfer of Registered Salesperson (section 9)

IFIC and SSI recommended removal of section 9, which sets out timelines for completing and approving the NAAF for clients of a registered salesperson transferring to the Member, stating that this section appears to apply only in the case of bulk transfers and that current procedures already require permission on bulk transfers.

MFDA Response
This section is intended to provide flexibility with respect to timelines for obtaining and approving NAAFs in situations where an Approved Person transfers to a Member with a large volume of accounts. The section provides that NAAFs must be prepared and completed within a reasonable time (but in any event no later than the time of the first trade) and approved no later than one business day after the NAAF is completed.

8. Change of Registered Salesperson/Requirement to Review KYC (section 11)

IFIC, IGM and Canfin recommended removal of the requirement for an Approved Person who has been assigned to service a client's account to review the KYC information as this requirement is redundant with Rule 2.2.1. IFIC commented that an update to KYC is initiated through a material change or a triggering point on the account and is not collected on a periodic basis. IFIC noted that the Rules triggering a suitability review establish that the KYC is current, as long as an annual notice is sent to the client and no material change known to the Member has occurred.

MFDA Response

MFDA staff agrees with the comment that the requirement to review the KYC information is already addressed by the requirement in Rule 2.2.1 to perform a suitability review and has deleted the requirement from the Policy.

9. Changes to Know-Your-Client Information

(a) Client Information/KYC Information

IFIC and SSI recommended clarifying that "client information" refers to KYC information and suggested the addition of "as defined in 2.2.4 (a)" following "client information" in sections 2, 3 and 7.

MFDA Response

The Policy has been amended to reference the definition in section 2.2.4(a).

(b) Client Signature for Changes to Client Name, Address or Banking Information (section 5)

IFIC recommended removal of section 5 that requires a client signature for changes to client name, address or banking information as it duplicates the requirements of Rule 2.2.4(d).

MFDA Response

MFDA staff recognizes that there may be overlap between the Policy and MFDA Rules. However, since the Policy is intended to set out a fulsome outline of Member obligations with respect to account supervision and there is no inconsistency in the noted duplication, the language of the section has not been amended.

(c) Evidencing Other Material Changes (section 6)

IFIC, SSI and Canfin recommended removal of section 6 that sets out requirements for evidencing material changes other than those referred to in the definition of 2.2.4(a) as they do not necessitate written client confirmation. IFIC and Canfin suggested

that these changes should be addressed by the Member's internal risk management policies and not be the subject of MFDA regulation.

MFDA Response

Section 6 is intended to reference changes to client information other than changes to client name, address and banking information. Section 6 is intended to be limited to material changes as defined in Rule 2.2.4(a) and has been amended to clarify this requirement.

(d) Timeline for Approval of Material Changes (section 7)

IFIC and Canfin commented that the recommended timeframe for approval of material changes is unrealistic and suggested modifying the timeframe to "within a reasonable time, but in any event no later than the time of the next trade."

MFDA Response

The timeline proposed for approving material changes in client information (within one business day after the date on which notice of the change is received from the client) is reasonable and appropriate. Material changes that may impact on the suitability of investments in the account should be reviewed and approved in a timely manner. Further, the timeline required for the approval of material changes in client information is consistent with the timeline to review the suitability of investments in the account (i.e. no later than one business day after the date on which notice of the change in information is received by the client).

(e) Requirement to Provide Current KYC Information (section 8)

IFIC and SSI recommended removal of the requirement to provide clients with all KYC information for the account where any material changes are made, suggesting that these changes should be subject to Members' internal risk management controls and not MFDA regulation.

MFDA Response

This section of the Policy has been amended to more specifically require that the client be provided with a document or documents specifying current risk tolerance, investment objectives, time horizon, income and net worth where material changes are made. This disclosure is necessary to demonstrate to the client how the information change has been recorded and to ensure that they understand the basis on which their account will operate and recommendations will be made going forward.

(f) Requirement to Record Date KYC Updated/Confirmed (section 9)

IGM recommended that the requirement for the Member to track the date of the last update or confirmation of the KYC information be amended to accommodate Members that have a practice of periodically confirming current KYC on a negative confirmation basis.

SSI noted that it is very difficult to track when certain KYC information is updated and that a requirement to do so would not warrant the cost.

MFDA Response

Members are required to record the date on which the client or the Approved Person took positive action to confirm that the KYC information is up to date. In accordance with the requirements of Policy No. 2, confirmation must be evidenced by client signature or by maintaining notes in the client's file with details of the client's instructions and providing the client with the opportunity to make corrections to the changes made.

With respect to the suggestion that the Policy be amended to accommodate periodic confirmation of KYC on a negative confirmation basis, MFDA Rules already accommodate this practice. Members are not prohibited from tracking the dates on which negative option confirmations have been sent to clients in routine mailings. However, unless the Member receives a positive confirmation from the client that the KYC information has either changed or not changed, Members should not be recording the dates on which negative confirmations have been sent to clients as the date upon which the KYC information was last updated or confirmed in accordance with Policy No. 2.

With respect to the comment that it is difficult to track when certain KYC information is updated, the proposed requirement is intended to apply only to material changes in client information. It is important to track updates to KYC information in order to maintain an audit trail for legal and regulatory purposes.

10. Client Communications – Hold Mail

IFIC and Canfin recommended removal of this section as hold mail requirements should be subject to Members' internal risk management controls and not MFDA regulation.

Assante indicated that, since there are occasions where clients may request to have mail held for periods longer than six months, this timeframe should be flexible to allow Members to have discretion.

MFDA Response

With respect to hold mail requirements, MFDA staff has identified significant risk of fraud arising from clients not receiving copies of their statements directly. Accordingly, the current requirement seems appropriate as it balances client protection with practical considerations. In addition, this is not a new requirement and Members are currently required to comply with these timeframes.

11. Assessing Suitability of Investments and Leveraging Strategies (Section 3)

(a) Obligation to Determine Suitability where Member not Involved in Leverage Strategy

IFIC and Canfin suggested that the Rule be clarified to state that, whenever the client is using a leverage strategy and is unwilling to provide the required documentation, the Member's responsibility is limited to the request for the loan amount.

RMFI commented that, in cases where the client acted on its own to employ a leveraging strategy without the recommendation or involvement of the Member, the Approved Person's and Member's responsibility should reflect such limited involvement and be limited to assessing the suitability of the investments while knowing that the investments are leveraged. RMFI recommended that, in cases where the Approved Person has recommended a leveraging strategy but does not participate in obtaining the loan, the Approved Person and Member be responsible for ensuring that such a recommendation is suitable in light of the client's KYC information (i.e. risk tolerance). RMFI expressed the view that, in both these cases, recording the amount of the loan is sufficient to enable the Approved Person and the Member to determine the suitability of the investments based on the knowledge that the investments are leveraged. RMFI indicated that assessing the suitability of a specific loan based on limited knowledge and information is inappropriate and may in fact be incorrect and give clients a false sense of security regarding their credit situation. Where the Approved Person participates in the loan application process, RMFI expressed the view that it is reasonable to require the Member to maintain copies of the loan application.

RMFI suggested that, similar to the disclosure that is proposed in Rule 2.2.5 with respect to the relationship disclosure requirements, the Member should be required to disclose its involvement in the loan process, if any, and disclose that the loan itself has not been assessed for suitability.

SSI recommended that the Rule be clarified to note that the requirements of this section are applicable only to open accounts of clients.

MFDA Response

If a leverage strategy is not recommended by an Approved Person but the Approved Person becomes aware the client is using borrowed funds to invest and the client refuses to provide the required documentation, the Member and the Approved Person are responsible for requesting that the client provide information regarding the loan amount, interest rate and payment requirements. All such information is pertinent in assessing whether leveraging is suitable for the client. Where a recommendation to borrow has been made and the Approved Person assists the client in obtaining financing, the Member or Approved Person must maintain a copy of the loan documents.

Where a client has acted on his or her own to employ a leverage strategy and the Member or Approved Person becomes aware of it, the Member and Approved Person are responsible for assessing both the suitability of the investments and the suitability of the leveraging strategy. Members and Approved Persons are responsible for acting in the best interest of clients and providing advice based on all essential facts pertinent to the client. If a Member or Approved Person becomes aware that a client has used borrowed funds to invest and determines that the strategy is not suitable or is not consistent with the client's KYC information, the Member and Approved Person have an obligation to inform the client of this fact.

The general requirements of the Policy with respect to assessing suitability of leveraging and maintaining documentation or making sufficient inquiries where leveraging is recommended is generally applicable to both registered and open accounts. The guidelines set out in MR-0069 with respect to specific criteria that should be considered when assessing suitability of leveraging are not intended to apply to loans obtained for the purpose of investing in a registered plan.

(b) Obtaining Details of Loan

BMO commented that clients may express privacy concerns with respect to disclosing the specifics of a loan obtained at another financial institution. BMO also noted that requiring the client to deliver loan documentation could mislead the client into believing that the Member is somehow overseeing or vetting the terms of the loan on the client's behalf, an impression that may be heightened in the case of Members that are also bank dealers and related to the lending institution. BMO stated that this may expose the Member to client complaints or requests for restitution if the client is forced to default, if the loan is called or if the loan documents contain an unfavourable provision of which the client later becomes aware. BMO added that, if bank dealer Members assert any sort of ownership or control over the loan documents, it may weaken the Member's ability to effectively convey that it is a separate legal entity from the bank.

MFDA Response

With respect to Members that are owned by or affiliated with banks, we understand that these organizations generally obtain client consent to share information among the entire corporate group. If the Approved Person became aware of a client borrowing from another financial institution, the Approved Person could either request the loan documentation or request information regarding the loan including the amount, interest rate and payment requirements.

(c) Obligation to Obtain Copies of Loan Documents

IGM agreed that Members should capture details of any loans used to finance investments through the Member where they are aware of the loan arrangement but expressed the view that this obligation should not extend to obtaining copies of the actual documents.

MFDA Response

The Member is only required to maintain copies of lending documents (including the loan application) where the Member or Approved Person has assisted the client in completing the loan application. Where the Member or Approved Person does not recommend leveraging but becomes aware of client's use of borrowed funds to invest, the Member or Approved Person can either obtain a copy of the loan documentation or request pertinent details with respect to the loan.

(d) Communication of Criteria to Salespersons and Relevant Employees (section 4)

IGM recommended that the requirement for Members to advise their registered salespersons and relevant employees of their criteria for selecting trades for review be amended to clarify that only a general description is required.

PFSL noted that it is inappropriate to share detailed information regarding how supervisory and disciplinary systems are applied as, in some cases, it may result in the salesperson altering behavior in an attempt to circumvent controls.

MFDA Response

It must be clear and transparent to salespersons what the Member's suitability guidelines are. For example, Members who use a percentage method to capture client risk tolerance may set a standard that advises Approved Persons that any trade that would result in the portfolio exceeding 10% of the standard risk tolerance may be considered unsuitable and would be identified for review and inquiry. It is not expected that detailed supervisory procedures be communicated to Approved Persons but rather information regarding the types of trades that will result in suitability concerns, the inquiry process and disciplinary process where issues are not addressed.

(e) Timeline for Suitability Assessment (section 5)

IGM expressed the view that the timeline to perform the suitability assessment should be simply at the time of the next trade and that the reference to "within a reasonable time" should be removed.

MFDA Response

Policy No. 2 requires the Approved Person to assess the suitability of investments in each client account within a reasonable time, but in any event no later than the time of the next trade. The determination of reasonable time in a particular instance will depend on the circumstances surrounding the event giving rise to the requirement to perform the suitability assessment. The Proposed Amendment is intended to ensure that a suitability review is performed as soon as reasonably possible following the trigger event. If the timeline for review was based solely on the timing of the first trade in the account after the transfer, there would be no change to the frequency of suitability assessments required currently under MFDA Rules.

(f) Identification of Unsuitable Investments (section 6)

IFIC expressed the view that the requirement to proactively provide a recommendation where unsuitable investments are identified in an account is excessive, particularly in a customer-directed channel. IFIC recommended that the Member's responsibility should be limited to advising the client that the investment(s) is/are unsuitable.

MFDA Response

Members and Approved Persons are responsible for acting in the best interest of clients and providing advice based upon all essential facts pertinent to the client. If a Member or Approved Person determines that the client's portfolio is not suitable or in keeping with the client's KYC information, the Member and Approved Person have an obligation to inform the client of this fact and provide recommendations to rebalance the investments in the account. If the client does not choose to follow the recommendations of the Approved Person, the Approved Person should document the advice given, as well as the fact that the client declined to follow the advice.

(g) Maintaining Evidence of Suitability Assessments and Follow-up Action (section 7)

PFSL noted that it agrees with the importance of maintaining such evidence but believes that this requirement would be best framed in a way that allows dealers to establish processes and procedures for the retention of this evidence as well as the manner in which such evidence is to be maintained.

MFDA Response

This section does not specify processes and procedures for the retention of the required information or the manner in which it is to be maintained, so long as it is done in accordance with Rule 5 (Books, Records & Reporting).

12. Branch and Head Office Supervision Requirements – General Comments

(a) Need for a Principles-Based Approach/More Flexibility

A number of commenters recommended adopting a less prescriptive and more principles-based approach to account supervision. It was suggested that a more practical approach is to set out principles for account supervision and allow Members flexibility to develop systems that effectively supervise accounts and manage risk.

IFIC, SSI and Canfin recommended directional, but less prescriptive, requirements based on sampling.

IFIC and the Federation also suggested that the new requirements do not take into account the growing activity through the call center or internet distribution channels and stated that the MFDA's model of a branch with a branch manager is dated. IFIC and the Federation were of the view that, in this respect, the Proposed Amendments fall short of providing flexibility in the supervision structure and the way supervision is conducted.

Worldsource stated that advances in technology and operating systems make it possible for exception-based single-tier supervision of unsuitable trading and unusual trading activity. It was recommended that Members have flexibility to use technology to efficiently supervise and manage risk in a manner consistent with the core principles of detecting unsuitable trading and unusual trading activity. Worldsource suggested that the Policy be flexible and permit migration to a single tier, exception-based supervision of trading. IPG commented that it is possible, using technology, for all daily trade suitability reviews to be performed in a location other than the branch office and that Members should have this flexibility. Worldsource also suggested that the standards prescribed in Policy No. 2 with respect to account supervision will rapidly become obsolete and irrelevant to many Members.

RMFI suggested that Members be permitted to develop alternative, more comprehensive ways to conduct branch office supervision. For example, RMFI indicated that technological solutions have been developed for real-time monitoring of suitability at the point of sale that would render the prescriptive requirement to review suitability on the following day unnecessary. RMFI also suggested that Members be required to tailor their sampling to reflect their business risks (considering product offering, sales force structure, technology, etc.) as opposed to following fixed sampling thresholds that may not be practical in all cases.

IGM suggested that the MFDA establish general binding parameters as to its expectations of Members supplemented by non-binding guidelines from MFDA staff setting out how Members can meet these obligations.

MFDA Response

As noted above, certain regulatory requirements were more principles-based prior to the development of the Proposed Amendments. Where MFDA staff has prescribed requirements in greater detail, for example, with respect to the trade review thresholds proposed in Policy No. 2, this has been in response to requests for more direction from Members. In addition, the prescribed requirements address compliance issues identified during reviews of our Members' branch supervision procedures and the issues identified by MFDA enforcement staff while assessing and investigating cases.

In developing the trade review thresholds, MFDA compliance staff examined the review thresholds currently used by Members and determined that 80% of Members are already conducting the proposed types of trade reviews.

MFDA staff encourages the use of technology by Members to implement alternatives that meet or exceed the minimum standards set in the Policy, such as real-time monitoring of suitability at the point of sale. Staff notes; however, that the majority of Members have not yet adopted such technology.

With respect to the recommendation that the MFDA establish a combination of binding parameters and non-binding guidelines, the current MFDA Rulebook uses a combination of prescriptive and principles-based approaches. The approach adopted in a particular area depends on the regulatory concerns being addressed.

(b) Harmonization with IIROC

IGM noted that many financial service providers have both MFDA Member dealers and IIROC dealers and that there is little harmonization between MFDA Rules and IIROC Rules regarding suitability assessment and branch and head office oversight. IGM commented that, if adopted, the MFDA approach will be more prescriptive and detailed than IIROC's, since it has adopted a more principles-based direction over the last few years.

MFDA Response

With respect to the comment that the MFDA and IIROC have different approaches to suitability and head office oversight regulation, it is noted that IIROC Policy No. 2 has been a requirement since 1993. As such, IIROC Members are familiar with their obligations and are accustomed to complying with the Policy as they have been subject to numerous compliance reviews since the Policy has been adopted. On the other hand, the MFDA has only recently completed its second round of compliance reviews. As noted above, the issues identified through these reviews indicated that a more prescriptive approach was appropriate for MFDA Members.

13. Branch Manager Daily Review

(a) Alternate Branch Managers

IPG expressed concern that alternate branch managers only manage in the absence of the primary branch manager and that, as a result, the alternate branch manager would not necessarily be using the required and ongoing training and experience that is required to perform daily trade reviews. It was suggested that the amendments should allow alternate branch managers to perform the daily trade reviews of trades of the producing primary branch manager and vice-versa to ensure that both perform supervisory duties daily.

MFDA Response

Cross-reviews between alternate and producing branch managers are permitted, but these reviews are considered branch office reviews (tier 1) and are not a substitute for head office review and assessment (tier 2).

