The Ontario Securities Commission

OSC Bulletin

October 9, 2009

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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)

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Chapter 1

Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

OCTOBER 9, 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
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David L. Knight, FCA	—	DLK
Patrick J. LeSage	—	PJL
Carol S. Perry	—	CSP
Charles Wesley Moore (Wes) Scott	—	CWMS

SCHEDULED OSC HEARINGS

October 14 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: JDC/KJK
October 14, 2009 10:00 a.m.	**Axcess Automation LLC, Axcess Management, LLC, Axcess Fund, L.P., Gordon Alan Driver and David Rutledge** s. 127 M. Adams in attendance for Staff Panel: DLK
October 19-November 10; November 12-16, 2009 10:00 a.m.	**Irwin Boock, Stanton Defreitas, Jason Wong, Saudia Allie, Alena Dubinsky, Alex Khodjiaints 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 and 127.1 H. Craig in attendance for Staff Panel: MGC/CSP/SA

October 22, 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: DLK
November 6, 2009 10:00 a.m.	**Adrian Samuel Leemhuis, Future Growth Group Inc., Future Growth Fund Limited, Future Growth Global Fund limited, 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
November 11, 2009 12:00 p.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 J. Feasby in attendance for Staff Panel: MGC/MCH
November 16, 2009 10:00 a.m.	**Maple Leaf Investment Fund Corp. and Joe Henry Chau** s. 127 A. Sonnen 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
November 24, 2009 2:30 p.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
November 24, 2009 2:30 p.m.	**Prosporex Investments Inc., Prosporex Forex SPV Trust, Anthony Diamond, Diamond+Diamond, and Diamond+Diamond Merchant Banking Bank** s. 127 H. Daley in attendance for Staff Panel: TBA
November 30, 2009 10:00 a.m.	**Paladin Capital Markets Inc., John David Culp and Claudio Fernando Maya** s. 127 C. Price in attendance for Staff Panel: TBA
November 30, 2009 2:00 p.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: JDC

December 9, 2009 10:00 a.m.	**Nest Acquisitions and Mergers and Caroline Frayssignes** s. 127(1) and 127(8) C. Price in attendance for Staff Panel: TBA
December 9, 2009 10:00 a.m.	**IMG International Inc., Investors Marketing Group International Inc., and Michael Smith** s. 127 C. Price in attendance for Staff Panel: TBA
December 11, 2009 9:00 a.m.	**Tulsiani Investments Inc. and Sunil Tulsiani** s. 127 A. Sonnen in attendance for Staff Panel: JDC
December 16, 2009 9:00 a.m.	**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: MGC/DLK
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
January 12, 2010 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: TBA
January 12, 2010 10:30 a.m.	**Abel Da Silva** s. 127 M. Boswell in attendance for Staff Panel: TBA
January 18, 2010; January 20-29, 2010 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
January 18, 2010; January 20 – February 1, 2010; February 3-12, 2010 10:00 a.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
January 25-26, 2010 10:00 a.m.	**Lehman Cohort Global Group Inc., Anton Schnedl, Richard Unzer, Alexander Grundmann and Henry Hehlsinger** s. 127 H. Craig in attendance for Staff Panel: TBA
February 5, 2010 10:00 a.m.	**Hillcorp International Services, Hillcorp Wealth Management, Suncorp Holdings, 1621852 Ontario Limited, Steven John Hill, John C. McArthur, Daryl Renneberg and Danny De Melo** s. 127 A. Clark in attendance for Staff Panel: TBA

February 8-12, 2010 10:00 a.m.	**Goldbridge Financial Inc., Wesley Wayne Weber and Shawn C. Lesperance** s. 127 J. Feasby in attendance for Staff Panel: TBA	TBA	**Yama Abdullah Yaqeen** s. 8(2) J. Superina in attendance for Staff Panel: TBA
February 17–March 1, 2010 10:00 .m.	**M P Global Financial Ltd., and Joe Feng Deng** s. 127(1) M. Britton 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
March 1-8, 2010 10:00 a.m.	**Teodosio Vincent Pangia** s. 127 J. Feasby in attendance for Staff Panel: TBA	TBA	**Frank Dunn, Douglas Beatty, Michael Gollogly** s. 127 K. Daniels in attendance for Staff Panel: TBA
March 3, 2010 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	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
May 3-28, 2010 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	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: TBA
May 31 – June 4, 2010 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	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: TBA

TBA

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: TBA

TBA

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

TBA

FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun

s. 127

A. Sonnen in attendance for Staff

Panel: TBA

TBA

Shane Suman and Monie Rahman

s. 127 and 127(1)

C. Price in attendance for Staff

Panel: TBA

TBA

Berkshire Capital Limited, GP Berkshire Capital Limited, Panama Opportunity Fund and Ernest Anderson

s. 127

E. Cole in attendance for Staff

Panel: TBA

TBA

Paul Iannicca

s. 127

H. Craig in attendance for Staff

Panel: TBA

TBA

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: TBA

TBA

Hollinger Inc., Conrad M. Black, F. David Radler, John A. Boultbee and Peter Y. Atkinson

s. 127

J. Superina in attendance for Staff

Panel: TBA

TBA

Global Energy Group, Ltd. And New Gold Limited Partnerships

s. 127

H. Craig in attendance for Staff

Panel: DLK

TBA

Gold-Quest International, Health and Harmoney, Iain Buchanan and Lisa Buchanan

s. 127

H. Craig in attendance for Staff

Panel: TBA

TBA **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

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

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

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

1.1.2 IIROC Rules Notice – Notice of Approval – IIROC Dealer Member Rule Amendments to Implement the CSA's Registration Reform Project

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA (IIROC)
NOTICE OF APPROVAL –
IIROC DEALER MEMBER RULE AMENDMENTS TO IMPLEMENT THE CSA'S REGISTRATION REFORM PROJECT

NOTICE OF COMMISSION APPROVAL

The Ontario Securities Commission approved amendments to the IIROC Dealer Member Rule amendments to implement the CSA's Registration Reform Project. The Alberta Securities Commission, the Autorité des marchés financiers, the New Brunswick Securities Commission, the Nova Scotia Securities Commission, the Consumer, Corporate Insurance Services Division, Office of the Attorney General, Government of Prince Edward Island, the Saskatchewan Securities Commission and the Financial Services Regulation Division of the Department of Government Services of the Government of Newfoundland and Labrador approved the amendments. The British Columbia Securities Commission does not object to the amendments.

A copy and description of the original amendments were published on September 26, 2008 at (2008) 31 OSCB 9274. A summary of public comments received, IIROC's responses, a copy of the amendments revised to reflect non-material changes to the original amendments and a black-lined copy of the amendments against current rules are contained in Chapter 13 of this OSC bulletin.

1.1.3 Notice of Correction – TSX INC. – s. 15.1 of NI 21-101 Marketplace Operation

The headnote for the Order entitled "TSX INC. – s. 15.1 of NI 21-101 Marketplace Operation", published at (2009), 32 OSCB 7816, should be replaced by the following:

Headnote

Section 15.1 of National Instrument 21-101 *Marketplace Operation* (NI 21-101) and section 6.1 of OSC Rule 13-502 *Fees* (Rule 13-502) – exemption granted from the requirement in paragraph 3.2(1)(b) of NI 21-101 to file an amendment to Form 21-101F1 (Form F1) 45 days prior to implementation of a fee change and from the requirements in Appendix C (item E(1) and item E(2)(a)) of Rule 13-502 to pay fees related to TSX's exemption application.

1.1.4 Notice of Approval of NI 23-102 Use of Client Brokerage Commissions and Proposed Consequential Amendments

The Commission has approved National Instrument 23-102 *Use of Client Brokerage Commissions* and Companion Policy 23-102CP *Use of Client Brokerage Commissions* (together, NI 23-102). Subject to Ministerial approval requirements, NI 23-102 will come into force on June 30, 2010. The Commission has also approved the rescission of OSC Policy 1.9 *Use by dealers of brokerage commissions as payment for goods or services other than order execution services ("Soft Dollar" Deals)*, to be effective on the same date.

The notice and related materials pertaining to NI 23-102 and OSC Policy 1.9 are published in Chapter 5 of this Bulletin.

Published in Chapter 6 of this Bulletin is a notice of proposed consequential amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure* and Form 81-101F2 *Contents of Annual Information Form,* and to National Instrument 41-101 *General Prospectus Requirements* and Form 41-101F2 *Information Required in an Investment Fund Prospectus*. The comment period for these proposed consequential amendments ends on January 7, 2010.

1.1.5 OSC Staff Notice 11-739 (Revised) – Policy Reformulation Table of Concordance and List of New Instruments

OSC STAFF NOTICE 11-739 (REVISED)

POLICY REFORMULATION TABLE OF CONCORDANCE AND LIST OF NEW INSTRUMENTS

The following revisions have been made to the Table of Concordance and List of New Instruments. A full version of the Table of Concordance and List of New Instruments as of September 30, 2009 has been posted to the OSC Website at www.osc.gov.on.ca under Policy and Regulation/Status Summaries.

Table of Concordance

Item Key
The third digit of each instrument represents the following: 1-National/Multilateral Instrument; 2-National/Multilateral Policy; 3-CSA Notice; 4-CSA Concept Release; 5-Local Rule; 6-Local Policy; 7-Local Notice; 8-Implementing Instrument; 9-Miscellaneous

Reformulation

Instrument	Title	Status
	Registration Clarification Note 4 – New Procedures for Approving and recording Amendments to Registration of Dealers and Advisers	***Withdrawn September 28, 2009***

New Instruments		
51-329	Continuous Disclosure Review Program activities for the fiscal year ended March 21, 2009	***Published July 24, 2009***
51-312	Harmonized Continuous Disclosure Review Program (Revised)	***Published July 24, 2009***
31-312	The Exempt Market Dealer Category under NI 31-103 Registration Requirements and Exemptions	***Published August 7, 2009***
33-315	Suitability Obligation and Know Your Product	***Published September 7, 2009***
52-325	Certification Compliance Review	***Published September 11, 2009***
52-107	Acceptable Accounting Principles and Reporting Currency – Amended and Restated (IFRS Amendments)	***Published for comment September 25, 2009***
14-101	Definitions (National) – IFRS Amendments	***Published for comment September 25, 2009***
51-102	Continuous Disclosure Obligations – IFRS Amendments	***Published for conmment September 25, 2009***
71-102	Continuous Disclosure and Other Exemptions Relating to Foreign Issuers	***Published for comment September 25, 2009***
41-101	General Prospectus Requirements – IFRS Amendments	***Published for comment September 25, 2009***
44-101	Short Form Prospectus Distributions – IFRS Amendments	***Published for comment September 25, 2009***
44-102	Shelf Distributions – IFRS Amendments	***Published for comment September 25, 2009***
31-103	Registration Requirements and Exemptions	***In force September 28, 2009***
14-101	Definitions – Amendment	***In force September 28, 2009***
24-101	Institutional Trade Matching and Settlement – Amendment	***In force September 28, 2009***

New Instruments		
31-102	National Registration Database – Amendment	***In force September 28, 2009***
33-105	Underwriting Conflicts – Amendment	***In force September 28, 2009***
81-102	Mutual Funds – Amendment	***In force September 28, 2009***
81-104	Commodity Pools – Amendment	***In force September 28, 2009***
81-105	Mutual Fund Sales Practices – Amendment	***In force September 28, 2009***
81-107	Independent Review Committee for Investment Funds – Amendment	***In force September 28, 2009***
13-502	Fees – Amendments	***In force September 28, 2009***
13-503	(*Commodity Futures Act*) Fees – Amendment	***In force September 28, 2009***
14-501	Definitions – Amendment	***In force September 28, 2009***
31-505	Conditions of Registration - Amendment	***In force September 28, 2009***
31-509	(*Commodity Futures Act*) National Registration – Amendment	***In force September 28, 2009***
35-502	Non-Resident Advisers – Amendment	***In force September 28, 2009***
91-501	Strip Bonds – Amendment	***In force September 28, 2009***
91-502	Trades in Recognized Options - Amendment	***In force September 28, 2009***
31-101	National Registration System	***Revoked September 28, 2009***
33-109	Registration Information	***Repealed and Replaced September 28, 2009***
33-102	Regulation of Certain Registrant Activities	***Revoked September 28, 2009***
31-501	Registrant Relationships	***Revoked September 28, 2009***
31-502	Proficiency Requirements for Registrants	***Revoked September 28, 2009***
31-503	Limited Market Dealers	***Revoked September 28, 2009***
31-504	Dealer and Adviser Applications for Registrations	***Revoked September 28, 2009***
31-506	SRO Membership – Mutual Fund Dealers	***Revoked September 28, 2009***
31-507	SRO Membership – Securities Dealers and Brokers	***Revoked September 28, 2009***
33-501	Surrender of Registration	***Revoked September 28, 2009***
33-502	Exceptions to Conflict Rules in the Sale of Mutual Fund Securities	***Revoked September 28, 2009***
33-506	(*Commodity Futures Act*) Registration Information	***Revocation and Restated September 28, 2009***
11-204	Process for Registration in Multiple Jurisdictions	***Effective September 28, 2009***
11-202	Process for Prospectus Reviews in Multiple Jurisdictions – Amendments	***Effective September 28, 2009***
11-203	Process for Exemptive Relief Applications in Multiple Jurisdictions	***Effective September 28, 2009***
31-309	Proposed National Instrument 31-103 Registration Requirements and Proposed Companion Policy 31-103CP Registration Requirements	***Withdrawn September 28, 2009***

New Instruments		
31-310	Proposed National Instrument 31-103 Registration Requirements and proposed Companion Policy 31-103CP Registration Requirements	***Withdrawn September 28, 2009***
31-402	Registration Forms Relating to the National Registration Database	***Withdrawn September 28, 2009***
31-702	Ontario Securities Commission Designation of Courses Under Rule 31-502 Proficiency Requirements for Registrants	***Withdrawn September 28, 2009***
31-706	Telemarketing Activities of Certain Employees or Independent Agents of Registered Dealers	***Withdrawn September 28, 2009***
31-707	Labour Sponsored Investment Fund Course	***Withdrawn September 28, 2009***
31-708	National Registration Database (NRD) Filing Deadlines Extended	***Withdrawn September 28, 2009***
31-711	Ontario Securities Commission Rule 31-502 - Proficiency Requirements for Registrants and Ontario Securities Commission Rule 31-505 – Conditions of Registration	***Withdrawn September 28, 2009***
32-702	Applications for Exemption from the Time Limits on Completion of Courses and Previous Registrations	***Withdrawn September 28, 2009***
33-307	List of Canadian Registrant and Non-Registrant Firms that Completed the CSA STP Readiness Assessment Survey	***Withdrawn September 28, 2009***
33-308	The CSA STPReadiness Assessment Survey Report (Survey Report) is Now Available on the OSC website	***Withdrawn September 28, 2009***
33-309	The CSA STP Infrastructure Survey Report is Now Available on the OSC Website	***Withdrawn September 28, 2009***
33-311	Lit of Canadian Registrant and Non-Registrant Firms that Completed the CSA STP Readiness Assessment Survey	***Withdrawn September 28, 2009***
33-312	The CSA STP Readiness Assessment Survey is Now Available on the OSC Website	***Withdrawn September 28, 2009***
33-701	Calculation fo Regulatory Capital	***Withdrawn September 28, 2009***
33-718	Networking Applications	***Withdrawn September 28, 2009***
33-719	Registration Renewal and Permanent Registration	***Withdrawn September 28, 2009***
33-722	Registration Renewal Procedure and Payment of Annual Participation Fees	***Withdrawn September 28, 2009***
33-726	IOSCO Publishes Final Report on Compliance Function at Market Intermediaries	***Withdrawn September 28, 2009***
33-727	IOSCO Published Consultation Report on Market Intermediary Management of Conflicts that arise in Securities Exchange Offerings	***Withdrawn September 28, 2009***
33-901	The Fair Dealing Model: Concept Paper of the Ontario Securities Commission – January 2004	***Withdrawn September 28, 2009***
35-501	Notice of Proposed Rule Registration of Non-Residents	***Withdrawn September 28, 2009***
45-106	Prospectus and Registration Exemptions - Repeal and Replacement	***In force September 28, 2009***
45-102	Resale of Securities – Amendment	***In force September 28, 2009***

New Instruments		
45-501	Ontario Prospectus and Registration Exemptions - Amended and Restated	***In force September 28, 2009***
33-105	Underwriting Conflicts – Amendment	***In force September 28, 2009***
51-102	Continuous Disclosure – Amendment	***In force September 28, 2009***
45-801	Implementing Multilateral Instrument 45-105 Trades to Employees, Senior Officers, Directors and Consultants – Amendment	***In force September 28, 2009***
48-501	Trading During Distributions, Formal Bids and Share Exchange Transactions – Amendment	***In force September 28, 2009***
11-737	Securities Advisory Committee-- Vacancies	***Published September 25, 2009***
33-372	2009 Compliance Team – Annual Report	***Published September 25, 2009***
52-107	Acceptable Accounting Principles and Auditing Standards – Amendments	***Published for comment September 25, 2009***
14-101	Definitions – Amendments	***Published for comment September 25, 2009***
51-102	Continuous Disclosure Obligations – Amendments	***Published for comment September 25, 2009***
41-101	General Prospectus Requriements – Amendments	***Published for comment September 25, 2009***
44-101	Short Form Prospectus Distributions	***Published for comment September 25, 2009***
44-102	Shelf Distributions	***Published for comment September 25, 2009***
71-102	Continuous Disclosure and Other Exemptions Relating to Foreign Issuers	***Published for comment September 25, 2009***
52-109	Certification of Disclosure in Issuers' Annual and Interim Filings	***Published for comment September 25, 2009***
23-404	CSA/IIROC Consultation Paper - Dark Pools, Dark Orders, and other Developments in Market Structure in Canada	***Published for comment September 30, 2009***

For further information, contact:
Darlene Watson
Project Coordinator
Ontario Securities Commission
416-593-8148

October 9, 2009

1.1.6 Notice of Commission Approval – Material Amendments to CDS Rules – CALMS (Corporate Action Liability Management Service)

CDS CLEARING AND DEPOSITORY SERVICES INC.

MATERIAL AMENDMENTS TO CDS RULES

CALMS (CORPORATE ACTION LIABILITY MANAGEMENT SERVICE)

NOTICE OF COMMISSION APPROVAL

In accordance with the Rule Protocol between the Ontario Securities Commission (Commission) and CDS Clearing and Depository Services Inc. (CDS), the Commission approved on October 2, 2009, amendments filed by CDS to its rules that introduce a new service for the submission and tracking of liability notifications, commonly known as “letters of liability”, for corporate action events. The new service is called CALMS, for “Corporate Action Liability Management Service”. A copy and description of these amendments were published for comment on July 10, 2009 at (2009) 31 OSCB 5652. No comments were received.

1.1.7 OSC Staff Notice 21-703 – Transparency of the Operations of Stock Exchanges and Alternative Trading Systems

I. Introduction

Staff of the Ontario Securities Commission (Staff) have been examining the regulatory requirements for stock exchanges recognized by the Commission (Exchanges) and alternative trading systems (ATSs) set out in National Instrument 21-101 *Marketplace Operation* (NI 21-101) and National Instrument 23-101 *Trading Rules* (together, the Marketplace Rules) and the practices set out around those requirements in various recognition orders, rule protocols and staff practices. The purpose of this examination is to consider ways to align the processes for Exchanges and ATSs where appropriate.

The first phase of this review has been focused on initiatives that can be taken in the short-term and on the transparency of filings by Exchanges and ATSs in areas where their operations are similar (including new order types and other issues regarding trading). The next phase will be a review of the requirements set out in NI 21-101 and its Forms to ensure that the Marketplace Rules are able to provide for flexibility in a competitive environment while providing regulators with the information they need to meet their mandate.

This notice sets out Staff's process for reviewing changes to certain of the operations of Exchanges and ATSs. The objective of this process is to foster fair and efficient capital markets. To do so, we expect an appropriate degree of transparency for certain aspects of the operations of Exchanges and ATSs, so that investors and market participants may be better informed as to how securities trade on these marketplaces. At the same time, this process seeks to treat similar changes to the operations of Exchanges and ATSs in a similar fashion.

II. Current Process for Changes to Operations

As described in more detail below, both ATSs and Exchanges are subject to regulatory filing requirements. ATSs must file Form 21-101F2[1] (F2) prior to beginning operations and must file any significant changes to the F2 at least 45 days prior to implementation. Similarly, Exchanges must file Form 21-101F1[2] (F1) as part of their application for recognition and must also file any significant changes to the F1 at least 45 days prior to implementation.

In addition, Exchanges have rules that are subject to a public comment process and Commission approval. These rules may relate to information that is also in the F1 but there is information contained in the F1 that is currently not subject to the rule review process or public comment. The paragraphs below describe these processes in more detail.

The rules of Exchanges are available on their websites. Although ATSs are not permitted to have rules, information about the operations of the ATS, including the order types each ATS supports, is on their websites.

(a) Exchanges

A fundamental characteristic of stock and derivatives exchanges globally, even those that are structured as for-profit entities, is their regulation function. This is also the case in Canada. Under NI 21-101, only an exchange or quotation and trade reporting system can set requirements (i.e. rules) governing the conduct of marketplace participants and discipline marketplace participants. Even where an Exchange has outsourced this function, the ultimate responsibility for the regulation of the trading on the Exchange remains with the Exchange.

In addition to being subject to the Marketplace Rules, Exchanges are subject to the terms and conditions of their recognition order. Some of the terms and conditions relate to the types of rules that an Exchange must have and the requirement that it comply with its rule protocol. Section 5.5 of NI 21-101 requires an Exchange to file with the Commission all rules, policies, and other similar instruments, and any amendments to these instruments, while the rule protocol sets out the process for making and changing rules.[3] As previously noted, the rules of Exchanges are publicly available on their websites.

Under their rule protocols, Exchanges must file all proposed rule changes with the Commission and categorize them as either (i): "public interest", or as (ii): "non-public interest" or "housekeeping". Public interest rule changes are published in the OSC Bulletin for a 30-day comment period and are reviewed by Staff prior to being submitted for Commission approval. In contrast,

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1 The F2 includes information about the ATS that describes, among other things, the classes of subscribers, the types of securities traded, a detailed description of the market structure of the ATS, and the manner of operations of the ATS, including procedures governing entry of orders, the means of access, fees charged by the ATS, and procedures governing executing, reporting, and clearing transactions.

2 The F1 includes information about the Recognized Exchange that describes, among other things, the governance of the Recognized Exchange, the manner of operation of its trading system, including a detailed description of the market, procedures governing entry of orders, the means of access and the Recognized Exchange's listing criteria, fees, and regulation.

3 Changes to the rules of the Toronto Stock Exchange (TSX) are governed by the Protocol for Commission Oversight of Toronto Stock Exchange Rule Proposals. Changes to the rules of the Canadian National Stock Exchange (CNSX) are governed by the Rule Review Process at Appendix B to the Commission order recognizing CNSX as an exchange.

non-public interest or housekeeping rule changes are effective on filing with the Commission and are not published for comment.

In addition to the rule protocol, Exchanges are subject to subsection 3.2 (1) of NI 21-101, which requires an Exchange to file an amendment to its F1 at least 45 days before implementing a significant change. Other changes are required to be filed quarterly. Section 6.1(3) of Companion Policy NI 21-101CP provides guidance about what the securities regulatory authorities consider to be a "significant change". Currently, the policy states that a significant change includes a change to the information contained in certain exhibits to the F1.[4] Changes to an F1 are not published for comment unless they are contained in an Exchange rule that is subject to the public comment process described above.

(b) ATSs

Unlike Exchanges, ATSs are not permitted to have a regulatory function or set rules or requirements. As a result, they retain a regulation services provider that sets rules to regulate trading on their marketplace. Despite this, ATSs have trading activities that are similar to Exchanges and they publish information about these trading activities, including information regarding order types that the ATS supports, on their websites.

The operational details of an ATS are outlined in its F2. The process governing changes to the information in the F2 is set out in subsection 6.4(2) of NI 21-101. If making a significant change to the information in the F2, an ATS must file an amendment to the F2 at least 45 days before implementing the significant change. Companion Policy NI 21-101CP provides that a significant change includes any change to the operating platform of an ATS, the types of securities traded, or the types of subscribers.[5] However, we also receive filings for changes to the operations of an ATS, new order types, and fees.

Staff review all changes filed and, depending on the issues that arise due to the change, this review may take longer than 45 days. However, unlike public interest rule changes for Exchanges, there is no requirement for the publication for comment of significant changes to ATS operations and no requirement for Commission approval of such changes. We note, however, that the current practice is that an ATS will not implement a change until Staff have indicated that they have no further comments and that all issues raised have been addressed.

III. Process for Changes to Operations

Staff's view is that an appropriate degree of transparency for certain aspects of the operations of Exchanges and ATSs contributes to the fairness and efficiency of capital markets. While the fact that Exchanges have regulatory responsibilities that ATSs do not have justifies some differences in regulatory treatment and oversight, Staff also believe that Exchanges and ATSs should be subject to the same degree of transparency when proposing similar changes to their operations.

Consequently, with this Notice, we are implementing a process applicable to all marketplaces that would make public summary information about proposed changes to their operations. The process provided for in this Notice does not change the current process by which marketplaces file changes to their F1 and F2 filings. It does, however, provide for a new process by which certain of these changes would be transparent.

The publication process described below would not apply to all changes filed. We expect that this process would apply to:

- order types (i.e. new or existing order types) or features/characteristics of orders;
- procedures governing how orders are entered, displayed (if applicable) and executed; and
- changes to the procedures relating to special facilities or sessions of the marketplace (for example, pre-opening and market-on-close facilities)

OSC staff may request that other changes be published if they raise regulatory concerns.

In the case of ATSs, these matters would be filed as amendments to Exhibits C and G, paragraphs 1, 2, and 5 to the F2. In the case of Exchanges, these matters are set out in Exhibit G, paragraphs 1, 3 and 4 to the F1. If the change requires a rule amendment, then the publication of the proposed rule change would suffice and no additional marketplace notice would be necessary.

[4] The Companion Policy to NI 21-101 provides that a significant change includes a change to the information contained in Exhibits A, B, G, I, J, K, M, N, P and Q of Form 21-101F1.

[5] Under proposed changes to the Companion Policy to NI 21-101, published for comment on October 17, 2008, a significant change to a matter set out in the F2 would include a change to the information in Exhibits A, B, C, F, G, I, and J of the F2.

If a marketplace is unsure as to whether a notice should go out, we expect the marketplace to contact OSC staff to request clarification.

(a) Notice and Filing Process

On proposing a change to the Exhibits described above and at least 45 days prior to implementation, we expect Exchanges and ATSs to file the proposed change with the Commission and publish a notice of the proposed change in the OSC Bulletin. The marketplace's notice should describe the proposed change, the rationale for the change, the expected impact of the change, any consultations the marketplace undertook in formulating the change, discussion of any alternatives considered by the marketplace and, if applicable, whether the proposed change currently exists in the market.

The marketplace's notice would be accompanied by a notice published by Staff that would:

- provide market participants with an opportunity to provide feedback within 30 days of the date of publication of the notice; and
- indicate that if the proposal does not raise any regulatory concerns, the proposed change would be implemented within 45 days from the date of publication of the notice.

Staff would review and evaluate the proposed change for the purpose of identifying any regulatory concerns with the proposal. Staff may also request any additional information from the marketplace to facilitate its review. Following this review, and in the absence of any regulatory concerns identified by Staff, the proposed change would take effect 45 days after the date of publication. The marketplace would then send out a notice confirming the original implementation date.

If regulatory concerns are identified, implementation of the proposed change may be delayed. Staff would discuss the concerns with the marketplace and attempt to resolve them. We would then issue a further notice identifying the concerns, the marketplace's response, and Staff's position. If the issues are resolved, the notice would also provide the implementation date. In the event that Staff's concerns and discussions with the marketplace result in material amendments to the proposed change, the publication of a second notice by the marketplace may be necessary.

There is presently no requirement that ATSs obtain approval by the Commission for changes to their operations but, under the rule review protocols, Exchange rule changes need to be approved. Rule amendments relating to the changes identified in this notice will be presented to the Commission for approval within 45 days if no comments are received or objections raised. If the change relates only to an F1 change and there is no accompanying rule change, no Commission approval is required.

Staff expect that proposed rule changes that affect an Exchange's regulatory responsibilities, such as changes to listing requirements, would continue to be subject to the current process requiring public comment and Commission approval. Similarly, non-public interest or housekeeping changes to Exchange rules would continue to be effective on filing.

IV. Conclusion

Staff are of the view that, from an operational and trading perspective, proposals filed by Exchanges and ATSs should be subject to an appropriate degree of transparency so that investors and market participants may be adequately informed of the nature and effect of such proposals. We believe that this process will achieve this goal while at the same time aligning the process by which Exchanges and ATSs make changes to certain of their operations.

V. Questions

Questions may be referred to any of:

Tracey Stern
Ontario Securities Commission
(416) 593-8167

Christopher Byers
Ontario Securities Commission
(416) 593-2350

October 9, 2009

1.3 News Releases

1.3.1 Canadians Still Not Putting Investing Knowledge Into Practice, National Study Reveals

FOR IMMEDIATE RELEASE
October 5, 2009

CANADIANS STILL NOT PUTTING INVESTING KNOWLEDGE INTO PRACTICE, NATIONAL STUDY REVEALS

Montreal – Canadians express greater confidence and optimism, and believe that they are knowledgeable and responsible about investing, according to research commissioned by the Canadian Securities Administrators (CSA). Yet, their behaviour indicates otherwise.

In 2006, the CSA conducted an inaugural Investor Index, designed to understand Canadians' knowledge about investments and experience with fraud attempts, and to provide a baseline for measurement. A partial follow-up study was conducted in 2007 and published as the CSA Investor Study, with this full follow-up in 2009.

According to the 2009 CSA Investor Index, most Canadians (85 per cent) believe that it is important to build their personal savings and investments. However, one-in-three (35 per cent) do not have any savings or investments, an increase of eight percent from 2006. Further, six-in-ten (60 per cent) Canadians worry that they do not have enough savings to meet their financial needs. Despite the current economic situation, half of Canadians are reasonably optimistic about their personal situation. One-in-ten (10 per cent) agree strongly that 2010 will be a good year for them, while a further four-in-ten (38 per cent) agree somewhat.

These are just some of the findings of the Index, released today to mark the launch of Investor Education Month in October. Conducted by Ipsos Reid on behalf of the CSA, the study asked more than 6,300 Canadians about their investment knowledge, their understanding of and experience with fraud, and their awareness of securities regulators. In addition, the 2009 Index includes a new set of questions focused on educating young people about personal finances and investing. The CSA uses this research to develop new programs and enhance existing ones based on the needs of Canadian investors.

"This research clearly shows that Canadians are not doing all they can to make informed investment decisions," says Jean St-Gelais, Chair of the CSA. "The CSA continues to provide Canadians with unbiased information and tools to help investors make these important decisions."

Eighty per cent of Canadians agree that it is their responsibility to acquire the skills they need to make sound investment decisions and 84 per cent recognize the need for reliable unbiased information about investing. However, only 32 per cent of Canadians have actually sought information about investing. And although anyone can be a victim of investment fraud, the research indicates certain predictors can lead to someone becoming victim: being over-confident, making decisions without consulting with others and being a frequent trader.

Other findings include:

- Only one-in-four (25 per cent) Canadians have a formal written financial plan that includes clear investment goals, despite the fact that two-thirds (64 per cent) agree that having one is important.
- Just under four-in-ten Canadians (38 per cent) have been approached with a fraudulent investment and four per cent of Canadians have invested money in what turned out to be an investment fraud.
- The top three ways Canadians were most recently approached with investment fraud have not changed since 2006: via email (33 per cent), by a stranger on the telephone (28 per cent), or through a friend, family member, neighbour or co-worker (18 per cent). The results also show that those approached with a suspected fraudulent investment are more likely to describe their level of trust with the person approaching them as either very or somewhat strong (13 per cent this year compared to 5 per cent in 2007).
- Fraud victims are more likely to agree that the riskier the investment, the greater the reward (48 per cent, compared to 39 per cent on average), that most people can be trusted (46 per cent, compared to 38 per cent on average) and that if you don't act immediately you may miss a good opportunity (30 per cent, compared to 22 per cent).
- Young Canadians aged 18 to 34 are less confident than other age groups about making investment decisions (48 per cent are very or somewhat confident compared to 56 per cent on average) and are significantly less likely to know where to go for information about investing (67 per cent compared to 75 per cent on average).
- A majority of parents (78 per cent) agree that teaching children financial skills is among the most important things a parent can do for their child. Yet, only 46 per cent of Canadian parents have taught their children about finances and investing, and only one in five (20 per

cent) consider a parent to be the most responsible for teaching young people about personal finances and investing (compared to 51 per cent who consider a financial advisor to be most responsible).

In addition, the study highlights regional data across Canada:

Alberta

- Over half of Albertans (53 per cent) personally research their investments and 61 per cent report being familiar with and can explain the risks and benefits of their most recent investment.
- 30 per cent of Albertans approached with a possible fraudulent investment have reported the fraud to the authorities (as compared with 26 per cent nationally), up from only 12 per cent in 2006.

British Columbia

- 48 per cent of people in B.C. say that they have been approached with a fraudulent investment compared to the national average of 38 per cent.
- British Columbians are most likely to say they have an aggressive investment style, with 38 per cent of B.C. respondents agreeing this was the case.

Manitoba

- 74 per cent of Manitobans are confident in their ability to teach their children about personal finances and investing, while only 54 per cent have actually done so.
- Manitobans are most worried (65 per cent) that they do not have enough savings to meet all their financial needs. More than one in four currently do not have any savings or investments set aside for their future.

New Brunswick

- Telephone attempts are the most common way for New Brunswickers to be approached with a fraud, with 40 per cent of attempts coming from a stranger calling over the phone (compared to 28 per cent nationally).
- A relatively low percentage of New Brunswickers actually invested in a fraudulent investment scam (1 per cent compared to 4 per cent among all Canadians).

Newfoundland

- Newfoundland & Labrador has the lowest incidence of selecting all correct indicators of investment fraud.
- 37 per cent of Newfoundlanders reported familiarity with their provincial regulator, highest in Canada.

Nova Scotia

- 45 per cent of Nova Scotians have a financial advisor. They are more likely to stick with an advisor long term, with 14 per cent claiming to have worked with their current advisor for 10 years or more. 61 per cent heard of their most recent investment from their financial advisor.
- Nova Scotians are more likely than other Canadians (48 per cent) to agree that, “in general, people can be trusted.”

Ontario

- 36 per cent of Ontarians currently do not have any savings set aside for the future, and 62 per cent of Ontarians worry that they do not have enough to meet their future financial needs, slightly above the national averages.
- 78 per cent of Ontarians believe it is their responsibility to acquire the skills they need to make sound investment decisions. Yet, only 36 per cent have looked for investing information in the past year, and only 45 per cent work with an adviser.

Prince Edward Island

- Investors in PEI are most likely (50 per cent) to have worked with a financial advisor to create a formal risk assessment.
- Islanders are the least optimistic about their financial outlook for 2010, with only 42 per cent agreeing that it will be a good year for them.

Quebec

- A majority of Quebecers (83 per cent), the highest in the country, agree that it is their responsibility to acquire the skills they need to make sound investment decisions. However, 78 per cent have

not looked for information about investing within the last 12 months.

- 81 per cent of Quebecers agree that it is important to report even the suspicion that someone has approached them with an investment fraud, and 46 per cent know that there is a securities regulator in the province.

Saskatchewan

- 51 per cent agree that 2010 will be a good year financially for them and 35 per cent plan to make investments in the next 12 months.

- 57 per cent are confident when it comes to making investment decisions and are most likely (40 per cent) to have looked for information on investing during the last year (as compared to 31 per cent nationally).

The full 2009 Index is available online in English on the CSA website www.securities-administrators.ca.

The CSA Investor Index is a mixed methodology study combining a telephone study with an in-depth online study. Ipsos Reid interviewed 6,319 Canadian adults online, in July, 2009. Separately, Ipsos Reid asked several questions in a national telephone survey of 1,000 Canadian adults to weight the online sample to make it representative of the Canadian population.

The CSA, the council of securities regulators of Canada's provinces and territories, coordinates and harmonizes regulation for the Canadian capital markets. Their mandate is to provide investors with protection from unfair or fraudulent practices through regulation of the securities industry. Part of this protection is educating investors about the risk, responsibilities and rewards of investing.

For more information:

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Janice Callbeck
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1.3.2 Canadian Securities Regulators Approve Requirements On Use of Client Brokerage Commissions

FOR IMMEDIATE RELEASE
October 6, 2009

CANADIAN SECURITIES REGULATORS APPROVE REQUIREMENTS ON USE OF CLIENT BROKERAGE COMMISSIONS

Toronto – The Canadian Securities Administrators (CSA) today announced the approval of National Instrument 23-102 *Use of Client Brokerage Commissions* and related Companion Policy 23-102CP. NI 23-102 clarifies the obligations of advisers and registered dealers when advisers obtain goods and services other than order execution in connection with client brokerage commissions, and also introduces new disclosure requirements for advisers.

"It is extremely important that advisers take appropriate steps to ensure that they don't place their interests ahead of those of their clients and that they provide their clients with proper disclosure where appropriate," said Jean St-Gelais, Chair of the CSA and President and Chief Executive Officer of the Autorité des marchés financiers.

In addition, on October 9, 2009, the CSA plans to publish for comment, consequential amendments to investment fund prospectus disclosure forms: Form 81-101F2 *Contents of Annual Information Form* under National Instrument 81-101 *Mutual Fund Prospectus Disclosure;* and Form 41-101F2 *Information Required in an Investment Fund Prospectus* under National Instrument 41-101 *General Prospectus Requirements.*

The purpose of the proposed form amendments will be to ensure consistency between the disclosure requirements under NI 23-102 relating to client brokerage commissions and similar disclosure prescribed for investment funds. NI 23-102 will replace OSC Policy 1.9 Use by dealers of brokerage commissions as payment for goods or services other than order execution services ("Soft Dollar" Deals), and the Autorité des marchés financiers Policy Statement Q-20 of the same name. Pending necessary approvals, NI 23-102 is expected to come into force in all jurisdictions on June 30, 2010.

NI 23-102 is available on various CSA members' websites. The proposed form amendments will be available on the various CSA members' websites on October 9, 2009, and the comment period for the Form Amendments will end on January 7, 2010.

The CSA, the council of the securities regulators of Canada's provinces and territories, co-ordinates and harmonizes regulation for the Canadian capital markets.

For more information:

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1.4 Notices from the Office of the Secretary

1.4.1 David Berry

FOR IMMEDIATE RELEASE
September 30, 2009

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

AND

IN THE MATTER OF
A REQUEST FOR A HEARING AND REVIEW
OF A DECISION OF A HEARING PANEL OF
MARKET REGULATION SERVICES INC.

AND

IN THE MATTER OF
THE UNIVERSAL MARKET INTEGRITY RULES

AND

IN THE MATTER OF
DAVID BERRY

TORONTO – On September 23, 2009, the Commission issued its Reasons and Decision in the above noted matter.

A copy of the Reasons and Decision dated September 23, 2009 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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416-593-8314
1-877-785-1555 (Toll Free)

1.4.2 Paladin Capital Markets Inc. et al.

FOR IMMEDIATE RELEASE
September 30, 2009

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

AND

IN THE MATTER OF
PALADIN CAPITAL MARKETS INC. ,
JOHN DAVID CULP AND
CLAUDIO FERNANDO MAYA

TORONTO – Following a hearing held in the above noted matter, the Commission issued an Order which provides that (1) pursuant to the consent of counsel for Staff, Mr. Maya and Mr. Culp, both on his own behalf and on behalf of Paladin, and sections 127(7) and 127(8), the Temporary Order is extended until December 1, 2009; and (2) the hearing is adjourned to November 30, 2009 at 10:00 a.m.

A copy of the Order dated September 29, 2009 is available at **www.osc.gov.on.ca**.

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1.4.3 Ernest Anderson et al.

FOR IMMEDIATE RELEASE
October 5, 2009

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

AND

IN THE MATTER OF
ERNEST ANDERSON, GOLDEN GATE FUNDS LP,
BERKSHIRE CAPITAL LIMITED,
GP BERKSHIRE CAPITAL LIMITED AND
PANAMA OPPORTUNITY FUND

TORONTO – Following a hearing held on October 2, 2009, the Commission issued an Order in the above noted matter pursuant to Subsections 127.

A copy of the Order dated October 2, 2009 is available at **www.osc.gov.on.ca**.

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1.4.4 Factorcorp Inc. et al.

FOR IMMEDIATE RELEASE
October 5, 2009

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

AND

IN THE MATTER OF
FACTORCORP INC.,
FACTORCORP FINANCIAL INC., AND
MARK IVAN TWERDUN

TORONTO – Following a hearing held today, the Commission issued an Order in the above noted matter. This matter is adjourned until December 15, 2009 at 10:00 a.m., or such other date as determined by the Office of the Secretary, for the purpose of having a pre-hearing conference on that date.

A copy of the Order dated October 5, 2009 is available at **www.osc.gov.on.ca**.

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1.4.5 Axcess Automation LLC et al.

FOR IMMEDIATE RELEASE
October 6, 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 MANAGEMENT, LLC,
AXCESS FUND, L.P., GORDON ALAN DRIVER,
DAVID RUTLEDGE, STEVEN M. TAYLOR AND
INTERNATIONAL COMMUNICATION STRATEGIES

TORONTO – The Commission issued a Temporary Order on October 2, 2009 in the above named matter.

A copy of the Temporary Order dated October 2, 2009 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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1.4.6 Nest Acquisitions and Mergers and Caroline Frayssignes

FOR IMMEDIATE RELEASE
October 7, 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 – Following a hearing held on October 6, 2009, the Commission issued an Order in the above named matter which provides that (1) pursuant to section 127(8) that the Temporary Order is extended to December 10, 2009; and (2) the hearing is adjourned to December 9, 2009 at 10:00 a.m.

A copy of the Order dated October 7, 2009 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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1.4.7 IMG International Inc. et al.

FOR IMMEDIATE RELEASE
October 7, 2009

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

AND

IN THE MATTER OF
IMG INTERNATIONAL INC.,
INVESTORS MARKETING GROUP
INTERNATIONAL INC.
AND MICHAEL SMITH

TORONTO – Following a hearing held on October 6, 2009, the Commission issued an Order which provides that (1) pursuant to section 127(8) that the Temporary Order is extended to December 10, 2009; and (2) the hearing is adjourned to December 9, 2009 at 10:00 a.m.

A copy of the Order dated October 6, 2009 are available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
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1.4.8 Hollinger Inc. et al.

FOR IMMEDIATE RELEASE
October 7, 2009

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

AND

IN THE MATTER OF
HOLLINGER INC., CONRAD M. BLACK,
F. DAVID RADLER, JOHN A. BOULTBEE,
AND PETER Y. ATKINSON

TORONTO – The Commission issued an Order today which provides that (1) the hearing of this matter, currently scheduled for October 8, 2009, is adjourned; and (2) the hearing before the Commission is adjourned *sine die*, pending the release of the decision of the United States Supreme Court in relation to the appeal brought by Boultbee referred to herein, such hearing to be returnable for the purpose of scheduling on no less than seven days' notice, or until such further Order as may be made by the Commission.

A copy of the Order dated October 7, 2009 is available at **www.osc.gov.on.ca**.

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Covington Capital Corporation et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Approval of a change of control of an investment fund manager – Approval is necessary under subsection 5.5(2) of National Instrument 81-102 Mutual Funds – Approval of abridgement of notice period from 60 days to 50 days – Decision conditional on no changes being made to the management, administration or portfolio management of the investment funds for at least 60 days subsequent to notice being provided to shareholders.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, s. 5.5(2).

June 25, 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
COVINGTON CAPITAL CORPORATION
(THE "FILER", THE "MANAGER", OR
"COVINGTON") AND COVINGTON FUND II INC.,
COVINGTON STRATEGIC CAPITAL FUND INC.,
COVINGTON VENTURE FUND INC. AND
NEW GENERATION BIOTECH (EQUITY) FUND INC.

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the "**Legislation**") for approval:

(i) pursuant to subsection 5.5(2) of National Instrument 81-102 *Mutual Funds* ("**NI 81- 102**") of a change of control of the Manager, and

(ii) pursuant to subsection 5.8(1)(a) of NI 81-102 of an abridgement of notice period of change of control of mutual fund manager to 50 days from 60 days.

(Items (i) and (ii) are referred to as the "**Approval 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; 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 Alberta, British Columbia, Manitoba, Newfoundland and Labrador, New Brunswick, Nova Scotia, Prince Edward Island and Quebec.

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning in this decision unless they are otherwise defined in this decision.

Representations

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

The Acquisition

1. The securityholder of Covington, AMG Canada Corp. ("**AMG Canada**") has entered into a securities purchase agreement dated May 1, 2009 (the "**Agreement**") with RC Capital Management Inc. ("**RC Capital**") pursuant to which all of the issued and outstanding securities of Covington will be acquired by RC Capital (the "**Acquisition**"). The Acquisition remains subject to the receipt of all applicable regulatory approvals, third party consents, as well as the satisfaction of other customary closing conditions set out in the Agreement.

2. The Acquisition consists of a direct change of control of Covington thereby requiring the approval of the Regulators pursuant to section 5.5(2) of NI 81-102.

Relevant Parties

3. Information about the relevant parties involved in the Acquisition consists of the following:

Covington

(a) Covington is a company based in Toronto, Ontario and was formed by amalgamation on January 1, 2008 pursuant to the *Companies Act* (Nova Scotia).

(b) Covington is the investment advisor of Covington Fund II Inc., the manager and investment advisor of Covington Strategic Capital Fund Inc., Covington Venture Fund Inc. ("**CVF**"), and New Generation Biotech (Equity) Fund Inc. (collectively, the "**Funds**")

(c) Covington is registered with the OSC as investment counsel and portfolio manager, and as a limited market dealer.

(d) Covington typically manages and oversees all day-to-day operations of the Funds and also provides investment management services to the Funds.

(e) Each of the Funds is a labour sponsored investment fund which is registered pursuant to the *Community Small Business Investment Funds Act* (Ontario) and which has certain series of Class A Shares offered on a continuous basis.

(f) All of the Funds are reporting issuers in Ontario. CVF is a reporting issuer in all of the provinces of Canada except for Saskatchewan. None of the Funds are on any list of defaulting reporting issuers maintained by any Regulator.

AMG Canada

(a) AMG Canada is a company governed by the laws of Nova Scotia. AMG Canada is a holding company with interests in several Canadian investment management firms.

(b) AMG Canada is the sole securityholder of Covington.

RC Capital

(a) RC Capital was incorporated on April 30, 2009 pursuant to the *Business Corporations Act* (Ontario) to complete the transaction. The directors and officers of RC Capital are Mr. Philip R. Reddon and Mr. Scott D. Clark.

(b) RC Capital is owned as to 50% by a trust of which Philip R. Reddon is the sole trustee, and 50% by a trust of which Scott D. Clark is the sole trustee.

(c) Philip R. Reddon and Scott D. Clark, each have extensive experience providing management and investment management services to the Funds and have been officers and/or directors of the Funds for a number of years.

Proposed Change of Control

4. The change of control of Covington will not materially affect the operation and administration of the Funds. All of the current service providers, including the investment advisors of the Funds are expected to continue in their current roles. The systems, back office, fund accounting and other administrative functions are expected to continue to be operated in the same manner as currently being operated by the Funds and their administrators.

5. The management fees and operating expenses of the Funds will not change as a result of the proposed transaction.

6. The change of control of Covington will have no negative consequences on the ability of Covington to comply with all applicable regulatory requirements or its ability to satisfy its obligations to the Funds and their securityholders. To the extent that any changes are made following the completion of the Acquisition which constitute "material changes" within the meaning of NI 81-106, amendments will be made to the prospectuses of the Funds, as appropriate.

7. There will be some changes to the board of directors of Covington, such new persons will have had previous experience with mutual funds and the directors and officers of Covington will have the requisite integrity and experience required under section 5.7(1)(a)(v) of NI 81-102.

8. Effective as of the closing, Messrs Jeffrey S. Murphy and Umesh Vallipuram and Ms. Jennifer M. Borggaard will resign from the director positions that they hold with Covington. The board of directors of Covington will decrease in size from five directors to three directors and Ms. Lisa Low will replace Mr. Murphy, Mr. Vallipuram and Ms. Borggaard as director.

9. Upon closing of the Acquisition, all of the current members of the Funds' independent review committee (the "IRC") will, by operation of section 3.10(1)(c) of National Instrument 81-107 – *Independent Review Committee for Investment Funds* ("**NI 81-107**"), cease to be members of the IRC. Therefore, Covington will fill the vacancies by appointing new members to the IRC pursuant to section 3.3(5) of NI 81-107.

10. A notice regarding the change of control of Covington was submitted to the registration

branch of the OSC on May 12, 2009 which was within the necessary time periods pursuant to section 217(1) of the Regulations to *Securities Act* (Ontario) with regard to the Acquisition.

11. Pursuant to section 5.8(1)(a) of NI 81-102, each of the securityholders of the Funds were sent a notice of change of control on May 6, 2009 (the "**Notice Date**").

12. The Acquisition is currently expected to close in early July 2009 following the receipt of the regulatory approvals and the expiration of the notice period provided for in section 5.8(1)(a) of NI 81-102.

13. The 60th day following the Notice Date will be July 5, 2009. However, the parties wish to be able to complete the Acquisition as quickly as possible. Covington intends to maintain the operation and administration of the Funds and to cause no changes to the current service providers, including the investment advisors of the Funds for at least 60 days following the Notice Date.

14. In order to facilitate appropriate time periods for the Acquisition, Covington requests that the notice period be abridged to 50 days from 60 days, which would result in the end of the notice period being June 25, 2009. Covington believes that abridging the period prescribed by paragraph 5.8(1)(a) of the Legislation to 50 days will not be prejudicial to any of the shareholders of the Funds.

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:

a) shareholders of the Funds are given at least 50 days notice of the change of control; and

b) no changes are made to the management, administration or portfolio management of the Funds for at least 60 days following the Notice Date.

"Vera Nunes"
Assistant Manager, Investment Funds Branch
Ontario Securities Commission

2.1.2 Goodman & Company, Investment Counsel Ltd. and Goodman & Company, Dealer Services Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Exemption pursuant to section 147 of the Securities Act (Ontario) – Exemption from the requirements of subsection 3.1(1) of National Instrument 52-107 – Acceptable Accounting Principles, Auditing Standards and Reporting Currency and subsection 2(1) of Regulation 1015 made pursuant to the Securities Act (Ontario) that the Applicant deliver its financial statements no later than 90 days after the end of its 2008 financial year prepared in accordance with generally accepted accounting principles.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 147.

Regulation Cited

R.R.O. 1990, Regulation 1015, am. to O. Reg. 500/06, s. 2(1).

Instruments Cited

National Instrument 52-107 Acceptable Accounting Principles, Auditing Standards and Reporting Currency, s. 3.7(b).

April 14, 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
GOODMAN & COMPANY,
INVESTMENT COUNSEL LTD.
GOODMAN & COMPANY, DEALER SERVICES INC.
(the Filers, or individually the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption from the requirements of subsection 3.1(1) of National Instrument

52-107 – *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* and subsection 2(1) of Regulation 1015 of the *Securities Act* (Ontario) and the equivalent provisions in the other Jurisdictions (as defined below), that the financial statements that must be delivered to the Jurisdictions (as defined below) no later than 90 days after the end of its 2008 financial year (the **2008 Consolidated Financial Statements**) be prepared in accordance with generally accepted accounting principles (**GAAP**), only to permit the omission of Financial Information (as defined below) from the Prior Period Statements (as defined below) on the basis that the time and effort involved in including the Financial Information would outweigh any benefit to the Jurisdictions to which the 2008 Consolidated Financial Statements must be delivered (the **Exemptive Relief Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

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

(b) the Filers have 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, Saskatchewan, Manitoba, Quebec, New Brunswick and Nova Scotia (the **Other Jurisdictions**, together with the Jurisdiction, the **Jurisdictions**) .

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 Filers:

1. Goodman & Company, Investment Counsel Ltd. (**GCICL**) is a corporation incorporated under the *Business Corporations Act* (Ontario) (the **OBCA**) and is registered as an advisor in the categories of Investment Counsel and Portfolio Manager or the equivalent under the securities legislation of the Jurisdictions.

2. Goodman & Company, Dealer Services Inc. (**GCDSI**) is a corporation amalgamated under the OBCA and is registered as a mutual fund dealer under or the equivalent under the securities legislation of the provinces of Ontario and Quebec. GCDSI is a wholly-owned subsidiary of GCICL and is exempt from the SRO membership requirement.

3. Each Filer is an indirect wholly-owned subsidiary of DundeeWealth Inc. (**DWI**). The head office of the Filers is located in Toronto, Ontario.

4. In 2007, DWI indirectly held a one hundred (100) percent interest in DundeeWealth BHC (**BHC**). BHC owned a one hundred (100) percent interest in each of Dundee Bank of Canada and The Dundee Bank (together, the **Entities**).

5. In 2007, BHC entered into agreements to dispose of its interests in the Entities. The sale of Dundee Bank of Canada to a non-related third party was competed in the third quarter of 2007; and the disposition of The Dundee Bank to Dundee Corporation, the controlling shareholder of DWI, was completed in 2008 (the **Dispositions**). The Disposition of the Entities by BHC constitutes a discontinued operating line of BHC.

6. In 2008, DWI completed an internal tax restructuring whereby DWI sold its indirect interest in BHC and, through a series of inter-company steps, GCICL acquired all of the issued and outstanding shares of BHC (the **DWI Consolidation**). BHC was then subsequently amalgamated with GCDSI (**Amalco**).

7. Under the securities legislation in each of the Jurisdictions, each Filer must deliver to the Jurisdictions its respective audited 2008 Consolidated Financial Statements not more than 90 days after the end of its respective financial year prepared in accordance with GAAP. The 2008 Consolidated Financial Statements include the 2007 comparative statements (the **Prior Period Statements**) of each Filer.

8. Canadian GAAP disclosure guidance, Emerging Issues Committee 89 – *Exchange of ownership interests between enterprises under common control – wholly and partially-owned subsidiaries* (**EIC 89**) requires that "the financial statements of the combined company for all periods should combine the assets and liabilities at their carrying value in the combining companies' records. The reported income of the combined company includes income of the combining companies for the entire fiscal period in which the combination took place. Financial statements of the combined company presented for prior periods are restated to reflect the financial position and results of operations as if the companies had been combined since their inception".