(b) Initial Trades

IGM commented that the requirement to review all initial trades is excessive and that there is no reason to single these trades out as a separate part of an integrated trade review process.

MFDA Response

Members of the MFDA's Policy Advisory Committee suggested, and MFDA staff agrees, that including this requirement is useful and appropriate. The branch manager is currently required to review and approve new accounts and, as such, MFDA staff believes that the requirement to review all initial trades is not onerous. In addition, a review of all initial trades in new accounts is an existing requirement under Policy No. 2.

(c) Trades in Exempt Securities

IFIC, SSI, BMO and Canfin expressed the view that the inclusion of GICs as exempt securities requiring review seems unnecessary and has not been explained.

MFDA Response

This inclusion of GICs as exempt securities requiring review was a drafting oversight. Accordingly, this section of the Policy has been amended to clarify that exempt securities do not include GICs.

(d) Leveraged Trades/Leverage Recommendations/Accounts with Power of Attorney

IFIC, IGM and Canfin expressed concern that there is limited ability for branch managers to track leverage recommendations. It was submitted that the requirement to review leverage recommendations for open accounts should be removed since the recommendation, unless and until executed, will not appear in a summary of trading activity.

IFIC and SSI recommended adding "If provided," to the requirement to review the "trades in accounts of family members of registered salespersons operating under a power of attorney in favour of the registered salesperson".

PFSL expressed concern that limiting reviews of accounts operating under power of attorney to those of family members of registered salespersons may insufficiently protect certain investors, noting that regardless of the relationship between the salesperson and the client, the potential for abuse exists when the salesperson is entrusted with power of attorney or limited trading authority. PFSL suggested that the phrase "of family members of registered salespersons" should be removed so that situations with similar potential for abuse receive similar degrees of scrutiny.

MFDA Response

Members are only expected to review leverage recommendations made by their Approved Persons where the client takes steps to execute such recommendations (i.e. where the Approved Person has received documentation indicating an intention to proceed with the recommendation). As a best practice, Members should also review leverage recommendations prior to the client obtaining the borrowed funds in light of the difficulty in unwinding such arrangements.

The requirement to review accounts operating under a power of attorney applies to limited cases where an Approved Person holds a power of attorney for a client who is an immediate family member and does not extend to every account operating under a power of attorney. This is a limited exception to the general prohibition on Members and Approved Persons accepting power of attorney from clients in Rule 2.3.1. MR-0031 sets out compliance controls that must be complied with where this exception is relied upon.

(e) Trades over $1,000 in Moderate-High/High-Risk Investments

IFIC and PFSL expressed the view that the $1000 trade review threshold for moderate-high or high-risk investments is arbitrary and unexplained. IFIC stated that threshold levels will become obsolete in time and should not be prescribed by a Rule. SSI noted that the number of moderate-high-risk investments (using standard deviation measures) is vast and may lessen the intended impact of the Rule.

IGM also disagreed with the $1,000 trade review threshold and recommended that Members be given flexibility to determine which trades in moderate-high or high-risk investments should be reviewed. IGM suggested that if a specific threshold is maintained, it should be higher than $1,000.

Assante expressed the view that requiring branch managers to review all trades over $1000 in moderate-high or high-risk investments is a considerably low threshold and will most likely not result in identifying a greater number of unsuitable trades. Assante indicated that previous guidance was provided to include a minimum threshold of $2,500 which it has found to be highly effective in its branch trade surveillance.

MFDA Response

The concerns of the commenters with respect to the $1,000 threshold for moderate to high-risk investments are acknowledged and, accordingly, the threshold has been increased to $2,500. The thresholds will be reviewed from time to time to ensure that these limits remain relevant.

14. Review of Redemptions

(a) Suitability of Redemption with regard to the Composition of the Remaining Portfolio

IFIC, SSI and Canfin recommended changing the requirement to assess "the suitability of the redemption with regard to the composition of the remaining portfolio" to read "the suitability of the portfolio at the time of the next trade, if, after a redemption, the composition of the portfolio does not match the KYC."

MFDA Response

If a redemption and subsequent withdrawal results in the investments in a client's account becoming unsuitable, the impact of the redemption must be discussed with the client prior to the redemption. If the assessment was done at the time of the next trade, the portfolio may be inconsistent with the KYC information for a significant period of time.

(b) Impact and Appropriateness of any Redemption Charges

With respect to the requirement to assess "the impact and appropriateness of any redemption charges", IFIC, SSI and Canfin recommended clarifying the term "appropriateness" of redemption charges and recommended adding "excessive" before the words "redemption charges".

PFSL commented that the current wording of this section may represent an excessive requirement for branch managers, as redemptions may occur without the representative being directly involved. PFSL recommended that transfers of assets to another dealer or transactions completed at the fund manager level by the client not fall under this requirement and suggested that the section be revised to clarify that the requirement only applies to branch managers when the representative is directly involved in the redemption prior to its completion.

IGM expressed the view that the requirement to assess the impact and appropriateness of any redemption charges is best conducted as part of the trend review process at head office as opposed to the daily review at the branch office.

MFDA Response

The requirements of this section are not intended to address only activities that are engaged in for the exclusive purpose of maximizing economic benefit to the Approved Person (i.e. churning), but are also intended to capture other inappropriate redemption charges arising from matters such as Approved Person error. In addition, it is noted that redemption charges do not have to be excessive to be inappropriate.

It is acknowledged that the requirement to assess the appropriateness of the redemption should be limited to circumstances where the Approved Person is directly involved in the redemption.

Review at both the branch and head office levels is necessary to ensure adequate assessment of the impact and appropriateness of redemption charges. Head office reviews are performed using higher dollar thresholds and thus do not duplicate the review performed at the branch office level. The more detailed branch office review provides an added check to identify errors that may not be apparent through the head office review.

(c) Identification of Possible Outside Business Activity

IFIC, SSI, BMO and Canfin recommended removal of the requirement to assess "possible outside business activity where money may be leaving the Member for reinvestment into other potentially inappropriate or unauthorized investments". These commenters expressed the view that monitoring subsequent purchases at another firm is not appropriate and not a duty that a branch manager can or should assume. BMO added that, upon client transfer to another institution, it is not uncommon for the trade to be initiated by that institution and processed through the Member's back office without any involvement from the Member's branch. While the transfer-out would appear on the trade review report, the other institution or the investments being transferred into would not be identified. Further, BMO noted that this provision assumes that the branch manager will be sufficiently familiar with the investment product being transferred into the account to determine whether it is inappropriate for the client. IFIC, SSI and BMO commented that this requirement is too vague and may not be enforceable.

MFDA Response

This section does not require branch managers to monitor subsequent purchases at another firm. Significant redemptions in a client's account where funds are leaving the Member may either result in the account falling out of line with the investor's stated risk tolerance/investment objectives or may indicate that the Approved Person is engaged in an outside business activity of which the branch manager should be aware.

The branch manager should seek to determine if the client's KYC information has changed and, if it has not, assess the impact of the redemption on the client's account in relation to both the investments remaining in the account and the existing KYC information. Similarly, if information with respect to where the funds will be invested can be obtained, the branch manager should seek to assess the suitability of the proposed new investments in relation to the investments remaining in the client's account and the existing KYC information.

(d) Identification of Possible Churning

IFIC, SSI and Canfin expressed the view that the requirement to identify potential churning requires trend analysis (as described in Section VI) and may not be apparent through review of daily trades and recommended removal of this requirement.

MFDA Response

The Policy has been amended to clarify that the requirements of this section contemplate a monthly or quarterly rather than daily review of trades to identify potential churning activity.

15. Branch Manager Assessment of Suitability where Material Change in KYC Information

IFIC, PFSL and SSI recommended removal of the requirement for the branch manager to assess investment suitability upon a material change in the client's KYC information as it is already assessed at the advisor level. PFSL noted that such review could be duplicative and stated that, in situations where the advisor has conducted a suitability assessment following a material change, a secondary review by the branch manager should only be required where the advisor's assessment does not receive approval.

In addition, PFSL expressed the view that the inclusion of the one-business-day deadline for the suitability assessment is arbitrary and unnecessarily prescriptive. PFSL noted that, since the situation described is not actually a transaction, a pressing material risk may not exist at the time the Member becomes aware of a material change and, as a result, this provision should be revised so that the assessment is performed "promptly or within a reasonable time".

IGM commented that branch managers are already required to approve changes to KYC information and that requiring a suitability review as well would prove onerous without a commensurate benefit and may divert time from more useful oversight activities.

MFDA Response

In response to the comments, the Policy has been amended to require the branch manager to perform a suitability review on a sample basis where a material change results in a significant decrease in the client's risk tolerance, time horizon, income or net worth or more conservative investment objectives. In addition, the requirement for head office to perform a suitability assessment on a sample basis where there is a material change in client information has been removed.

16. Head Office Supervision Requirements

(a) Head Office Daily Reviews

IGM commented that the proposed changes to the head office review requirements largely duplicate the reviews done at the branch level, although with some higher thresholds. IGM expressed the view that this is not an effective use of head office resources that would be better directed at supplementing what the branch manager is doing (such as the excessive switching and churning reviews). IGM recommended that, if the requirements are retained, the thresholds be increased.

IPG sought clarification with respect to the suitability reviews required by head office and suggested that the review should focus only on exceptional trades of concern, such as out of province trades, exempt products, leveraging reviews and sample branch manager trades and that general trade suitability should be left under the sole responsibility of the branch office.

BLG commented that the requirement to review all trades over $5,000 for all exempt securities, regardless of their nature, risk characteristics or their issuer may be burdensome for dealers whose clients have and trade significant positions in investments issued or guaranteed by Canadian governments and their agencies (for example, Canada Savings Bonds) or financial institutions regulated by the Office of the Superintendent of Financial Institutions (for example, GICs). The commenter suggested that these types of investments be explicitly excluded from this requirement.

Assante commented that, in difficult market times, many clients switch into money market funds for safety. It recommended that money market funds be exempt from reviews in redemptions greater than $10,000.

With respect to the daily review requirement for trades over $10,000 in other investments (excluding money market funds), SSI noted that if money market funds are excluded than GICs and cash transactions should also be excluded.

MFDA Response

With respect to comments indicating that the proposed head office reviews are duplicative of those performed at the branch level, it is noted that head office reviews are intended to detect unsuitable investments and excessive trading and serve the purpose of exercising effective oversight of branch office operations. Higher trade thresholds and sampling of suitability of investments on a transfer-in of assets allow such reviews to be less detailed than those required at the branch level, while still being effective as an oversight review for unsuitable investments and excessive trading.

The reference to exempt securities in the Policy was not intended to include GICs and has been clarified. The Policy has also been amended to revise the $10,000 threshold in respect of low risk investments to $50,000.

(b) Suitability Review of Accounts where Assets Transferred in/Material Changes to Client Information

IGM recommended deleting section 5 that imposes an obligation on Members to review the suitability of investments in an account on a sample basis where assets have been transferred into an account or where there is a material change in client information. IGM commented that this obligation should only be triggered where a trade has occurred.

Assante expressed the view that it is excessive to require the salesperson, branch manager and head office to review an account for suitability if there is a material change in a client's KYC form. It indicated that this review is currently the branch manager's responsibility and suggested that head office should not be required to examine such accounts.

BMO expressed the view that this requirement seems redundant given that the MFDA also intends to prescribe trade review thresholds for all transactions. BMO questioned the added value of sampling transfer-ins that fall outside the standard trade review process, unless a transfer-in, leveraged trade or account with a power of attorney meets the daily trade review filtering criteria (which will include higher-risk investments and exempt securities).

In addition, BMO noted that sampling trades "where there has been a material change in client information" is not possible given the definition of material change in client information in Rule 2.2.4. BMO submitted that the definition refers to information "that could reasonably result in changes" to certain KYC information. BMO added that, unless there is an actual material change to the KYC information and the resulting transaction meets the filtering criteria, the trade would not be picked up on the trade review report. BMO also noted that the reference to "products not normally sold by the Member" in this section is not helpful as a trade reviewer cannot be expected to determine on a case-by-case basis whether a particular product is normally sold across a large sales force.

MFDA Response

As noted above, the Policy has been amended to remove the requirement for head office to perform a suitability assessment on a sample basis where there is a material change in client information. With respect to the transfer-in of assets, Approved Persons are required to perform a suitability review but there is no requirement for branch manager review. Accordingly, it is appropriate that head office perform a suitability review on a sample basis where clients have transferred assets into the account as part of their oversight function to ensure that the suitability reviews have been performed properly.

With respect to comments indicating that the sample-basis head office review should not be required unless triggered by trade, it is not appropriate to wait until a trade has occurred to assess suitability in these circumstances. Where an individual transfers assets into an account at a Member and becomes a client of the Member, the Member is earning compensation and has a responsibility to provide financial advice and assess whether the assets transferred in are suitable for the client. With respect to comments indicating that the proposed sample-basis head office review seems redundant given the proposed trade review thresholds, we note that the trade review thresholds have been amended and, as a result, the Policy does not require the review of all trades.

As noted above, the definition of material change has been amended to delete the reference to "that could reasonably result in changes".

With respect to the comment indicating that the reference to "products not normally sold by the Member" is not helpful in light of the volume of products sold across a large sales force, we note that we have deleted the reference to "normally". To the extent that an asset is transferred into a client account which is not sold by the Member, this should be easily determined.

(c) Identification of Trends in Trading Activity – General Comments

PFSL noted that this section is unnecessarily prescriptive and, given the operational diversity among Member firms, each company should be entrusted to design methods for addressing risk with respect to churning that are appropriately designed for their operations.

MFDA Response

Under Member Regulation Notice MR-0065 – Churning ("MR-0065"), Members are advised to have policies and procedures to detect instances of churning or excessive trading and properly address these situations. Members should also generate and review reports showing trading and commission trends on a periodic basis (generally monthly or quarterly, taking into consideration the Member's trading volume). MFDA staff has received inquiries from Members requesting more detail in respect of the policies and procedures that would be appropriate under MR-0065 and the Proposed Amendments have been developed in response to such requests. If a Member has a specific business structure in which the risk of churning is not present (e.g. where Approved Person is compensated exclusively on a salary basis), the review of accounts generating more than $1,500 within the month and the quarterly review of commission reports would not apply. However, the requirement to perform trend analysis and quarterly reviews of assets under administration ("AUA") reports would still be applicable.

(d) Review of Accounts Generating Commissions Exceeding $1,500 per Month

IFIC and Canfin suggested that the main objective of the requirement to review all accounts generating commissions of more than $1,500 within the month is to monitor accounts where excessive trading has occurred for the sole benefit of the registered representative. It was noted that a $1,500 commission may be produced by one $30,000 trade. IFIC also suggested that, in instances of high market volatility, it may be prudent for registered representatives to rebalance their client's portfolios and minimize risk levels and, in such cases, increasing the volume of trading is in the best interests of the client. IFIC and Canfin expressed the view that the requirement will generate an excessive number of false positives, each of which will require time to review. IFIC and Canfin recommended increasing the threshold to $3,000 to correspond with IIROC Rule 2500 IV (B).

The ACCP expressed the view that review requirements for all accounts with more than five trades per month and accounts generating commissions greater than $1,500 will result in an unnecessarily high number of exceptions to be reviewed. It indicated that accounts with more than five trades and more than $1,500 in commissions per month are not outside the realm of normal trading patterns, especially during RRSP season. The ACCP suggested that Members be permitted to establish their own thresholds based on their specific dealer models. If thresholds are prescribed, the ACCP recommended that these thresholds be increased to $2,500 in commissions and five purchases per month per account.

IGM recommended that the requirement to review all accounts generating commissions greater than $1,500 per month be removed. IGM expressed the view that this reporting is of very limited use and general commission trend monitoring, which is captured in other items in the section, is more effective.

MFDA Response

The $1,500 threshold is intended to recognize the fact that, based on data provided by large mutual fund dealers, the dollar value of the average mutual fund trade is generally quite low. In addition, unlike equities traded by IIROC Members, mutual funds are generally long-term investments that should not, in the normal course, be frequently traded and thus should not generate commissions higher than $1,500 within one account in a month.

With respect to the suggestion that the review threshold be increased to $3,000 to correspond to IIROC Rules, it should be noted that IIROC Rule 2500 requires branch office review of all client statements that produced commissions of $1,500 or more for the month as well as head office review of all client statements that generated more than $3,000 in commissions during the month. Given that head office is required to perform a quarterly trend analysis of commissions and AUA under MFDA Policy No. 2, it appeared more appropriate to have head office perform the monthly commission review of accounts generating commissions greater than $1,500 and unnecessarily duplicative to have it performed at the branch level. However, Members may choose to adopt IIROC's two-tier review as an alternative approach to meet the minimum standards of Policy No. 2, provided they have controls and procedures in place to ensure that commission reviews are implemented at the branch level.

The section that refers to an account review where there are more than five trades per month is merely intended as an example of a procedure to identify excessive trading or switching between funds and has been included to provide guidance to Members.

The review of all accounts generating commissions exceeding $1,500 per month is required on a monthly basis to allow for a more timely review than commission trend monitoring that is required on a quarterly basis.

(e) Revenue versus Commissions

With respect to the review of commission reports to detect potential inappropriate conduct, BMO noted that Members compensate their sales force using means other than traditional commissions. BMO noted that mutual fund salespersons of bank-owned Members are salaried employees with various incentive pay arrangements that do not fit within the traditional commission structure and that commissions cannot be carved out from the salesperson's overall pay. BLG reiterated these comments, submitting that it may be more appropriate to consider "revenue" in section 2 under "Identification of Trends in Trading Activity" as opposed to "commissions" alone in order to capture all types of remuneration.

MFDA Response

The purpose of the requirement is to identify trading activity or strategies that are being engaged in exclusively for the purpose of maximizing the economic benefit to the Approved Person. Although a review of commission reports would not be applicable to Approved Persons who are salaried employees, the review of AUA reports as required under Section 2 of Part VI of the Policy would apply.

(f) Excessive Trading

RMFI suggested that the MFDA clarify the term "excessive trading" and questioned whether it refers to churning or short-term trading.

IGM suggested that the requirement to review trends to identify excessive trading or switching should be amended to require a review where trading takes place on five different days in a month as opposed to where there are more than five trades in a single month.

MFDA Response

"Excessive trading" is not intended to refer exclusively to one type of activity and can be an indicator of a number of potential problems including, as noted, unauthorized trading, lack of suitability or churning. Excessive trading would also include short-term trading, to the extent that such trading is inappropriate or an indicator of potentially inappropriate activity in the specific circumstances.

As noted above, the reference to five trades per month has been included for the purpose of providing guidance to Members and is intended only as an example.

(g) Head Office Supervisory Reviews to Be Completed in 21 Days

IFIC noted that increased supervision requirements make meeting review checks within 21 days impractical and recommended a 30-day requirement. IGM recommended clarification that not all issues must be resolved within the 21-day period.

MFDA Response

The Policy has been amended to require that reviews be completed within 30 days of the last day of the period being reviewed.

This section is not intended to require that all issues be resolved within the prescribed period, but Members must have a plan in place to address the identified issues.

17. Transition Periods

A number of commenters noted that the proposed changes would require significant development time for systems changes, new documentation and retraining and restructuring at all levels including representatives, branch managers and administration. IGM also noted that the required transition time will be highly dependent on other businesses in the financial services industry, in particular mutual fund manufacturers and back office system service providers that will be providing necessary data for Members to meet the proposed performance reporting requirements.

IFIC, SSI and Worldsource recommended an 18-month transitional period for the implementation of amendments relating to suitability assessments triggered by certain events. PFSL commented that a transition period of up to two years might be necessary and noted, by way of example, that the shift from transaction-level to account-level suitability assessments represents a substantial change that will be accompanied by an equally substantial effort to establish corresponding compliance structures.

RMFI suggested a minimum 12-month transition period to allow Members time to become fully compliant with the new requirements. The ACCP suggested the following specific transition periods: (i) where systems must be developed, a one-year period; (ii) where Members must develop forms, policies, procedures and implementation plans, a 15-month period; (iii) where

systems must be developed for new accounts, KYC and other account documents, one year from the first trigger (trade, transfer, reassigned Approved Person or material change); and (iv) where Members must develop forms, policies, procedures and implementation plans for new accounts, KYC and other account documents, a 15-month period from the first trigger (trade, transfer, reassigned Approved Person or material change).

MFDA Response

MFDA staff is aware that systems changes may be required to implement the Proposed Amendments and will carefully consider comments received to ensure that transition periods allow sufficient time for the implementation of any such changes.

13.1.10 Summary of Public Comments Respecting Proposed Amendments to MFDA Rule 5.3 (Client Reporting) and MFDA Rule 2.8 (Client Communications)

SUMMARY OF PUBLIC COMMENTS RESPECTING
PROPOSED AMENDMENTS TO MFDA RULE 5.3 (CLIENT REPORTING) AND
MFDA RULE 2.8 (CLIENT COMMUNICATIONS)

On June 13, 2008, the British Columbia Securities Commission published proposed amendments to MFDA Rule 5.3 (Client Reporting) and MFDA Rule 2.8 (Client Communications) (the "**Proposed Amendments**") for a 90-day public comment period that expired on September 11, 2008.

11 submissions were received during the public comment period:

1. Advocis
2. Assante Wealth Management ("Assante")
3. Canfin Financial Group ("Canfin")
4. Federation of Mutual Fund Dealers ("Federation")
5. IGM Financial Inc. ("IGM")
6. Independent Financial Brokers of Canada ("IFB")
7. The Investment Funds Institute of Canada ("IFIC")
8. Kenmar Associates ("Kenmar")
9. Primerica Financial Services (Canada) Ltd. ("PFSL")
10. Royal Mutual Funds Inc. ("RMFI")
11. Scotia Securities Inc. ("SSI")

Copies of comment submissions may be viewed on the MFDA's website at: www.mfda.ca.

The following is a summary of the comments received, together with the MFDA's responses.

1. General Comments

Industry Involvement in Proposed Amendments

Advocis recommended involving industry stakeholders at an early stage of the policy development process. Advocis noted that regulatory actions are often predicated on MFDA findings resulting from compliance reviews and commented that involving stakeholders upon first identifying a problem would result in better two-way communication, greater discussion about the nature of the problem, plausible corrective actions and greater buy-in from stakeholders when a course of action has been determined.

MFDA Response

Over the past three years, MFDA staff conducted numerous consultations with industry stakeholders on the Proposed Amendments. These consultations were conducted through the MFDA Member Regulation Forums, meetings of the MFDA Policy Advisory Committee and other ad hoc industry meetings and involved Members, other regulators and industry participants. MFDA Members were also consulted by way of industry subcommittees which were established in 2006 and presented with the original draft of the amendments for comment. In the course of these consultations, many suggestions were brought forward and discussed. Alternative viewpoints and suggestions from Members, regulators and other participants were also discussed at length and input received by MFDA staff was factored into the Proposed Amendments.

Need for Cost/Benefit Analysis

Advocis submitted that a cost/benefit analysis is critical in determining if the benefits to be derived from the proposed regulatory intervention outweigh its costs and that such analysis should have been performed.

MFDA Response

The possibility of conducting a cost/benefit analysis of changes proposed in relation to the Client Relationship Model ("CRM") project was considered and discussed with the industry. Several meetings were held to discuss and agree upon the cost versus benefits survey approach to be pursued. However, no agreement with potential participants was reached regarding the approach to be followed in conducting the analysis.

Many of the Proposed Amendments were developed, in part, to address regulatory concerns identified in the course of the MFDA's regular compliance and enforcement activities. MFDA compliance and enforcement staff has noted inconsistencies and potentially misleading information in performance reports provided to clients directly by some Approved Persons. Some Members have adopted policies and procedures whereby the Member does not properly supervise performance reports generated by Approved Persons, but simply disclaims responsibility for the content of these reports. Such policies are inconsistent with the business conduct requirements under MFDA By-laws, Rules and Policies. The Proposed Amendments have been developed with the intent of achieving investor protection objectives while taking into account existing operational systems and the costs to change these systems. As noted above, over the past three years, the MFDA conducted numerous consultations with industry stakeholders on the Proposed Amendments and issues of cost to implement the Proposed Amendments were raised and considered. The Proposed Amendments strike an appropriate balance between managing cost considerations and addressing the regulatory issues identified by the MFDA.

Cost to Comply with Proposed Amendments

IGM noted that there will be significant costs associated with acquiring or building systems to comply with the Proposed Amendments as well as ongoing costs of delivering the required information including production and mailing costs. In addition, IGM suggested that there would be significant costs to mutual fund manufacturers to provide the necessary information to MFDA Members to meet the reporting obligations. IGM noted that costs will depend on whether fund manufacturers agree upon a common method of reporting data to Members and to what extent service providers will support that reporting methodology.

MFDA Response

Most Members or their Approved Persons currently provide the information required by the Proposed Amendments and it is not anticipated that there will be a significant systems impact on these Members as a result of the proposals. MFDA staff acknowledges that the systems impact and costs required will be greater for Members that do not presently have the ability to provide the proposed information to clients. As such, the MFDA will provide appropriate transition periods for the implementation of the amendments to Rule 5.3.5 to allow Members sufficient time to comply with the new requirements. MFDA staff notes that the information required in Rule 5.3.5 can be included in the client's account statement thus minimizing additional costs.

Harmonization

A number of commenters noted the differences between the MFDA's Proposed Amendments and those of the Investment Industry Regulatory Organization of Canada ("IIROC") and other regulators, in particular proposals under National Instrument 31-103 Registration *Requirements* ("NI 31-103") and the requirements of the Point of Sale initiative of the Joint Forum. These commenters stressed the importance of harmonization to avoid inconsistency, duplication and overlap for the industry and also to ensure that investors are subject to similar standards of disclosure and protection.

IGM noted that, as many dealers have both an MFDA Member and an IIROC Member, the approach taken by the MFDA and IIROC should be harmonized for a variety of reasons including cost of system development. IGM commented that, although they have concerns with elements of the MFDA approach, it is preferable to IIROC's in that it is less prescriptive in nature.

MFDA Response

The MFDA has and will continue to work with the Canadian Securities Administrators and the IIROC to ensure that, after the primary objective of addressing regulatory concerns identified by the MFDA has been met, registrants are subject to regulatory requirements that are as harmonized as possible. The MFDA and IIROC have adopted different approaches in certain areas that result, in part, from differences in the business of MFDA and IIROC Members and the different ways in which the existing Rules of the two self-regulatory organizations are structured.

2. Specific Comments

Delivery of Account Statement (Rule 5.3.1)

Need for Personalized Rate of Return Information

Kenmar submitted that the requirement to provide the information set out in proposed Rule 5.3.1 is not sufficient and that clients should be provided with personalized rate of return information based on the Association for Investment Management and Research ("AIMR") or equivalent recognized standards without additional charges or fees. Kenmar suggested that performance should be disclosed for the current year and since account inception, at a minimum, and should be provided on a pre- and post-tax basis. Kenmar expressed the view that such information will result in useful questions being raised, a reduction in complaints and improvement of investor education.

MFDA Response

In drafting the Proposed Amendments, MFDA staff considered the provision of more detailed information including a personalized rate of return. MFDA staff recognized that such a requirement may involve additional costs which would ultimately be passed on to clients. The Proposed Amendments are intended to ensure that investors receive basic information as to the performance of securities in their accounts. MFDA staff believes that the Proposed Amendments achieve a balance between providing investors with useful information regarding performance and cost considerations.

Content, Format and Methodology

Advocis expressed support for the fact that Proposed Amendments have been drafted with an outcomes-based focus. Advocis noted that Rule 5.3.5 states what must be included in disclosures to clients, yet allows Members to provide the information in a format of their choosing. Advocis welcomed this flexibility as an example that consumer protection need not suffer in an outcomes-based approach to regulation.

IFIC, IGM, SSI and the Federation recommended that flexibility be provided to dealers with regard to the specific information that is to be provided and the methodology. IGM suggested that the regulatory focus should be on ensuring effective disclosure to the client of the method used, with the Member being free to choose an appropriate approach. IFIC and SSI expressed the view that regulation should focus primarily on a requirement that full disclosure be provided to the client (via Relationship Disclosure), on the specifics of the performance information that is provided and how it will be delivered. These commenters recommended that firms be given the freedom to meet their client's needs and suggested that the competitive process determine what information and methodologies will best meet those needs, rather than prescribing them by Rule.

MFDA Response

The objective of the Proposed Amendments is to ensure that all clients of MFDA Members receive basic, core information on an annual basis with respect to the performance of the investments in their accounts. The Proposed Amendments have been drafted to establish minimum standards but also permit flexibility as to how this objective can be satisfied. The MFDA recognizes that Members may adopt alternative measures that meet or exceed the minimum standards in the Rule and will be issuing a Member Regulation Notice to provide more guidance as to how the requirements under the Proposed Amendments may be satisfied. Members may provide percentage rate of return information to clients in accordance with the requirements of Rule 2.8.3 as an alternative to the information set out under proposed Rule 5.3.5(a). Rule 2.8.3 provides Members with flexibility regarding the methodology used provided it is calculated in accordance with standard industry practices and the methodology is explained to the client.

Client Name Accounts

IGM expressed concern that, with respect to client name accounts, there may be difficulty for Members in obtaining the necessary information from fund companies and inquired whether there will be an industry standard format for providing the information. IGM recommended that the Proposed Amendments clarify whether each client name account of a client with different fund companies is to be regarded as separate accounts at the Member or if collectively they are to regarded as one account, with the assumption being that the Member has assigned a single client account number for all such accounts.

Assante expressed the view that there is no distinction in the Rule relating to performance reporting for client name and nominee accounts even though Members may not have access to the information for client name accounts in order to comply with the Rule.

MFDA Response

In situations where a client opens accounts with different fund companies governed by one dealer new account application form, the separate accounts at the fund companies would be considered to be one account at the dealer.

With respect to the issue of access to information for client name accounts to comply with the Rule, we understand that most of the information required by Rule 5.3.5 is available and can be made accessible to Members provided sufficient time is permitted to implement necessary system changes. MFDA staff would be happy to discuss the issue further with individual Members affected by the Proposed Amendments.

Changing "Annual Period" to "Statement Period" (Rule 5.3.5(a)

With respect to Rule 5.3.5(a), IFIC, PFSL and Canfin recommended changing reporting from "annual period" to "statement period" as Member firms may provide this information more frequently than once a year.

MFDA Response

The requirement to provide performance information to clients on an annual basis is consistent with the general industry standard used by most portfolio managers and mutual fund managers to track fund performance on an annual and multiple-annual basis. The long-term nature of mutual fund investments also supports reporting for the "annual period" rather than the "statement period" and makes the information more useful for the client as it provides a year-to-year comparison of account performance. Members may choose to provide performance information to clients more frequently than annually provided such information is provided on an annualized basis.

"Total Assets Deposited/Withdrawn" (Rule 5.3.5(a)(ii)/(iii)

IFIC, IGM, SSI and Canfin commented that the terms "total assets deposited" or "total assets withdrawn" in Rule 5.3.5(a)(ii) and (iii) are both undefined. These commenters were of the view that prescribing these two data items may not achieve the objectives of the CRM, particularly where firms may already provide performance information that more accurately reflects changes in the account's investments as one combination of these items. The commenters suggested that reporting total assets deposited and withdrawn from the account during the period overstates the true values, particularly if there are switches in the account. IFIC and Canfin suggested that it would be preferable to provide firms with the flexibility to report either a combined net invested amount or separate total assets deposited or withdrawn. PFSL suggested that the reporting requirements would be more effective if Rule 5.3.5(a)(i) and (ii) were amalgamated so that the net amount invested in the statement period is communicated in an easily understandable manner to the client.

MFDA Response

The Proposed Amendments with respect to Rule 5.3.5 were drafted, in part, to address clients' confusion about money that had been withdrawn from and deposited into their accounts over the year. MFDA would consider the disclosure of net amount invested as an acceptable alternative to the requirement to provide total assets deposited and withdrawn.

Total assets deposited and withdrawn would not include switches as money is never deposited or withdrawn from the client's account at the dealer.

Rule 5.3.5 has been amended to include a requirement to provide the gain or loss in the account as at the end of the period covered by the report.

Treatment of Deposit Products

SSI commented that clarification is required to address the treatment of deposit products held in dealer client accounts, such as Guaranteed Investment Certificates ("GICs") or Principal Protected Notes ("PPNs") and asked how accrued interest is to be addressed in determining market values.

MFDA Response

The market value of GICs should be reported as the principle amount plus accrued interest earned as at the end of the account statement period.

With respect to reporting the value of PPNs, certain PPNs have market values that are available on FundSERV. However, for PPNs that do not have a reliable market value, the book value should be reported.

Disclosure of Information not Included (Rule 5.3.5(b)

IFIC, SSI, IGM and Canfin noted that, with respect to the disclosure requirement in Rule 5.3.5(b), there are no existing processes available to document why information is unavailable and costs to develop such systems would be prohibitive.

MFDA Response

MFDA staff is aware that system changes may be required to implement the disclosure requirement in Rule 5.3.5(b) of the Proposed Amendments. This issue will be addressed through the provision of appropriate transition periods.

Section (b) of Rule 5.3.5 would apply specifically to exempt securities such as limited partnerships for which there is no secondary market or readily available market value. If the market value of such securities cannot be readily or reliably determined, the market values must not be included in the report and disclosure of why the information has not been included in the report must be provided to the client. MFDA staff would generally expect a brief statement to the effect that the market value of the security has not been provided because the security is not frequently traded or there is no market value provided by the issuer. Members may want to consider the availability of a market value for a given product prior to selling the product.

Rates of Return (Rule 2.8.3)

Support for Proposed Amendments

Kenmar expressed support for the Proposed Amendments to Rule 2.8.3, which would require Members to approve and supervise client communications provided by their Approved Persons. Kenmar submitted that all account reporting should be generated by the Member firm and e-mailed to the client on firm letterhead.

MFDA Response

MFDA Rules currently permit Approved Persons to provide client communications such as account statements to clients directly provided certain requirements are met. Rule 1.1.7 requires that the name of the Member firm be included on all client communications including account statements.

Clarification of Standard Acceptable Industry Practice (Rule 2.8.3)

IFIC, IGM and Canfin requested clarification with respect to what are considered to be standard acceptable industry practices in Rule 2.8.3. These commenters recommended that, where an annualized rate of return percentage is provided to a client, firms be given flexibility to provide the information with disclosure of the methodology used.

IGM expressed the view that Members should have the flexibility to choose any appropriate method in calculating rates of return.