9. The DWI Consolidation is a reorganisation of entities under common control. Accordingly, the 2008 Consolidated Financial Statements for Amalco must be presented as if GDCSI had been combined with BHC since inception. The 2008 Consolidated Financial Statements for GCICL must also be presented to include the accounts of Amalco on a combined basis.

10. Strict adherence to EIC 89 requires that the Prior Period Statements of the Filers be adjusted to include full disclosure applicable to a financial

institution as well as full disclosure applicable to entities with discontinued operations (the **Financial Information**). This requires that the Prior Period Statements presented in the 2008 Consolidated Financial Statements would need to be adjusted to include the prior year impact of BHC and all of its subsidiaries, including the Entities. This would also require substantial additional disclosure in the Prior Period Statements, including disclosure and presentation of Financial Information relating to the Entities.

11. In the absence of the Exemption Sought, each Filer will be required to include the Financial Information in its Prior Period Statements.

12. The Filers submit that applying the EIC 89 requirements with respect to the Prior Period Statements does not provide any additional benefit to the Jurisdictions.

13. The auditors for the Filers will provide an audit opinion for the 2008 Consolidated Financial Statements of each Filer that will be qualified to reflect that the Financial Information has not been included in the Prior Period Statements.

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:

1. Each Filer files its respective 2008 Consolidated Financial Statements with the Jurisdictions no later than 90 days after the end of its 2008 financial year; and

2. The auditors for the Filers provide a qualified audit opinion for the 2008 Consolidated Financial Statements of each Filer to reflect that the Financial Information has not been included in the Prior Period Statements.

"Mary Condon"
Commissioner
Ontario Securities Commission

"Carol S. Perry"
Commissioner
Ontario Securities Commission

2.1.3 Brookfield Properties Corporation

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – decision exempting the Filer from the requirement in s. 3.1 of National Instrument 52-107 Acceptable Accounting Principles, Auditing Standards and Reporting Currency that financial statements be prepared in accordance with Canadian GAAP for so long as the Filer prepares its financial statements in accordance with IFRS-IASB - Filer has assessed the readiness of its staff, board, audit committee, auditors and investors – Filer must provide specified disclosure regarding early adoption of IFRS-IASB in a news release to be disseminated within seven days of the decision – if the Filer files interim financial statements prepared in accordance with Canadian GAAP in the year it adopts IFRS-IASB, those interim statements must be restated using IFRS-IASB.

Applicable Legislative Provisions

National Instrument 52-107 Acceptable Accounting Principles, Auditing Standards and Reporting Currency , ss. 3.1, 9.1.

October 2, 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
BROOKFIELD PROPERTIES CORPORATION
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the Legislation) exempting the Filer from the requirement in section 3.1 of National Instrument 52-107 – *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (NI 52-107) that financial statements be prepared in accordance with Canadian GAAP for financial periods beginning on or after January 1, 2010 (the Exemption Sought), for so long as the Filer prepares its financial statements in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board (IFRS-IASB).

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, Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (the Passport Jurisdictions).

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 Filer:

1. The Filer is a corporation incorporated under the *Canada Business Corporations Act* pursuant to articles of incorporation dated September 5, 2002. The head office of the Filer is located at Brookfield Place, 181 Bay Street, Suite 330, P.O. Box 762, Toronto, Ontario M5J 2T3.

2. The Filer is a reporting issuer or equivalent in the Jurisdiction and each of the Passport Jurisdictions. The Filer is not, to its knowledge, in default of its reporting issuer obligations under the Legislation or the securities legislation of the Passport Jurisdictions. The Filer's securities are listed on the Toronto Stock Exchange and the New York Stock Exchange. The Filer is also a registrant with the United States Securities and Exchange Commission (SEC) and a foreign private issuer in the United States.

3. The Filer owns, develops and manages premier office properties. Its current portfolio is comprised of interests in 108 properties totaling 75 million square feet in the downtown cores of New York, Boston, Washington, D.C., Los Angeles, Houston, Toronto, Calgary and Ottawa, making it one of the largest owners of commercial real estate in North America. Landmark assets include the World Financial Center in Manhattan, Brookfield Place in Toronto, Bank of America Plaza in Los Angeles and Bankers Hall in Calgary.

4. As of September 1, 2009, the Filer's parent company, Brookfield Asset Management Inc. (BAM), directly and indirectly, owned 249,362,561 common shares and 13,796,870 Class A Redeemable Voting preferred shares of the Filer, representing approximately 50% and 97%, respectively, of the outstanding shares of each such class. BAM is a reporting issuer or equivalent in the Jurisdiction and each of the Passport Jurisdictions. BAM's securities are listed on the Toronto Stock Exchange, the New York Stock Exchange and the Euronext Amsterdam Exchange. BAM is also a registrant with the SEC and a foreign private issuer in the United States.

5. BAM has received an exemption from the requirement in section 3.1 of NI 52-107 that financial statements be prepared in accordance with Canadian GAAP for financial periods beginning on or after January 1, 2009, for so long as BAM prepares its financial statements in accordance with IFRS-IASB. BAM intends to begin preparing its financial statements in accordance with IFRS-IASB for periods beginning on or after January 1, 2010.

6. The Canadian Accounting Standards Board has confirmed that publicly accountable enterprises will be required to prepare their financial statements in accordance with IFRS-IASB for interim and annual financial statements relating to fiscal years beginning on or after January 1, 2011.

7. NI 52-107 sets out acceptable accounting principles for financial reporting under the Legislation by domestic issuers, foreign issuers, registrants and other market participants. Under NI 52-107, a domestic issuer must use Canadian GAAP with the exception that an SEC registrant may use US GAAP. Under NI 52-107, only foreign issuers may use IFRS-IASB.

8. The Filer has not previously prepared financial statements that contain an explicit and unreserved statement of compliance with IFRS-IASB.

9. In CSA Staff Notice 52-321 – *Early Adoption of International Financial Reporting Standards, Use of US GAAP and Reference to IFRS-IASB*, staff of the Canadian Securities Administrators recognized that some issuers may wish to prepare their financial statements in accordance with IFRS-IASB for periods beginning prior to January 1, 2011 and indicated that staff were prepared to recommend exemptive relief on a case by case basis to permit a domestic issuer to do so, despite section 3.1 of NI 52-107.

10. Subject to obtaining the Exemption Sought, the Filer intends to adopt IFRS-IASB effective January 1, 2010 for its financial statements for periods beginning on and after January 1, 2010.

11. The Filer believes that the adoption of IFRS-IASB for financial periods beginning on or after January 1, 2010 would be in its best interests and the best interests of users of its financial information for a number of reasons, including the following:

(a) it will align the basis of accounting under which the Filer prepares its financial statements with the basis of accounting under which BAM intends to prepare its financial statements for financial periods beginning on or after January 1, 2010;

(b) it will result in financial information that will more accurately represent the Filer's results of operations and financial position in particular because IFRS-IASB's greater use of fair value in conjunction with the Filer being an owner, operator and manager of long-lived assets that predominately appreciate over time rather than depreciate systematically will result in the carrying value of the Filer's assets and its tax balances more closely aligning to their economic values; and

(c) it will reduce the administrative burden and risk involved in preparing its consolidated financial statements and reporting to BAM if both entities' financial statements are prepared in accordance with IFRS-IASB.

12. The Filer is implementing a comprehensive IFRS-IASB conversion plan.

13. The Filer has carefully assessed the readiness of its staff, board of directors, audit committee, auditor, investors and other market participants to address the Filer's adoption of IFRS-IASB for financial periods beginning on January 1, 2010 and has concluded that they will be adequately prepared to address the Filer's adoption of IFRS-IASB for periods beginning on or after January 1, 2010.

14. The Filer has considered the implications of adopting IFRS-IASB for financial periods beginning before January 1, 2011 on its obligations under securities legislation, including, but not limited to, those relating to CEO and CFO certifications, business acquisition reports, offering documents and previously released material forward-looking information.

15. The Filer will disseminate a news release not more than seven days after the date of this decision document disclosing relevant information about its conversion to IFRS-IASB as contemplated by CSA Staff Notice 52-320 – *Disclosure of Expected Changes in Accounting Policies Relating to Changeover to International Financial Reporting Standards*, including:

(a) the key elements and timing of its conversion plan to adopt IFRS-IASB;

(b) the exemptions available under IFRS 1 First-time Adoption of International Financial Reporting Standards that the Filer expects to apply in preparing financial statements in accordance with IFRS-IASB;

(c) the major identified differences between the Filer's current accounting policies and those the Filer is required or expects to apply in preparing financial statements in accordance with IFRS-IASB; and

(d) the impact of adopting IFRS-IASB on the key line items in the Filer's interim financial statements for the period ended June 30, 2009.

16. The Filer will update the information set out in the news release in its subsequent management's discussion and analysis, including, to the extent the Filer has quantified such information, quantitative information regarding the impact of adopting IFRS-IASB on the key line items in the Filer's financial statements.

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, subject to all of the following conditions:

(a) for so long as the Filer prepares its financial statements for financial periods beginning on or after January 1, 2010 in accordance with IFRS-IASB;

(b) provided that the Filer provides all of the communication as described and in the manner set out in paragraphs 15 and 16;

(c) provided that if the Filer files interim financial statements prepared in accordance with Canadian GAAP for one or more interim periods in the year that the Filer adopts IFRS-IASB, the Filer will restate and refile those interim financial statements originally prepared in accordance with Canadian GAAP in accordance with IFRS-IASB, together with the related restated interim management's discussion and analysis as well as the certificates required by National Instrument 52-109 – Certification of Disclosure in Issuers' Annual and Interim Filings; and

(d) provided that if the Filer files its first IFRS-IASB financial statements in an

interim period, those interim financial statements will present all financial statements with equal prominence, including the opening statement of financial position at the date of transition to IFRS-IASB.

"Lisa Enright"
Manager, Corporate Finance
Ontario Securities Commission

2.1.4 BCE Inc.

Headnote

Clause 104(2)(c) – Issuer bid – relief from issuer bid requirements in sections 94 to 94.8 and 97 to 98.7 of the Act – Issuer proposes to purchase, at a discounted purchase price, approximately 2,800,000 of its common shares from one shareholder – due to discounted purchase price, proposed purchases cannot be made through TSX trading system – but for the fact that the proposed purchases cannot be made through the TSX trading system, the Issuer could otherwise acquire the subject shares in reliance upon the issuer bid exemption available under section 101.2 of the Act and in accordance with the TSX rules governing normal course issuer bid purchases – no adverse economic impact on or prejudice to issuer or public shareholders – proposed purchases exempt from issuer bid requirements in sections 94 to 94.8 and 97 to 98.7 of the Act, subject to conditions.

TRANSLATION

March 27, 2009

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

AND

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

AND

IN THE MATTER OF
BCE INC.
(the "Issuer")

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the "**Decision Maker**") has received an application from the Issuer for a decision under the securities legislation of the Jurisdictions (the "**Legislation**") granting relief (the "**Exemption Sought**") (i) from the issuer bid requirements in connection with the proposed purchases by the Issuer of up to 3,900,000 (the "**BMO Ltée/Ltd. Shares**") of its common shares (the "**Common Shares**") in one or more trades from BMO Nesbitt Burns Ltd. (the "**62-104 Issuer Bid Requirements**"), and (ii) from the issuer bid requirements in connection with the proposed purchases by the Issuer of up to 2,600,000 Common Shares in one or more trades (concurrently or not with the BMO Ltée/Ltd. Shares) from BMO Nesbitt Burns Inc. (the "**Ontario Issuer Bid Requirements**", together with the 62-104 Issuer Bid Requirements, the "**Issuer Bid requirements**").

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

(a) the Autorité des marchés financiers is the principal regulator for this application (the "**Principal Regulator**"); and

(b) 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 Regulation 14-101 *Definitions* and Regulation 11-102 *Passport System* have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. The Issuer is a corporation governed by the *Canada Business Corporations Act*.

2. The head office and registered office of the Issuer are located at 1 Carrefour Alexander-Graham-Bell, Building A, 8th Floor, Verdun, Québec H3E 3B3.

3. The Issuer is a reporting issuer in each of the provinces of Canada and the Common Shares of the Issuer are listed for trading on the Toronto Stock Exchange ("**TSX**") and the New York Stock Exchange under the symbol "BCE". The Issuer is not in default of any requirement of the securities legislation in the Jurisdictions in which it is a reporting issuer.

4. The authorized common share capital of the Issuer consists of an unlimited number of Common Shares, of which approximately 787,080,838 were issued and outstanding as of February 17, 2009.

5. BMO Nesbitt Burns Ltée/Ltd. and BMO Nesbitt Burns Inc. (collectively, the "**Selling Shareholders**") have advised the Issuer that they own at least 3,900,000 and 2,600,000 Common Shares, respectively.

6. Each Selling Shareholder has advised the Issuer that it does not directly or indirectly own more than 5% of the issued and outstanding Common Shares.

7. Each of the Selling Shareholders is at arm's length to the Issuer and is not an insider of the Issuer or an associate of an insider of the Issuer, or an associate or affiliate of the Issuer, as such terms are defined in the Legislation. Each of the Selling Shareholders is an accredited investor within the meaning of Regulation 45-106 *Prospectus and Registration Exemptions* ("**Regulation 45-106**").

8. On December 23, 2008, the Issuer commenced a normal course issuer bid (its "**Normal Course Issuer Bid**") for up to 40,000,000 Common Shares through the facilities of the TSX in accordance with sections 628 to 629.3 of Part VI of the TSX Company Manual (the "**TSX NCIB Rules**"). As at February 20, 2009, 20,953,300 Common Shares have been purchased under the Issuer's Normal Course Issuer Bid.

9. The Issuer and the Selling Shareholders intend to enter into one or more agreements of purchase and sale (each, an "**Agreement**") pursuant to which the Issuer will agree to acquire up to 6,500,000 Common Shares (collectively, the "**Subject Shares**") from the Selling Shareholders by one or more purchases each occurring prior to May 31, 2009 (each such purchase, a "**Proposed Purchase**") for a purchase price (the "**Purchase Price**") that will be negotiated at arm's length between the Issuer and the Selling Shareholders. The Purchase Price will be at a discount to the prevailing market price and below the bid-ask price for the Issuer's Common Shares at the time of each Proposed Purchase.

10. The Subject Shares acquired under each Proposed Purchase will constitute a "block" as that term is defined in section 628 of the TSX NCIB Rules.

11. The purchase of the Subject Shares by the Issuer pursuant to each Agreement will constitute an issuer bid for purposes of the Issuer Bid Requirements.

12. Because the Purchase Price will be at a discount to the prevailing market price and below the bid-ask price for the Issuer's Common Shares at the time of each Proposed Purchase, each Proposed Purchase cannot be made through the TSX trading system and, therefore, will not occur through the facilities of the TSX. As a result, the Issuer will be unable to acquire the Subject Shares from the Selling Shareholders in reliance upon the exemption from the Issuer Bid Requirements in each Jurisdiction.

13. But for the fact that the Purchase Price will be at a discount to the prevailing market price and below the bid-ask price for the Issuer's Common Shares at the time of each Proposed Purchase, the Issuer could otherwise acquire the Subject Shares as a "block purchase" (a "**Block Purchase**") in accordance with the block purchase exception in section 629(l)7 of the TSX NCIB Rules and the exemption from the Issuer Bid Requirements in each Jurisdiction. The notice of intention to make a normal course issuer bid filed with the TSX by the Issuer contemplates that purchases under the

bid may be made by such other means as may be permitted by the TSX, including by private agreements pursuant to an issuer bid exemption order issued by a securities regulatory authority.

14. For each Proposed Purchase, the Issuer will be able to acquire the Subject Shares from the Selling Shareholders in reliance upon the exemption from the dealer registration requirements that is available under section 2.16 of Regulation 45-106.

15. The purchase of the Subject Shares will not adversely affect the Issuer or the rights of any of the Issuer's securityholders and it will not materially affect the control of the Issuer. The Proposed Purchases will be carried out with a minimum of cost to the Issuer.

16. To the best of the Issuer's knowledge, as of February 17, 2009, the public float for the Common Shares represented more than 99% of all issued and outstanding Common Shares for purposes of the TSX NCIB Rules.

17. The market for the Common Shares is a liquid market within the meaning of section 1.2 of Regulation 61-101 *Protection of Minority Security Holders in Special Transactions*.

18. Other than the Purchase Price, no additional fee or other consideration will be paid in connection with the Proposed Purchases.

19. At the time that each Agreement is entered into by the Issuer and the Selling Shareholders, neither the Issuer nor the Selling Shareholders will be aware of any undisclosed material change or any undisclosed material fact in respect of the Issuer (as such terms are defined in the Legislation).

20. Each of the Selling Shareholders owns the Subject Shares and the Subject Shares were not acquired in anticipation of resale pursuant to the Proposed Purchases.

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 Exemption Sought is granted provided that:

(a) the Proposed Purchases will be taken into account by the Issuer when calculating the maximum annual aggregate limit that is imposed upon the Issuer's Normal Course Issuer Bid in accordance with the TSX NCIB Rules;

(b) the Issuer will refrain from conducting a Block Purchase in accordance with the TSX NCIB Rules during the calendar week that it completes each Proposed Purchase and may not make any further purchases under its Normal Course Issuer Bid for the remainder of the calendar day that it completes each Proposed Purchase;

(c) the Purchase Price will be at a discount to either (i) the closing market price for the Issuer's Common Shares on the TSX on the date of each Proposed Purchase, (ii) the volume weighted average trading price of the Issuer's Common Shares on the TSX on the date of each Proposed Purchase, or (iii) the lower of (i) or (ii).

(d) the Issuer will otherwise acquire any additional Common Shares pursuant to its Normal Course Issuer Bid and in accordance with the TSX NCIB Rules, including by mean of open market transactions and by other means as may be permitted by the TSX, including private agreements under an issuer bid exemption order issued by a securities regulatory authority;

(e) immediately following each Proposed Purchase of the Subject Shares from the Selling Shareholders, the Issuer will report the purchase of the Subject Shares to the TSX;

(f) at the time that each Agreement is entered into by the Issuer and the Selling Shareholders, neither the Issuer nor the Selling Shareholders will be aware of any undisclosed material change or any undisclosed material fact in respect of the Issuer (as such terms are defined in the Legislation); and

(g) the Issuer will issue a press release in connection with the Proposed Purchases.

Montreal, dated March 27, 2009

"Josée Deslauriers"
Director, Corporate Finance
Autorité des marchés financiers

2.1.5 Profound Energy Inc. – s. 1(10)

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Issuer deemed to no longer be a reporting issuer under securities legislation.

Applicable Legislative Provisions

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

Citation: Profound Energy Inc., Re, 2009 ABASC 478

October 6, 2009

Bennett Jones LLP
4500 Bankers Hall East
855 - 2 Street SW
Calgary, AB T2P 4K7

Attention: Sean R. Mason

Dear Sir:

Re: Profound Energy Inc. (the Applicant) - Application for a decision under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, Québec and New Brunswick (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 to be deemed to have ceased to be a reporting issuer in the Jurisdictions.

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 deemed to have ceased to be a reporting issuer and that the Applicant's status as a reporting issuer is revoked.

"Blaine Young"
Associate Director, Corporate Finance

2.1.6 AXA Rosenberg Investment Management LLC et al.

Headnote

Filers exempted from section 13.12 [Restriction on lending to clients] of National Instrument 31-103 for a one-year transition period, to the extent section 13.12 applies to each filer because it is registered under the Act as an "exempt market dealer" and/or an "international adviser", subject to other conditions and restrictions – Each of the filers was registered under the Act as a "limited market dealer", before the coming into force of NI 31-103, and is automatically registered under the Act as an "exempt market dealer" under subsection 16.3(2) of NI 31-103, and/or was registered under the Act as an "international adviser", before the coming into force of NI 31-103, and remains registered as an "international adviser" under section 16.19 of NI 31-103 (for the one-year transition period specified in section 16.19) – Among the conditions and restrictions on the exemption are requirements that: (i) the head office or principal place of business of the filer be in a foreign jurisdiction; and (ii) the filer be licensed or registered under the securities legislation of the foreign jurisdiction in which its head office or principal place of business is located, in a category of licensing or registration that permits it to carry on the activities in that jurisdiction that registration as an investment dealer would permit it to carry on in Ontario.

Statute Cited

Securities Act, R.S.O. 1990, c. S.5, as am.

Instruments Cited

Multilateral Instrument 11-102 Passport System, s. 4.7.
National Instrument 14-101 Definitions.
National Instrument 31-103 Registration Requirements and Exemptions, ss. 9.3(1), 12.1, 13.12, 15.1, 16.3, 16.3(1), 16.3(2), 16.3(4).

Rule Cited

Ontario Securities Commission Rule 35-502 Non-Resident Advisers.

September 28, 2009

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

AND

IN THE MATTER OF
NATIONAL INSTRUMENT 31-103
REGISTRATION REQUIREMENTS AND EXEMPTIONS
(NI 31-103 or the Instrument)

AND

IN THE MATTER OF
AXA ROSENBERG INVESTMENT MANAGEMENT LLC, BLOOMBERG TRADEBOOK (BERMUDA) LTD., BLOOMBERG TRADEBOOK LLC, BNY MELLON CAPITAL MARKETS LLC, CREDIT SUISSE SECURITIES (EUROPE) LIMITED, CREDIT SUISSE SECURITIES (USA) LLC, GOLDMAN SACHS EXECUTION & CLEARING, L.P., GOLDMAN, SACHS & CO., MORGAN STANLEY & CO. INCORPORATED AND MORGAN STANLEY SMITH BARNEY LLC
(the Filers)

DECISION

Interpretation

Unless otherwise defined in this decision or the context otherwise requires, terms used in this decision that are defined in NI 31-103 have the same meaning, and other terms used in this decision that are defined in National Instrument 14-101 *Definitions* have the same meaning.

Background

1. NI 31-103 comes into force in Ontario on September 28, 2009.

2. Under subsection 16.3(2) of NI 31-103, in Ontario and Newfoundland and Labrador, persons or companies that are registered in the jurisdiction as a "limited market dealer" (immediately before the coming into force of NI 31-103) are automatically registered in the jurisdiction as an "exempt market dealer".

3. Section 13.12 of NI 31-103 provides that a registrant must not lend money, extend credit or provide margin to a client.

4. Although NI 31-103 includes transition provisions for the application of certain requirements – including subsections 16.3(1) and (4), which provide that, in Ontario and Newfoundland Labrador, section 12.1 [*Capital requirements*] does not apply to a person or company (a **mapped-over exempt market dealer**) registered as an exempt market dealer under subsection 16.3(2) until one year after the Instrument comes into force – there is no transition provision for the application of section 13.12 of the Instrument to a mapped over exempt market dealer. There is also no transition provision for the application of section 13.12 to a person or company (a **transitioned international adviser**) that was registered in Ontario as an "international adviser" on the day NI 31-103 comes into force and remains registered as an international adviser under section 16.19 of NI 31-103 (with such registration to be identified by the regulator on NRD as "portfolio manager", but subject to terms and conditions which confirm the status of this registrant as an "international adviser" for the

purposes of Ontario Securities Commission Rule 35-502 *Non Resident Advisers*).

5. Subsection 9.3(1) of NI 31-103 provides that section 13.12 does not apply to an investment dealer that is a member of IIROC to the extent that section 13.12 applies to the activities of an investment dealer.

6. In certain comments received on NI 31-103, when it was published for comment, it was suggested that the new prohibitions in section 13.12 should not apply to registered firms that are subject to a margin regime, similar to that imposed by IIROC on its member firms, because of the registered firm's membership in an international self-regulatory organization(s), or because of other regulatory requirements applicable to the registered firm in an international jurisdiction. The CSA responded to these comments by suggesting that these circumstances could be considered on a case-by-case basis, through exemption applications, and that an exemption should be made available to registrants who have "adequate measures in place to address the risks involved and other regulatory concerns".

7. The temporary exemption from section 13.12 of NI 31-103 provided for in this Decision is intended to facilitate the case-by case assessment of exemption applications referred to in paragraph 6.

Applications

Each of the Filers has applied to the regulator in Ontario (the **Decision Maker**), under section 15.1 of NI 31-103, for an exemption from section 13.12 of NI 31-103, subject to the conditions and restrictions set out in this decision.

Representations

Each of the Filers has represented that the head office of the Filer is outside of Canada.

Decision

The Decision Maker is satisfied that this decision meets the test set out in the securities legislation (the **Legislation**) of Ontario for the Decision Maker to make the decision.

The decision of the Decision Maker under the Legislation is that each of the Filers is exempt from the requirements of section 13.12 of NI 31-103, but only to the extent that the provisions of section 13.12 apply to the Filer because it is registered as an exempt market dealer or as a transitioned international adviser, and subject to the following other conditions or restrictions:

(a) the head office or principal place of business of the Filer is in a foreign jurisdiction;

(b) the Filer is not registered in any other category of registration in Ontario other than that of exempt market dealer, by virtue of section 16.3 of NI 31-103, or that of transitioned international adviser;

(c) the Filer is licensed or registered under the securities legislation of the foreign jurisdiction in which its head office or principal place of business is located, in a category of licensing or registration that permits it to carry on the activities in that jurisdiction that registration as an investment dealer would permit it to carry on in the local jurisdiction;

(d) this decision is not to be relied upon by the Filer in a jurisdiction other than Ontario under section 4.7 of Multilateral Instrument 11-102 Passport System; and

(e) this decision will expire one year after the Effective Date.

DATED at Toronto, Ontario this 28th day of September, 2009.

"Erez Blumberger"
Manager
Registrant Regulation

2.1.7 Miller Tabak Roberts Securities, LLC and Certain Other International Dealers

Headnote

NI 31-103 Registration Requirements and Exemptions (NI 31-103), which came into force on September 28, 2009, does not continue the registration category of international dealer that currently exists in Ontario and Newfoundland and Labrador. NI 31-103 will instead permit activities which are broadly similar to those of an international dealer registrant to be carried out on an exempt basis under section 8.18. It is anticipated that upon the coming into force of NI 31-103, most currently registered international dealers will choose to carry on business under the exemption.

However, the activities permitted under the international dealer exemption are more narrow than those permitted under the former international dealer registration category. In particular, the only debt securities that an international dealer can trade outside of their distribution are debt securities that are foreign securities (section 8.18(2)(c)). This means that registered international dealers who traded debt securities that were not foreign securities outside of their distribution before the Instrument came into effect have to either cease doing so in order to be able to rely on the exemption, or become registered in a category that will permit them to do so (such as exempt market dealer). NI 31-103 does not provide a transition period for current international dealers to become registered in another category. The transitional relief in this decision provides that for a period of one year, persons or companies that were registered international dealers immediately before the coming into force of NI 31-103 will continue to be permitted to trade debt securities that are not foreign securities outside of their distribution.

Persons or companies wishing to carry on business in reliance on the international dealer exemption in section 8.18 are required to provide a prescribed notice to clients. The transition provisions for international dealers in section 16.18 allow them one month in which to provide this notice to existing clients. However, some international dealers will have difficulty in doing so within that time. The transitional relief in this decision provides that for a period of six months, persons or companies that were registered international dealers immediately before the coming into force of NI 31-103 will be permitted to carry on business in reliance on the exemption in section 8.18 without having delivered the prescribed notices to their existing clients.