MFDA Response

Members are currently given flexibility with respect to reporting rates of return provided a standard industry method is used and a clear explanation of the method is included on the performance statement. Standard industry practices include time weighted returns such as Global Investment Performance Standards, Modified Dietz or a dollar weighted return method (Internal Rate of Return). MFDA staff will be issuing a Member Regulation Notice to provide additional guidance with respect to standard industry practices in calculating rates of return. The methodology and standards with respect to performance reporting adopted by the Member must be applied on a firm-wide basis across its entire client base and sales force. The adoption of different methodologies for different clients or Approved Persons within a Member may be misleading and used to misrepresent account performance.

Member Approval and Supervision for Communications Containing/Referencing Rate of Return (Rule 2.8.3(b))

The IFB expressed the view that the requirement for Members to be responsible for the content of and to approve any performance reports provided to clients represents a substantive change in regulation and is intrusive to the Approved Person's relationship with their client. IFB commented that the requirements in Rule 2.8.3(a)(c) were sufficient and that paragraph (b) should be deleted.

Advocis submitted that the requirement in Rule 2.8.3(b) for the Member to approve and supervise any communication containing or referring to a rate return regarding a specific account or group of accounts is problematic, and, in light of the requirement in subsection (a), redundant. Advocis noted that Approved Persons, in their conversations with clients, are regularly asked about the performance of their investments and this requirement would require the Approved Persons to speak with the compliance personnel at the Member office prior to disclosing any information. Advocis expressed the view that this requirement is

needlessly broad and fails to recognize that Approved Persons often deal with their clients outside standard business hours. Advocis noted that compliance with subsection (b) would require Members to have compliance personnel available at all hours.

MFDA Response

As noted above, in the course of compliance examinations and enforcement activities, MFDA staff has identified inconsistencies and potentially misleading information in performance reports provided to clients directly by some Approved Persons. MFDA Rule 2.8.2(a) currently provides that no client communication shall be untrue or misleading. Accordingly, there must be adequate supervision to ensure that such misleading communications are not provided to clients.

With respect to the requirements in proposed Rule 2.8.3(b), reference is made to "client communication", which is defined in Rule 2.8.1 as "any written communication by a Member or Approved Person to a client of the Member, including trade confirmations and account statements, other than an advertisement or sales communication". Accordingly, only written communications and not verbal conversations that reference performance are subject to the requirements of Rule 2.8.3(b). In addition, Rule 2.8.3 requires Member supervision of client communications containing a rate of return regarding a specific account or group of accounts and does not require Member supervision of a rate of return provided for specific products.

13.1.11 IIROC Rules Notice – Request for Comments – Client Relationship Model

IIROC RULES NOTICE

REQUEST FOR COMMENTS

CLIENT RELATIONSHIP MODEL

Summary of the nature and purpose of the proposed Rules and amendments

The proposed Rules and amendments have been introduced to establish substantive requirements developed under the Client Relationship Model (CRM) Project for the purpose of addressing the following regulatory objectives:

- Relationship disclosure;
- Management and disclosure of conflicts of interest;
- Account suitability; and
- Account performance reporting.

To a degree, the issues identified above may be viewed discretely. They may also be viewed as key elements of a broader CRM framework and complementary to the fundamental obligation of all dealers and their representatives under National Instrument 31-505 to deal fairly, honestly and in good faith with their clients.

Disclosure of the details of the account relationship and the services to be provided are necessary to better inform the client of the nature of their account relationship. This disclosure, along with account cost and activity reporting will provide clients with important information to use in assessing the performance of investments in their account and whether their objectives and expectations for the account have been satisfied.

A new Rule has been proposed to clarify IIROC's position regarding the management of conflicts of interest. The Rule will require Dealer Members to develop and maintain policies and procedures to identify, disclose and address all real and potential conflicts.

Amendments to the account suitability requirements have been introduced to enhance the level of investor protection for retail clients by ensuring that the suitability of investments in each client's account is assessed whenever:

- a trade is accepted,
- a recommendation is made,
- securities are transferred or deposited into the account,
- there is a change of representative on the account, or
- there is a material change to the know-your-client information for the account.

Response to comments

Proposed rule changes to address the CRM issues were published by the Investment Dealers Association (IDA) in February, 2008 and subsequently adopted by the IIROC Board in May, 2008. IIROC staff's response to the comments received on the proposed amendments has been posted on the IIROC website (IIROC – Policy Proposals).

As noted below, IIROC staff has made several revisions to the proposed CRM Rules and amendments to address comments received. The revised proposed Rules and amendments, as well as a draft guidance note, have been re-published for comment for a period of 90 days with this Notice.

Description of the proposed Rules and rule-making process

Current IIROC rules address some aspects of the core principles under CRM. However, there are significant gaps in other respects, such as the requirement to provide relationship disclosure information on account opening and the requirement to provide account performance reporting. The proposed Rules and amendments are designed to address the gaps that have been identified.

The CRM Project is essentially an extension of the earlier work of the Ontario Securities Commission (OSC) Fair Dealing Model Committee, which released the Fair Dealing Model Concept Paper in January, 2004. This Concept Paper envisioned extensive changes to the regulatory requirements applicable to retail client accounts, from the negotiation and documentation of the relationship at account opening to the transactional information and account reporting to be provided to clients on an ongoing basis.

In September 2004, the Fair Dealing Model initiative was brought under the umbrella of the broader Registration Reform Project (RRP) of the provincial securities commissions. The aim of RRP is to streamline and harmonize the registration regime and develop rules in certain key areas to apply to all registrants on a national basis. Under RRP, the Fair Dealing Model initiative was re-branded as the Client Relationship Model and its focus narrowed to the following three areas:

- account opening documentation;
- costs, conflicts and compensation transparency; and
- performance reporting.

Working groups consisting of industry and regulatory staff developed rulemaking recommendations for each of these areas. A joint rulemaking committee of the IDA and the Mutual Fund Dealers Association (MFDA) then drafted rule proposals in consultation with staff of the securities commissions. This was followed by an initial dealer review of the proposals by three joint IDA/MFDA industry subcommittees. Samples of proposed new disclosures were reviewed and commented on by approximately 370 advisors that participated an 11 city broadcast consultation that was held in August, 2006. These initial drafts were also distributed for comment to the IDA Compliance and Legal Section and the IDA Financial Administrators Section in September 2006. Presentations on the contents of these initial drafts were provided to each of the IDA District Councils in October and November 2006. In response to the comments received on these initial drafts, IDA staff re-drafted its proposals to focus more closely on the core CRM objectives and to factor in potential implementation issues.

As noted above, proposed rule changes to address the CRM issues were published by the IDA in February, 2008 and subsequently adopted by the IIROC Board in May, 2008. IIROC staff has reviewed the comments received in response to the February, 2008 publication. We have also conducted further consultations with industry associations, the MFDA and the provincial securities regulators. The proposed Rules and amendments brought forward for consideration with this Notice incorporate feedback received through the comment process and these subsequent consultations.

The proposed Rules and amendments are summarized as follows:

(a) Relationship disclosure

IIROC is proposing that every dealer will provide its retail clients with the following information regarding the relationship they are entering into with the client:

- a description of the types of products and services offered by the dealer;
- a description of the account relationship to which the client has consented;
- where applicable, a description of the process used by the Dealer Member to assess investment suitability, including a description of the process used to assess the client's "know your client" information, a statement as to when account suitability will be reviewed and an indication whether or not the dealer will review suitability in other situations, including market fluctuations;
- a statement indicating Dealer Member and adviser conflicts of interest and stating that future conflicts of interest situations, where not resolved, will be disclosed to the client as they arise;
- a description of all fees, charges and costs associated with operating the account and in making or holding investments in the account; and
- a description of account reporting the client will receive, including a statement indentifying when account statements and trade confirmations will be sent to the client and a description of the Dealer Member's obligations to provide account performance information and a statement indicating whether or not percentage return information will be sent.

The obligations of Dealer Members to provide certain specific disclosures regarding suitability will vary for order-execution only and managed accounts, in that there is no suitability obligation regarding execution only service and

managed accounts must be monitored and supervised according to the specific standards imposed under Rule 1300 and Rule 2500.

IIROC will not mandate the format of the disclosures, but will require that the information be:

- Provided to the client in writing at the time of account opening;
- Written in plain language; and
- Included in a document entitled "Relationship Disclosure".

Dealer Members are obligated to provide some of the relationship disclosure information under the current Rules. The proposed Rule allows for information already provided to clients to essentially be incorporated by reference as long as the relationship disclosure contains a description of this information and the client is specifically referred to the other documents.

(b) Conflicts management / disclosure

Rules relating to the management of conflicts of interest are already in place. To supplement these existing requirements, IIROC is proposing to adopt a general rule to require that where conflict situations cannot be avoided, all such conflicts must be disclosed and addressed in manner that is consistent with the best interests of the client.

(c) Account suitability

In addition to the current suitability requirement for trades accepted and recommendations made on retail client accounts, IIROC is proposing that an account suitability review must be performed when certain "trigger" events occur (i.e., transfers/deposits into an account, material change in client circumstances, change in the account representative). It is currently an industry best practice to perform suitability assessments on a periodic basis irrespective of the "trigger" events.

IIROC staff is examining the possibility of introducing further changes to the suitability rule, in addition to the amendments noted above. Some of these may include consequential amendments to conform the suitability requirements contained in Rule 1300 to the new relationship disclosure requirements. In particular, the proposed relationship disclosure requirements will require the Dealer Member to advise the client that he or she will be provided with a copy of the "know your client" information collected at account opening and when there are material changes to this information. The proposed amendments may also lead to changes in the supervisory requirements under Rule 2500.

Staff is also in the process of drafting guidance to Dealer Members on regulatory expectations for meeting their suitability requirements.

(d) Account performance reporting

In developing the proposed Rules on performance reporting, issues regarding security position cost disclosure, account activity disclosure and account percentage return disclosure were considered.

(i) Security position cost disclosure

IIROC is proposing to mandate that security position cost information be provided to all retail clients at least annually. When the proposed Rules were published for comment in February, 2008, input was requested as to the preference to require the disclosure of original cost or tax cost. No clear consensus was reached on this point. However, as we believe original cost provides the most useful information for the purpose of account performance, we have mandated in the proposed amendments that original cost be disclosed.

(ii) Account activity disclosure

IIROC is proposing to mandate that account activity information be provided to all retail clients on at least an annual basis. This reporting would require disclosure of the cumulative realized and unrealized capital gains on the client's account.

(iii) Account percentage return disclosure

At this time, IIROC is not proposing to mandate that account percentage return information be provided to retail clients. However, we believe that account percentage return information is important for clients, as it allows for easy comparison of actual account returns to potential returns that might be received from other investments. Therefore, our intent is to continue to study the cost and implementation issues surrounding

percentage return reporting with the objective of requiring that this information be provided to clients as soon as possible. We will continue to work with IIROC Dealer Member firms in order to understand and address any existing impediments to the provision of this information to retail clients.

As noted above, IIROC is proposing to mandate that dealers disclose to clients at account opening whether they will be provided with percentage return information. In addition, where Dealer Members choose to provide percentage return information to retail clients, they will be required to calculate account percentage returns in accordance with a method acceptable to IIROC.

IIROC staff will provide guidance as to acceptable percentage return calculation methods. This will include both dollar-weighted and time-weighted methods.

The proposed Rules and amendments were approved by the IIROC Board of Directors on March 25, 2009. The text of the proposed Rules and amendments is set out in Attachments 1 through 4.

Issues and alternatives considered

In the course of working on the CRM project, IIROC staff has consulted extensively with industry participants and the public. As a result, staff has been presented with a number of different alternatives and perspectives on the issues to be addressed.

Many industry commenters have raised questions regarding value of the proposed changes in light of the potential costs to industry participants. IIROC staff has continued to receive input on the cost issue throughout the rule-making process and is confident that it is aware of, and has properly considered the issue. To minimize potential costs, wherever possible, staff has revised the proposal to provide greater flexibility to Members in complying with the new requirements without compromising the investor protection goals of the CRM project.

In addition, to assist in mitigating the impact of costs, IIROC will provide transition periods to allow Dealer Members sufficient time in the development and implementation of the systems necessary to comply with new requirements. Before setting any timelines, staff will be consulting with Dealer Members to develop a transition plan for the various aspects of the proposal.

Many industry participants have suggested that the regulatory objectives of CRM should be addressed through broad principles-based requirements alone. Staff recognizes that there are advantages with principles-based rules, but the need to communicate baseline minimum standards must also be considered. IIROC staff believes that the proposed Rules and amendments strike an appropriate balance, setting out clear standards while allowing a sufficient degree of flexibility to accommodate differences in Dealer Members' business models.

Consideration was also given to the suggestion that a standard form boilerplate disclosure document be developed to address the relationship disclosure issue. However, while staff acknowledges that some aspects of the relationship disclosure information may be common to all Dealer Members, we also expect that there will be a great deal of variation between firms regarding the specific products and services provided and the processes Dealer Members put in place to deliver those products and services. We believe that the identification of these differences is essential information for clients to make informed choices as to the different options that are available to them. IIROC staff does not believe that the regulatory objectives of relationship disclosure can be satisfied by simply providing a standard form generic disclosure document that lists products and services that a dealer may or may not offer without differentiating between firms.

The need for consistency across the various segments of the securities industry was also raised in many comments received by staff. Some of the inconsistencies in the approach to the CRM issues taken by IIROC, MFDA and the securities commissions may be due to differences in the way business is conducted by the different types of registrants. In any case, staff has reviewed and revised the proposed changes with a view to ensuring, as much as possible, that there is consistency with the proposed requirements to apply to other industry sectors. To this end, the relationship disclosure content requirements have been amended and re-organized.

IIROC staff maintains the position that the relationship disclosure information should function as a foundation document that provides a single reference point for key information on the account relationship. However, in the interests of avoiding duplication of the information, the proposed Rule has been re-drafted to allow for disclosure provided to clients in other materials to be referenced. In such cases, the relationship disclosure must contain a description of the information and the client must be specifically referred to the other documents that have been provided.

On the issue of conflicts of interest, staff has made changes to the proposed Rule to clarify that the Dealer Member must "address" rather that "resolve" conflicts and that the Dealer Member must avoid conflicts only if the conflict cannot be addressed in the client's best interests.

Staff also notes the potential challenges pointed out by industry participants on the issue of performance reporting. To address the comments we received, the proposed rule regarding activity reporting has been simplified so that Dealer Members will be required only to disclose the cumulative realized and unrealized income and capital gains/losses on the customer's account. To provide Dealer Members with greater flexibility, the proposed Rule has also been amended to allow for percentage rates of return, if provided, to be calculated by any method acceptable to IIROC. The requirement to disclose returns, if reported, on a 1, 3, 5 and 10 year basis has been maintained, but as the requirement will apply on a prospective basis, it is not anticipated that it will create a significant compliance burden on Dealer Members.

Many commenters argued that performance reporting is strictly a service issue and that it should be left up to dealers to decide whether they choose to provide any such reporting to clients. However, IIROC's primary mandate is to protect the interests of investors and this responsibility partly involves setting minimum service levels for clients. IIROC's position is that it is reasonable to expect that clients receive cost information and account activity reporting that is sufficient to allow them to determine whether they have gained or lost money on the investments in their accounts.

Again, as noted above, the proposed Rules and amendments will be subject to transition periods to allow for systems changes to be implemented before the amendments become effective. IIROC staff will be consulting with industry participants before setting timelines.

We will also be issuing guidance to clarify staff expectations and answer questions on the application of the proposed Rules and amendments. A preliminary draft guidance note is attached as Attachment 5. We invite Dealer Members and other interested parties to provide their comments on the draft and, in particular, look for feedback on other areas to be addressed.

Comparison with similar provisions

The CRM-related proposals of the MFDA and the Canadian Securities Administrators (CSA) are summarized below.

For the purpose of comparison, we have also noted certain provisions set out in the U.K. and U.S. rules regarding account relationship disclosure and performance reporting. This information has been included to provide some background and context, but is not intended to serve as a comprehensive analysis of international requirements relating to CRM issues.

(a) Mutual Fund Dealers Association of Canada

As noted above, IIROC staff has been exchanging information and holding ongoing meetings with staff of the MFDA and the securities commissions with a view to developing harmonized rules to address the CRM issues.

The revised CRM proposal of the MFDA, is substantially similar to the IIROC proposed Rules and amendments in most respects. All of the core elements of the CRM project are addressed under both proposals, as are the proposed changes to the suitability requirements. Some noteworthy differences between the two proposals are summarized below:

- The MFDA proposal allows for the required disclosure elements to be disseminated in a variety of documents. IIROC's proposed Rule states that where specific information has already been provided to the client by the Dealer Member, the relationship disclosure information can simply include a general description and a reference to the other disclosure materials containing the required information. The revised IIROC requirement is intended to provide greater flexibility for Dealer Members than the previous IDA proposal which required that clients be provided with a single stand alone relationship disclosure document containing all of the mandatory information. The new proposed Rule allows Dealer Members to continue to use their existing processes to deliver specific information, such as fee disclosure, but maintains the requirement that clients be provided with a comprehensive user friendly source for at least basic account relationship information.

- Most of the specific relationship disclosure requirements are contained in both the IIROC and MFDA proposals. There are differences in that the IIROC proposal requires specific disclosure as to whether client accounts will be reviewed at times other that the regulatory minimum (such as in the event of a market disruption) and whether the client will be provided with percentage return information. The MFDA proposal does not require such disclosure. IIROC's position stems from the concern that clients may presume that their accounts are being reviewed by their representatives whenever significant market events occur and that they are entitled to receive percentage return information on statements. If these services are not to be provided, Dealer Members should advise clients accordingly, so that client expectations are properly managed.