September 25, 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
NATIONAL INSTRUMENT 31-103
REGISTRATION REQUIREMENTS
AND EXEMPTIONS
(NI 31-103 or the Instrument),
MILLER TABAK ROBERTS SECURITIES, LLC
(the Filer)
AND CERTAIN OTHER INTERNATIONAL DEALERS

DECISION

Interpretation

Unless otherwise defined in this decision or the context otherwise requires, terms used in this decision that are defined in NI 31-103 have the same meaning, and other terms used in this decision that are defined in National Instrument 14-101 *Definitions* or Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) have the same meaning.

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

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

(b) the Filer has provided notice that section 4.7(1) of MI 11-102 is intended to be relied upon in Newfoundland and Labrador.

Background

1. NI 31-103 will come into force on September 28, 2009 (the **Effective Date**).

2. Pursuant to subsection 16.18(2) of NI 31-103, in Ontario and Newfoundland and Labrador, persons or companies that are registered in those jurisdictions as an international dealer immediately before the coming into force of NI 31-103 (**International Dealers**) will have their registrations in that category (which is not continued under NI 31-103) revoked immediately upon the Effective Date.

3. Section 8.18 [*International dealer*] of NI 31-103 provides an exemption from the dealer registration requirement (the **International Dealer Exemption**) that permits activities which are broadly similar, but narrower in some cases, to those that had been permitted for International Dealers under section 208 of Ontario Regulation 1015 (the Regulation) made under the *Securities Act*, Ontario (the **OSA**).

4. Upon the Effective Date, International Dealers who had traded Canadian debt securities outside of a distribution of the securities with designated institutions (as that term is defined in section 204 of the Regulation) pursuant to their international dealer registration (the **Canadian Debt Securities Activity**), will no longer be able to carry on that activity since it is not permitted under the International Dealer Exemption.

5. NI 31-103 does not provide a transition period for International Dealers so that they may become registered in another category of registration in the Jurisdiction in order to allow them to carry on the Canadian Debt Securities Activity.

6. Under section 16.18(3) of NI 31-103, International Dealers will have one month following the Effective Date to provide the notice prescribed in subsection 8.18(4)(b) to each of their clients (together the **Notice Requirement**) in order to be permitted to rely on the International Dealer Exemption.

Application

The Filer has applied to the securities regulatory authority in Ontario (the **Decision Maker**), under section 74(1) of the OSA for an exemption from the dealer registration requirement in section 25 of the OSA to allow it as well as other International Dealers (together with the Filer, the **Filers**) to:

1. continue to carry on the Canadian Debt Securities Activity for a period of one year from the Effective Date, subject to the conditions and restrictions set out in this decision; and

2. carry on business in a manner otherwise consistent with the International Dealer Exemption for a period of six months from the Effective Date before complying with the Notice Requirement in respect of existing clients of the Filers as of the Effective Date, subject to the conditions and restrictions set out in this decision.

Filers may also be registered as an International Dealer in Newfoundland and Labrador immediately before the coming into force of NI 31-103 (each, a **Newfoundland and Labrador Filer**), and in such case, the Filers have provided notice that section 4.7(1) of MI 11-102 is intended to be relied upon on the same basis in Newfoundland and Labrador; but otherwise this decision is not intended to be relied upon by any Filer in any other jurisdiction under MI 11-102.

Representations of the Filers

1. Each Filer has its head office or principal place of business in a foreign jurisdiction.

2. Each Filer is registered under the securities legislation of the foreign jurisdiction in which its head office or principal place of business is located in a category of registration that permits it to carry on the activities in that jurisdiction that registration as a dealer would permit it to carry on in the local jurisdiction.

3. Each Filer engages in the business of a dealer in the foreign jurisdiction in which its head office or principal place of business is located.

4. Each Filer is acting as principal or as agent for the issuer of the securities, for a permitted client, or for a person or company that is not a resident of Canada.

5. Each Filer was registered with the Commission as an international dealer immediately before the Effective Date.

6. Without the exemption sought under this Application, Filers will not be able to engage in Canadian Debt Securities Activity which they are currently able to engage in.

7. A transitional relief period of one year will enable Filers to obtain registration in an appropriate dealer category if they wish to continue to engage in Canadian Debt Securities Activity on an ongoing basis.

8. Despite good faith efforts, Filers may face practical difficulties in satisfying the Notice Requirement with respect to existing clients within one month of the Effective Date.

9. A transitional relief period of six months will enable them to satisfy the Notice Requirement with respect to existing clients.

Decision

The Decision Maker is satisfied that this decision meets the test set out in the securities legislation (the **Legislation**) of the Jurisdiction for the Decision Maker to make the decision.

The decision of the Decision Maker under the Legislation is that upon the Effective Date,

1. each Filer is exempt from the dealer registration requirement in respect of the following:

   (a) an activity, other than a sale of a security, that is reasonably necessary to facilitate a distribution of securities that are offered primarily in a foreign jurisdiction;

   (b) a trade in a debt security with a permitted client during the security's distribution, if the debt security is offered primarily in a foreign jurisdiction and a prospectus has

not been filed with a Canadian securities regulatory authority for the distribution;

(c) a trade in a debt security with a designated institution, other than during the security's distribution;

(d) a trade in a foreign security with a permitted client, unless the trade is made during the security's distribution under a prospectus that has been filed with a Canadian securities regulatory authority;

(e) a trade in a foreign security with an investment dealer;

(f) a trade in any security with an investment dealer that is acting as principal; and

2. provided that "foreign security" means:

(a) a security issued by an issuer incorporated, formed or created under the laws of a foreign jurisdiction, or

(b) a security issued by a government of a foreign jurisdiction; and

3. provided that "designated institution" has the meaning in section 204 of the Regulation as it was at the date or this order (and not as it will be upon the coming into effect of amendments to the Regulation on September 28, 2009); and

4. provided that the Filer

(a) has its head office or principal place of business in a foreign jurisdiction;

(b) is registered under the securities legislation of the foreign jurisdiction in which its head office or principal place of business is located in a category of registration that permits it to carry on the activities in that jurisdiction that registration as a dealer would permit it to carry on in the local jurisdiction;

(c) engages in the business of a dealer in the foreign jurisdiction in which its head office or principal place of business is located;

(d) is acting as principal or as agent for the issuer of the securities, for a permitted client, or for a person or company that is not a resident of Canada;

(e) was registered with the Commission as an international dealer immediately before the Effective Date;

(f) within one month of the Effective Date, submits to the Commission a completed Form 31-103F2 Submission to Jurisdiction and Appointment of Agent for Service and indicates its intention to rely on the transitional relief in this decision; and

5. provided that unless the permitted client or designated institution is a person or company registered under the securities legislation of a jurisdiction of Canada as an adviser or dealer, the Filer must have, with six months of the Effective Date, notified the permitted client or designated institution of all of the following:

(i) the Filer is trading with them in reliance upon an exemption from the dealer registration requirement;

(ii) the Filer's jurisdiction of residence;

(iii) the name and address of the agent for service of process of the Filer in the local jurisdiction; and

(iv) there may be difficulty enforcing legal rights against the Filer because it is resident outside Canada and all or substantially all of its assets may be situated outside of Canada.

This decision will expire one year after the Effective Date.

"David L Knight"
Commissioner
Ontario Securities Commission

"Mary Condon"
Commissioner
Ontario Securities Commission

2.1.8 Crosbie & Company Inc. and Certain Other Limited Market Dealers that have become Exempt Market Dealers under Subsection 16.3(2) of NI 31-103

Headnote

In jurisdictions where there is no Limited Market Dealer (LMD) registration category, persons or companies that would be required to register as Exempt Market Dealers (EMDs) have a one year transition period before they must become registered in the new category. However, in Ontario and Newfoundland and Labrador, LMDs automatically became registered as EMDs as soon as NI 31-103 Registration Requirements and Exemptions (NI 31-103) came into force on September 28, 2009. These "mapped-over EMDs" thus became immediately subject to the financial statement and capital calculation delivery requirements and the client statement delivery requirements in NI 31-103 without the benefit of a transition period.

The Director has made a decision that provides transitional relief to mapped-over EMDs from:

1. the requirements in subsection 12.12(1) to deliver audited annual financial statements and prescribed capital calculations for a period of one year, consistent with the other solvency-related transitional relief provided in section 16.3; and

2. the requirements in section 14.14 to deliver certain client statements for a period of two years, consistent with that which section 16.17 provides for mutual fund dealers.

The relief is only available to the extent a mapped-over EMD is not registered in another category that requires delivery of financial statements or client statements during the applicable transition period.

September 28, 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
NATIONAL INSTRUMENT 31-103
REGISTRATION REQUIREMENTS
AND EXEMPTIONS
(NI 31-103 or the Instrument) AND
CROSBIE & COMPANY INC. AND CERTAIN OTHER LIMITED MARKET DEALERS THAT HAVE BECOME EXEMPT MARKET DEALERS UNDER SUBSECTION 16.3(2) OF NI 31-103

DECISION

Interpretation

Unless otherwise defined in this decision or the context otherwise requires, terms used in this decision that are defined in NI 31-103 have the same meaning, and other terms used in this decision that are defined in National Instrument 14-101 *Definitions* or Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) have the same meaning.

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

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

(b) the Filer has provided notice that section 4.7(1) of MI 11-102 is intended to be relied upon in Newfoundland and Labrador.

Background

1. NI 31-103 came into force on September 28, 2009 (the **Effective Date**).

2. Under subsection 16.3(2), in Ontario and Newfoundland and Labrador, persons or companies that were registered in those jurisdictions as limited market dealers immediately before the coming into force of NI 31-103 (**LMDs**) have been automatically registered in the jurisdiction as exempt market dealers (**EMDs**, such former LMDs referred to in this decision document as "**mapped-over EMDs**").

3. Subsection 12.12(1) provides that a registered dealer (including an EMD) must within 90 days after the end of the registrant's financial year deliver (a) annual audited financial statements including information prescribed in section 12.10 and (b) a completed Form 31-103F1 *Calculation of Excess Working Capital* showing prescribed information.

4. Mapped-over EMDs were not subject to financial statement filing requirements or capital requirements prior to the coming into force of NI 31-103 unless they were also registered in certain other categories.

5. Section 14.14 provides that a registered dealer (including an EMD) must deliver client statements including prescribed information, in some circumstances on a monthly basis and, in any event, at least once every three months.

6. Mapped-over EMDs were not subject to client statement requirements prior to the coming into force of NI 31-103 unless they were also registered in certain other categories.

7. There is no transition provision for the application of subsection 12.12(1) or section 14.14 to mapped-over EMDs, although NI 31-103 does include transition provisions for other requirements where immediate compliance may pose significant costs or practical difficulties for registrants – including subsections 16.3(1) and (4), which provide that in Ontario and Newfoundland Labrador, section 12.1 [*Capital requirements*] does not apply to a mapped-over EMD until one year after the Instrument comes into force, and section 16.17, which provides that, in all jurisdictions, section 14.14 does not apply to a person or company that is a mutual fund dealer (**MFD**) on the day the instrument comes into force until two years after that day (a **mapped-over MFD**).

Application

The Filer has applied to the regulator in Ontario (the **Decision Maker**), under section 15.1 of NI 31-103, for exemptions for itself and any other mapped-over EMD (together with the Filer, the **Filers**) from:

1. the audited annual financial statement and Form 31-103F1 delivery requirements in subsection 12.12(1) (together, the **Financial Statement Requirements**) until one year after the Effective Date, subject to the conditions and restrictions set out in this decision; and

2. the client statement requirements in section 14.14 (the **Client Statement Requirement**) for a period of two years from the Effective Date, subject to the conditions and restrictions set out in this decision.

Filers may also be mapped-over EMDs in Newfoundland and Labrador and in such cases, the Filers have provided notice that section 4.7(1) of MI 11-102 is intended to be relied upon on the same basis in Newfoundland and Labrador; but otherwise this decision is not intended to be relied upon by any Filer in any other jurisdiction under MI 11-102.

Representations of the Filers

1. Each of the Filers is a mapped-over EMD.

2. Compliance with the Financial Statement Requirements would present practical difficulties and significant costs for Filers who are not already subject to comparable requirements as a result of registration in another category.

3. A transitional relief period of one year will enable them to make adequate preparations to comply with the Financial Statement Requirements.

4. Immediate compliance with the Client Statement Requirements will pose practical difficulties and significant costs for Filers who are not already subject to comparable requirements as a result of registration in another category.

5. A transitional relief period of two years will enable them to make adequate preparations to comply with the Client Statement Requirements.

Decision

The Decision Maker is satisfied that this decision meets the test set out in the securities legislation (the Legislation) of the Jurisdiction for the Decision Maker to make the decision.

The decision of the Decision Maker under the Legislation is that:

1. each Filer is exempt from the Financial Statement Requirement provided that it is not registered in any other category of registration in Ontario or Newfoundland and Labrador; and

2. each Filer is exempt from the Client Statement Requirement provided that it is not registered in any other category of registration in Ontario or Newfoundland and Labrador except as a mapped-over MFD or an investment fund manager.

This decision with respect to the Financial Statement Requirement will expire one year after the Effective Date.

This decision with respect to the Client Statement Requirement will expire two years after the Effective Date.

"Erez Blumberger"
Manager, Registrant Regulation
Ontario Securities Commission

2.2 Orders

2.2.1 Paladin Capital Markets Inc. et al. – 127(1), 127(7) and 127(8)

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

AND

IN THE MATTER OF
PALADIN CAPITAL MARKETS INC. ,
JOHN DAVID CULP AND
CLAUDIO FERNANDO MAYA

ORDER
Sections 127(1), 127(7) and 127(8)

WHEREAS on June 2, 2009, the Ontario Securities Commission (the "Commission") issued a temporary 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:

1. Under s. 127(1)1 of the Act, the registration of Paladin and Mr. Culp be suspended;

2. Under s. 127(1)2 of the Act, all trading in any securities by the Respondents cease;

3. Under s. 127(1)2 of the Act, all trading in securities of Paladin cease; and

4. Under s. 127(1)3 of the Act, all exemptions contained in Ontario securities law do not apply to the Respondents.

AND WHEREAS on June 2, 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 June 4, 2009 the Commission issued a Notice of Hearing to consider, among other things, the extension of the Temporary Order, to be held on June 15, 2009 at 10:00 a.m;

AND WHEREAS the Commission held a hearing on June 15, 2009 to consider whether to extend the Temporary Order;

AND WHEREAS counsel for Staff, Mr. Maya and Mr. Culp, on his own behalf and for Paladin, appeared at the hearing held on June 15, 2009;

AND WHEREAS Mr. Culp, on his own behalf and for Paladin, consented to the extension of the Temporary Order to September 30, 2009;

AND WHEREAS Mr. Maya consented to the extension of the Temporary Order to September 30, 2009, subject to his right to contest the Temporary Order by hearing on July 2, 2009 at 2:30 p.m.;

AND WHEREAS on July 2, 2009, the Commission heard submissions from Staff and Mr. Maya as to the continuation of the Temporary Order against Mr. Maya;

AND WHEREAS on July 2, 2009, with reasons issued on July 10, 2009, the Commission was not satisfied that Mr. Maya had provided satisfactory information not to extend the temporary order;

AND WHEREAS the Commission held a hearing on September 29, 2009 to consider whether to extend the Temporary Order;

AND WHEREAS Mr. Maya and Mr. Culp, on his own behalf and for Paladin, and counsel for Staff, appeared at the hearing held on September 29, 2009;

AND WHEREAS Staff sought and Mr. Culp, on his own behalf and for Paladin, and Mr. Maya consented to the extension of the Temporary Order to December 1, 2009;

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

AND WHEREAS by Commission order made August 31, 2009, pursuant to section 3.5(3) of the Act, any one of W. David Wilson, James E. A. Turner, David L. Knight, Carol S. Perry, Patrick J. LeSage, James D. Carnwath and Mary G. Condon, acting alone is authorized to exercise the powers of the Commission under the Act, subject to subsection 3.5(4) of the Act, to make orders under section 127 of the Act;

IT IS ORDERED that:

1. pursuant to the consent of counsel for Staff, Mr. Maya and Mr. Culp, both on his own behalf and on behalf of Paladin, and sections 127(7) and 127(8), the Temporary Order is extended until December 1, 2009; and

2. the hearing is adjourned to November 30, 2009 at 10:00 a.m.

Dated at Toronto this 29th day of September 2009.

"James D. Carnwath"
Commissioner

2.2.2 Ernest Anderson et al. – s. 127

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

AND

IN THE MATTER OF
ERNEST ANDERSON, GOLDEN GATE FUNDS LP,
BERKSHIRE CAPITAL LIMITED,
GP BERKSHIRE CAPITAL LIMITED AND
PANAMA OPPORTUNITY FUND

ORDER
(Subsections 127)

WHEREAS the Ontario Securities Commission ("the Commission") issued a temporary order on January 27, 2009 ("the Temporary Order") against Berkshire Capital Limited, GP Berkshire Capital Limited, Panama Opportunity Fund ("the Berkshire Entities") and Ernest Anderson ("Anderson");

AND WHEREAS the Temporary Order ordered that: (i) trading in securities of and by the Berkshire Entities and Ernest Anderson cease pursuant to paragraph 2 of subsection 127(1) and subsection 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended ("the Act"); and (ii) any exemptions contained in Ontario securities law not do not apply to the Berkshire Entities and Ernest Anderson pursuant to paragraph 3 of subsection 127(1) and subsection 127(5) of the Act;

AND WHEREAS the Temporary Order was continued from time to time until October 5, 2009;

AND WHEREAS on September 21, 2009, Staff issued a Statement of Allegations against Ernest Anderson, Golden Gate Funds LP and the Berkshire Entities;

AND WHEREAS the Commission issued a Notice of Hearing to consider whether it is in the public interest to make a permanent order against the Berkshire Entities pursuant to section 127(1) of the Act, at its offices at 20 Queen Street West, 17th Floor, Toronto, Ontario, on October 2, 2009;

AND WHEREAS Staff served the Berkshire Entities by emailing the Notice of Hearing and the Statement of Allegations to Anderson and the Berkshire Entities' Panamanian contacts, Georgia Lainiotis ("Lainiotis") and Mohamed Al-Harazi ("Al-Harazi"), who have been identified to Staff as being involved with the Berkshire Entities;

AND WHEREAS on October 2, 2009, having heard the submissions of Staff and having read the affidavit and exhibits of Stephanie Collins, Sr. Forensic Accountant, Enforcement, sworn February 9, 2009 and having read the transcript of the May 8, 2009 hearing to consider continuing the Temporary Order and the excerpt of the section 13 examination of Anderson conducted by Staff on May 9-11, 2009, no one appearing on behalf of the Berkshire Entities;

AND WHEREAS in the Commission's opinion, it is in the public interest for the Commission to make this order:

IT IS ORDERED:

(a) that trading in any securities by or of the Berkshire Entities cease permanently pursuant to paragraph 2 of section 127(1) of the Act;

(b) that acquisition of any securities by the Berkshire Entities is prohibited permanently pursuant to paragraph 2.1 of section 127(1) of the Act;

(c) that any exemptions contained in Ontario securities laws do not apply to the Berkshire Entities pursuant to paragraph 3 of section 127(1) of the Act;

(d) that the Berkshire Entities be reprimanded pursuant to paragraph 6 of section 127(1) of the Act;

DATED at Toronto this 2nd day of October, 2009.

"Patrick J. LeSage"

2.2.3 Factorcorp Inc. et al. – s. 127

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

AND

IN THE MATTER OF
FACTORCORP INC.,
FACTORCORP FINANCIAL INC., AND
MARK IVAN TWERDUN

ORDER
(Section 127 of the Act)

WHEREAS on May 12, 2009 the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990 c. S.5, accompanied by a Statement of Allegations (the "Statement of Allegations") issued by Staff of the Commission on the same date against Factorcorp Inc., Factorcorp Financial Inc., and Mark Twerdun ("Twerdun");

AND WHEREAS on May 12, 2009 a temporary order was continued against Twerdun, as varied on October 26, 2007, until this proceeding is concluded and a decision of the Commission is rendered or until the Commission considers it appropriate;

AND WHEREAS Twerdun brought a motion for particulars by Notice of Motion dated September 25, 2009;

AND WHEREAS Staff of the Commission and Twerdun have requested that this matter be adjourned for a pre-hearing conference on December 15, 2009 at 10:00 a.m.;

AND WHEREAS Staff of the Commission ("Staff") and Twerdun consent to the making of this Order;

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

IT IS HEREBY ORDERED that

(1) Staff will provide particulars of the allegations contained in the Statement of Allegations as follows:

a. with respect to the allegations contained in paragraph 22 of page 7 of the Statement of Allegations, Staff will furnish particulars of which of the "certain loans" alleged were insufficiently secured against all of the assets of the borrower;

b. which "other loans" were not secured at all;

c. in which loans was the value of the collateral in question; and

d. in which "certain loans" did the respondents fail to conduct reasonable due diligence and implement the "Risk Management Practices" as promised in the Offering Memoranda;

(2) Staff will provide to counsel for Twerdun the Promotional Material which it alleges contained misleading, untrue or incomplete statements with those particular statements highlighted, or otherwise marked, and the particulars of why each impugned statement is allegedly misleading, untrue or incomplete;

(3) These particulars will be forwarded no later than October 26, 2009; and

(4) This matter is adjourned until December 15, 2009 at 10:00 a.m., or such other date as determined by the Office of the Secretary, for the purpose of having a pre-hearing conference on that date.

DATED at Toronto, this 5th day of October 2009.

"David L. Knight"

2.2.4 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 MANAGEMENT, LLC,
AXCESS FUND, L.P., GORDON ALAN DRIVER,
DAVID RUTLEDGE, STEVEN M. TAYLOR AND
INTERNATIONAL COMMUNICATION STRATEGIES**

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

WHEREAS on April 15, 2009, the Ontario Securities Commission (the "Commission") issued a temporary order (the "Temporary Order") pursuant to sections 127(1) and 127(5) of the Ontario *Securities Act*, R.S.O. 1990, c. S.5 (the "Act") in relation to Axcess Automation LLC ("Axcess"), Axcess Fund Management, LLC ("Axcess Fund Management"), Axcess Fund, L.P. ("Axcess Fund"), Gordon Alan Driver ("Driver") and David Rutledge ("Rutledge");

AND WHEREAS the Temporary Order was issued based on the appearance of the following:

1. Axcess is a Nevada corporation located in Mission Viejo, California and has never been a reporting issuer in Ontario nor registered to trade in securities in Ontario;

2. 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 is a purported hedge fund operated by Axcess Fund Management;

5. 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. 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 Act;

AND WHEREAS Steven M. Taylor ("Taylor") is an Ontario resident and has never been registered to trade in securities in Ontario;

AND WHEREAS International Communication Strategies ("ICS") appears to be a company which is registered in Panama and controlled by Taylor, and has never been a reporting issuer in Ontario nor registered to trade in securities in Ontario;

AND WHEREAS based on information obtained by Staff of the Commission, it appears to the Commission that Taylor and ICS may have solicited investments from investors in Ontario in relation to Axcess, Axcess Fund Management, Axcess Fund and Driver;

AND WHEREAS it appears to the Commission that Taylor and ICS may have traded in securities without being registered to do so, contrary to section 25 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 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 August 31, 2009, pursuant to subsection 3.5(3) of the Act, the Commission authorized each of W. David Wilson, James E. A. Turner, David L. Knight, Carol S. Perry, Patrick J. LeSage, James D. Carnwath and Mary G. Condon, 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 Taylor and ICS 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 Taylor and ICS.

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 2nd day of October, 2009.

"David Wilson"

2.2.5 ACE Aviation Holdings Inc.

Headnote

Application for exemption from formal issuer bid requirements and valuation requirement – Issuer proposes to repurchase outstanding preferred shares – all preferred shares held by a single holder resident in Ontario – holder is an "accredited investor" and does not require issuer bid circular nor other protections of the formal issuer bid requirements – relief conditional on holder providing consent and acknowledgement that offer will be made on a basis that is exempt from the formal issuer bid requirements and the valuation requirement – relief from formal issuer bid requirements and valuation requirement granted, subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 93 to 99.1, 104(2)(c).
Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions, Parts 3 and 9.

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

AND

IN THE MATTER OF
ACE AVIATION HOLDINGS INC.
(the Issuer)

ORDER

UPON the application (the **Application**) of the Issuer to the Ontario Securities Commission (the **Commission**) for

(a) an order pursuant to section 104(2)(c) of the Act exempting the Issuer and a wholly owned subsidiary of the Issuer (**Subco**) from the requirements in sections 93 to 99.1 of the Act that are applicable to issuer bids (the **Formal Issuer Bid Requirements**), and

(b) an exemption pursuant to section 9.1(2) of Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions* (**MI 61-101**) exempting the Issuer and Subco from the valuation requirements contained in Part 3 of MI 61-101 (the **Valuation Requirement**);

in connection with the proposed offer (the **Proposed Offer**) by the Issuer and Subco to purchase all of the issued and outstanding Preferred Shares of the Issuer held by a single holder for a negotiated and agreed upon cash amount, pursuant to which Subco would purchase all of the Preferred Shares in exchange for a number of common shares of Subco and, as part of the same transaction, (i) the Issuer would issue to Subco Class B Voting Shares of the Issuer in exchange for the transfer by Subco to the Issuer of the Preferred Shares acquired by Subco; (ii) Subco would immediately repurchase all of such common shares of Subco issued to the former holder of Preferred Shares for the cash amount agreed to by the Issuer and the former holder of Preferred Shares for the purchase of its Preferred Shares; and (iii) the Issuer would immediately repurchase the Class B Voting Shares of the Issuer issued to Subco under (i) above;

AND UPON the request of the Issuer that this decision and all materials related to the Application (collectively, the **Confidential Material**) be kept confidential and not be made public until the earlier of:

(i) the date the Issuer advises staff that there is no longer any need for the Confidential Material to remain confidential; and

(ii) the date that is 90 days after the date of this decision (the **Confidentiality Relief)**;

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

AND UPON the Issuer having represented to the Commission that:

The Issuer

1. The Issuer is a corporation incorporated under the *Canada Business Corporations Act* (**CBCA**). Its head office is located in Montreal, Québec. Subco will be a wholly owned subsidiary of the Issuer. The registered and head office of Subco will be in Ontario.

2. The Issuer is a reporting issuer or the equivalent in each of the provinces of Canada, and has been for more than 12 months.

3. The Issuer is not in default of securities legislation in any of the provinces of Canada, and is not on any list of defaulting reporting issuers maintained by any securities regulatory authority in Canada.

4. The authorized share capital of the Issuer consists of an unlimited number of Class A Variable Voting Shares, an unlimited number of Class B Voting Shares and of 12,500,000 Preferred Shares. The variable voting share structure is to address airline foreign ownership restrictions that limit foreign owners to no more than 25% of the voting rights attached to all of the Issuer's voting securities. In addition, the Issuer has issued debt securities in the form of 4.25% Convertible Senior Notes. As of the close of business on July 31, 2009, there were 25,680,411 Class A Variable Voting Shares, 10,010,878 Class B Voting Shares and 3,200,000 Preferred Shares issued and outstanding, as well as $63,883,000 principal amount of 4.25% Convertible Senior Notes outstanding.

5. The Preferred Shares are not listed for trading on the Toronto Stock Exchange (TSX) or any other securities exchange. The Class A Variable Voting Shares, Class B Voting Shares and 4.25% Convertible Senior Notes are listed on the TSX under the symbols "ACE.A", "ACE.B" and "ACE.NT.A", respectively.

Terms of the Preferred Shares

6. The holder of Preferred Shares is entitled to vote on an "as converted" basis with the Class A Variable Voting Shares and the Class B Voting Shares and is subject to the same proportionate reduction in voting percentage applicable to Class A Variable Voting Shares, as if, for voting purposes only, the Preferred Shares had been converted into Class A Variable Voting Shares.