- The MFDA performance reporting proposal does not require individual position cost disclosure, which is required under the IIROC proposal.

- The activity reporting requirements in the IIROC and MFDA proposals are similar in most respects. However, the MFDA proposes to mandate account activity disclosure for the current year only, while the IIROC proposal will require cumulative activity reporting.

- Neither of the IIROC or MFDA amendments propose to mandate percentage return performance reporting. The IIROC proposed Rules and amendments specify that percentage return information, if provided, must set out returns for 1, 3, 5 and 10 year periods. This is not required in the proposed MFDA rule.

Details of the proposed amended MFDA rules and policies can be accessed at www.mfda.ca.

(b) Canadian Securities Administrators

IIROC staff has also participated in the development of National Instrument 31-103, which also addresses elements of the CRM project and in particular, relationship disclosure and conflicts management. NI 31-103 is intended, in part, to impose requirements similar in effect to the CRM proposals of the SROs on registrants that are not subject to SRO jurisdiction.

Following our previous publication of the proposed Rules, several commenters pointed out that there are significant differences between the IIROC proposal and the relationship disclosure requirements under proposed National Instrument 31-103. Staff has been advised that conforming amendments to NI 31-103 on these issues will be introduced at a later date, once the IIROC and MFDA requirements have been finalized.

The current NI 31-103 proposal may be accessed on the Ontario Securities Commission website at http://www.osc.gov.on.ca/Regulation/Rulemaking/Current/Part3/rule_20080229_31-103_rfc-reg-req.pdf.

CSA Statement

The CSA is now finalizing the requirements in NI 31-103 and reminds the SROs and their members that once it is in effect all registrants will be required to comply with the principle for relationship disclosure in that instrument. The principle in the CSA's most current version of NI 31-103 is that all registrants must provide their clients with information a reasonable client would consider important on account opening. The CSA has confirmed to the SROs that their CRM requirements must remain consistent with that finalized principle in NI 31-103.

The CSA is also developing a principle for performance reporting for the first round of amendments to NI 31-103. The CSA will expect the SROs to ensure that their requirements for performance reporting are consistent with that principle.

(c) United Kingdom

The U.K. Financial Services Authority ("FSA") also has implemented principles-based rules that address some of the issues raised under CRM.

The FSA Conduct of Business sourcebook (COBS) sets account relationship related disclosure requirements as follows:

- COBS 2.2 – A firm must provide appropriate information in a comprehensible form to a client about the firm and the types of products (including specific types of investments and investment strategies) and services offered by the dealer and the costs and associated charges relating to these products and services before these products and services are provided. This disclosure may be provided in a standardized format.

- COBS 6.1 – Unless subject to COBS 9.6.5, a firm must provide retail clients the following information (along with other additional information) if relevant:

  (1) the name and address and contact details of the firm;

  (2) a statement that the firm is authorized and the name of the authorizing body (and the contact information for the authorizing body);

  (3) the nature, frequency and timing of reporting to be provided to the client;

  (4) disclosure regarding conflicts of interest;

  (5) disclosure regarding investments or cash held by the firm for a retail client;

(6) information on costs and account charges;

(7) information on the investor compensation scheme to which the firm belongs.

- COBS 8.1 – Requirement to enter into a written basic agreement with a retail client setting out the rights and obligations of both parties.

- COBS 9.6.5 – A firm that offers "basic advice" on "stakeholder products" must provide clients with the following information:

(1) the name and address of the firm;

(2) a statement as to whether investment products being offered come from one company, a limited number of companies or the capital markets as a whole;

(3) a statement that the service being offered is basic on a limited range of investment products;

(4) a statement that the firm is regulated by the FSA;

(5) a statement disclosing any product provider loans;

(6) a description of the complaint handling process and the circumstances under which a client can refer a matter to the Financial Ombudsman Service;

(7) a description of the circumstances and the extent to the client will be entitled to compensation from the Financial Services Compensation Scheme.

On the issue of performance reporting, the FSA Handbook contains the following requirements:

- COBS 16.3 – Where a retail client has a managed account with a firm, a periodic statement must be provided every six months at a minimum (every three months if the client requests) which must include the following information (as referenced in the Conduct of Business Sourcebook Rule 16 Annex 2R):

(1) market value of each position held;

(2) cash balance at the beginning and end of each reporting period;

(3) the performance of the portfolio during the reporting period;

(4) the fees and charges incurred during the reporting period;

(5) a comparison of the performance during the reporting period to a performance benchmark (if agreed to between the firm and the client);

(6) details of the total amount of dividends, interest and other payments received during the reporting period and details of other relevant corporate actions.

The Conduct of Business Sourcebook can be accessed at FSA Handbook.

The FSA is continuing to look at ways to improve the interaction between consumers and industry participants and is in the process of conducting a Retail Distribution Review aimed at:

- improving the clarity for consumers of the characteristics of different service types and the distinctions between them;

- raising professional standards; and

- reducing the conflicts of interest inherent in remuneration practices and improving transparency of the cost of all advisory services.

The FSA advises that their intent is to publish a consultation paper outlining policy proposals to address to these issues in June 2009.

Information relating to the FSA's Retail Distribution Review can be accessed at www.fsa.gov.uk.

(d) United States

Under the *Investment Advisers Act of 1940*, a registered adviser that gives personal advice generally is required to supply each prospective advisory client with a copy of part of its registration application (Part II of Form ADV) or a written document, such as a brochure, containing the information required by the form. Additionally, the brochure is to be offered to current clients annually. Part II of Form ADV includes the following:

- the approximate percentage of billings from each type of advisory service itemized in the form;
- the types of compensation arrangements used by the adviser, the fee schedule, and how to obtain a refund or end an advisory contract before its expiration;
- the types of clients of the adviser;
- the categories of investments about which the adviser offers advice;
- methods of security analysis, sources of information, and investment strategies;
- the education and business backgrounds of particular individuals;
- other business activities of the adviser;
- other financial industry activities or affiliations (including registration) of the adviser and related persons;
- participation or interest in client transactions;
- information on the frequency, level, and triggering factors for account reviews and the nature and frequency of reports to clients on their accounts.

On the issue of account opening documentation, the Financial Industry Regulatory Authority (FINRA) has also provided some guidance to their members in the form of a new account application template. There is no regulatory requirement to use the sample form, or any portion of it. Rather, the intent of the form is to provide basic plain language examples of what a firm might use to describe client risk profile and issues the client should be aware of when evaluating account performance information. The form may be accessed at FINRA - Information Notice - 10/21/08.

Effects of proposed Rule on market structure, Dealer Members, non-members, competition and costs of compliance

The effect of the proposed Rules and amendments will be to improve the quality of information that clients are provided regarding their account relationships and with the performance of investments in their accounts. Clients will also be better served through more frequent monitoring of their accounts and better conflict management procedures at Dealer Members.

In developing the proposed Rules and amendments, the possibility of performing costs versus benefits analysis work was examined in some detail. An independent research company was hired to provide recommendations and assist in completing this work. Meetings involving staff from the IDA, MFDA, OSC, the Investment Funds Institute of Canada, the Investment Industry Association of Canada and representatives from investment dealers and mutual fund dealers were held to discuss the approach to be taken on the cost/benefit analysis. However, no agreement on the approach was reached. While the proposed formal cost/benefit analysis was not performed, substantial feedback from industry participants was provided throughout the rule development process in any case. As such, IIROC staff believes that it is sufficiently informed as to the potential impacts of the proposed Rules and amendments.

It is expected that the systems and cost impacts will be the greatest for the relationship disclosure and performance reporting proposals. The extent of the impact for relationship disclosure will be influenced by:

1. *Relationship disclosure customization* – Dealer Members that choose to customize the relationship disclosure to address individual client account details will likely have greater initial and ongoing compliance costs. Greater customization will also lead to more frequent revisions to the relationship disclosure to ensure it properly reflects the specific client situation.

2. *Relationship disclosure implementation period for existing accounts* – A longer relationship disclosure implementation period for existing accounts will lessen the costs of initial compliance.

The extent of the systems and cost impact for the performance reporting requirements will be influenced by:

1. *Report data requirements* – Dealer Members will be required to warehouse greater amounts of historical information to produce the reports.

2. *Report calculation requirements* – Costs will likely increase where a greater number of calculations must be performed to generate the report.

The costs incurred may also differ between Dealer Members as many firms already furnish at least a portion of the information required under the new minimum standards. The effect on a particular Dealer Member can only be precisely determined by performing a firm specific assessment, but may include costs associated with the production of documents (including printing and mailing) and the imposition of new compliance and supervisory requirements.

As previously noted, an appropriately long transition period will be provided to allow Dealer Members time to make necessary systems changes. IIROC will continue to consult with Dealer Members in developing an implementation schedule.

Apart from the issues described above, it is not expected that there will be other major technological systems impacts on Dealer Members as a result of the proposed Rules and amendments. Further, it is not anticipated that there will be other significant effects on Dealer Members or non-Dealer Members, market structure or competition.

It is believed that the benefits associated with the proposed requirements are significantly greater than the additional costs to Dealer Members. The proposed Rules and amendments do not impose any burden or constraint on competition or innovation that is not necessary or appropriate in the furtherance of IIROC's regulatory objectives. The proposed Rules and amendments do not impose costs or restrictions on the activities of market participants that are disproportionate to the goals of the regulatory objectives sought to be realized.

The IIROC Board has determined that the proposed Rules and amendments are not contrary to the public interest.

Anticipated effective date and implementation plan

IIROC anticipates that the proposed Rules and amendments will be made effective on a date to be determined by IIROC staff after receiving notification of approval by the requisite provincial securities commissions.

As noted above, transition periods for some of the requirements under the proposed Rules and amendments will also apply.

Classification of Rules and amendments and filing in other jurisdictions

IIROC has determined that the proposed Rules and amendments are Public Comment Rules and has directed that the proposed Rules and amendments be published for comment.

The proposed Rules and amendments will be filed with each of IIROC's Recognizing Regulators, in accordance with s.3 of the Joint Rule Review Protocol contained in the IIROC Recognition Order.

Request for public comment

Comments should be made in writing. One copy of each comment letter should be delivered within 90 days of the publication of this notice, addressed to the attention of:

Mark Stechishin
Policy Counsel
Investment Industry Regulatory Organization of Canada
Suite 1600, 121 King Street West
Toronto, Ontario
M5H 3T9

A second copy should be addressed to the attention of:

Manager of Market Regulation
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario
M5H 3S8
marketregulation@osc.gov.on.ca

Those submitting comment letters should be aware that a copy of their comment letter will be made publicly available on the IIROC website (www.iiroc.ca under the heading "IIROC Rulebook - Dealer Member Rules - Policy Proposals and Comment Letters Received").

Attachments

Attachment 1 – Proposed Amendments – New Rule XX00 – Relationship disclosure;

Attachment 2 – Proposed Amendments – New Rule XX00 – Conflicts of interest;

Attachment 3 – Proposed Amendments – Black-line copy of amended Rule 1300.1 – Supervision of accounts;

Attachment 4 – Proposed Amendments – Amended Rule 200.1 – Minimum Records;

Attachment 5 – Draft Guidance Note.

ATTACHMENT 1

PROPOSED AMENDMENTS TO THE IIROC DEALER MEMBER RULES – PROVISIONS RESPECTING IMPLEMENTATION OF THE CLIENT RELATIONSHIP MODEL

PROPOSED AMENDMENTS – NEW RULE XX00 – RELATIONSHIP DISCLOSURE

1. New Rule XX00 is enacted as follows:

XX01. Objective of relationship disclosure requirements

(1) This Rule establishes the minimum industry standards for relationship disclosure to retail clients at the time of opening an account or accounts. This Rule does not apply to accounts of institutional clients.

Relationship disclosure is a written communication from the Dealer Member to the client describing:

- the products and services offered by the Dealer Member;
- the nature of the account and the manner in which the account will operate; and
- the responsibilities of the Dealer Member to the client.

References in this Rule describing the obligations of the Dealer Member in relation to services provided on advisory and managed accounts apply equally to the Approved Persons of the Dealer Member providing services on such accounts.

This Rule should be reviewed in conjunction with:

- Rules 1300.1 and 1300.2 – Know your client, suitability and supervision;
- Rules 1300.3 to 1300.21 – Discretionary and managed accounts;
- Rule 2500 – Minimum standards for retail account supervision; and
- Rule 3200 – Minimum requirements for Dealer Members seeking approval under Rule 1300.1(s) for suitability relief for trades not recommended by the Member.

XX02. Definition of account relationship types

(1) An "advisory account" is an account where the client is responsible for investment decisions but is able to rely on advice given by a registered representative. The registered representative is responsible for the advice given. In providing this advice, the registered representative must meet an appropriate standard of care, provide suitable investment recommendations and provide unbiased investment advice.

(2) An "order-execution service account" is an account opened in accordance with "order-execution service" requirements set out in Rule 3200.

(3) A "managed account" is an account as defined in Rule 1300.3.

XX03. Form of relationship disclosure

(1) Dealer Members have the choice of providing customized relationship disclosure to each client, or appropriate standardized relationship disclosure to separate classes of clients.

(2) Where standardized relationship disclosure is provided to the client the Dealer Member must determine that the disclosure is appropriate for the client. Specifically, the disclosure must accurately describe:

(a) the account relationship the client has entered into with the Dealer Member; and

(b) the advisory, suitability and performance reporting service levels the client will receive from with the Dealer Member.

(3) Where a client has more than one account, combined relationship disclosure information may be provided as long as the Dealer Member determines that the combined disclosure is appropriate for the client in light of the relevant circumstances, including the nature of the various accounts.

XX04. Format of relationship disclosure

(1) The format of the relationship disclosure is not prescribed but:

(a) The relationship disclosure must be provided to the client in writing;

(b) The relationship disclosure must be written in plain language that communicates the information to the client in a meaningful way; and

(c) The relationship disclosure must include all the required content set out in Section XX05, or, where specific information has otherwise been provided to the client by the Dealer Member, a general description and a reference to the other disclosure materials containing the required information.

(2) Dealer Members may choose to provide the relationship disclosure as a separate document or to integrate it with other account opening materials.

XX05. Content of relationship disclosure

(1) The relationship disclosure information must be entitled “Relationship Disclosure”.

(2) Subject to subparagraphs (3) and (4), the relationship disclosure must contain the following information:

(a) A description of the types of products and services offered by the Dealer Member;

(b) A description of the account relationship;

(c) A description of the process used by the Dealer Member to assess investment suitability, including:

(i) a description of the approach used by the Dealer Member to assess the client’s financial situation, investment objectives, risk tolerance and investment knowledge and a statement that the client will be provided with a copy of the “know your client” information that is obtained from the client and documented at time of account opening and when there are material changes to the information;

(ii) a statement indicating that the Dealer Member will assess the suitability of investments in the client’s account whenever:

(A) a trade is accepted,

(B) a recommendation is made,

(C) securities are transferred or deposited into the account,

(D) there is a change in the registered representative, investment representative or portfolio manager responsible for the account, or

(E) there is a material change to the client’s know-your-client information; and

(iii) a statement indicating whether or not the suitability of the investments held in the account will be reviewed in the case of other triggering events not described in Rule 1300.1(r) and, in particular, in the event of significant market fluctuations;

(d) A description of the client account reporting that the Dealer Member will provide, including:

(i) a statement indicating when trade confirmations and account statements will be sent to the client;

(ii) a description of the Dealer Member's minimum obligations to provide performance information to the client and a statement indicating when account position cost and account activity information will be provided to the client; and

(iii) a statement indicating whether or not the provision of account percentage return information will be an option available to the client as part of the account service offering;

(e) A statement indicating Dealer Member and Approved Person conflicts of interest and stating that future conflicts of interest situations, where not avoided, will be disclosed to the client as they arise;

(f) A description of all account service fees and charges the client will or may incur relating to the general operation of the account;

(g) A description of all costs the client will or may incur in making and holding investments by type of investment product;

(h) A listing of the account documents required to be provided to the client with respect to the account; and

(i) A description of the Dealer Member's complaint handling procedures and a statement that the client will be provided with a copy of an IIROC approved complaint handling process brochure at time of account opening.

(3) For order-execution service accounts, the Dealer Member does not have to provide the relationship disclosure information required under subparagraph 2(c), provided that disclosure is made in compliance with the requirements in Rule 3200.

(4) For managed accounts, the required disclosure referred to in subparagraph 2(c)(iii) does not apply and the relationship disclosure provided by the Dealer Member must include a statement that ongoing suitability is provided as part of the managed account services.

XX06. Review of relationship disclosure materials

(1) Pursuant to Rule 1300.2, the relationship disclosure provided to the client must be approved by a partner, director, officer or designated supervisor. This approval must occur regardless of the form the relationship disclosure takes. If the document is a standardized document, the document must be approved by head office and the supervisor who approves new accounts must ensure that the correct document is used in each client circumstance. If the relationship disclosure is a customized document for each client, the designated supervisor must approve each document.

XX07. Client acknowledgement of receipt of relationship disclosure

(1) The Dealer Member must maintain an audit trail to evidence that the information has been provided to the client. A client signature acknowledging receipt is preferred, but not required. If no signature is obtained, some other method of documenting the provision of the information to the client must be used.

ATTACHMENT 2

PROPOSED AMENDMENTS TO THE IIROC DEALER MEMBER RULES – PROVISIONS RESPECTING IMPLEMENTATION OF THE CLIENT RELATIONSHIP MODEL

PROPOSED AMENDMENTS – NEW RULE XX00 – CONFLICTS OF INTEREST

1. New Rule XX00 is enacted, as follows:

"XX01. Responsibility to identify conflict of interest situations

(1) Each Dealer Member and, where applicable, Approved Person shall use reasonable efforts to identify potential conflicts of interest between the interests of the Dealer Member or Approved Person and the interests of the client.

(2) Where an Approved Person becomes aware of an existing or potential conflict of interest, the existing or potential conflict shall be reported immediately to the Dealer Member.

XX02. Avoidance of conflicts of interest

(1) The Dealer Member must consider the possible implications of any existing or potential conflict of interest and any conflict of interest that cannot be addressed in a manner that is consistent with the best interests of the client must be avoided.

XX03. Addressing conflicts of interest

(1) The Dealer Member and, where applicable, the Approved Person must address the existing or potential conflict of interest:

(a) in a fair, equitable and transparent manner, and

(b) by exercising responsible judgment influenced only by the best interest of the client or clients.

XX04. Conflicts of interest disclosure

(1) Unless a conflict of interest has been avoided, the conflict of interest must be disclosed to the client in all cases where there is a reasonable likelihood that a client would consider the conflict of interest important:

(a) for new clients, prior to opening an account for the client; and

(b) for existing clients, either as they occur or, in the case of transaction related conflicts of interest, prior to entering into the transaction with the client.

XX05. Conflicts of interest policies and procedures

(1) Each Dealer Member shall develop and maintain written policies and procedures to be followed in identifying, avoiding, disclosing and addressing conflict of interest situations."

ATTACHMENT 3

**PROPOSED AMENDMENTS TO THE IIROC DEALER MEMBER RULES –
PROVISIONS RESPECTING IMPLEMENTATION OF THE CLIENT RELATIONSHIP MODEL**

BLACK-LINE COPY OF AMENDED RULE 1300 – SUPERVISION OF ACCOUNTS

1. Rule 1300.1 is amended as follows:

1300.1

"Suitability ~~Generally~~determination required when accepting order

(p) Subject to Rules 1300.1(t~~r~~) and 1300.1(u~~s~~), each Dealer Member shall use due diligence to ensure that the acceptance of any order from a customer is suitable for such customer based on factors including the customer's financial situation, investment knowledge, investment objectives, ~~and~~ risk tolerance and any investments in the customer's account.

Suitability ~~d~~Determination ~~r~~Required ~~w~~When ~~r~~Recommendation ~~p~~Provided

(q) Each Dealer Member, when recommending to a customer the purchase, sale, exchange or holding of any security, shall use due diligence to ensure that the recommendation is suitable for such customer based on factors including the customer's financial situation, investment knowledge, investment objectives, ~~and~~ risk tolerance and any investments in the customer's account.

Suitability determination required for account positions held when certain events occur

(r) Each Dealer Member shall, subject to Rules 1300.1(t) and 1300.1(u), use due diligence to ensure that the positions held in a customer's account or accounts are suitable for such customer based on factors including the customer's financial situation, investment knowledge, investment objectives and risk tolerance whenever one or more of the following trigger events occurs:

(i) Securities are received into the customer's account by way of deposit or transfer; or

(ii) There is a change in the registered representative, investment representative or portfolio manager responsible for the account; or

(iii) There has been a material change to the customer's life circumstances or objectives that has resulted in revisions to the customer's "know your client" information as maintained by the Dealer Member.

Suitability of investments in customer accounts

(s) To comply with the requirements under Rules 1300.1(p), 1300.1(q) and 1300.1(r), the Member must use due diligence to ensure that:

(i) The suitability of all positions in the customer's account is reviewed whenever a suitability determination is required; and

(ii) The customer receives appropriate advice in response to the suitability review that has been conducted.

Suitability ~~d~~Determination ~~n~~Not ~~r~~Required

(t~~r~~) Each Dealer Member that has applied for and received approval from the Corporation pursuant to Rule 1300.1(v), is not required to comply with Rule 1300.1(p), when accepting orders from a customer where no recommendation is provided, to make a determination that the order is suitable for such customer.

(u~~s~~) Each Dealer Member that executes a trade on the instructions of another Dealer Member, portfolio manager, investment counsel, limited market dealer, bank, trust company or insurer, pursuant to Section I.B (3) of Rule 2700 is not required to comply with Rule 1300.1 (p).

Corporation aApproval

(vt) The Corporation, in its discretion, shall only grant such approval where the Corporation is satisfied that the Dealer Member will comply with the policies and procedures outlined in Rule 3200. The application for approval shall be accompanied by a copy of the policies and procedures of the Dealer Member. Following such approval, any material changes in the policies and procedures of the Dealer Member shall promptly be submitted to the Corporation."

2. References in Rule 1300.1 and Rule 3200 to Rules 1300.1(p) and 1300.1(t) are amended as follows:

(a) References to existing Rule 1300.1(p) are repealed and replaced by references to new Rules 1300.1(p) and 1300.1(r); and

(b) References to existing Rule 1300.1(t) are repealed and replaced by references to new Rule 1300.1(v).

ATTACHMENT 4

PROPOSED AMENDMENTS TO THE IIROC DEALER MEMBER RULES – PROVISIONS RESPECTING IMPLEMENTATION OF THE CLIENT RELATIONSHIP MODEL

PROPOSED AMENDMENTS – AMENDED RULE 200.1 – MINIMUM RECORDS

1. Rule 200.1 is amended by renumbering existing sections 200.1(d) through (n) as Rules 200.1(g) through (q).

2. Rule 200.1 is amended by adding new Rules 200.1(d), 2001.1(e) and 200.1(f) as follows:

"(d) Customer account cost reports for all accounts other than those held by institutional customers, itemizing security position cost information as follows:

(1) For all new security positions added to the account on or after the latest of:

(i) [Date of implementation],

(ii) The date the account was opened or

(iii) If applicable, the date the account was received in by the Dealer Member firm as a transferred account,

the original cost of the position.

(2) For all existing security positions in the account as of [Date of implementation], the original cost of the position.

Where original cost information is unavailable, Dealer Member firms may elect to provide market value information as at [Date of implementation], or as at an earlier date (referred to as "point in time market value") instead of original cost information, provided that it is done for all accounts and as at the same date.

Where the account was received in by the Dealer Member firm as a transferred account, the market value of the positions as at the date the account was received in via transfer (also referred to as "point in time market value") may be used instead of original cost.

For each security position, the current market value as at the report date shall be provided as a comparison to the cost information. The basis for costing each position (either original cost or point in time market value) must be disclosed.

Customer account cost reports shall be sent to customers annually, at a minimum.

(e) For all accounts other than those held by institutional customers, customer account performance information disclosing the annual and cumulative realized and unrealized income and capital gains in the customer's account. This account performance information shall be sent to customers annually, at a minimum."

(f) If provided by the Dealer Member, customer account performance reports itemizing account annualized compound percentage returns for the customer's account.

Account annualized compound percentage return information

Where account annualized compound percentage return information is provided to the client, it shall be provided indicating the account's performance for the past ten, five, three and one year periods. Where the account has existed for more than one and less than ten years, the account's annualized compound percentage return since inception shall be provided. Where the account has existed for less than one year, account annualized compound percentage return information shall not be provided. The computational method used in determining annualized compound percentage return information shall be a method acceptable to the Corporation.

If provided by the Dealer Member, the report containing account annualized compound percentage return information shall be sent to customers annually, at a minimum."

3. The Guide to Interpretation of Rule 200.1 is amended by renumbering Guide items (d) through (n) as guide items (g) through (q).

4. The Guide to Interpretation of Rule 200.1 is amended by adding new guide items (d) through (f) as follows:

"(d) "**Customer account cost reports"**

Reports must include all customer account security positions held by the Dealer Member firm for the customer in nominee name or physically in client name and all customer account security positions for which the Dealer Member firm continues to receive compensation, subject to the exceptions below.

Where, pursuant to Rule 200.1(d)(2), the original cost information is unavailable and the point in time market value amount is not readily determinable for an individual security position held, cost information for the security position shall not be reported.

Where, a particular long security position held has been determined to be not readily marketable, current market value information for the security position shall not be reported. In such instance, a disclosure in the customer account cost report shall inform the customer that the information has not been reported and why the information has not been reported.

The information provided in the customer account cost report may be provided to the customer on either a dollar amount or dollar amount per share basis.

The customer account cost report may be provided to the customer as part of the customer account statement, referred to in Rule 100.2(c), or separately.

(e) "**Cumulative account performance information"**

The cumulative account performance information must be determined based on all customer account security positions held by the Dealer Member firm for the customer in nominee name or physically in client name and all customer account security positions for which the Dealer Member firm continues to receive compensation, subject to the exceptions below.

Where one or more security positions held in the client account have been determined to be not readily marketable, the security position(s) shall not be considered in the determination of cumulative account performance. In such instance, a disclosure in the cumulative account performance information shall inform the customer of the positions that have been excluded and why the positions have been excluded.

At the option of the Dealer Member firm, customers may be provided with portfolio level (portfolio level being a consolidation of all account security positions and debit/credit money balances of the same customer) cumulative account performance information.

At the option of the Dealer Member firm, customers may instead be provided with cumulative account performance information that delineates advised/non-advised account security positions.

The cumulative account performance information may be provided to the customer as part of the customer account statement, referred to in Rule 100.2(c), or separately.

(f) "**Account annualized compound percentage return information"**

Where account annualized compound percentage return information is provided to the client, it must be determined based on all customer account security positions held by the Dealer Member firm for the customer in nominee name or physically in client name and all customer account security positions for which the Dealer Member firm continues to receive compensation, subject to the exceptions below.

Where one or more security positions held in the client account have been determined to be not readily marketable, the security position(s) shall not be considered in the determination of annualized compound percentage returns. In such instance, a disclosure in the annualized compound percentage return information shall inform the customer of the positions that have been excluded and why the positions have been excluded.

At the option of the Dealer Member firm, customers may be provided with portfolio level (portfolio level being a consolidation of all account security positions and debit/credit money balances of the same customer) annualized compound percentage return information.

At the option of the Dealer Member firm, customers may instead be provided with annualized compound percentage return information that delineates advised/non-advised account security positions.

Account annualized compound percentage return information may be provided to the customer as part of the customer account statement, referred to in Rule 100.2(c), or separately."

ATTACHMENT 5

IIROC RULES NOTICE – DRAFT GUIDANCE NOTE

CLIENT RELEATIONSHIP MODEL

Introduction

This Notice provides guidance for Dealer Members on compliance with the new requirements introduced under the Client Relationship Model (CRM) project. The new Rules and amendments under CRM project address:

- Relationship disclosure;
- Management and disclosure of conflicts of interest;
- Account suitability; and
- Account performance reporting.

While each of these issues can be viewed in isolation, the intent of the CRM project is that the different elements work together within the larger CRM framework and the existing Rules. Essentially, each of the requirements is a part of the broader fundamental obligation of the Dealer Member and its representatives under National Instrument 31-505 to deal fairly, honestly and in good faith with clients.

Wherever possible, the new CRM requirements have been created with the intent of allowing Dealer Members to leverage off of existing processes. However, certain aspects will require Dealer Members to develop new systems, which may pose some significant operational challenges. Therefore, with the input of Dealer Members and other industry participants, IIROC staff has developed a transition plan for implementation of the CRM Rules and amendments. Details of the transition periods that have been approved by the IIROC Board are attached as Schedule 1 to this Notice. **[NTD: to be determined following consultation]**

Relationship disclosure

Rule XX00 establishes minimum standards for client/firm relationship disclosure to be provided by Dealer Members to clients at the time of account opening. The policy rationale underlying the Rule is that all clients should have a good understanding of what they sign up for when they open an account.

The relationship disclosure must include a description of the products and services of the Dealer Member, the nature of the account and the responsibilities of the Dealer Member. Staff expects that many Dealer Members will currently be providing marketing information that includes at least some information on products and services offered. However, to provide a more complete and balanced picture, the client should also be advised as to specific limitations and Dealer Member responsibilities that might exist for different classes of accounts (for example, an order execution account versus an advisory account). The relationship disclosure information will help the clients understand:

- why the information they provide to the Dealer Member is important;
- what service levels to expect from the Dealer Member once the account has been opened; and
- what information the Dealer Member will provide to update the client on the status of the account.

Although there are a variety of business models employed by Dealer Members, IIROC staff expect that in a typical face to face client meeting, the registered representative will sit down with the client and take him or her through the account opening documentation. The representative will collect the necessary know-your-client information, complete the account opening forms and obtain the required client signatures. The client should then be provided with a copy of the forms and disclosure documents. Ideally, throughout this process, the client will be raising any questions and the representative will be providing meaningful responses. However many clients may not be fully engaged in the discussion or may feel intimidated by the process. As a result, they may walk away from the meeting without getting relevant information. The intent of the relationship disclosure is to ensure that all clients have answers to some basic questions on the account relationship, whether or not the client raises these issues with their representative.

The Rule provides for a degree of flexibility as to the form and format of the relationship disclosure, but in all cases the information must be in writing, in plain language and must contain all of the required elements set out in Section XX05. The

Rule allows for standardized disclosure to be provided to particular groups of clients, or all clients. Where the Rule requires the Dealer Member to advise as to whether optional services can be obtained from the Dealer Member, the costs associated with such services should be provided. **[NTD: would Dealer Members like to see a sample relationship disclosure template provided along with the guidance note?]**

The disclosure required under subparagraphs (e), (f), (h) and (i) of Section XX05 reflects existing requirements under other Rules. Going forward, Dealer Members may include this information with the other required relationship disclosure information in a single package. Alternatively, the Rule allows Dealer Members to rely on their existing procedures to deliver this information. In such cases, the relationship disclosure provided by the Dealer Member must include a general description of the information and a reference to the other disclosure materials containing the required information.

As noted in the introduction to this Notice, the relationship disclosure requirements should be viewed in the context of other business conduct rules. One of the fundamentals in the advisory relationship is the requirement for the Dealer Member to satisfy the investment suitability requirements contained in Rule 1300.1. Accordingly, staff expects the Dealer Member to provide a fulsome, clear and meaningful explanation of its suitability obligation in the relationship disclosure information. Further, the client should be made aware of the limitations on the obligation and whether account suitability reviews will be performed in situations apart from those listed in the Rule. In particular, the Rule requires that clients be informed whether any action will be taken by the Dealer Member in response to significant market fluctuations.

The obligations of Dealer Members to provide certain specific disclosures regarding suitability will vary for order-execution only and managed accounts, in that there is no suitability obligation regarding execution only service and managed accounts must be monitored and supervised according to the specific standards imposed under Rule 1300 and Rule 2500. Apart from these limited exceptions for order-execution and managed accounts, all of the required elements listed in Rule XX00 must be addressed in the Dealer Member's relationship disclosure.

Beyond the required content set out in Rule XX00, the Dealer Member may also elect to include additional information in the relationship disclosure. In consulting with Dealer Members in the rule development process, staff has noted that some Dealer Members currently recommend steps to be taken by their clients to maintain a successful relationship with the firm. These include:

- Carefully and promptly reviewing all documentation provided by the Dealer Member that relates to the operation of the account, account investment recommendations, account investment transactions and account investment holdings. This would include the "know your client" information maintained by the Dealer Member for the account; conflicts of interest disclosures; descriptions of all transaction costs and account service fees and charges relating to the account; trade confirmations; and account statements.

- Promptly informing the Dealer Member of changes to the client's life circumstances or objectives that may materially affect the accuracy of the "know your client" information maintained by the Dealer Member for the account.

- Promptly informing the Dealer Member of any trade confirmation or account statement errors.

- Proactively asking questions and requesting information about the account.

- Contacting the Dealer Member immediately if the client is unsatisfied with the handling of the affairs in the account.

Dealer Members are required to provide the relationship disclosure information to all clients. It is expected that new clients will be provided with the information at the time of account opening. Staff acknowledges that there are significant logistical concerns involved in distributing the information to existing clients and is therefore allowing a transition period of three years to provide the information to existing clients. This is in line with current expectations regarding the updating and re-papering of client accounts.

Where significant changes to the relationship disclosure information have occurred, it is expected that the Dealer Member will provide timely notice to clients of any changes. This could be accomplished by including details of the updated information with a regular client communication, such as the client statements.

As noted in section XX07, Dealer Members are required to maintain an audit trail to evidence that the relationship disclosure information has been provided to clients. As a best practice this would be accomplished through a signed client acknowledgement. Alternatively, Dealer Members may rely on other methods, such as negative confirmation, provided that compliance with the basic requirement can be demonstrated by the Dealer Member.

Dealer Members may also satisfy the delivery requirements regarding initial disclosure and subsequent updates through electronic means. Dealer Members that intend to rely on electronic delivery of the information would be expected to satisfy the requirements noted in IDA Member Regulation Notice MR-008.

Conflicts of Interest

There are a number of provisions in the IIROC Rules that relate to specific conflict of interest situations. New Rule XX00 has been implemented to clarify the Dealer Member's general obligations wherever a conflict situation is encountered. The new Rule generally requires Dealer Members to have written policies and procedures in place for identifying, avoiding, disclosing and addressing conflicts. Where a conflict between the interests of the client and those of the Dealer Member is not avoided, the conflict must be disclosed and addressed in manner that is consistent with the best interests of the client.

As with the other elements of the CRM project, the Rule should be read in light of the basic business conduct requirements to deal with clients fairly, honestly and in good faith. The intent is to provide clarity for Dealer Members in how these basic principles can be satisfied when considering conflicts. The Rule should not be interpreted as requiring Dealer Members to identify and eliminate every conceivable conflict, or preventing Dealer Members from profiting from their regular business activities.