7. The holder of Preferred Shares is entitled to participate on an "as converted" basis with the Class A Variable Voting Shares and the Class B Voting Shares with respect to all dividends, distributions, spin off, split-off, subscription rights or other offers or rights made available to holders of Class A Variable Voting Shares and the Class B Voting Shares and any other similar transactions.

8. In the event of any liquidation, dissolution or winding up of the Issuer (with the holder of the Preferred Shares being entitled to treat the occurrence of a merger, amalgamation, sale of all or substantially all of the assets of the Issuer or other similar transaction involving a change in control of the Issuer as a liquidation for these purposes), then the holder of the Preferred Shares is entitled to receive, prior to and in preference to the holders of Class A Variable Voting Shares and the Class B Voting Shares, an amount per Preferred Share equal to the Fully Accreted Value of such Preferred Shares, determined as of the date of such event. For the purposes of the terms of the Preferred Shares, **Fully Accreted Value** means, with respect to each Preferred Share issued on September 30, 2004 as of any date, the initial purchase price of such Preferred Share, increased at a rate of 5% per annum, compounded semi annually from the date of issuance of such Preferred Shares.

9. The Preferred Shares are convertible at the option of the holder thereof at any time into Class A Variable Voting Shares at a conversion rate equal to the Fully Accreted Value per Preferred Share (as of the conversion date) divided by the Conversion Price. For the purposes of the terms of the Preferred Shares, **Conversion Price** is equal to $26 or 130% of the initial per share value attributed to the Class A Variable Voting Shares and Class B Voting Shares on September 30, 2004 of $20. The Conversion Price of the Preferred Shares is subject to certain adjustments, including customary public company anti-dilution protection for stock splits, stock dividends, subdivisions, combinations and similar transactions.

10. As of July 31, 2009, the 3,200,000 issued and outstanding Preferred Shares were convertible at the option of its holder into an aggregate of 3,125,359 Class A Variable Voting Shares, representing a conversion rate of approximately 0.9767 Class A Variable Voting Share for each Preferred Share. On July 31, 2009, the closing price of the Class A Variable Voting Shares on the TSX was $4.91 which, taking into account the current conversion rate, represents approximately 19% of the current Fully Accreted Value of a Preferred Share.

11. The holder of Preferred Shares is subject to certain mandatory conversion provisions pursuant to which it is required to convert its Preferred Shares into Class A Variable Voting Shares in September 2011, and on the date every six months thereafter until September 2014, if on any of such dates the closing prices of the Class A Variable Voting Shares and the Class B Voting Shares over a number of trading days preceding such respective dates exceed the then applicable Fully Accreted Value of a Preferred Share. If the closing prices do not exceed the Fully Accreted Value on any such dates, the then applicable Conversion Price is reduced by 3.75% on each such dates.

12. If no mandatory conversion of the Preferred Shares has occurred by September 2014 (the **Final Maturity Date**), the holder of Preferred Shares has the right to require the Issuer to redeem each of the Preferred Shares in cash on the Final Maturity Date at a per share redemption price equal to the Fully Accreted Value as at the Final Maturity Date. Except as otherwise described above, the holder of Preferred Shares does not have a fixed cash redemption right prior to the Final Maturity Date.

13. If at any time the closing price of the Class A Variable Voting Shares or Class B Voting Shares, as the case may be, for each of 30 consecutive trading days exceeds 175% of the then applicable Conversion Price, then the Issuer may require the holder of Preferred Shares to convert the Preferred Shares into Class A Variable Voting Shares.

14. With respect to any recapitalization, reorganization, reclassification, consolidation, amalgamation, arrangement, merger, sale of all or substantially all of the Issuer's assets to another person or other transaction which is effected in such a way that holders of Class A Variable Voting Shares and Class B Voting Shares are entitled to receive (either directly or upon

subsequent liquidation) stock, securities or assets with respect to or in exchange for Class A Variable Voting Shares or Class B Voting Shares, as the case may be (each an **Organic Change**) which includes a sale of all or substantially all of the Issuer's assets or where the Issuer is not the surviving entity, the holder of the Preferred Shares shall be entitled to cause the Issuer to either (i) require that the surviving entity or its publicly traded parent issue to the holder of Preferred Shares in exchange for such shares, a security of the surviving or publicly traded parent entity evidenced by a written instrument substantially similar in form and substance to the Preferred Shares, including, without limitation, having the same economic rights and preferences as the Preferred Shares and having a rank senior to all capital stock of such issuing entity or (ii) make appropriate adjustments contemporaneously to the rights attached to the Preferred Shares so as to preserve in all respects the benefits conferred on the holder of the Preferred Shares by the terms of the Preferred Shares. With respect to any reorganization, amalgamation, arrangement, merger or other similar transaction that does not constitute an Organic Change, appropriate adjustments shall contemporaneously be made to the rights (including, without limitation, the conversion right) attached to the Preferred Shares so as to preserve in all respects the benefits conferred on the holder of the Preferred Shares by the terms of the Preferred Shares.

15. The holder of Preferred Shares has pre-emptive rights in connection with further issuances of Class A Variable Voting Shares and Class B Voting Shares or other equity securities, rights, options, warrants or other convertible securities which represent rights to purchase Class A Variable Voting Shares or Class B Voting Shares, subject to certain exceptions.

16. The conditions attaching to the Preferred Shares in the Issuer's articles do not restrict the Issuer's ability to purchase Preferred Shares by private agreement. The Preferred Shares are not redeemable at the option of the Issuer.

Holder of the Preferred Shares

17. All of the Preferred Shares are held by one single holder, being Morgan Stanley Canada Limited, an institutional shareholder resident in Ontario based on the address indicated in the shareholder register of the Issuer.

18. To the knowledge of the Issuer, the holder of Preferred Shares is a sophisticated institutional investor and is an "accredited investor" as defined in Section 1.1 of National Instrument 45-106 – *Prospectus and Registration Exemptions* (**NI 45-106**).

19. To the knowledge of the Issuer, the holder of Preferred Shares is not a related party of the Issuer for the purposes of MI 61-101.

The Proposed Offer

20. Given the preferential attributes of the Preferred Shares, the Issuer has determined based on financial, tax and legal advice that it is in the best interest of its holders of Class A Variable Voting Shares and Class B Voting Shares that the Issuer repurchase the outstanding Preferred Shares as soon as practicable.

21. A direct repurchase by the Issuer for cash of the Preferred Shares could result in the Issuer being liable for the payment of a tax under Part VI.1 of the *Income Tax Act* (Canada) in an amount equal to 50% of the consideration paid for the repurchase. A repurchase of the Preferred Shares pursuant to the structure referred to in paragraph 22 below (**Offer Structure**) would not result in the Issuer purchasing taxable preferred shares or short term preferred shares and, as a result, the Issuer would not be liable for the payment of a tax under Part VI.1 of the *Income Tax Act* (Canada). Any payment of tax under Part VI.1 of the *Income Tax Act* (Canada) would otherwise be imposed on the Issuer and therefore would become payable out of the assets that would otherwise be available for the holders of Class A Variable Voting Shares and Class B Voting Shares.

22. Under the terms of the Proposed Offer, Subco would make an offer (**Preferred Shares Issuer Bid**) to the holder of Preferred Shares to purchase its Preferred Shares for a negotiated and agreed upon cash amount (**Purchase Price**). Payment of the Purchase Price would occur as follows:

    (i) The Issuer would contribute to Subco, in cash, the necessary amount to effect the redemption of Subco Common Shares described below in paragraph (iv), in consideration for voting preferred shares of Subco, which will be redeemable and retractable for an amount equal to the cash contributed;

    (ii) Subco would acquire the Preferred Shares in consideration of the payment by Subco for each Preferred Share of $0.001 and a number of common shares of Subco (**Subco Common Shares**), that are exchangeable at the option of the holder on a one-for-one basis for Class A Variable voting shares of the Issuer;

    (iii) The Issuer would issue to Subco a number of Class B Voting Shares of the Issuer equal to the number of Subco Common Shares referred to in paragraph (ii) in exchange for the transfer by Subco

to the Issuer of the Preferred Shares acquired by Subco as referred to in paragraph (ii) above;

(iv) Subco would redeem (**Subco Common Shares Issuer Bid**) all of the Subco Common Shares then held by the selling holder of Preferred Shares in consideration for the receipt in cash of a purchase price for all of such Subco Common Shares which shall be equal to the Purchase Price (subject to applicable withholding taxes, if any) for all Preferred Shares to be sold; and

(v) The Issuer would redeem (**Class B Voting Shares Issuer Bid**) the Class B Voting Shares (**Class B Voting Shares Held by Subco**) of the Issuer held by Subco.

23. The terms of any Proposed Offer would be negotiated on an arm's length basis between the Issuer and the holder of Preferred Shares, and would be completed at a price not to exceed the Fully Accreted Value of the Preferred Shares. It is proposed that the agreed cash consideration for the Preferred Shares would be divided by the weighted average of the latest closing price of the Class A Variable Voting Shares and the Class B Voting Shares or the weighted average of the latest closing prices of the Class A Variable Voting Shares and the Class B Voting Shares over a number of trading days, which would be both the issue price and the repurchase price. However, the Issuer could also apply a discount in the calculation of the number of Subco Common Shares issuable in exchange for the Preferred Shares as long as the repurchase price for the Subco Common Shares is identical to their issuance price. As long as the issuance price and the repurchase price of the Subco Common Shares are identical, no premium on the Subco Common Shares will be paid to the holder of Preferred Shares.

24. Following the completion of the Proposed Offer, the Preferred Shares repurchased by the Issuer from Subco under step (iii) of paragraph 22 above would be cancelled.

25. The cash Purchase Price for the Preferred Shares will be negotiated by the parties on the basis of the attributes of the Preferred Shares.

26. The terms of the Proposed Offer will be approved by the Issuer's board of directors. There is no requirement under MI 61-101 for the Issuer to establish an independent committee to approve the Proposed Offer.

27. In addition to the foregoing, in order to ensure compliance with applicable tax requirements, the Issuer's and Subco's obligations to consummate the Proposed Offer will be conditional upon the receipt of an opinion of an investment dealer to the effect that the purchase price per Subco Common Share does not exceed the fair market value of such Subco Common Share.

28. The Issuer has engaged financial advisors in connection with the Proposed Offer and will obtain a fairness opinion confirming the fairness of the consideration payable in respect of the Preferred Shares from the point of view of the Issuer and the holders of its Class A Variable Voting Shares and Class B Voting Shares. The Issuer will include a copy of the fairness opinion in a material change report or other public filing to be made on SEDAR at the time of the announcement of the Proposed Offer.

29. As the holder of Preferred Shares is not a related party of the Issuer for the purposes of MI 61-101, the transaction does not constitute a related party transaction under MI 61-101 and minority shareholder approval of the Issuer is therefore not required under MI 61-101. Based on the structure of the Proposed Offer as described above, the Proposed Offer does not require shareholder approval under the CBCA.

30. As an alternative to the Proposed Offer, the Issuer could have amended the rights attached to the Preferred Shares to create an additional redemption right in favour of the Issuer or the holders. However, adding a redemption right to the Preferred Shares which the Issuer or the holder would exercise would not result in the Issuer eliminating the Part VI.1 tax which would still be payable by the Issuer on the total redemption price.

31. Under the Act and the rules adopted thereunder, each of the Preferred Share Issuer Bid, the Subco Common Shares Issuer Bid and the Class B Voting Shares Issuer Bid would constitute an issuer bid for the purposes of the Act. The issuer bid exemptions under Part XX of the OSA are not available in relation to the Preferred Share Issuer Bid or the Class B Voting Shares Issuer Bid. The issuer bid exemption under Section 101.3 of the OSA would be available in relation to the Subco Common Shares Issuer Bid.

32. The Issuer's intention is to purchase all of the Preferred Shares in a single transaction.

33. The Proposed Offer will not constitute an indirect issuer bid for the Class A Variable Voting Shares and Class B Voting Shares and will not be prejudicial to the holders of such shares by reason of its structure which requires, from a tax point of view, the issuance and simultaneous repurchase and cancellation of Subco Common Shares and Class B Voting Shares Held by Subco. From a

business and economic point of view, the transaction is strictly a repurchase for cash of the Preferred Shares. If there were not a requirement under tax laws to implement the Proposed Offer pursuant to the Offer Structure, the transaction would simply be a cash payment for the Preferred Shares. As a result, despite its structure, the Proposed Offer has no impact on the holders of Class A Variable Voting Shares and Class B Voting Shares that would be different from a direct purchase of Preferred Shares for cash.

34. The issuance and simultaneous repurchase and cancellation of Class B Voting Shares Held by Subco is only a payment modality required to implement the Offer Structure. These "temporary" Class B Voting Shares Held by Subco would be outstanding on paper only for a single moment in time and, for practical purposes, would never be outstanding with a potential of being traded, nor, as a result, would they be listed on the TSX.

35. The Proposed Offer is not dilutive to holders of Class A Variable Voting Shares and Class B Voting Shares. There would be no change in the holders of Class A Variable Voting Shares and Class B Voting Shares of the Issuer before and after the transaction. There would be no impact on the liquidity of the Class A Variable Voting Shares and Class B Voting Shares, before and after the Proposed Offer. The holders of Class A Variable Voting Shares and Class B Voting Shares will not be prejudiced by the structure of the Proposed Offer, whether the preferred shares are exchanged for "temporary" Subco Common Shares which are issued and simultaneously repurchased for cash or, if instead the Preferred Shares are directly repurchased for cash.

36. Since the issuance price and the repurchase price of the Subco Common Shares will be identical, no premium on the Subco Common Shares will be paid to the holder of Preferred Shares, whether or not there is a formal valuation of the Preferred Shares.

37. A valuation of the Preferred Shares would not provide any benefit to the holder of the Preferred Shares since

    (a) there is only one holder of Preferred Shares, which is a sophisticated institutional investor and an accredited investor for the purposes of NI 45-106; and

    (b) the Issuer will negotiate a private agreement with the holder of Preferred Shares, and will obtain the prior written consent, in form reasonably satisfactory to staff, of the holder of Preferred Shares to the Proposed Offer being made on a basis that is exempt from the Formal Issuer Bid Requirements and the Valuation Requirement.

42. In addition, a valuation of the Class B Voting Shares Held by Subco would not provide any benefit to the holder of the Preferred Shares as the issuance and simultaneous repurchase of Class B Voting Shares Held by Subco are merely steps required by tax law to allow the transaction to proceed without the payment of a tax under Part VI.1 of the *Income Tax Act* (Canada).

AND UPON the Commission being satisfied that it would not be prejudicial to the public interest for the Commission to grant the requested exemption.

IT IS ORDERED pursuant to section 104(2)(c) of the Act that the Issuer and Subco be exempt from the Formal Issuer Bid Requirements in connection with the Proposed Offer, provided that:

(a) at the time of the Proposed Offer, no person or company, other than the company described in paragraph 17, holds Preferred Shares;

(b) the holder of the Preferred Shares is an accredited investor for the purposes of NI 45-106;

(c) the holder of the Preferred Shares tenders to the Proposed Offer by entering into a written purchase and sale agreement with Subco; and

(d) the Issuer obtains the prior written consent, in form reasonably satisfactory to staff, of the holder of Preferred Shares to the Proposed Offer being made on a basis that is exempt from the Formal Issuer Bid Requirements and the Valuation Requirement.

IT IS FURTHER the decision of the Commission that the Confidentiality Relief is hereby granted.

September 4, 2009.

"Patrick J. LeSage"
Commissioner
Ontario Securities Commission

"Mary G. Condon"
Commissioner
Ontario Securities Commission

IT IS FURTHER the decision of the Director under Part 9 of MI 61-101 that an exemption from the Valuation Requirement is hereby granted.

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

2.2.6 Intercable ICH Inc. – s. 144

Headnote

Section 144 – full revocation of cease trade order upon remedying of defaults.

Statutes Cited

Securities Act,R.S.O. 1990, c.S.5, as am., ss. 127 and 144.

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

AND

IN THE MATTER OF
INTERCABLE ICH INC.
(the "Reporting Issuer")

ORDER
(Section 144)

WHEREAS on June 26, 2009, the Director made an order under paragraphs 2 and 2.1 of subsection 127(1) of the Act (the "Permanent Order") that all trading in and all acquisitions of the securities of the Reporting Issuer, whether direct or indirect, shall cease until further order by the Director;

AND WHEREAS the Permanent Order was made because the Reporting Issuer was in default of certain filing requirements under Ontario securities law as described in the Permanent Order (the "Default");

AND WHEREAS the Reporting Issuer has represented to the Director that:

1. The Reporting Issuer is a reporting issuer in each of British Columbia, Alberta, Ontario and Québec.

2. The Reporting Issuer has filed all outstanding continuous disclosure documents that are required to be filed under Ontario securities law and has paid all outstanding activity, participation and late filing fees that are required to be paid.

3. The Reporting Issuer was also subject to a similar cease trade order issued by the Autorité des Marchés Financiers (the "AMF"). The order issued by the AMF was revoked on July 28, 2009. The Reporting Issuer is still subject to a similar cease trade order issued by the British Columbia Securities Commission.

4. The Reporting Issuer's SEDAR profile and SEDI issuer profile supplement are current and accurate.

AND WHEREAS the Director is of the opinion that it would not be prejudicial to the public interest to revoke the Permanent Order;

IT IS ORDERED under section 144 of the Act that the Permanent Order is revoked.

DATED at Toronto this 29th day of July, 2009.

"Michael Brown"
Assistant Manager, Corporate Finance

2.2.7 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 May 21, 2009;

AND WHEREAS on April 22nd, 2009, a panel of the Commission ordered, pursuant to subsection 127(8) of the Act, that the Temporary Order be extended as against the respondents to May 22, 2009 and that the hearing be adjourned to May 21, 2009 at 2:00 p.m.;

AND WHEREAS the Commission held a Hearing on May 21, 2009, in writing, and counsel for Staff and counsel for the respondents consented to an order extending the Temporary Order until June 17th, 2009 and adjourning the Hearing until June 16th, 2009 at 2:00 p.m.;

AND WHEREAS the Commission held a Hearing on June 16, 2009, where counsel for Staff and counsel for the respondents attended in person and consented to an order extending the Temporary Order until October 7, 2009 and adjourning the hearing to October 6, 2009;

AND WHEREAS on June 16, 2009 the Commission ordered pursuant to subsection 127(8) of the Act, that the Temporary Order be extended as against the respondents to October 7, 2009 and that the hearing be adjourned to October 6, 2009;

AND WHEREAS the Commission held a Hearing on October 6, 2009, where counsel for Staff and counsel for the respondents attended in person and consented to an order extending the Temporary Order to December 10, 2009 and adjourning the hearing to December 9, 2009;

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 to December 10, 2009.

IT IS FURTHER ORDERED that the hearing is adjourned to December 9, 2009 at 10:00 a.m.

DATED at Toronto this 7th day of October 2009.

"Carol S. Perry"

2.2.8 IMG International 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
IMG INTERNATIONAL INC.,
INVESTORS MARKETING GROUP INTERNATIONAL INC.
AND MICHAEL SMITH

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

WHEREAS on June 11, 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 IMG International Inc./Investors Marketing Group International Inc. ("IMG") and Michael Smith ("Smith") shall cease;

AND WHEREAS on June 11, 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 June 19, 2009, the Commission issued a Notice of Hearing to consider, among other things, the extension of the Temporary Order, to be held on June 24, 2009 at 10:00 a.m;

AND WHEREAS the Commission held a Hearing on June 24, 2009, where counsel for Staff attended but no one attended for IMG or Smith before the Commission;

AND WHEREAS on June 24, 2009 the Commission made an order extending the Temporary Order until October 7, 2009 and adjourning the hearing to October 6, 2009;

AND WHEREAS the Commission held a Hearing on October 6, 2009, where counsel for Staff attended but no one attended for IMG or Smith before the Commission;

AND WHEREAS Staff advised that it has received a voice mail from Smith, and has served the applicable materials on the respondents to the email address provided by Smith, but has had no substantive contact with Smith or IMG;

AND WHEREAS the Commission is satisfied that Staff has taken reasonable steps to give notice of the hearing to the respondents;

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

AND WHEREAS 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 to December 10, 2009.

IT IS FURTHER ORDERED that the hearing is adjourned to December 9, 2009 at 10:00 a.m.

DATED at Toronto this 6th day of October 2009.

"Carol S. Perry"

2.2.9 Hollinger Inc. et al.

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

AND

**IN THE MATTER OF
HOLLINGER INC., CONRAD M. BLACK,
F. DAVID RADLER, JOHN A. BOULTBEE,
AND PETER Y. ATKINSON**

ORDER

WHEREAS on March 18, 2005 the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") accompanied by a Statement of Allegations issued by Staff of the Commission ("Staff") with respect to Hollinger Inc. ("Hollinger"), Conrad M. Black ("Black"), F. David Radler ("Radler"), John A. Boultbee ("Boultbee") and Peter Y. Atkinson ("Atkinson") (collectively, the "Respondents");

AND WHEREAS the matter was set down for a hearing to commence on Wednesday, May 18, 2005;

AND WHEREAS the Commission granted a request for adjournment of this proceeding on consent of Staff and the Respondents from Wednesday, May 18, 2005 to Monday, June 27, 2005 in its Order dated May 10, 2005;

AND WHEREAS on June 27, 2005, the Commission granted a further request for adjournment of this proceeding on consent of Staff and the Respondents from Monday, June 27, 2005 to Tuesday, October 11, 2005 in its Order dated June 27, 2005;

AND WHEREAS the Commission held a contested hearing on October 11 and November 16, 2005, to determine the appropriate date for a hearing on the merits of the above matter;

AND WHEREAS on January 24, 2006, the Commission issued its Reasons and Order setting down the matter for a hearing on the merits commencing June 2007, subject to each of the individual respondents agreeing to execute an Undertaking to the Commission to abide by interim terms of a protective nature within 30 days of that Decision;

AND WHEREAS following the Reasons and Order dated January 24, 2006, all the individual respondents provided Undertakings in a form satisfactory to the Commission;

AND WHEREAS on March 30, 2006, the Commission issued an order with attached Undertakings provided by the individual Respondents in a form satisfactory to the Commission, and ordered, among other things, that the hearing on the merits commence on Friday, June 1, 2007 at 9:30 a.m., or as soon thereafter as may be fixed by the Secretary to the Commission and agreed to by the parties;

AND WHEREAS the individual Respondents further provided to the Commission Amended Undertakings stating that each of the respondents agree to abide by interim terms of a protective nature, as set out more fully in the Amended Undertakings, pending the Commission's final decision of liability and sanctions in the proceeding commenced by the Notice of Hearing;

AND WHEREAS on April 4, 2007, the Commission issued an order with attached Amended Undertakings provided by the individual Respondents in a form satisfactory to the Commission, and ordered that the hearing on the merits be scheduled to take place November 12 to December 14, 2007, and January 7 to February 15, 2008;

AND WHEREAS Black and Boultbee brought motions on the basis of certain grounds enumerated in Notices of Motion dated September 5, 2007 and September 6, 2007, respectively, requesting the following relief;

(i) an order adjourning the hearing of this matter, currently scheduled to take place on November 12 to December 14, 2007 and January 7, to February 15, 2008; and

(ii) an order to attend before the Commission on a date convenient in mid-December 2007, following the scheduled sentencing of the respondents Black and Boultbee in the criminal proceedings brought against them in the United States, for the purpose of obtaining further directions regarding the conduct of these proceedings;

AND WHEREAS on September 11, 2007, the Commission granted a request for adjournment of this proceeding on consent of Staff and the Respondents, and issued an order scheduling a hearing for December 11, 2007 for the purpose of addressing the scheduling of this proceeding;

AND WHEREAS Boultbee requested an adjournment of the hearing on December 11, 2007 to a date in January, 2008, by letter addressed to the Secretary to the Commission dated November 29, 2007, for the purpose of addressing the scheduling of this proceeding;

AND WHEREAS on December 10, 2007, the Commission granted a request for adjournment of this proceeding on consent of Staff and the Respondents, and issued an order scheduling a hearing for January 8, 2008 for the purpose of addressing the scheduling of this proceeding;

AND WHEREAS Black requested an adjournment of the hearing on January 8, 2008 to a date in late March

2008, by letter addressed to the Secretary to the Commission dated December 19, 2007, for the purpose of addressing the scheduling of this proceeding;

AND WHEREAS on January 7, 2008, the Commission granted a request for adjournment of this proceeding on consent of Staff and the Respondents, and issued an order scheduling a hearing for March 28, 2008 for the purpose of addressing the scheduling of this proceeding;

AND WHEREAS Black and Boultbee brought motions requesting an order adjourning the hearing of this matter to a convenient date in late September 2008, on the basis of certain grounds enumerated in Notices of Motion dated March 24 and March 25, 2008 respectively, including grounds related to the pending appeals of Black and Boultbee in the criminal proceedings brought against them in the United States;

AND WHEREAS on March 27, 2008 the Commission granted the requested adjournment and scheduled a hearing for September 26, 2008;

AND WHEREAS Boultbee brought a motion requesting an order adjourning the hearing of this matter to a convenient date in February 2009, on the basis of certain grounds enumerated in Boultbee's Notice of Motion dated September 22, 2008, including grounds related to an intended application for a Writ of Certiorari from the Supreme Court of the United States in respect of the criminal proceedings brought against him in the United States;

AND WHEREAS on September 26, 2008 the Commission granted the requested adjournment and scheduled a hearing for February 16, 2009;

AND WHEREAS Boultbee brought a motion requesting an order adjourning the hearing of this matter from February 12, 2009 to a convenient date in May 2009, on the basis of certain grounds enumerated in Boultbee's Notice of Motion dated February 2, 2009, including grounds related to the determination of Boultbee's Writ of Certiorari to the Supreme Court of the United States;

AND WHEREAS on February 16, 2009 the Commission granted the requested adjournment and scheduled a hearing for May 21, 2009;

AND WHEREAS Boultbee brought a motion requesting an order adjourning the hearing of this matter, on the basis of certain grounds enumerated in Boultbee's Notice of Motion dated May 19, 2009, including grounds related to Boultbee's pending appeal in the Supreme Court of the United States.

AND WHEREAS on May 21, 2009 the Commission granted the requested adjournment and scheduled a hearing for July 10, 2009;

AND WHEREAS Boultbee requested an order adjourning the hearing of this matter until October, 2009 on the basis of the grounds enumerated in the above-mentioned Notice of Motion dated May 19, 2009;

AND WHEREAS on May 20, 2009 the Commission granted the requested adjournment and scheduled a hearing for October 8, 2009;

AND WHEREAS Boultbee has advised the Commission that the appeal before the United States Supreme Court, in respect of the criminal proceeding brought against him in the United States, is scheduled to be heard in December, 2009;

AND WHEREAS Boultbee has requested an order adjourning this matter sine die, pending the release of the decision of the United States Supreme Court in relation to his appeal in the criminal proceeding described herein;

AND WHEREAS the Respondents and Staff of the Commission consent to the requested order;

IT IS ORDERED THAT:

(i) The hearing of this matter, currently scheduled for October 8, 2009, is adjourned;

(ii) The hearing before the Commission is adjourned sine die, pending the release of the decision of the United States Supreme Court in relation to the appeal brought by Boultbee referred to herein, such hearing to be returnable for the purpose of scheduling on no less than seven days' notice, or until such further Order as may be made by the Commission.