The Rule has been drafted to point out the factors that Dealer Members must consider in addressing conflicts. The Dealer Member must use reasonable efforts to identify any real or potential conflicts that may arise in the conduct of business. If a conflict cannot be addressed in a manner that is consistent with the best interests of the client, it must be avoided. If the Dealer Member determines that a conflict does not require prohibition, the Dealer Member must ensure that the conflict is addressed in accordance with Rule XX03. Any material conflict that has not been avoided must be disclosed.

Disclosure is fundamental in responding to a material conflict of interest. The disclosure should be timely and meaningful to the client. Section XX04(1) requires Dealer Members to provide disclosure in any case where there is a reasonable likelihood that a client would consider the conflict of interest important. Disclosure should be made before the product or service related to the conflict is sold or provided to the client. Further, the disclosure should be sufficient to provide the client an understanding of the specific conflict. A generic form of disclosure simply stating that conflicts may arise will not satisfy the Dealer Member's obligation to respond to conflicts properly.

In some cases, disclosure of a conflict combined with informed consent (which may be express or implied, depending on the circumstance) may be sufficient to discharge the Dealer Member's obligation to properly address the conflict. The fact that the Dealer Member and its representatives earn commissions from recommended trades is a conflict that arises every day in the regular course of business. However, as clients generally expect that there is a cost associated with operating an account, the conflict can be adequately addressed simply through disclosure of the amount of fees and commissions that are being charged.

In other cases, to properly address a conflict, the Dealer Member may need to implement policies and procedures in addition to disclosure. Proposed National Instrument 31-103 will require registrants to execute a written agreement as well as providing prescribed disclosure prior to entering into a referral arrangement with a client. Other types of personal financial dealings, if permitted, may also necessitate additional measures, such as requiring the client to obtain independent advice before entering into a transaction.

As indicated in section XX02 of the Rule, situations may also arise where the interests of the parties cannot be reconciled and the Dealer Member would be expected to prohibit such transactions. As noted in previous enforcement actions, hearing panels have determined that registered representatives that borrow money from clients are engaging in business conduct which is unbecoming or detrimental to the public interest. Such activity should be prohibited, even where the amount of the loan may not appear to be material for a particular client.

Account suitability

Rule 1300 has been amended to expand the suitability obligations of the Dealer Member beyond the requirement to assess trade suitability at the time a trade is recommendation is made. The intent is to provide investors with an added level of protection in situations where the risk profile of the client and the account portfolio diverge over time. Amended Rule 1300.1(r) requires that the account suitability be reviewed when any of the following additional triggering events occurs:

- securities are transferred or deposited into the account,
- there is a change of representative on the account, or
- there is a material change to the know-your-client information for the account.

The general expectation of staff expectation is that all account suitability reviews required under Rule 1300 will be completed in a timely manner. In most cases, this means that the review should be completed within one day after the Dealer Member or its representative becomes aware of the fact that one of the triggering events noted in the Rule has occurred. Where warranted in a given case, such as a transfer of a block of accounts to a new advisor, a "reasonable time" standard would apply. In any case, the required account suitability reviews should be completed prior to, or at the time of, any subsequent trade on the account.

Staff does not expect that Dealer Members would perform reviews in situations where a change in client information is not material or the Dealer Member is not made aware of the change in circumstances. The Dealer Member's policies and procedures should address the issue of materiality and ways to encourage clients to provide updates on changes to client information.

Staff is in the process of considering further changes to the suitability requirements and providing guidance as to staff expectations for Dealer Member compliance. In some respects these will key off of amendments under the CRM project (such as the requirement to provide each client a copy of their KYC information and the requirement to supervise compliance with the new suitability requirements). Additional guidance to Dealer Members will be provided as part of this initiative.

Performance reporting

One of the most significant parts of the CRM project is the creation of new standards for performance reporting. Many Dealer Members have, for some time, provided performance reporting to clients as one of the services they offer. The amendments to Rule 200.1 now require that certain basic performance information be provided to all clients, as each client should have sufficient information to determine whether they have gained or lost money on the investments in their accounts. Specifically, Dealer Members are now required to provide security position cost information and account activity reporting.

Staff has noted a number of operation issues regarding performance reporting, and these have been discussed at length in the rule making process. Many issues were pointed out to staff with respect to potential problems with the quality and availability of historical data. To eliminate these issues, Rule 200.1 allows Dealer Members to report the required information as of the implementation date of the Rule.

As noted in the Guide to Interpretation of Rule 200.1, where a particular long security position has been determined by the Dealer Member to be not readily marketable, or the point in time market value for a security cannot be readily determined, costs information must not be reported for such securities and the client should be advised why the information is not being reported.

In some situations, cost information for securities previously provided to clients may be subject to subsequent adjustments. For example, this would apply to securities that have been subject to re-organizations. In such cases, the general rule to follow would be to adjust the security cost in line with the information provided by the issuer. Dealer Members may contact IIROC staff regarding questions on specific cases, if required.

Under Rule 200.1(e), account activity information must be provided to all retail clients on at least an annual basis. To meet the requirement, Dealer Members must disclose the cumulative realized and unrealized capital gains on the client's account. Again, the expectation is that this information will be reported on a go forward basis to avoid issues with historical data.

IIROC has not mandated that account percentage return information be provided to retail clients under the CRM amendments. However, under Rule 200.1(f), where a Dealer Member chooses to provide percentage return information to retail clients, the information must be reported on a 1, 3, 5 and 10 year basis and must be calculated in accordance with a method acceptable to IIROC.

For the purpose of the Rule, Dealer Members are advised that both dollar-weighted and time-weighted methods are acceptable to IIROC. In particular, this includes the Dietz and modified Dietz methods, daily valuation and any method permitted under the Global Investment Performance Standards endorsed by the CFA Institute.

IIROC staff intends to continue to study the cost and implementation issues surrounding percentage return reporting with the objective of requiring that this information be provided to clients at some point in the future. We will continue to work with IIROC Dealer Member firms in order to understand and address any existing impediments to the provision of this information to retail clients.

13.1.12 IIROC Response to Comments on Client Relationship Model Rules and Amendments to IIROC Dealer Member Rules 200 and 1300

IIROC RESPONSE TO COMMENTS ON
CLIENT RELATIONSHIP MODEL RULES AND
AMENDMENTS TO IIROC DEALER MEMBER RULES 200 AND 1300

April 2, 2009

Re: IIROC response to comments on Client Relationship Model Rules and amendments to IIROC Dealer Member Rules 200 and 1300

We are publishing this letter in response to the comment letters received on the proposed Client Relationship Model (CRM) amendments, which include proposed amendments to IIROC Dealer Member Rules 200 and 1300.

We received 20 comment letters in response to the request for comments. We thank all of the commenters for their helpful submissions.

The comments have been summarized and grouped according to the issues raised. The response by IIROC staff follows each particular issue.

GENERAL

Costs versus benefits of proposed amendments

We received the following comments which relate to potential costs versus benefits of the proposed amendments:

- The proposed changes will lead to unnecessary costs and will have an adverse impact on the market.
- Service levels for clients should be determined by market forces, as opposed to regulation.
- The basic business conduct principles that are already in place adequately address the underlying issues.
- No justification for the proposed changes has been demonstrated.
- A cost/benefit analysis must be conducted before proceeding further on the project.

IIROC staff response

IIROC staff consulted with Dealer Members and approved persons extensively prior to publishing the proposal and received input on the cost issue throughout the rule-making process. Staff is therefore confident that we are aware of, and have properly considered the cost issues noted in the comments. Although it is difficult to quantify potential benefits with any high degree of precision, comments received from investors indicate that the proposals are a step in the right direction in enhancing investor protection.

To minimize potential costs, wherever possible, staff has revised the proposal to provide greater flexibility to Members in complying with the new requirements without compromising the investor protection goals of the CRM project. Further, as described in more detail below, IIROC will be allowing transition periods to give Dealer Members adequate time to develop and implement systems necessary to meet the new requirements.

As noted in the materials supporting the proposed rules, staff of the Canadian Securities Administrators (CSA), the Mutual Fund Dealers Association (MFDA) and IIROC also attempted to develop a more formal cost/benefits analysis. To assist in the performance of this work, an independent research company was hired to make recommendations on the investor survey approaches to be used and to perform the surveys themselves. Subsequent meetings were held with industry participants to discuss and agree upon the approach to be pursued. Dealer Members that attended the meeting were also called upon to provide new client lists for use in the investor survey process. However, as agreement as to approach was not reached with dealers and an insufficient number of client names were received, this formal analysis was not completed.

Need for Further Consultation

Two comments suggested that further consultation be conducted with respect to operational challenges that would have to be addressed in complying with the proposed requirements.

IIROC staff response

As noted in our previous response, IIROC staff has consulted extensively with Dealer Members, approved persons and other industry participants throughout the development of the proposed rules. Industry representatives were directly involved in the drafting of the direction documents that set out the basis for the proposed changes. Joint SRO/industry subcommittees were also consulted in the drafting of the actual proposed rule amendments. Finally, the materials were published for an extended 90 day comment period to ensure that industry and members of the public were provided with an ample time to digest the materials and consider their impact.

The revised proposals will be published for comment for a further 90 days. Commenters are encouraged to provide input on the anticipated operational challenges associated with the proposals and how these might be addressed.

Consistency between IIROC and Other Proposals

Seven comments were received regarding the need for consistency between the IIROC proposal and those of the CSA and MFDA.

IIROC staff response

To address consistency issues, IIROC has continued to meet and work with representatives of the CSA and the MFDA throughout the development of the proposed rules. As a result of these discussions, IIROC staff has made several changes to the previously proposed amendments to further enhance consistency in the approaches.

Differences between the relationship disclosure requirements in the IIROC proposal and those in proposed National Instrument 31-103 exist mainly because the proposed National Instrument reflects previous drafts of the IIROC and MFDA proposals.

In some cases, inconsistencies in the approach taken by IIROC and the MFDA have arisen because of differences in the business models typically employed by registrants under each registration category or because of differences in the way the IIROC and MFDA rulebooks are constructed and applied.

Alignment with Fair Dealing Model Principles

One comment stated that IIROC must ensure that the proposed amendments take a holistic approach to addressing CRM issues that maintains the values adopted under the Fair Dealing Model.

IIROC staff response

IIROC staff has been involved in the CRM rule initiative, including the preceding work on the Fair Dealing Model, since inception. As active participants, we have maintained the objective of creating industry standards that are consistent with the Fair Dealing Model principles. Staff believes that the proposed amendments achieve that goal in a way that is consistent with the best interests of both investors and industry participants.

Transition Periods

We received one comment recommending that adequate transition periods be provided prior to implementation of the proposed changes.

IIROC staff response

IIROC staff will provide sufficient transition periods to allow Dealer Members to develop and implement systems necessary to comply with the new requirements under the proposed rules. To ensure that the proposed timelines are reasonable, staff will be consulting with Dealer Members and other industry participants in developing a transition plan. The plan will also be presented to the Board for approval.

RELATIONSHIP DISCLOSURE

Prescriptive Nature of Disclosure Requirements

We received the following comments which relate to the prescribed requirement to provide relationship disclosure:

- Four commenters suggested that the rule should be more principles based and allow for more flexibility.
- One commenter suggested that the proposal still requires too much customization.

IIROC staff response

The relationship disclosure requirements are designed to address a fundamental objective of the Client Relationship Model project – to provide clients with a better understanding of what to expect from their Dealer Member and advisor when they open a securities account. However, balanced against the desire to state this objective in broad principles-based language is the need to set minimum standards regarding the nature and quality of such disclosure.

Several changes to the previously proposed amendments have been made to address the need for greater flexibility in the proposed Rule. We believe that with these changes, the proposed Rule strikes an appropriate balance, setting out clear standards while still allowing a sufficient degree of flexibility to accommodate differences in Dealer Members' business models.

Use of Standard Industry Document

We received two comments suggesting that IIROC develop standard industry documentation for use by all Dealer Member firms.

IIROC staff response

Staff does not support the introduction of a standard form boilerplate disclosure document that does not provide clients with information particular to their advisor and Dealer Member. While staff recognizes that some aspects of the disclosure may be common to all Dealer Members, we also expect that there will be a great deal of variation between firms with respect to the specific products and services they provide and the processes they have put in place to deliver those products and services. We believe that the identification of these differences is essential information, allowing clients to make informed choices as to the products and service levels that are available. IIROC staff does not believe that this objective can be satisfied by providing a generic disclosure document that lists products and services that the Dealer Member may or may not offer without giving the client a basis upon which to differentiate between firms.

Content Requirements

We received the following comments which relate to the required content for the proposed relationship disclosure information:

- The proposed required disclosure may provide too much information for many clients to digest.
- The rule should explicitly state that boilerplate language must be avoided.
- Socially responsible investing issues should be addressed as a core element in relationship disclosure.
- The requirement to define account types must be flexible enough to allow for more than the three basic business models of order execution only, advisory, or managed account services.
- The proposed rule should be clear that the relationship disclosure must include a description of types of products and services as opposed to specific products and services.
- The description of the products and services available through the Dealer Member should point out that some products may not be suitable for some clients. The requirement to disclose services not available through the Dealer Member should be removed.
- The requirement to describe the process used by the Dealer Member to assess KYC information should be removed.

IIROC staff response

On the basis of the comments received, staff has re-organized the requirements and made other substantive changes to ensure, as much as possible, that IIROC's approach is consistent with the relationship disclosure requirements proposed for other industry sectors. However, all of the elements of disclosure have been retained in the proposed requirements and no substantive additions or deletions from the required content have been made.

Section XX05(2)(c)(iii) of the proposal has been revised to require Dealer Members to disclose whether they provide percentage return reporting to clients and whether investment suitability will be reviewed at any times beyond the triggering events listed in the revised Rule 1300.1(r). In particular, Dealer Members will have to advise clients if their accounts will be reviewed in response to market fluctuations. This is important information for clients in that it facilitates direct comparison of services available from different Dealer Members on these issues.

To address the issue raised in the second comment noted above, the proposed Rule requires that the relationship disclosure be written in plain language. Staff will be reviewing the adequacy of the disclosure as part of our regular review process.

In response to the fourth comment, staff supports the position that the proposed Rule must be flexible enough to allow for Dealer Members to describe products and services beyond the three basic business models. The proposal is not intended to create such a restriction.

As noted above, staff does not expect to establish any additional disclosure requirements at this time. We will, however, provide additional guidance to Dealer Members regarding staff expectations in satisfying the disclosure requirements, to address questions noted above.

Delivery of Documentation

We received the following comments regarding issues with the delivery requirements:

- The requirement to provide the client with a copy of his or her KYC information should be limited to KYC information used to assess investment suitability.
- Documents such as fee schedules should be incorporated by reference into the relationship disclosure.
- The rule should not require that relationship disclosure information be provided to existing clients.
- The rule should contemplate an "access equals delivery" approach to allow Dealer Members to provide information to clients via their websites.

IIROC staff response

In response to the first point noted above, staff agrees that KYC information used to assess investment suitability is critical information to be provided to investors. However, we believe that carving out a subset of information from other KYC information collected for clients may lead to unnecessary additional compliance challenges and could potentially create client confusion. We have therefore not made changes to the proposed requirement.

On the issue of the incorporation of fee schedules by reference, staff agrees that the information contained in other schedules such as these may be appropriately addressed by referring the client to the existing documentation that has been provided. The IIROC proposal has been revised to stipulate that where specific information has already been provided to the client, the relationship disclosure need not duplicate this information. In such cases, we would expect the relationship disclosure to provide a general description of the relevant material and a reference to the other document containing the required information.

IIROC is of the view that the relationship disclosure information must be provided to existing clients, as well as new clients. However, staff recognizes that the requirement to deliver the information to existing clients will pose challenges and will require some time to complete. We will be consulting with Dealer Members on this point in the development of our transition plan.

Staff will also be providing additional guidance on other issues related to the delivery requirement, including electronic delivery. Dealer Members that intend to deliver the document by electronic means should look to the previous guidance provided in IDA Member Regulation Notice MR-0008.

IIROC staff does not support the concept of an "access equals delivery" model for providing relationship disclosure information. We do not believe that making information available to clients on a website is equivalent to delivering the document in paper or electronic form as it is not as effective in bringing the information to the attention of the client.

Requests for Clarification of Rule

We received the following comments requesting clarification of certain aspects of the proposed relationship disclosure requirements:

- The rule should be clear regarding the Dealer Member's obligations to advise clients of any subsequent revisions to the relationship disclosure information previously provided.
- The rule should be clear regarding the Dealer Member's obligations where a client fails to acknowledge receipt of information.
- The rule should be clear as to the responsibilities of introducer and carrying brokers in providing the disclosure.

IIROC staff response

Where significant changes to the relationship disclosure information have occurred, staff expects that the Dealer Member will provide timely notice to clients of any changes. This could be accomplished by including details of the updated information with a regular client communication, such as the client statements.

On the second point noted above, section XX07 of the proposed Rule requires Dealer Members to maintain an audit trail to evidence that the relationship disclosure information has been provided to clients. It does not specifically require that this be accomplished through a signed client acknowledgement. Dealer Members may rely on other methods, such as negative confirmation, provided that compliance with the basic requirement can be demonstrated by the Dealer Member.

Issues with respect to the obligations of introducer and carrier dealers will be considered and will be addressed in guidance provided by staff. We welcome further input on any specific points that Dealer Members feel should be addressed.

CONFLICTS RESOLUTION AND DISCLOSURE

Requirement to Avoid Conflicts

One commenter suggested that the requirement to avoid conflicts "where possible" is not practical or desirable.

IIROC staff response

We have amended the proposed rule so that conflicts must be avoided only if they cannot be resolved in the client's best interests.

Requirement to Resolve Conflicts

One commenter requested clarification with respect to the Dealer Member's obligation to resolve conflicts.

IIROC staff response

We have amended the proposed rule to clarify that conflicts must be "addressed" as opposed to "resolved".

Clarification of Disclosure Requirements

We received the following comments requesting clarification of the requirements relating to conflict disclosure:

- The rule should be clear as to what would be expected of Dealer Members in meeting their disclosure obligations.
- Disclosure should only be required if a conflict is not resolved.

IIROC staff response

We have amended the proposed rule so that disclosure is required only when the conflict is not avoided. Where a Dealer Member has opted to address a potential conflict by avoiding the situation entirely, disclosure is not necessary. If, however, the Dealer Member chooses to address the conflict in some other way, disclosure is required.

IIROC staff will issue guidance to Dealer Members as to staff expectations regarding compliance with the proposed new disclosure requirements.

Intended Scope of Proposed Rule

We received the following comments requesting clarification of the intended scope of application for the conflicts requirements:

- The rule should be re-drafted to include a materiality provision, so that inconsequential conflicts are not captured.
- The rule should be clear as to the types of potential conflicts that are intended to be caught by the proposed rule.

IIROC staff response

We have amended the proposed rule to address the issue of materiality. The general rule is that conflicts must be disclosed and addressed where there is a reasonable likelihood that a client would consider the conflict important. This is consistent with the approach adopted under proposed National Instrument 31-103.

As noted above, staff will issue additional guidance to Dealer Members that will expand on the application of the proposed rule.

RETAIL CLIENT SUITABILITY

Factors to be Considered in Assessing Suitability

We received two comments regarding factors that should specifically be referenced by firms when assessing the suitability of investments:

- Suitability triggers should contemplate socially responsible investing issues. The ongoing cost to hold a product should be explicitly included as a factor to be considered in investment suitability.

IIROC staff response

As part of a separate project, IIROC staff is examining the possibility of introducing further changes to the suitability rule and is in the process of drafting guidance to Dealer Members on regulatory expectations for meeting their suitability requirements. We will consider the comments noted above as we continue work on that project.

Limitations on Suitability Obligations

We received three comments with respect to limitations that should apply to the requirement to perform a suitability assessment:

- A Dealer Member cannot "ensure" that positions transferred in are suitable for the client – the Dealer Member can only ensure that a review is conducted and that the client is provided with advice. The obligation to review suitability following a change in client circumstances should be limited to material changes. The obligation to review the suitability of a client's holdings after a material change should be limited to cases where the client advises the Dealer Member of the change.

IIROC staff response

We agree with the first comment on the issue of ensuring the suitability of positions transferred into the Dealer Member and revised the proposed rule to clarify that the responsibility of the Dealer Member is to use due diligence to ensure that investments are suitable, following the language in the current Rules 1300.1(p) and 1300.1(q).

With respect to the issue of changes to client information, staff does not expect that Dealer Members would perform reviews in situations where the change in client information is not material or the Dealer Member is not made aware of the change in circumstances. This position will be reflected in the guidance note on the proposed amendments.

Timing of Reviews

We received three comments requesting clarification of staff expectations regarding timelines for completion of suitability assessments:

- The suitability review to be performed after a change in advisor occurs should not be required until after the first transaction in the account following the change.

- The requirement to review portfolio suitability after a change in portfolio manager is excessive, as such reviews are required on a quarterly basis in any event.

- The rule should clearly allow the Dealer Member a reasonable amount of time to conduct reviews after a triggering event occurs (because, for example, transfers of positions into the Dealer Member often take time to complete).

IIROC staff response

Staff maintains the position that where a change in the portfolio manager assigned to an account occurs, it is reasonable for a client to expect that his or her account be reviewed by the individual taking over the account.

IIROC will provide guidance regarding expected timelines for completing the suitability reviews in other situations. Staff do not intend to fix a hard and fast rule for the timing of completion of the reviews, as there many different situations that can trigger a

review. As suggested, the general expectation is that the reviews will be completed in a reasonable time, factoring in the circumstances of each case (for example, the number of accounts to be reviewed where a block of clients has been transferred).

ACCOUNT PERFORMANCE REPORTING

General Issues Regarding Performance Reporting

We received two general comments regarding the proposed requirement to provide performance reporting:

- The requirement to provide any form of performance reporting should be optional – it should be left to market forces to drive such requirements rather than regulators.
- Performance reporting will encourage clients to focus their attention on short term gains and losses as opposed to long term strategy.

IIROC staff response

IIROC's position is that it is reasonable to expect that clients be given basic cost information and account activity reporting to allow them to determine whether they have gained or lost money on the investments in the account. Staff notes that many Dealer Members currently provide performance reporting to clients and this should be considered a basic service.

IIROC staff does not believe that the minimum requirements under the proposed rules will lead to undue focus on short term account returns.

Issues Related to Cost Reporting

We received a number of comments regarding the proposed requirement to provide cost reporting:

- "Cost" must be defined.
- The required cost disclosure should be in dollars and cents and in plain language.
- Operational challenges regarding the collection and analysis of cost data must be considered further before any changes are implemented.
- Cost information is difficult to determine where reorganizations or other issuer transactions have taken place.
- Cost information on positions transferred in to the Dealer Member may be unreliable. Dealer Members may have incomplete or inaccurate cost information on positions held in client name.
- Client name positions cannot be reported on statements.
- Cost information is irrelevant to certain accounts. Cost information is relevant only for individual positions and is not relevant at the account level.
- Dealer Members may have limited or no access to reliable information on investments for which compensation has been received through referral arrangements.
- The requirement to explain why certain cost information is not available is onerous and of little value to clients.

IIROC staff response

As with other issues raised in the comments, challenges regarding the recording and presentation of cost information have been pointed out on several occasions by firms and individuals involved in the rule development process.

IIROC staff is of the view that many of the issues noted above are addressed by virtue of the fact that retroactive cost information is not required under the proposed rule. In addition, the rules will be subject to transition periods to allow Dealer Members time to implement policy and systems changes before the rules become effective.

Staff will provide guidance with respect to adjustments to cost information for securities that have been subject to re-organizations.

Issues relating to reporting of client name positions on customer statements will be addressed as a transition issue. We will be working with CIPF in looking at disclosures relating to CIPF covered holdings prior to the introduction of any changes.

On the issue of referral agreements, the Rule is not intended to capture such arrangements. Valid referrals are not subject to the cost reporting requirements.

Staff takes the position that the requirement to disclose why a Dealer Member is unable to report cost on certain securities is important information for investors. For example, if a reliable market value cannot be obtained to determine a cost value for an exempt security transferred into a Dealer Member account, staff believes that the Dealer Member should advise the client that accurate information is not available. It would not be sufficient to simply report "N/A" in the cost report, without further explanation. However, staff expects that situations where reliable cost information could not be obtained would be exceptional cases and does not believe that, in practice, the requirement will impose an undue burden on Dealer Members.

Issues Related to Account Activity Reporting

We received three comments regarding the proposed requirement to provide account activity cost reporting:

- Account activity reporting on client name assets is not possible because the transaction is between the client and the issuer.
- Account activity reporting should not require reporting of income, capital gains realized or unrealized gains or losses on the account.
- Gains or losses on the account should be viewed in the context of the client's objectives and risk tolerance.

IIROC staff response

We disagree with the comment that activity reporting on client name positions held outside the firm is not possible. The proposed requirements apply only to client name positions held outside the firm on which the Dealer Member continues to receive compensation. Specific to these assets, based on our consultations with Dealer Members, it is our understanding that information required to calculate account activity information is available and account activity reporting is possible.

However, as noted above, staff has amended and simplified the proposed rule regarding activity reporting so that Dealer Members will be required only to disclose the cumulative realized and unrealized income and capital gains/losses on the customer's account. As stated above, staff is of the view that it is not unduly onerous or unreasonable to expect that all clients be advised as to total gains or losses on their accounts.

With respect to the last comment, staff agrees that gains and losses on a client's account should be viewed in the context of the client's investment objectives and risk tolerance. The proposed amendments are consistent with this view. In some ways this point relates back to the requirement to describe the Dealer Member's suitability obligation in the relationship disclosure information. Clients should understand how their risk profiles relate to the volatility of investments held in their accounts.

Issues Relating to Percentage Return Reporting

We received five comments regarding the provision of percentage return performance reporting:

- The requirement to report percentage rates of return in accordance with GIPS is too restrictive.
- The rule should be clear that Dealer Members are not required to provide percentage rate of return reporting.
- Personalized rates of return should be provided to all clients.

IIROC staff response

The proposed rule has been amended to allow for percentage rates of return to be calculated by any method acceptable to IIROC. Staff will provide guidance as to the methods that have been approved for use by Dealer Members and approved persons. These will include time-weighted and dollar-weighted methods.

Staff confirms the position that the proposed rules do not mandate percentage return reporting to clients. The intent at this time is to set basic, consistent standards to be followed where Dealer Members or approved persons elect to provide such reporting to clients.

IIROC is supportive of a move to mandate percentage return reporting in future. However, staff anticipates that extensive consultations with Dealer Members will be required before any such change is implemented.

13.1.13 Summary of Public Comments Respecting Proposed Amendments to MFDA Rule 1.2.1(d)

SUMMARY OF PUBLIC COMMENTS RESPECTING
PROPOSED AMENDMENTS TO MFDA RULE 1.2.1(D)

On June 27, 2008, the British Columbia Securities Commission published proposed amendments to MFDA Rule 1.2.1(d) (the "**Proposed Amendments**") for a 30-day public comment period.

The public comment period expired on July 28, 2008.

Two submissions were received during the public comment period:

1. Financial Planners Standards Council ("FPSC")

2. Ryan, Lamontagne and Associates ("Ryan Lamontagne")

Copies of comment submissions may be viewed on the MFDA's website at: www.mfda.ca.

The following is a summary of the comments received, together with the MFDA's responses.

1. Proposed Amendments Should Recognize Certified Financial Planners ("CFP"s)

Both commenters suggested that amendments to paragraph (A) of Rule 1.2.1(d)(vii) should be revised to specifically recognize CFPs who are subject to FPSC oversight.

The FPSC commented that the proposed amendments impose unnecessary restrictions on financial planners who are held to a high standard by an independent third party organization such as the FPSC and thus are not in keeping with the MFDA's intention of ensuring that the public is protected from unqualified financial planners. The FPSC commented that a CFP professional is bound by an enforceable code of ethics, is required to undertake continuing professional development related to financial planning, must complete substantial training and experience in the theory and provision of financial planning and must successfully complete one of the most challenging professional examinations in the industry (the CFP Examination).

The FPSC also expressed concern that the proposed amendments appear to suggest that the MFDA considers members of associated or unrelated professions and salespeople as offering greater consumer protection from inappropriate or unscrupulous financial planning advice than a CFP professional or similarly qualified individual. The FPSC stated that this seems contrary to the MFDA's ultimate goal of consumer protection.

The FPSC urged the MFDA to remove the reference to "governmental authority or statutory agency" stating that the authorities and agencies cited as examples do not set standards for financial planners nor do they certify or oversee financial planning activities. As an alternative, the FPSC suggested adding the following reference to the Rule: "*individuals held to generally accepted standards of competence and ethical behaviour in the provision of financial planning services as evidenced by holding a professional financial planning credential that meets the standards set out in the Standards Council of Canada's CAN-P-9 (ISO17024)) standard for personnel certification bodies*". The FPSC commented that such an approach would not only ensure that individuals are held accountable for meeting appropriate ongoing professional standards but would also demonstrate their initial and ongoing competence in financial planning by being licensed or certified through generally accepted Canadian and international standards for certification.

As an alternative, Ryan Lamontagne suggested that paragraph (A) of Rule 1.2.1(d)(vii) should be eliminated. The commenter noted that under the proposed amendments, in order to conduct financial planning services outside of its dealer, a CFP would be required to obtain an insurance license. Ryan Lamontagne outlined several advantages and benefits to clients associated with the provision of financial planning services outside of the Approved Person's dealer and submitted that the effect of the amendments would be to eliminate these benefits by requiring Approved Persons that are not insurance licensed to conduct financial planning services through their Member. Ryan Lamontagne commented that the requirement for an insurance license places an unnecessary burden on the financial planner because of the time and money involved. The commenter also questioned why a financial planning designation such as the CFP and many years experience preparing financial plans would not be sufficient to conduct financial planning as a dual occupation under Rule 1.2.1(d).

MFDA Response

Financial planning conducted by Approved Persons as an outside business activity must be conducted through another governmental authority or statutory agency to ensure a level of regulatory oversight similar to that offered by the MFDA and to provide clients with a similar level of protection. At the core of the regulatory oversight exercised by the MFDA is the ability, where necessary and appropriate, to terminate the Membership/Approved Person status of an organization or individual subject

to the MFDA's jurisdiction, thereby precluding them from operating as a mutual fund dealer or mutual fund salesperson in Canada. For the purposes of Rule 1.2.1(d)(vii), it is the power to terminate the governed individual's ability to engage in their business by revoking their license to practice (e.g. as can law societies, institutes of chartered accountants and provincial insurance councils) that is used to determine whether a governing body provides a similar level of regulatory oversight and investor protection as the MFDA. While the FPSC has the ability to revoke the CFP designation, its revocation may not preclude the individual from engaging in financial planning or from providing other financial services to clients who may be unaware that the individual's CFP designation has been revoked. This potential situation essentially compromises investor protection. The FPSC is also distinct from the MFDA (and comparable organizations such as insurance councils, law societies or accounting institutes) in that a person cannot carry on business as a mutual fund dealer in Canada without being a Member of the MFDA, or in a business regulated by these other governing bodies without being a member of that body. In addition, as other organizations offer financial planning designations, the FPSC operates as one amongst a number of service providers.

Governmental authorities or statutory agencies including provincial insurance councils, law societies or institutes of chartered accountants exercise a similar level of regulatory oversight to the MFDA and provide clients with a similar level of protection by having MFDA-type standards in respect of licensing and registration requirements, active oversight of regulated activities, audits, the review of complaints, information sharing between the other regulator and the MFDA where necessary and the ability to compel the individual subject to regulatory oversight to provide information.

13.1.14 MFDA Issues Notice of Hearing regarding Michael B. Johns

NEWS RELEASE
For immediate release

MFDA ISSUES NOTICE OF HEARING
REGARDING MICHAEL B. JOHNS

April 21, 2009 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") today announced that it has commenced disciplinary proceedings against Michael Brandon Johns (the "Respondent").

MFDA staff alleges in its Notice of Hearing that Mr. Johns engaged in the following conduct contrary to the By-laws, Rules or Policies of the MFDA:

Allegation #1: Between October 2003 and January 2006, the Respondent engaged in securities related business, which was not carried on for the account of the Member or conducted through the facilities of the Member, by recommending, selling or facilitating the sale of Lighthouse Pointe Limited Partnership units ("Lighthouse LPs") and Ashton Oaks Limited Partnership units ("Ashton LPs") to clients, contrary to MFDA Rule 1.1.1.

Allegation #2: Between October 2003 and January 2006, the Respondent engaged in another occupation, which was not properly disclosed to and approved by the Member and not properly disclosed to clients, by recommending, selling or facilitating the sale of Lighthouse LPs and Ashton LPs, contrary to MFDA Rule 1.2.1(d).

Allegation #3: Between October 2003 and January 2006, the Respondent recommended, sold or facilitated the sale of Lighthouse LPs and Ashton LPs to clients without ensuring that:

(a) the investments were suitable for the clients, and in keeping with their investment objectives, contrary to MFDA Rules 2.2.1 and 2.1.1; and

(b) the clients qualified as accredited investors in accordance with Ontario Securities Commission Rule 45-501 and subsequently National Instrument 45-106, contrary to MFDA Rule 2.1.1, thereby engaging the jurisdiction of the Hearing Panel to impose a penalty on the Respondent pursuant to s. 24.1.1(h) of MFDA By-law No. 1.

Allegation #4: Between October 2003 and January 2006, the Respondent failed to comply with the Member's policies and procedures with respect to the disclosure and approval of outside business activities, contrary to MFDA Rule 2.1.1.

The first appearance in this matter will take place by teleconference before a Hearing Panel of the MFDA Central Regional Council in the Hearing Room located at the offices of the MFDA, 121 King Street West, Suite 1000, Toronto, Ontario on June 16, 2009 at 10:00 a.m. (Eastern) or as soon thereafter as the appearance can be held.

The purpose of the first appearance is to schedule the date for the commencement of the hearing on its merits and to address any other procedural matters. The first appearance is open to the public, except as may be required for the protection of confidential matters. Members of the public attending the first appearance will be able to listen to the proceeding by teleconference.

A copy of the Notice of Hearing is available on the MFDA website at www.mfda.ca.

The MFDA is the self-regulatory organization for Canadian mutual fund dealers, regulating the operations, standards of practice and business conduct of its 150 Members and their approximately 75,000 Approved Persons with a mandate to protect investors and the public interest.

For further information, please contact:
Shaun Devlin
Vice-President, Enforcement
416-943-4672 or sdevlin@mfda.ca

This page intentionally left blank

Index

This page intentionally left blank