DATED at Toronto this 7th day of October, 2009

"James D. Carnwath"

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 David Berry – s. 21.7

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

AND

IN THE MATTER OF
A REQUEST FOR A HEARING AND REVIEW
OF A DECISION OF A HEARING PANEL OF
MARKET REGULATION SERVICES INC.

AND

IN THE MATTER OF
THE UNIVERSAL MARKET INTEGRITY RULES

AND

IN THE MATTER OF
DAVID BERRY

REASONS FOR DECISION
(Section 21.7 of the Securities Act)

Hearing:	October 29, 2008		
Decision:	September 23, 2009		
Panel:	Lawrence E. Ritchie	–	Vice-Chair and Chair of the Panel
	James E. A. Turner	–	Vice-Chair
Counsel:	Johanna Superina Susan Kushneryk	–	For the Ontario Securities Commission
	Brian Gover Brendan Van Niejenhuis	–	For Market Regulation Services Inc.
	Peter C. Wardle Daniel Bernstein	–	For TSX Inc.
	Linda Fuerst Usman Sheikh Yashoda Ranganathan	–	For David Berry

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REASONS FOR DECISION

I. Background

[1] David Berry ("**Berry**") is a former employee of Scotia Capital Inc. ("**Scotia**"). Scotia is, and was at the relevant time, a participant ("**Participant**") of the Toronto Stock Exchange (the "**Exchange**", the "**TSX**" or the "**TSE**") within the meaning of Rule 1.1 of the Universal Market Integrity Rules ("**UMIR**"). This case involves a challenge to both the applicability of UMIR to, and to the jurisdiction of Market Regulation Services Inc. ("**RS**") to enforce UMIR against, Berry in the circumstances of this case. While counsel for Berry makes great effort to emphasize that the issues are framed as only affecting Berry, the implications of her primary argument are that UMIR were not properly implemented by the TSX, and therefore are unenforceable against all those within the TSX's jurisdiction.

A. Introduction

[2] Staff of RS ("**RS Staff**") commenced a proceeding against Berry on February 20, 2007 (the "**RS Proceeding**"). In the RS Proceeding, RS Staff alleges that between April 4, 2002 and April 18, 2005 (the "**Relevant Period**") Berry contravened certain provisions of UMIR while he was employed as a trader for Scotia; Berry had ceased to be an employee of Scotia by the time the RS Proceeding was commenced.

[3] Berry moved before the RS hearing panel (the "**RS Panel**") for a stay of the RS Proceeding on the basis that the TSX had repealed certain rules relating to the market conduct of Participants (the "**Former TSE Rules**") before the Relevant Period and purported to but did not validly adopt UMIR. In the alternative, Berry submits that UMIR does not apply to him because he is not now and was not, when RS commenced the RS Proceeding, a Participant or an employee of a Participant. The RS Panel dismissed Berry's stay motion in a decision dated February 29, 2008 (the "**RS Stay Decision**").

[4] On March 7, 2008, Berry commenced this application (the "**Application**") pursuant to section 21.7 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") for a hearing and review of the RS Stay Decision by the Ontario Securities Commission (the "**Commission**"). He submits that the RS Panel erred in refusing to stay the RS Proceeding and asks the Commission to set aside the RS Stay Decision and permanently stay the RS Proceeding.

B. Our Decision

[5] For the reasons set out below, we dismiss this Application. We conclude that UMIR are rules of RS and are applicable to and enforceable against Participants and other persons within the jurisdiction of the TSX. We find that in early 2002:

(a) the TSX had authority to and properly retained RS as its regulation services provider ("**RSP**") and assigned and delegated its powers to enforce applicable rules against persons within its jurisdiction;

(b) the Commission recognized RS as a self-regulatory organization ("**SRO**") and approved UMIR as rules of RS; and

(c) the TSX validly amended its rules to require persons within its jurisdiction to comply with UMIR (among other requirements) as a matter of compliance with its own rules.

[6] Further, we conclude that:

(a) UMIR 10.3(4), which extends responsibility to an employee of a Participant for conduct that results in the Participant contravening a requirement, was validly adopted by RS;

(b) Berry was subject to UMIR when he was an employee of Scotia pursuant to that provision; and

(c) RS had jurisdiction to bring and continue the RS proceeding against Berry, being a former employee of a Participant, as RSP to the TSX.

C. The Parties

[7] As stated above, Berry is a former employee of Scotia, which is a Participant of the TSX.

[8] RS is the SRO that is responsible for enforcing UMIR in relation to the Exchange pursuant to the Commission's recognition order under subsection 21.1(1) of the Act. Effective March 17, 2008, RS was reorganized through a merger with the Investment Dealers Association ("**IDA**") to form the Investment Industry Regulatory Organization of Canada ("**IIROC**").

[9] TSX is a company incorporated under the *Business Corporations Act*, R.S.O. 1990, c. B.16. TSX owns and operates the Exchange and the TSX Venture Exchange. The Exchange is a stock exchange created by the Toronto Stock Exchange Act, R.S.O. 1990, c. T.15 (the "***TSX Act***") and recognised by the Commission pursuant to subsection 21(2) of the Act.

[10] On August 8, 2008, TSX filed a Notice of Motion for standing to intervene in the Application (the "**TSX Motion**"). The TSX Motion was heard on September 29, 2008, and TSX was granted limited intervenor status by order dated September 30, 2008 ((2008), 31 O.S.C.B. 9520), with written reasons released on December 10, 2008 ((2008), 31 O.S.C.B. 12027).

[11] Staff of the Commission ("**OSC Staff**") is also a party to this Application under section 21.7 of the Act, but was not a party to the RS Proceeding, nor was it a party to the motion giving rise to the RS Stay Decision.

D. Chronology

[12] The resolution of the issues raised in this Application requires a careful examination of the history of the TSX, RS and UMIR.

[13] In April 2000, concurrent with the demutualization of the TSX, Regulatory Services was established as a separate division within the TSX ("**TSX-RS**") that was responsible, among other things, for enforcing TSX rules and policies against TSX Participants. The Commission approved the change in its April 3, 2000 order granting and continuing the recognition of the TSX ((2000), 23 O.S.C.B. 2495) (the "**April 2000 TSX Recognition Order**").

[14] In 2001, the TSX and the Canadian Venture Exchange (the "**CDNX**") jointly proposed rules designed to harmonize their trading rules, and to apply these rules to other Canadian marketplaces, including alternative trading systems ("**ATSs**").

[15] On April 20, 2001, the TSX and the Canadian Securities Administrators (the "**CSA**") published the first draft of UMIR and requested comment from the public on the draft rules (the "**April 2001 Regulatory Notice**"). The April 2001 Regulatory Notice and CSA Request for Comment stated that the draft rules were expected to become effective concurrent with National Instrument 21-101, *Marketplace Operation* ("**NI 21-101**"), at which time the rules and policies of the TSX and CDNX would be amended to delete any provisions where the subject matter is covered by UMIR. The April 2001 Regulatory Notice and the CSA Request for Comment also noted that the TSX and the IDA were considering creating RS as a stand alone market regulator to provide services to the TSX and CDNX ((2001), 24 O.S.C.B. 2555).

[16] On September 21, 2001, RS was incorporated under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as a separate entity independent of the TSX.

[17] On October 12, 2001, RS's application for recognition as an SRO was published for comment ((2001), 24 O.S.C.B. 6027) (the "**RS Application for Recognition and Request for Comment**"). The RS Application for Recognition and Request for Comment included a second version of UMIR and stated that the proposed criteria for recognition would include RS's adoption of UMIR, subject to approval by securities regulators in Alberta, British Columbia, Manitoba, Ontario and Quebec (the "**Recognizing Regulators**").

[18] Also on October 12, 2001, TSX-RS published a Regulatory Notice which stated that if the RS Application for Recognition was approved, RS would become the RSP for the TSX, UMIR, in the form approved by the Recognizing Regulators, would be adopted as the market integrity rules for the TSX, and the existing rules and policies of the TSX would be amended to delete any provisions where the subject matter is covered by UMIR (the "**October 2001 Regulatory Notice**").

[19] On October 16, 2001, the Ontario Minister of Finance approved NI 21-101, National Instrument 23-101, *Trading Rules* ("**NI 23-101**") and OSC Rule 23-501, *Designation as Market Participant* (the "**ATS Rules**"), which came into force on December 1, 2001 ((2001), 24 O.S.C.B. 10). Section 7.1 of the ATS Rules requires a recognized stock exchange to set requirements governing the trading activities of its members and to monitor and enforce the requirements either directly or indirectly through an RSP. If an RSP is used, section 7.2 states that the exchange shall enter into a written regulation services agreement that provides that the RSP will enforce the requirements set under section 7.1.

[20] At a meeting of the TSX Board of Directors (the "**TSX Board**") on November 27, 2001 (the "**November 27, 2001 Meeting**"), the TSX Board approved a third version of UMIR, which contained amendments to the October 12, 2001 version in response to the public comments received.

[21] The TSX Board also amended the TSX rules at the November 27, 2001 Meeting. The relevant changes for purposes of this Application included the following:

(a) Rule 1-101 was amended to define "RS Inc." to mean "Market Regulation Services Inc." and "UMIR" as "the Universal Market Integrity Rules as adopted by RS Inc. and approved by the applicable securities regulatory authorities and in effect from time to time";

(b) Rule 4-201 was added, which states:

> Each Participating Organization and each person under the jurisdiction of the Exchange shall comply with all applicable:
>
> (a) securities legislation;
>
> (b) Exchange Requirements; and
>
> (c) provisions of UMIR; and

(c) a number of provisions of the existing TSX rules and policies were repealed to avoid duplication or inconsistency with UMIR.

[22] The Minutes of the November 27, 2001 Meeting (the "**November 27, 2001 Minutes**") state the following about the amendments:

> THIS RULE AMENDMENT MADE the 27th day of November, 2001 to be effective following the approval of the Ontario Securities Commission on the date determined by the Exchange that RS Inc. shall commence to be the regulation service provider for the Exchange in accordance with requirements of National Instrument 23-101.

[23] The November 27, 2001 Minutes also state:

> With the recognition of RS Inc. as a regulation service provider, the UMI Rules will be approved by the securities regulatory authorities in Alberta, British Columbia, Manitoba, Ontario and Quebec. It is proposed that these rules then be incorporated into the rules of the TSE. Upon incorporation, a number of provisions of the existing rules and policies of the TSE would be repealed to avoid duplication or inconsistency.

[24] On January 29, 2002, in accordance with the ATS Rules, TSX transferred its market regulation function to RS pursuant to a regulation services agreement. The Commission amended its April 2000 TSX Recognition Order and continued the recognition of TSX under section 21 of the Act while adding certain terms and conditions, including that TSX "shall retain RS Inc. as an RSP to provide, as agent for the TSE, certain regulation services which have been approved by the Commission" ((2002), 25 O.S.C.B. 929) (the "**TSX Recognition Order**").

[25] Also on January 29, 2002, the Commission, under section 21.1 of the Act, recognized RS as an SRO responsible for administering and enforcing UMIR in the marketplaces that retain its services ((2002), 25 O.S.C.B. 929) (the "**RS Recognition Order**"). The RS Recognition Order stated that RS would provide regulation services as an agent for the TSX and, in this capacity, would "administer the exchanges' market conduct and trading requirements and monitor and enforce compliance with these requirements by the exchanges' members, their directors, officers, employees, affiliates and representatives".

[26] On February 15, 2002, the Commission published its Notice of Approval of RS, which indicated that Alberta, British Columbia, Manitoba and Quebec had also recognized RS as an SRO and approved UMIR (*Recognition of Market Regulation Services Inc. – Notice of Approval* (2002), 25 O.S.C.B. 891) (the "**RS Notice of Approval**")). The version of UMIR published as part of the RS Notice of Approval included the amendments to UMIR that were presented to the TSX Board at the November 27, 2001 Meeting.

[27] On March 7, 2002, TSX issued a Notice to Participating Organizations stating that the TSX had retained RS as its RSP effective March 1, 2002, and that effective April 1, 2002, the TSX would adopt UMIR as the trading rules for its Participating Organizations, and amend its existing rules and policies to delete or vary any provisions where the subject matter is covered by UMIR.

[28] On September 30, 2002, RS issued a Request for Comment on certain "Administrative and Editorial Amendments" to UMIR, which were approved by the RS Board of Directors on June 11, 2002. The Request for Comment notes that "the most substantive amendment extends responsibility for conduct of a Participant to the officer or employee of a Participant or Access Person that engages in conduct that results in the contravention of a requirement under UMIR". This amendment was effected by adding UMIR 10.3(4), which provides as follows:

> Any officer or employee of a Participant or Access Person or any individual holding a similar position with a Participant or Access Person who engages in conduct that results in the Participant or Access Person contravening a Requirement may be found liable by the Market Regulator for the

> conduct and be subject to any penalty or remedy as if such person was the Participant or Access Person.

[29] On January 30, 2004, the Commission issued a Notice of Commission Approval of the UMIR amendments, including the amendment to UMIR 10.3 ((2004), 27 O.S.C.B. 1333). On the same day, RS issued a Notice of Amendment Approval indicating that the amendments had been approved by the Recognizing Regulators.

[30] On September 29, 2006, the Commission published the following Notice of Approval:

> In November 2001, TSX Inc. (TSX) adopted certain amendments (Amendments) relating to the Universal Market Integrity Rules (UMIR) to be effective on the date determined by TSX that Market Regulation Services Inc. (RS) was to commence to be the regulation services provider for TSX. That date was determined to be April 1, 2002. The Amendments delete or vary the provisions of the Rules of the Toronto Stock Exchange, including its Policies, where the subject matter is covered by UMIR. The Amendments have now been filed with the Commission as "non-public interest" amendments and approved by the Commission pursuant to the Protocol for Commission Oversight of Toronto Stock Exchange Rule Proposals. A TSX Notice and the Amendments are being published in Chapter 13 of this Bulletin.
>
> (*Notice of Approval – Amendments to the Rules of the Toronto Stock Exchange Relating to the Adoption of Universal Market Integrity Rules* (2006), 29 O.S.C.B. 7694)

E. The RS Proceeding

[31] In its Statement of Allegations, RS Staff alleges that Berry solicited client orders during the distribution of new issues by Scotia, contrary to UMIR 7.7(5), and conducted off-marketplace trades, contrary to UMIR 6.4 during the Relevant Period.

[32] UMIR came into effect on April 1, 2002. As stated above, effective January 30, 2004, UMIR were amended to add UMIR 10.3(4), which provides that an employee of a Participant who engages in conduct that results in the Participant contravening UMIR may be found liable for the conduct and sanctioned accordingly. As a result, from and after January 30, 2004, as a prima facie matter Berry can be found personally liable for causing Scotia to solicit the client orders and conduct the off-marketplace trades referred to above. In respect of the solicitations, 11 took place after January 30, 2004. In respect of the off-marketplace trades, 10 took place after January 30, 2004.

[33] RS Staff seeks the following sanctions in the RS Proceeding:

(a) a reprimand;

(b) a fine not to exceed the greater of

(i) $100,000 per contravention of a Requirement; and

(ii) an amount equal to triple the financial benefit which accrued to [Berry] as a result of committing each contravention;

(c) a restriction, suspension or revocation of access to the marketplace for such period and upon such terms and conditions, if any, considered appropriate; and

(d) any other remedy determined to be appropriate under the circumstances.

[34] On or around June 30, 2005, prior to the commencement of the RS Proceeding, Berry's employment with Scotia ended. Berry was an employee of Scotia at the time the alleged breaches of UMIR occurred.

(i) The RS Stay Decision

[35] The RS Panel heard Berry's motion on December 10, 2007 and dismissed it with written reasons in a decision dated February 29, 2008.

[36] With regard to the validity of UMIR, the RS Panel began by quoting the excerpt from the November 27, 2001 Minutes that is quoted at paragraph 23 of these reasons.

[37] The RS Panel continued as follows:

> The proposed changes were considered administrative in nature, and as such they were considered as approved upon being filed with the OSC. They were to take effect on the date on which RS became the TSE's regulation service provider, which it did on March 1, 2002.
>
> The Respondent submits that no formal adoption was ever recorded. As the extract from the minutes shows, it was proposed and adopted that the UMI Rules be incorporated into the rules of the TSE once the regulators had given their approval. While, with hindsight, it might have been better had the Board held a further meeting after the UMI Rules were approved by the regulatory authorities, we are not prepared to say that the actions taken on November 27, 2001 were in any way deficient. The rules were published, comments were received, changes were made, and a final version was presented to the Board, which it approved. In our view, this was akin to "adoption".
>
> (*RS Stay Decision*, *supra*, at p. 13)

[38] Moreover, the RS Panel concluded that the Commission had exercised its overriding supervisory authority and validated the applicability of UMIR to TSX Participants by approving UMIR:

> As we noted earlier, the Respondent also urged upon us that the "adoption" of UMIR was invalid because certain other rules had not been observed. That may be so, but in the final analysis we agree with counsel for RS that "[t]he Commission's approval of UMIR, of RS, and of TSX's transfer of regulatory power to RS, all demonstrate that the Commission has exercised [its over-riding statutory power] and given its blessing to UMIR's applicability to TSX participants." [citation deleted]
>
> This power finds its source in section 21(5)(e) of [the Act], which authorizes the Commission to "make any decision with respect to … any by-law, rule, regulation, policy, procedure, interpretation or practice of a recognized stock exchange." Similarly, with respect [to] a self-regulatory organization such as RS, the Commission is entitled to "make any decision with respect to any by-law, rule, regulation, policy, procedure, interpretation or practice." (Section 21.1(4))
>
> As RS points out [citation deleted], the TSE Act specifically provides (in section 14) that "[n]othing in this Act shall be construed to derogate from the powers of the Ontario Securities Commission and the Securities Act or any other Act." The Commission therefore had a free hand. It published drafts of UMIR in 2001, and it approved UMIR and recognized RS. On February 15, 2002, it published a Notice of Approval, which included a copy of UMIRs and the policies under them.
>
> By the same Notice, the Commission also approved the transfer of the market regulation function from TSX to RS, and the establishment, by TSX, of all the necessary rules. It is clear from the context that these "rules" are the UMI Rules.
>
> (*RS Stay Decision*, *supra*, at pp. 14-15)

[39] The RS Panel also dismissed Berry's alternative argument that the UMIR do not apply to him in any event because, as a former employee, he is not a "Participant" within the meaning of UMIR 6.4 and 7.7(5), and UMIR 10.3(4) does not extend to former employees. The RS Panel held that:

> The problem vis-à-vis former employees was corrected by the Legislature following the decision of the Ontario Court of Appeal in *Chalmers v. Toronto Stock Exchange* (70 O.R. (2d) 532), which held that former employees of members were not subject to the disciplinary powers of the Exchange since the relevant statute did not authorize such proceedings. The amendment, passed to cure this effect (s. 13.0.8(1) of the TSE Act), now gives the Board the power to "govern and regulate . . . the business conduct of members . . . and of their current and former . . . employees and agents."
>
> (*RS Stay Decision*, *supra*, at p. 11)

[40] With respect to UMIR 10.3(4), the RS Panel ruled:

> UMI Rule 1.1 defines a "participant" as "… a person who has been granted trading access to a marketplace and who performs the functions of a derivative market trader." In our view, the use of the present tense is, by itself, insufficient to remove the Respondent from the outreach of the Rules under which he is charged. We agree with RS that the legislative amendment cited above gave ample authority to the Exchange to discipline former employees and members, and this authority was included in the delegation [of] its market regulation function to RS.

> We are satisfied that the Rules cover ex-employees, and the Respondent cannot succeed on this point.
>
> (*RS Stay Decision*, *supra*, at pp. 12-13)

[41] The RS Panel concluded its ruling by stating:

> We are therefore of the view that we have the necessary jurisdiction to hear and decide the case brought by RS against the Respondent. It follows that the Motion to Stay the proceedings should be, and hereby is, dismissed.
>
> (*RS Stay Decision*, *supra*, at p. 15)

(ii) The Section 21.7 Application

[42] Berry filed this Application on March 7, 2008. He submits that:

(a) RS is attempting to enforce UMIR, which were never validly adopted by the TSX or it is attempting to enforce the Former TSE Rules, which were expressly repealed by the TSX; and

(b) in the alternative, even if UMIR were validly adopted, RS does not have jurisdiction to enforce them against Berry given that Berry is not a Participant or an employee of a Participant.

[43] Berry seeks:

(a) an order pursuant to section 21.7 of the Act that the RS Proceedings are permanently stayed as being without jurisdiction. Section 21.7 provides that:

> The Executive Director or a person or company directly affected by, or by the administration of, a direction, decision, order or ruling made under a by-law, rule, regulation, policy, procedure, interpretation or practice of a recognized stock exchange, recognized self-regulatory organization, recognized quotation and trade reporting system or recognized clearing agency may apply to the Commission for a hearing and review of the direction, decision, order or ruling;

(b) in the alternative, an order pursuant to subsection 21.1(4) of the Act prohibiting RS from enforcing UMIR against Berry. Subsection 21.1(4) provides that:

> The Commission may, if it is satisfied that to do so would be in the public interest, make any decision with respect to any by-law, rule, regulation, policy, procedure, interpretation or practice of a recognized self-regulatory organization; and

(c) such further and other relief as counsel may advise and the Commission deems just.

II. The Issues

[44] The essential question raised in this Application is:

> Are UMIR enforceable against Berry, and does RS have jurisdiction to enforce them against Berry, given that he is no longer an employee of a Participant?

[45] As stated above, this Application raises a number of issues, the resolution of which could have an impact upon the applicability of rules of conduct governing market participants subject to the regulatory oversight of SROs.

[46] Berry's Application frames the issues for the Commission to determine as follows:

(a) Did TSX "make or adopt" UMIR and require persons within its jurisdiction to comply with UMIR?

(b) In any event, did the Commission's recognition of RS and approval of UMIR, as rules of RS, make UMIR (as amended) enforceable by RS against Berry?

(c) Notwithstanding or in addition to the foregoing, does RS have jurisdiction to bring a proceeding against a former employee of a Participant of the TSX?

[47] In his written submissions, Berry also submitted that in purporting to adopt UMIR, TSX did not comply with the Protocol for Commission Oversight of Toronto Stock Exchange Rule Proposals (*Memoranda of Understanding Between the Ontario Securities Commission and the Toronto Stock Exchange and the Toronto Futures Exchange* (1997), 20 O.S.C.B. 5682 (the "MOU") as required by the TSX Recognition Order, and therefore that UMIR were not validly adopted. However, in oral submissions, Berry stated that he was no longer pursuing that issue. Accordingly, that issue is not addressed in these reasons.

III. Threshold Issues: Prematurity and Standard of Review

[48] Before turning to the issues raised in the Application, we must dispose of two threshold or preliminary issues:

(a) Should the Application be dismissed as premature because the RS Proceeding has not yet been concluded? and

(b) What is the standard of review that should be applied by the Commission in considering the Application?

A. Prematurity

(i) Positions of the Parties

The Respondents

[49] RS Staff submits that the Application is premature. It relies on *Re TSX Inc.* (2007), 30 O.S.C.B. 8917 ("***Northern Securities***"), another section 21.7 application that concerned a challenge to the enforceability of UMIR, including UMIR 10.3(4). In that case, RS Staff argued that an application brought to the Commission to stay an RS proceeding was premature because it had been brought before the RS Panel had had an opportunity to rule on the UMIR validity issue. In the circumstances of that case, the Commission agreed that the application was premature.

[50] RS Staff urges us to reject Berry's argument that the reasoning of the Commission in *Re Berry* (2008), 31 O.S.C.B. 5441 ("***Berry Disclosure***") should be applied to this case. Berry Disclosure arose out of the same RS Proceeding that is before us. In that earlier proceeding, Berry applied under section 21.7 for a hearing and review of the RS Panel's refusal to order disclosure of certain documents he had requested from RS Staff. RS Staff submitted that the application should be dismissed on the basis that it was premature and would fragment the RS Proceeding. The Commission dismissed the prematurity motion and ordered the requested disclosures in order to enable Berry to prepare for the RS hearing on the merits. The Commission also found that rejecting the application as premature would offer no efficiency and could lead to further delay, if the need for disclosure of the requested documents became apparent during the RS hearing on the merits.

[51] RS Staff attempts to distinguish *Berry Disclosure* on the basis that this Application addresses a substantive legal issue on which the RS Panel has ruled, and therefore, rejecting the Application as premature would not affect the fairness of the RS Proceeding. RS Staff asks the Commission to dismiss the Application as premature, without prejudice to Berry's right to argue these issues again, if he deems it necessary or appropriate, following the conclusion of the RS Proceeding.

[52] OSC Staff agrees with RS Staff that the Application is premature and submits that this is not a case of exceptional or extraordinary circumstances that would warrant interrupting the RS Proceeding.

[53] TSX takes no position on whether the Application is premature.

Berry

[54] Berry submits that because the RS Panel has already heard and decided the jurisdiction issue, there is nothing to be gained by remitting this matter back to the RS Panel for a hearing on the merits, which would be costly and unnecessary if Berry succeeds on the Application. As stated above, he relies on *Berry Disclosure* and the cases it follows and submits that *Northern Securities* is distinguishable.

(ii) Analysis and Conclusion on Prematurity

[55] In *Ontario College of Art et al. v. Ontario Human Rights Commission* (1993), 11 O.R. (3d) 798 (Ont. Div. Ct.) ("***Ontario College of Art***"), the Ontario Divisional Court set out the legal principles governing prematurity as follows:

> This court has a discretion to exercise in matters of this nature. It can refuse to hear the merits of such an application if it considers it appropriate to do so. Where the application is brought prematurely, as alleged by the Attorney General in these proceedings, it has been the approach of the court to quash the application, absent the showing of exceptional or extraordinary circumstances demonstrating that the application must be heard.
>
> (*Ontario College of Art*, *supra*, at p. 799)

[56] The Commission adopted these principles in *Northern Securities*, stating:

> Essentially, premature attempts to review tribunal decisions are routinely rejected because interrupting the proceedings prevents the first instance tribunal from properly and effectively performing its function.
>
> (*Northern Securities*, *supra*, at para. 180)

[57] The Commission also noted that these general legal principles were affirmed in *Coady v. Law Society of Upper Canada* (2003), 171 O.A.C. 51 (Ont. Div. Ct.) ("***Coady***") where the Court stated:

> When litigants before administrative tribunals seek the court's intervention in the midst of the litigation, the court is reluctant to do so except in very extraordinary circumstances. Experience has shown that the best course is to permit the hearings to be completed and then review the entire matter. Many apparent problems disappear in the light of further evidence, sometimes the result makes the application unnecessary.
>
> (*Coady*, *supra*, at para. 9, quoted in *Northern Securities*, *supra*, at para. 182)

[58] The Commission noted that the rationale for not dealing with premature applications is that it is preferable to consider a full record, including a reasoned tribunal decision (*Northern Securities*, *supra*, at para. 183, referring to *Ontario College of Art*).

[59] In conclusion, the Commission ruled in *Northern Securities* that:

> For these reasons, only in exceptional circumstances should a reviewing court or tribunal hear an application in the midst of a hearing before the first instance tribunal.
>
> (*Northern Securities*, *supra*, at para. 184)

[60] However, in some cases, an attack on the jurisdiction of a tribunal can constitute exceptional circumstances that justify the intervention of a reviewing court or tribunal. In our view, this may be particularly true when the original tribunal has appropriately considered and ruled upon the matter as a threshold question. As was noted in *Ainsley Financial Corp. v. Ontario Securities Commission*, [1993] O.J. No. 1830 (Ont. Gen. Div.) ("***Ainsley Gen. Div.***") aff'd [1994] O.J. No. 2966 (Ont. C.A.):

> … the right of a litigant to challenge the jurisdiction of an administrative body to make rules, regulations or by-laws by bringing an action for a declaration that the administrative body has exceeded its jurisdiction under its enabling statute in issuing the disputed provisions, is well settled.
>
> (*Ainsley Gen. Div.*, *supra*, at para. 91)

[61] Similarly, in *Roosma v. Ford Motor Co. of Canada Ltd*, [1988] O.J. No. 3114 (Ont. Div. Ct.) ("***Roosma***"), the Ontario Divisional Court stated:

> Notwithstanding their reluctance to intervene in the proceedings of tribunals prior to their completion courts will do so in order to avoid wasting time and money. Thus, if it appears at the outset that a proceeding in a tribunal will be fatally flawed, a means exists by way of judicial review to challenge it. That is so even where an appeal is provided.
>
> (*Roosma*, *supra*, at para. 31)

[62] In this case, the Application, if successful, would put an end to the RS Proceeding and make a hearing on the merits before the RS Panel unnecessary. In these circumstances, we accept Berry's submission that it would be unfair to all parties concerned to defer a hearing of the Application until after the hearing on the merits.

[63] This case is distinguishable from *Northern Securities*, where the application was brought before the RS Panel had heard and decided the jurisdictional issues. In contrast, in this case, the RS Panel heard and decided the jurisdictional issues that are in dispute in this Application, there are no additional facts relevant to the matter that are not before us, and we have the full record and reasons of the RS Panel that are necessary to decide the issues raised in this Application.

[64] As the Commission noted in *Berry Disclosure*:

> On the other hand, when approaching matters such as the one before us, the Commission can, and should, as Berry has submitted, consider the impact the reviewed decision has on the fairness

> to the applicant and whether the Commission's intervention would facilitate rather than interfere with the SRO process.
>
> (*Berry Disclosure*, *supra*, at para. 62)

[65] Applying the factors discussed above to the case before us, we conclude that the Application is not premature. We find, in the circumstances of this Application, that it is in the interests of fairness to Berry and other persons within the jurisdiction of the TSX for us to hear and determine the Application at this time and that doing so will facilitate rather than interfere with the SRO process.

B. Standard of Review

(i) Positions of the Parties

Berry

[66] Berry submits that the Commission should generally defer to the RS Panel with respect to its factual determinations. However, he submits that the RS Panel has no more specialized expertise than the Commission on the questions of law at issue in this Application and therefore no deference is warranted. Accordingly, Berry submits that the standard of review of the RS Panel's findings is correctness.

The Respondents

[67] RS Staff agrees with Berry that the Commission may substitute its own view for that of the RS Panel and need not show deference to the RS Panel on the issues in question.

[68] OSC Staff agrees that the Commission may substitute its judgment for that of the RS Panel, but submits that the Commission should take a restrained approach and if it does intervene, it should explicitly state the basis for its intervention. OSC Staff cites *Boulieris v. Investment Dealers Association of Canada*, [2005] O.J. No. 1894 (Div. Ct.) ("***Boulieris Div. Ct.***") and *Taub v. Investment Dealers Association of Canada*, [2008] O.J. No. 2778 (Ont. Div. Ct.) ("***Taub (Div. Ct.)***") in support of this position.

(ii) Analysis and Conclusion on Standard of Review

[69] In *Re Boulieris* (2004), 27 O.S.C.B. 1597 ("***Re Boulieris***"), the Commission described its approach to applications under section 21.7 of the Act in the following terms:

> The Commission may "confirm the decision under review or make such other decision as the Commission considers proper." The Commission is, therefore, free to substitute its judgment for that of the District Council. The hearing and review is treated much like a trial *de novo* where the panel may admit new evidence as well as review the earlier proceedings and the applicant does not have the onus of showing that the District Council was in error in making the decision that is the subject of the application. See *Security Trading Inc. and the Toronto Stock Exchange* (1994), 17 O.S.C.B. 6097 at 6105 and *Re Security Trading Inc.*, [1995] T.S.E.D.D. No.2; *Picard and Fleming - Brokers*, November (1953), O.S.C.B. 14; *BioCapital Biotechnology and Healthcare Fund and BioCapital Mutual Fund Management Inc.* (2001), 24 O.S.C.B. 2659 at 2662.
>
> In this regard, a hearing and review may be considered broader in scope than an appeal, which is usually limited to determining whether there has been an error in law or whether a rule of natural justice has been contravened. See *Re C. Cole & Co Ltd., Coles Books Stores Ltd. and Cole's Sporting Goods Ltd.*, [1965] 1 O.R. 331; affirmed [1965] 2 O.R. 243 (C.A.).
>
> However, in practice the Commission takes a restrained approach. The Commission will interfere with a decision of a self-regulatory organization (SRO) if any of the following grounds are present:
>
> 1. the SRO has proceeded on an incorrect principle;
> 2. the SRO has erred in law;
> 3. the SRO has overlooked some material evidence;
> 4. new and compelling evidence is presented to the Commission that was not presented to the SRO; or

> 5. the SRO's perception of the public interest conflicts with that of the Commission's.
>
> See *Re Canada Malting* (1986), 9 O.S.C.B. 3565 at 3587 and *Security Trading Inc. and the Toronto Stock Exchange* (1994), 17 O.S.C.B. 6097 at 6105.
>
> The Commission will not substitute its own view of the evidence for that taken by an SRO just because the Commission might have reached a different conclusion. See *Re Cavalier Energy Ltd.* (1991), 14 O.S.C.B. 1480 at 1482; *Re Lafferty, Harwood & Partners Ltd. and Board of Governors of the Toronto Stock Exchange* (1973), O.S.C.B. 26, confirmed (1975), 8 O.R. (2d) 604 at 607 (Ont. Div. Ct.); and *GHZ Resource Corporation v. Vancouver Stock Exchange* (1993), 1 B.C.J. No. 3106 at para. 7 (B.C. C.A).
>
> (*Re Boulieris*, *supra*, at paras. 29-32)

[70] These principles were reaffirmed in *Taub (Div. Ct.)*, at paras. 25-34[1], and in *Berry Disclosure*, where we described our approach as follows:

> . . . . Although the statute provides the Commission with broad powers of review, the Commission has repeatedly emphasized the "restrained approach" urged upon us by Staff and RS. Such restraint is desirable to ensure that SROs have adequate control and direction over their own processes and procedures, and that they are not unduly hampered by interruptions caused by parties seeking a "second opinion" in the midst of an ongoing SRO regulatory proceeding. On the other hand, when approaching matters such as the one before us, the Commission can, and should, as Berry has submitted, consider the impact the reviewed decision has on the fairness to the applicant and whether the Commission's intervention would facilitate rather than interfere with the SRO process.
>
> We also agree with Berry that the nature and characteristics of the specific issue in dispute is relevant to this analysis. It is true that an RS Panel ought to be master of its own process and procedures, in a manner similar to this Commission in regard to its own proceedings. However, RS does not have unique or special expertise or jurisdiction with respect to disclosure issues and it is appropriate for the Commission to exercise its oversight powers to ensure procedural fairness in the RS Proceeding. Assessments and reviews of those matters should be measured against practices and principles articulated in law. In situations where the decision under review deals specifically with an issue squarely within an SRO's expertise or jurisdiction, higher deference should be accorded to the SRO.
>
> (*Berry Disclosure*, *supra*, paras. 62 and 63)

[71] We accept that the law is correctly stated in *Boulieris*, *Taub (Div. Ct.)* and *Berry Disclosure*, and we apply these principles in this case.

[72] This case does not involve a party's challenge to an RS Panel's findings of fact within its area of specialized expertise (as to the application of UMIR to specific circumstances, for example). Rather, the Application concerns questions of law and the role and powers of the TSX and RS within the framework of securities regulation in Ontario. Although we recognize the expertise of the TSX and RS in their respective roles, we find that neither the TSX nor RS has greater expertise than the Commission in respect of the issues arising in this Application. As the issues raised in this Application go to the heart of the Commission's supervisory jurisdiction and public interest mandate, we conclude that we may consider the issues before us as if they were matters of first instance and that we are free to substitute our decision for that of the RS Panel.

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[1] On appeal to the Ontario Court of Appeal, *Taub (Div. Ct.)* was reversed on another point (*Taub v. Investment Dealers Association of Canada*, 2009 ONCA 628 ("***Taub (Ont.C.A.)***").

IV. Applicability of UMIR: Positions of the Parties

A. Did TSX "make or adopt" UMIR and require persons within its jurisdiction to comply with UMIR?

(i) Did TSX Adopt UMIR at the November 27, 2001 Meeting?

Berry

[73] Berry submits that UMIR were not presented to the TSX Board in final form at the November 27, 2001 Meeting and, accordingly, they were not adopted by the TSX Board on that day.

[74] Berry notes that the November 27, 2001 Minutes indicate that the TSX Board expected to receive further comments on UMIR from the CSA and intended to make further changes to UMIR based on those comments before UMIR were adopted and approved by securities regulators. Berry compares the version of UMIR considered by the TSX Board and the February 15, 2002 version that was approved by the Commission and submits that "extensive amendments were made" after the November 27, 2001 Meeting.

[75] Further, Berry submits that the November 27, 2001 Minutes do not indicate that the TSX Board adopted UMIR but rather proposed their incorporation into the TSX rules at a later date.

RS Staff

[76] RS Staff submits that the TSX Board took all the necessary steps at the November 27, 2001 Meeting to adopt UMIR and repeal duplicative TSX rules upon the transfer of regulatory services to RS and approval of UMIR by securities regulators. The use of the future tense in the November 27, 2001 Minutes was appropriate, according to RS Staff, because the TSX Board did not know when UMIR would take effect. That date turned out to be April 1, 2002, one month after RS became RSP to the TSX. By that time, the TSX Board had discharged its role.

[77] RS Staff relies on the amendment to the TSX Rules that added a definition of "UMIR" as "the Universal Market Integrity Rules as adopted by RS Inc. **and approved by the applicable securities regulatory authorities and in effect from time to time**", and Rule 4-201, that requires each Participating Organization and each person under the jurisdiction of the Exchange to comply with "**all applicable**" securities legislation, Exchange Requirements and provisions of UMIR [emphasis added] (see paragraph 21 of these reasons). The November 27, 2001 Minutes confirmed that UMIR would take effect when RS became the RSP:

> THIS RULE AMENDMENT MADE the 27th day of November, 2001, to be effective following the approval of the Ontario Securities Commission on the date determined by the Exchange that RS Inc. shall commence to be the regulation service provider for the Exchange in accordance with the requirements of National Instrument 23-101.

[78] RS Staff submits that these amendments contemplate future amendments of UMIR – and indeed, of securities legislation – from time to time without the need for the TSX Board to consider and approve each subsequent amendment. As evidence supporting this submission, RS Staff notes that the TSX Board has not considered it necessary to amend its Rules every time UMIR has been amended in the roughly seven years since UMIR were approved. Further, RS Staff submits that there is no basis in law for any such requirement.

TSX

[79] The TSX concurs with the submissions made by RS Staff. The TSX submits that it adopted UMIR by amending its Rules to add Rule 4-201 and a definition of "UMIR" in Rule 1-101, the amendments to take effect at a future date, and no further action was necessary. Requiring TSX to put each and every provision of UMIR into its rule book would be excessively formal and impractical because UMIR were developed by RS, subject to approval by securities regulators, and liable to change from time to time. Moreover, Rule 4-201 also requires compliance with "securities legislation", which is amended from time to time, but it would be nonsensical to suggest that the TSX has to reiterate each and every provision of applicable securities legislation in its own rules.

OSC Staff

[80] OSC Staff agrees with the submissions of RS Staff and the TSX.

(ii) Did TSX Exceed its Jurisdiction by Adopting UMIR or Incorporating UMIR by Reference?

Berry

[81] In the alternative, Berry submits that if the TSX Board adopted UMIR at the November 27, 2001 Meeting, it exceeded its jurisdiction under the *TSX Act* by doing so. He submits that it is well settled law that the TSX, as a statutory body, and RS, as a domestic tribunal, cannot exceed their jurisdiction or confer expanded jurisdiction on themselves (*Ainsley General Division*, *supra*, at paras. 23-24 and 75-76; and *Chalmers v. Toronto Stock Exchange*, [1989] O.J. No. 1839 (Ont. C.A.) ("***Chalmers***") at paras. 26 and 28, leave to appeal dismissed, *Toronto Stock Exchange v. Chalmers*, [1989] S.C.C.A. No. 446 (S.C.C.)).

[82] Subsection 13.0.8(1) of the *TSX Act* gives the TSX Board certain powers to govern and regulate the Exchange. Subsection 13.0.8(2) of the *TSX Act* states:

> In the exercise of the powers set out in subsection (1) and in addition to its power to pass by-laws under the *Business Corporations Act*, the board of directors may pass by-laws, **make or adopt** rulings, policies, rules and regulations and issue orders and directions as it considers necessary, including the imposition of penalties and forfeitures for the breach of any such by-law, ruling, policy, rule, regulation, order or direction. [emphasis added]

[83] Berry submits that in Ontario statutes, the term "adopt" is synonymous with the term "make" and the two terms are used interchangeably. For example, the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended, in subsection 25.1(1) states "a tribunal may **make** rules governing the practice and procedure before it", and in subsection 25.1(5), states "the rules **adopted** under this section are not regulations as defined in Part II of the Legislation Act, 2006" [emphasis added]. (See also *Residential Tenancies Act*, 2006, S.O. 2006, c. 17, at subsection 2(1) and section 176; and *Greenbelt Act*, 2005, S.O. 2005, c. 1 at subsections 13(3) and 18(7).) Berry notes, as well, the following statement from *The Interpretation of Legislation in Canada*:

> Even if the contrary is presumed, a statute may certainly be redundant. Sometimes the drafter has good reasons for saying the same thing in more than one way, for example, to dispel doubts or avoid controversy.
>
> (Pierre-André Coté, *The Interpretation of Legislation in Canada*, 2nd ed. (Cowansville (Quebec): Les Editions Yvon Blais, Inc., 1992) ("**Coté**"), at p. 233)

[84] Berry submits that subsection 13.0.8(2) gives the TSX Board power to adopt rules it has considered and approved, but does not authorize the adoption, or incorporation by reference, of rules considered and approved by RS, an external body. Berry submits that when the Ontario legislature intends to authorize an administrative body to adopt or incorporate external standards by reference, it does so expressly and specifically in the rule-making provisions of the enabling legislation. In support of this position, Berry cites, for example, subsection 143(6) of the Act ("Incorporation by reference"), which states: "A regulation or rule may incorporate by reference, and require compliance with, one or more provisions of an Act or regulation and all or part of any standard, procedure or guideline." (See also: subsection 65(6) of the *Commodity Futures Act*, R.S.O. 1990, c. C.20, as amended; subsection 44(3) of *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, Sched. B, as amended; and subsection 11(2) of the *Racing Commission Act*, 2000, S.O. 2000, c. 20, as amended.)

[85] Berry submits that the absence of similar express language in the *TSX Act* is significant because there is a presumption that the legislature uses the same language to mean the same thing when legislating in the same field. By giving the TSX Board power to "make or adopt" rules, the legislature impliedly excluded incorporation by reference or adoption by reference, in Berry's submission. (Coté, *supra*, at p. 291; Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed. (Markham: LexisNexis, 2008), at pp. 244, 248; and *University Health Network v. Ontario (Minister of Finance)*, [2001] O.J. No. 4485 (Ont. C.A.) at para 31-32; leave to appeal dismissed, [2002] S.C.C.A. No. 23.)

[86] Further, Berry submits that while subsection 13.0.8(4) of the *TSX Act*[2] gives the TSX Board power to delegate its powers to "investigate", "examine", "hold hearings", "make determinations" and "discipline", it does not authorize delegation of "rule-making". Berry submits that for the TSX Board to adopt UMIR or incorporate UMIR by reference would result in

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[2] Subsection 13.0.8(4) of the TSX Act provides as follows:

The board of directors may by order delegate to one or more persons, companies or committees the power of the board of directors,

(a) to consider, hold hearings and make determinations regarding applications for any acceptance, approval, registration or authorization and to impose terms and conditions on any such acceptance, approval, registration or authorization;

(b) to investigate and examine the business conduct of members of the continued Corporation, former members of the continued Corporation and other persons or companies referred to in clauses (1) (c) and (d); and

(c) to hold hearings, make determinations and discipline members of the continued Corporation, former members of the continued Corporation and other persons or companies referred to in clauses (1) (c) and (d) in matters related to business conduct.

impermissible subdelegation of the TSX Board's authority. The rule against subdelegation holds that, "absent express authority, a delegate of legislative powers may not further subdelegate those powers to another. It is enshrined in the legal maxim *delegatus non potest delegare*: a delegate cannot delegate" (Paul Salembier, *Regulatory Law and Practice in Canada* (Markham: LexisNexis, 2004) at p. 247). (See also: *Re Therrien*, [2001] S.C.J. No. 36 (S.C.C.) at para. 93; *Barnard v. National Dock Labour Board*, [1953] 1 All E.R. 1113 (C.A.), at p. 1118; and *King v. Nova Scotia (Institute of Chartered Accountants)*, [1993] N.S.J. No. 25 (N.S.T.D.) at p. 8.)

[87] In the further alternative, Berry submits that the open-ended nature of certain UMIR provisions has the effect of delegating the TSX's rule-making authority not only to RS but also to any employee of RS designated by RS as a "Market Integrity Official" to exercise the powers of RS under UMIR, including the power to make "Requirements". UMIR 7.1(2)(c) and 10.1(1) require compliance with Requirements, and UMIR 1.1 defines "Requirements" to include UMIR, RS policy, and "any direction, order or decision of the Market Regulator or a Market Integrity Official, as amended, supplemented and in effect from time to time". Berry submits, accordingly, that anyone subject to UMIR may be subjected to capricious and arbitrary decisions of RS or RS employees. Berry submits that this amounts to impermissible delegation and subdelegation of the exclusive rule-making authority of the TSX Board. (*Dene Nation v. Canada*, [1984] F.C.J. No. 188 (F.C.T.D.); *Canada (Attorney General v. Brent*, [1956] S.C.J. No. 10 (S.C.C.); *Outdoor Neon Displays Ltd. & Toronto*, [1959] O.J. No. 642 (Ont. C.A.), aff'd *Toronto (City) v. Outdoor Neon Displays Ltd.*, [1960] S.C.J. No. 10 (S.C.C.).)

RS Staff

[88] RS Staff submits that the TSX Board has the power to "make or adopt" rules, including UMIR. RS Staff submits that the inclusion of both "make" and "adopt" in subsection 13.0.8(2) of the *TSX Act* must mean that the words have different meanings. RS Staff submits that while the TSX "makes" a rule it creates, "adopt" has a broader meaning. RS Staff refers to a dictionary definition of the word "adopt" which includes "take as one's own" (Random House Unabridged Dictionary, 2006, as referred to at http://dictionary.reference. com/browse/adopt). RS Staff submits that the TSX Board properly adopted UMIR at the November 27, 2001 Meeting.

[89] RS Staff also submits that the absence of express language granting the TSX the power to incorporate by reference is of no consequence because the plain meaning of "adopt" embraces incorporation by reference. On this point, RS Staff relies on *Canada Post Corp. v. Key Mail Canada Inc.* (2005), 77 O.R. (3d) 294 ("***Key Mail***"), where the Ontario Court of Appeal rejected an argument that by granting Canada Post "the sole and exclusive privilege of collecting, transmitting and delivering letters to the addressee thereof within Canada," the legislature excluded outgoing international mail from the scope of the monopoly or privilege. With respect to the principle of implied exclusion (*expressio unius est exclusio alterius*), the Court said the following:

> The maxim "to express one thing is to exclude another" applies in statutory interpretation terms "whenever there is reason to believe that if the legislature had meant to include a particular thing within its legislation, it would have referred to that thing expressly": R. Sullivan, *Driedger on the Construction of Statutes*, 4th ed., (Markham: Butterworths, 2002) at 186. As Professor Sullivan points out, at p. 187, however, "[t]he force of the implication depends on the strength and legitimacy of the expectation of express reference".
>
> (*Key Mail*, *supra*, at para. 22)

[90] RS Staff submits that under the ordinary principles of statutory interpretation the power to "adopt" rules includes the power to incorporate rules made by another body, and therefore the legislature's use of the words "make" and "adopt" in the *TSX Act* does not imply the exclusion of incorporation by reference.

[91] Further, RS Staff submits that in exercising its power to "make or adopt rules", the TSX Board need not spell out each and every provision of UMIR in its own rules.

[92] Finally, RS Staff submits that the Commission's consideration of what the statute authorizes has to be guided principally by the plain language of the statute and the purpose of the statute and that construing the word "adopt" narrowly would make it more difficult for the TSX to regulate its members.

[93] In response to Berry's submission that the TSX's adoption of UMIR amounts to an improper subdelegation of the TSX's rule-making power to RS and RS officials, RS Staff submits that the RS Proceeding does not involve the specific sections of UMIR that Berry identifies as problematic, and that the provisions of UMIR at issue in the RS Proceeding do not involve the exercise of rule-making discretion on the part of RS or its employees.

[94] In the alternative, RS Staff submits that, under UMIR 10.5, the powers of a market regulator are subject to oversight by an RS hearing panel. Further, RS Staff submits that the powers of Market Integrity Officials do not amount to subdelegation because generally they are on-the-spot short-term powers that are necessary given the fact that there is a real time surveillance aspect to regulating the Exchange.

[95] In response to Berry's submission that by requiring compliance with UMIR at a time when the language of UMIR was not finalized, the TSX Board engaged in improper subdelegation, RS Staff submits that by the same logic the requirement in TSX Rule 4-201 to comply with "securities legislation" would also amount to improper subdelegation, as the TSX Board does not approve each amendment of securities legislation. RS Staff submits that such a conclusion is untenable and thus Berry's argument that requiring compliance with UMIR amounts to improper subdelegation cannot succeed.

TSX

[96] TSX agrees with RS Staff's submissions. TSX submits that the inclusion of the term "adopt" in subsection 13.0.8(2) of the *TSX Act* gives the TSX power to adopt or incorporate by reference external rules or standards. TSX submits that the term "adopt" means to "pass or put into operation or enact" and "to take as one's own or to incorporate". TSX submits that this latter meaning gives the TSX Board the power to incorporate by reference.

[97] TSX finds further support for its position in the legislative evolution of the *TSX Act*. Prior to 1997, the *TSX Act* gave the TSX Board the power to "pass such by-laws and **make** such rules and regulations and issue such orders and directions pursuant to such by-laws as it considers necessary…" [emphasis added] (*Toronto Stock Exchange Act*, R.S.O. 1980, c. 506, as amended, subsection 10(1)).

[98] In 1997, as part of the demutualization process, the *TSX Act* was amended and the TSX Board was given power to "pass such by-laws and make such rulings, **adopt** such policies, rules and regulations and issue such orders and directions pursuant to such by-laws as it considers necessary…" [emphasis added] (S.O. 1997, c. 19, s. 26(6)). TSX submits that this amendment allows the TSX Board to incorporate external standards by reference.

[99] TSX further submits that a 1999 amendment, which changed the provision to state that the TSX Board has power to "pass by-laws, **make or adopt** rulings, policies, rules and regulations and issue orders and directions as it considers necessary…" [emphasis added] (S.O. 1999, c. 9, s. 23), was merely formal and not substantive.

[100] TSX cites *Kingston v. Ontario (Racing Commission)*, [1965] O.J. No. 951 (Ont. H.C.J.), aff'd [1965] O.J. No. 249 (Ont. C.A.) ("***Kingston***") in support of its position that there is nothing improper in adopting the rules of an external organization. In *Kingston*, the appellant challenged certain delegations made to the Canadian Trotting Association by the Ontario Racing Commission. The Court ruled, in part, that the mere embodiment of the rules of another organization into the rules of the adopting organization did not amount to the delegation of the authority to make rules.

[101] TSX also agrees with RS Staff's submissions with respect to improper subdelegation. TSX submits that improper subdelegation occurs when all discretion is delegated from one level arbitrarily down to the next. TSX submits that it has not delegated all its discretion to RS because it retains the power to repeal Rule 4-201, which requires compliance with UMIR.

[102] TSX also relies on *Coughlin v. Ontario Highway Transport Board*, [1968] S.C.R. 569 (S.C.C.) ("***Coughlin***"). The issue in *Coughlin* was whether federal legislation (the *Motor Vehicle Transport Act*) was *ultra vires* Parliament because it delegated certain aspects of the regulation of inter-provincial transport to provincial transport boards. The Supreme Court of Canada held that there was no improper delegation of federal law-making power since Parliament could, at any time, alter the powers it had granted; rather, Parliament had adopted the legislation of the provinces as that legislation might, from time to time, exist.

[103] TSX submits that, when deciding if a subdelegation is valid or invalid, the key determining factor is whether the delegation conforms to the intentions of the legislature. TSX cites *Peralta v. Ontario* (1985), 49 O.R. (2d) 705 (C.A.) aff'd (1988), S.C.J. No. 92 ("***Peralta***") for support of its proposition that legislative intention is paramount. In Peralta, the Minister of Natural Resources of Ontario began issuing commercial fishing licenses with quotas, something he had never done before. Peralta argued that the federal *Fisheries Act*, under which the provincial Minister has authority to do so, created an unauthorized subdelegation. In deciding *Peralta*, the Supreme Court of Canada noted that there is no rule or presumption against subdelegation; what is important is whether the legislative intent behind the affected statute is being fulfilled.

OSC Staff

[104] OSC Staff agrees with TSX's submission that the power to "adopt" in subsection 13.0.8.(2) of the *TSX Act* allows the TSX to incorporate by reference external standards. OSC Staff did not make submissions on the issue of subdelegation.

B. Is UMIR 10.3(4) valid and enforceable against Berry?

Berry

[105] Even if the TSX Board validly adopted UMIR at the November 27, 2001 Meeting, Berry submits, in the alternative, that UMIR 10.3(4), which is the provision upon which RS relies to extend personal responsibility to Berry for the contraventions by Scotia, was never adopted by the TSX Board.

[106] Berry submits that it was RS, not the TSX, that proposed and approved the amendment. He submits that there is no evidence that UMIR 10.3(4) was ever considered or adopted by the TSX Board pursuant to subsection 13.0.8(1) of the *TSX Act*, which gives the TSX Board its rule-making power, and thus, Berry submits, UMIR 10.3(4) has no application.

RS Staff

[107] RS Staff submits that the inclusion of the words "from time to time" in the definition of UMIR (found in TSX Rule 1-101) evidences the TSX Board's understanding that UMIR would be amended as necessary. RS Staff further submits that the obligation to comply with "all applicable provisions of UMIR" in TSX Rule 4-201 includes subsequent amendments so long as they have been approved by the Commission and are "in effect" at the time of the relevant conduct.

[108] RS Staff submits that the fact that the TSX Board has not considered it necessary to pass a new rule every time UMIR has been amended confirms that the TSX Board intended, and has always acted on the basis, that TSX Rules 4-201 and 1-101 impose an obligation on TSX members to "comply with UMIR", thus incorporating UMIR (and any amendments to UMIR that are approved by the Commission) into TSX rules.

C. Did the Commission's recognition of RS and the TSX and approval of UMIR make UMIR enforceable by RS against Berry?

Berry

[109] Berry submits that the Commission's oversight authority over the TSX does not include the power to make rules for the TSX to cure the TSX's procedural deficiencies in approving UMIR.

[110] Subsection 21(5) of the Act gives the Commission supervisory jurisdiction over the TSX. It states:

> The Commission may, if it appears to be in the public interest, make any decision with respect to,
>
> …
>
> (e) any by-law, rule, regulation, policy, procedure, interpretation or practice of a recognized stock exchange.

[111] Berry submits that paragraph 21(5)(e) of the Act authorizes the Commission to make a decision with respect to a *pre-existing* rule of the Exchange, but not to make rules *for* the Exchange. Further, while paragraph 143(1)12 of the Act grants the Commission extensive rule-making authority with respect to stock exchanges, Berry submits that it does not authorize the Commission to make rules *for* an exchange. Further, Berry submits that there is no evidence that the Commission undertook to follow any part of the mandatory rule-making procedure set out in section 143.

[112] Berry argues that had the legislature intended to give the Commission power to make rules for the TSX, it would have done so expressly. For this proposition Berry cites *Ainsley Gen. Div.*, where the Court ruled that the Commission had exceeded its authority by issuing a policy statement that purported to govern securities dealers without explicit authority to do so under the Commission's enabling legislation (*Ainsley Gen. Div.*, *supra,* at paras. 66 and 67).

[113] Berry submits that the Commission's position has long been that the TSX is responsible for administering its affairs, including making its own rules, and that the Commission considers TSX rules only after they are in the form of formal proposals. Berry cites *In the Matter of the Toronto Stock Exchange and the Proposed Schedule of Commission Rates* (1967), O.S.C.B. 15, and *Re Instinet* (1990), 13 O.S.C.B. 2179.

[114] Berry argues that while section 14 of the *TSX Act* provides that nothing in that Act shall be construed to derogate from the powers of the Commission, this does not give the Commission powers or jurisdiction beyond those set out in its enabling legislation. Accordingly, Berry submits that the RS Panel erred when it ruled that section 14 of the *TSX Act* gives the Commission a "free hand" to make rules for the TSX (*RS Stay Decision*, *supra*, at p. 14).

[115] It is Berry's position that interpreting subsection 21(5) or subsection 143(1) of the Act to mean that the Commission has a "free hand" to create rules and adopt UMIR for the TSX, would directly conflict with the *TSX Act*, NI 23-101, the MOU and every TSX Recognition Order issued by the Commission, because all, in some manner, require the TSX to create its own rules.

RS Staff

[116] In response, RS Staff notes that paragraph 21(5)(e) of the Act gives the Commission power to "**make any decision with respect to . . . any . . .** rule" of an Exchange [emphasis added] and that subsection 21.1(4) uses the same broad language with respect to the Commission's supervisory authority over SROs. RS Staff relies on *Northern Securities*, *supra*, at paras. 100

and 134-137, where the Commission confirmed that paragraph 21(5)(e) gives the Commission an "overriding supervisory jurisdiction" over the TSX and its rules. While the cases cited by Berry demonstrate a variety of ways in which this power has been exercised in the past, RS Staff submits that none of those cases restrict the ambit of the Commission's overriding power.

[117] RS Staff submits that in approving UMIR, the Commission did not impose a rule on the TSX because the TSX Board had passed Rule 4-201 at the November 27, 2001 Meeting. RS Staff submits that in that context, paragraph 21(5)(e) of the Act makes it clear that if there is a technical defect in the process (arising from a Recognition Order, National Instrument, etc.), the Commission has power to make a decision approving the change. RS Staff submits that the Commission, through its actions in 2002 (approving UMIR, recognizing RS and recognizing the TSX on condition, among other things, that TSX retain RS as its RSP) and in 2006 (approving the amendments reflected in TSX Rules 1-101 and 4-201) has exercised this power.

[118] In summary, RS Staff submits that neither a technical breach of other Commission instruments nor a breach of the *TSX Act* can displace the Commission's overriding authority to approve the adoption of UMIR by the TSX.

OSC Staff

[119] OSC Staff submits that the Commission has supervisory jurisdiction over SROs pursuant to section 21.1 of the Act and that it recognized RS and approved UMIR pursuant to that jurisdiction. The Commission also has supervisory jurisdiction over stock exchanges pursuant to section 21 of the Act. Pursuant to that jurisdiction, the Commission approved the TSX's transfer of certain regulation services to RS and amended the TSX Recognition Order to reflect that RS would be entitled to exercise the authority of the TSX with respect to the administration and enforcement of UMIR.

[120] OSC Staff further submits that the TSX's adoption of Rule 4-201 (which was not an adoption of UMIR but of a rule implementing UMIR for its Participating Organizations) was deemed approved by the Commission on the TSX's filing of Rule 4-201 with the Commission.

TSX

[121] TSX did not make submissions on the effect of the Commission's approval of UMIR.

V. Applicability of UMIR: Analysis

[122] Given the conclusions we have reached, we address the issues raised by Berry, but in a different order than they were addressed before us.

A. The Commission's recognition of RS and approval of UMIR makes UMIR enforceable by RS against persons within the TSX's jurisdiction

[123] The RS Panel, in its reasons, said the following:

> …in the final analysis we agree with counsel for RS that [t]he Commission's approval of UMIR, of RS, and of TSX's transfer of regulatory power to RS, all demonstrate that the Commission has exercised [its over-riding statutory power] and given its blessing to UMIR's applicability to TSX participants.
>
> (*RS Stay Decision*, *supra*, at p. 14)

[124] We agree.

[125] While counsel for Berry has done an exemplary job at characterizing the complex issues before us as a question relating to the actions of the TSX Board, we agree with OSC Staff's observation that Berry's argument "conflates the approval of the substance of UMIR and the approval of TSX's adoption of UMIR into its own rule book". The distinction between RS approval and the TSX rule-amending process, however, is significant and has different purposes and legal effects. For us, the overall regulatory scheme including the Commission's discretionary and authorizing power to "recognize" an SRO, and the public interest principles it reflects, is the key to resolving this Application.

[126] While the TSX's process for its own "adoption" of UMIR may not have been ideal, in our view, a strict review of that process and its effectiveness is unnecessary to resolve the issues raised in this Application. We are of the view that the appropriate place to start an analysis of RS's jurisdiction is with the regulatory purpose and history of RS, and the source of its jurisdiction over TSX Participants and their employees.

[127] A review of the Chronology section of these reasons highlights the following:

(a) In the April 2001 Regulatory Notice, UMIR were published for public comment jointly by the TSX, RS and CDNX. As well, the CSA published a Request for Comment and proposed that "the market regulator will adopt the UMI rules" and "the TSE and CDNX will delete their existing market integrity rules".

(b) The April 2001 Regulatory Notice also indicated that if and when UMIR became effective, the existing rules and policies of the Exchange and the CDNX would be amended to delete any provisions where the subject matter is covered by UMIR.

(c) An 85-day public comment period followed the publication of the April 2001 Regulatory Notice.

(d) RS was incorporated as a legal entity in September 2001.

(e) In October 2001, the Recognizing Regulators published a notice seeking further public comment on the proposed recognition of RS as the RSP for TSX (the RS Application for Recognition and Request for Comment) and the TSX issued a further notice concurrently, indicating that recognition of RS as its RSP would trigger the application of UMIR to its members (the October 2001 Regulatory Notice).

(f) The Commission recognized RS as an SRO by order dated January 29, 2002. In the RS Recognition Order, the Commission approved UMIR and the policies under UMIR, as well as the transfer of market regulation functions from TSX to RS.

[128] To repeat, for us, the determining issue is the legal effect of the Commission's RS Recognition Order and approval of UMIR.

[129] As pointed out, the Commission has overriding supervisory authority over both the TSX and RS. This authority is granted by statute. Pursuant to subsection 21(1), "no person or company shall carry on business as a stock exchange in Ontario unless recognized by the Commission under this section". Subsection 21(2) states that "the Commission may, on the application of a person or company proposing to carry on business as a stock exchange in Ontario, recognize the person or company if the Commission is satisfied that to do so would be in the public interest". Similarly, subsection 21.1(1) of the Act states that "the Commission may, on the application of a self-regulatory organization, recognize the self-regulatory organization if the Commission is satisfied that to do so would be in the public interest".

[130] Pursuant to subsection 21(4) of the Act, a recognized stock exchange shall regulate the standards of practice and business conduct of its members and their representatives in accordance with its by-laws, regulations, policies, procedures, interpretations and practices. Pursuant to subsection 21(5) of the Act, the Commission may, if it appears to be in the public interest, make any decision with respect to:

(a) the manner in which a recognized stock exchange carries on business;

(b) the trading of securities on or through the facilities of a recognized stock exchange;

. . .

(e) any by-law, rule, regulation, policy, procedure, interpretation or practice of a recognized stock exchange.

[131] Similarly, by virtue of subsection 21.1(3) of the Act, "a recognized self-regulatory organization shall regulate the operations and the standards of practice and business conduct of its members and their representatives in accordance with its by-laws, rules, regulations, policies, procedures, interpretations and practices". Pursuant to subsection 21.1(4), "The Commission may, if it is satisfied that to do so would be in the public interest, make any decision with respect to any by-law, rule, regulation, policy, procedure, interpretation, and practice of a recognized self-regulatory organization."

[132] Recognition of an exchange and/or a self-regulatory organization is a discretionary "decision" made under section 21 (or section 21.1 in the case of an SRO) of the Act.

[133] In our view, the Commission's decision to recognize RS and RS's adoption of UMIR and the enforceability of UMIR as against TSX Participants and their employees as a term and condition of such recognition, was made pursuant to subsection 21.1(4) of the Act. Similarly, regardless of whether the TSX, by its own actions, effectively adopted UMIR as applicable to TSX Participants and their employees, the RS Recognition Order was a decision of the Commission requiring RS (or its assignee) to enforce UMIR as a "standard of practice and business conduct" within the meaning of subsection 21(4) or the Act.

[134] We find that RS's jurisdiction arises from the Commission's exercise of its powers under sections 21 and 21.1 of the Act. The Commission has the power, through "recognition", to empower entities to carry on business as stock exchanges, SROs, clearing agencies and quotation and trade reporting systems, and to impose any terms and conditions within its jurisdiction to impose (see subsections 21(2) and (3) and 21.1(2) and (3)). The Act contemplates and permits recognized entities to have certain powers and authority but only if and when these entities are empowered by the Commission through the exercise of a statutory discretion of "recognition", as permitted by the Act. In addition, as OSC Staff points out in its factum, "the supervisory jurisdiction of the Commission is broader than subsections 21(5) and 21.1(4)". The Commission ultimately has responsibility "for the administration of [the] Act and shall perform the duties assigned to it under this Act and any other Act" (subsection 3.2(2)).

[135] At the end of the day, in our view, it is the Commission's SRO recognition, and the Commission's SRO rule approval process, that enables RS to enforce UMIR against TSX Participants and their employees.

[136] As the RS Panel properly points out (referring to RS Staff's submission), the *TSX Act* specifically provides (in section 14) that "nothing in [the TSE] Act shall be construed to derogate from the powers of the Ontario Securities Commission and the Securities Act or any other Act". In other words, the Commission's oversight authority, and the powers granted to the Commission under the Act, are sufficient to grant authority to the Commission to recognize RS and to authorize it to apply and enforce UMIR as RS rules. That recognition grounds RS's authority over TSX Participants and their employees, including Berry.

[137] The RS Recognition Order states as follows:

> RS Inc. has agreed to provide regulation services to the Toronto Stock Exchange Inc. and the Canadian Venture Exchange, Inc. under the ATS Rules, as agent for each of them. In this capacity, RS Inc. will administer the exchanges' market conduct and trading requirements and monitor and enforce compliance with these requirements by the exchanges' members, their directors, officers, employees, affiliates and representatives.

[138] The RS Notice of Approval states as follows:

> On January 29, 2002 the Commission recognized Market Regulation Services Inc. (RS Inc.) as a self-regulatory organization. RS Inc. will operate as a regulation services provider under the Alternative Trading System (ATS) rules and will administer and enforce ***trading rules*** for the market places that retain its services. [emphasis added]
>
> …
>
> Rules and Policies
>
> The recognizing regulators approved the Universal Market Integrity Rules (UMIRs).

[139] In our view, UMIR are rules of RS and were approved as such by this Commission. UMIR, as approved rules of RS, are enforced and apply to TSX Participants, *regardless of whether they were adopted by the TSX*. We note that the intention to make UMIR applicable to Participants and other persons within the jurisdiction of the TSX was always made clear by the TSX. The history demonstrates that UMIR were proposed by RS when it was a division of the TSX, and were put into effect as RS rules simultaneously with the establishment and recognition of RS as an entity separate and distinct from the TSX. Subsequent amendments to UMIR were made by the RS board of directors and were approved as such by the Commission.

B. By adopting TSX Rule 4-201 at the November 27, 2001 Meeting, the TSX Board required persons within the TSX's jurisdiction to comply with UMIR, as adopted by RS

[140] Based on the November 27, 2001 Minutes, we find that the TSX Board, by adopting TSX Rule 4-201, required each person within its jurisdiction to comply with UMIR as a standard of conduct similar to its requirement that such persons comply with securities law.

[141] The November 27, 2001 Minutes state the following with regard to UMIR:

> Board Action
>
> Upon motion duly made, seconded and approved, the TSE Board accepted the recommendation of Regulation Services as follows:
>
> a. confirmed the assessment by Regulation Services that the proposed amendments are in the best interests of the capital markets of Ontario and are "administrative" in nature; and

b. amended the Rules as set out in Schedule "D" of Appendix "D" to these Minutes and amended the Policies as set out in Schedule "E" of Appendix "D" to these Minutes;

c. authorized the CEO to make such additional changes in the form and content of the amendments set out in Schedule "D" and Schedule "E" of Appendix "D" to these Minutes as may be required to properly give effect to any changes in the Universal Market Integrity Rules and Policies from that set out in Schedule "A" of Appendix "D" to these Minutes that may be required by the applicable securities regulatory authorities as a condition of approving the application of [the] Market Regulation Services Inc. to be a self-regulatory organization in accordance with applicable securities legislation in Alberta, British Columbia, Manitoba, Ontario and Quebec.

[142] By approving Appendix "D" referred to in the board motion above, TSX, among other things, amended its rules as set out in paragraph 21 of these reasons, by adding Rule 1-101 (definition of "RS Inc." and "UMIR") and Rule 4-201 (requiring compliance with UMIR) and repealing some existing rules to avoid duplication or inconsistency.

[143] In amending the TSX Rules in this manner, the TSX Board validly created a requirement that any person under its jurisdiction must comply with UMIR. However, this was its own requirement. As expressed above, it is our view that the jurisdiction of RS to enforce UMIR is not grounded on the actions of the TSX, once TSX retained RS as an RSP and the Commission empowered RS as such pursuant to the RS Recognition Order.

[144] As described above, UMIR were adopted by RS at the time of its recognition, and UMIR were approved by the Commission as RS rules at the same time.

[145] It is clear from the November 27, 2001 Minutes that the TSX Board intended that the amendments to its rules referred to above take effect once RS was recognized by the relevant CSA jurisdictions. The November 27, 2001 Minutes state:

> Regulation Services proposes that the changes be effective on the date determined by the TSE that RS Inc. shall commence to be the regulation service provider for the TSE in accordance with the requirements of National Instrument 23-101.

[146] One of Berry's complaints is that UMIR were not in final form at the time of the November 27, 2001 Meeting. He submits that the TSX Board could not properly approve UMIR until it had the final form of UMIR before it. Therefore, its approval was not effective to require compliance by persons within the TSX's jurisdiction.

[147] We do not agree. As discussed above, the relevant actions to make UMIR applicable were those of RS and the Commission, together with the TSX's retainer of RS as its RSP.

[148] In the RS Notice of Approval dated February 15, 2002, the Commission recognized the approval by RS of UMIR. The February 15, 2002 Notice also included the version of UMIR that was approved by the Commission. Given that the November 27, 2001 Minutes made it clear that the Commission's approval of UMIR was required, we find that Participating Organizations and persons within the jurisdiction of TSX, who must comply with UMIR, knew or ought to have known that the version of UMIR published by the Commission, subject to any future amendments, was the version of UMIR applicable to them.

[149] We find that the Commission's February 15, 2002 Notice, publishing the version of UMIR that it approved, clearly informed market participants as to the effective date and the version of UMIR that was applicable to them.

[150] Finally, TSX's Notice to Participating Organizations, published on March 7, 2002, as discussed in the Chronology section of these reasons, clearly stated that UMIR would become effective April 1, 2002 and that persons under the TSX's jurisdiction would be subject to UMIR and the enforcement regime established by UMIR.

[151] There is no evidence before us to suggest that Berry, or any other person then within the TSX's jurisdiction, was actually confused, nor, in our view, could it be successfully argued that anyone reasonably could have been confused, as to the applicability of UMIR to them.

[152] As discussed above, we are of the view that UMIR are rules of RS and as such are enforceable against TSX Participants and their employees by virtue of the Commission's recognition of RS and TSX and approval of UMIR. In our view, this conclusion applies irrespective of whether UMIR were formally approved as TSX rules.

[153] Given the securities regulatory framework, the coming into force of UMIR, as applicable to TSX Participants and their employees, required steps by multiple actors. The RS board of directors needed to approve UMIR, the Commission needed to give its approval pursuant to its overriding supervisory authority, and the TSX had to confirm that persons within its jurisdiction are required by its rules to comply with UMIR. By adopting Rule 4-201, at the November 27, 2001 Meeting, the TSX Board

confirmed that Participating Organizations and other persons within the jurisdiction of the TSX are required to comply with UMIR "as adopted by RS Inc.", and it deleted duplicative or inconsistent TSX rules.

[154] We find that these steps were taken and all prerequisites were satisfied for the implementation and enforcement of UMIR against persons within the TSX's jurisdiction. Specifically, we find that:

(a) The TSX Board properly required Participating Organizations and other persons within the jurisdiction of the TSX to comply with UMIR as a TSX standard of conduct by passing Rule 4-201; and

(b) There is nothing in the *TSX Act* that prevents the TSX in its rules from requiring such persons to comply with UMIR.

[155] In our view, the TSX's approval of Rule 4-201 does not amount to improper incorporation by reference, as asserted by Berry. Again, UMIR are RS rules that apply to TSX Participants and other persons under TSX jurisdiction pursuant to the RS Recognition Order and the TSX Recognition Order. By adopting Rule 4-201 and eliminating rules that were duplicative of UMIR, the TSX confirmed the expectation and requirement that persons subject to its jurisdiction must comply with UMIR **as a TSX requirement**. Those persons were already subject to and required to comply with UMIR as RS rules. Rule 4-201 also requires compliance with Exchange Requirements and securities legislation. By requiring compliance with securities legislation, we believe that no one can seriously suggest that the TSX improperly incorporated by reference securities legislation.

[156] We do not accept that by requiring compliance with UMIR, TSX has improperly delegated its rule-making authority to RS, as asserted by Berry. While TSX has delegated or assigned its enforcement powers to RS, as permitted under subsection 13.0.8(4) of the *TSX Act*, the authority for UMIR comes not from the *TSX Act* but from RS and the exercise of the Commission's recognition powers under the Act, in combination with the other prerequisite steps taken and authorized by the *TSX Act*, as described above.

[157] We do not find it necessary to consider Berry's argument that because TSX Rule 4-201 requires compliance with Exchange Requirements, which, pursuant to UMIR, includes "any direction, order or decision of the Market Regulator or a Market Integrity official", TSX's adoption of UMIR amounts to improper subdelegation. That issue does not arise on the facts before us.

C. UMIR 10.3(4) was validly adopted by RS and applies to Berry

[158] As stated above, we find that UMIR are rules of RS. RS, with the required approval of the Commission, properly amended UMIR to include subsection 10.3(4). The TSX Board is not required to approve or adopt each and every amendment of UMIR – or of securities legislation. If there was any uncertainty on this point, it was dispelled by the amendment of the TSX Rules to define "UMIR" as the RS rules "in effect from time to time". Accordingly, we find that UMIR were validly amended to include subsection 10.3(4), which applies to Berry to the extent that his conduct in issue occurred after its adoption.

VI. Jurisdiction of RS over Former Employees

A. Positions of the Parties

(i) Berry

[159] Berry submits that even if UMIR were validly enacted, those rules are unenforceable against him because he is no longer an employee of a TSX Participant and was not an employee when RS Staff commenced the RS Proceeding against him.

[160] Berry submits that, while paragraph 13.0.8(1)(c) of the *TSX Act* grants the TSX power to regulate the conduct of former employees of its members,[3] RS has only those powers granted under UMIR and the Act. Subsection 21.1(3) of the Act states that a recognized SRO "shall regulate the operations and the standards of practice and business conduct of its members and their representatives...", but is silent with respect to former members. UMIR 10.3(4) extends responsibility to employees of TSX members (see paragraph 28 of these reasons), but uses the present tense ("who engages in conduct that results in" a contravention) and is silent with respect to former employees. Berry submits that express language would be required to give RS jurisdiction over former employees.

---

[3] Paragraph 13.0.8(1)(c) of the *TSX Act* provides:

The board of directors has the power to govern and regulate,

…

(c) the business conduct of members of the continued Corporation and other persons or companies authorized to trade by the exchange and of their current and former directors, officers, employees and agents and other persons or companies currently or formerly associated with them in the conduct of business, but only in respect of their business conduct while employed or associated with a member of the continued Corporation; and …

[161] By contrast, Berry refers to By-law 17.19 of the Former TSE Rules,[4] By-law 24.1.4 of the Mutual Fund Dealers Association ("**MFDA**") and subsection 5(2) of the *Architects Act*, R.S.O. 1990, c. A.26, which expressly authorize proceedings against former members.

[162] Berry submits that it is an established principle that disciplinary provisions should be construed strictly, as recognised in, for example, *British Columbia College of Teachers v. Stafford*, [1991] B.C.J. No. 217 (B.C.S.C.), *Ross v. British Columbia Psychological Assn.*, [1987] B.C.J. No. 2145, and *In the Matter of Louis Anthony DeJong and Dwayne Barrington Nash*, RS No. 2004-04.

[163] The most important decisions for purposes of this argument are *Chalmers* and *Taub (Ont. C.A.)*.

[164] In *Chalmers*, the Ontario Court of Appeal ruled that By-law 17.19 of the Former TSE Rules was beyond the jurisdiction of the TSX because the *TSX Act*, as it then read, did not authorize the regulation of former members or former employees. Paragraph 13.0.8(1)(c), which expressly grants the TSX jurisdiction to discipline former employees of members of the Exchange, was subsequently added to the *TSX Act*.

[165] The issue in *Taub (Div. Ct.)* was whether the IDA had jurisdiction to commence a proceeding against Taub after he ceased to be an IDA member. The IDA relied on its By-law 20.7, which provided that a member remained subject to the jurisdiction of the IDA for five years after ceasing to be a member. The Commission dismissed Taub's application for review of that decision under section 21.7 of the Act ((2007), 30 O.S.C.B. 4739) ("***Taub (O.S.C.)***"), but that decision was overturned on appeal by the Divisional Court.

[166] The Divisional Court concluded that an SRO, "though voluntary, is coloured by recognition under the Act" and therefore the court had to decide whether subsection 21.1(3) of the Act "is limiting in the sense that it prescribes whom a self-regulated organization may regulate" (*Taub (Div. Ct.)*, *supra*, at para. 35).

[167] The Court continued:

> Recognition of a self-regulatory organization under the Act makes the organization subject to the limitations and obligations of the Act. This legislative intent is reflected in s. 21.6 of the Act which requires that by-laws of self-regulatory organizations must not contravene Ontario securities law. Regulation of "members" rather than "former members" is such a limitation.
>
> (*Taub (Div. Ct.)*, *supra*, at para. 40)

[168] The Court concluded that the Act does not authorize SROs to discipline former members.

> In our view, the plain meaning of s. 21.1(3) of the Act cannot be stretched to include the discipline of former members without doing violence to the meaning of the statute. "Members" and "former members" are not interchangeable terms. Such an interpretation of the governing statute is unreasonable.
>
> (*Taub (Div. Ct.)*, *supra*, at para. 44)

[169] Berry submits, by the same reasoning, that RS lacks statutory authority to commence proceedings against former employees of TSX members.

(ii) The Respondents

[170] In response, RS Staff submits that *Taub (Div. Ct.)* does not govern this case because paragraph 13.0.8(1)(c) of the *TSX Act* expressly provides that the TSX retains jurisdiction over former employees of members in respect of their conduct while employed. RS Staff submits that as an agent and delegate of the TSX, RS has jurisdiction to commence a proceeding against a former employee of a TSX Participant pursuant to the authority granted by the *TSX Act*. Though UMIR 10.3(4) is silent with respect to former employees, RS Staff submits that an express provision is not required.

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[4] Former TSX By-law 17.19, "Retention of Jurisdiction", provided as follows:

(1) The Exchange continues to retain jurisdiction under this Part over any person that has ceased to be under the jurisdiction of the Exchange and the Exchange may investigate the person, whether or not on the basis of a complaint or other communication in the nature of a complaint, and, subject to subsection (2), may commence discipline proceedings against the person.

(2) The Exchange may not commence discipline proceedings pursuant to subsection (1) against a person unless the Exchange has served on the person a Notice of Hearing and Particulars pursuant to section 17.09 within twelve months from the date upon which the person ceased to be under the jurisdiction of the Exchange.

[171] TSX and OSC Staff did not make submissions on the "former employee" issue.

B. Analysis

[172] We accept that it is established law that a domestic tribunal or self-regulatory body cannot confer on itself jurisdiction not conferred by its enabling legislation. As the Ontario Court of Appeal noted in *Chalmers*:

> I am satisfied that our courts will intervene where it appears that a domestic tribunal or self-regulatory body has purported to confer on itself, through a by-law, jurisdiction not provided for in the statute which created or incorporated it.
>
> (*Chalmers*, *supr*a, at para. 20)

[173] However, the Court went on to state:

> . . . while by-laws of domestic tribunals or self-regulatory organizations may be declared *ultra vires*, before courts will do so, the by-law must be in some way in conflict with the governing statute or with the purposes underlying that statute.
>
> (*Chalmers*, *supra*, at para. 27)

[174] In *Taub (O.S.C.)*, the Commission held that the IDA had jurisdiction to bring enforcement proceedings against a former employee of an IDA member for rule infractions that allegedly occurred while the person was employed by the IDA member. The Commission (and the dissent in the Divisional Court) came to this conclusion, notwithstanding that the IDA's jurisdiction was founded in subsection 21.1(3) of the Act, which speaks only to "members", not "former members".

[175] Shortly prior to releasing this decision, the Ontario Court of Appeal released its decision in *Taub (Ont. C.A.)*. In that decision, the Court of Appeal reversed the decision of the Divisional Court and concurred with the Commission's original decision. The result in *Taub (Ont. C.A.)* is consistent in result with another decision, which was decided just prior to the hearing of this matter by the British Columbia Court of Appeal (*Dass v. Investment Dealers Assn. of Canada*, 2008 BCCA 413).

[176] In *Taub (Ont. C.A.)*, the Ontario Court of Appeal held, first, that subsection 21.1(3) of the Act "sets out the statutory obligations of a recognized SRO, but does not state that those are its only obligations or powers". Second, the Court held that section 21.6 of the Act specifically provides that a recognized SRO may "impose additional requirements within its jurisdiction", and "[b]ecause s. 21.1(3) does not limit the jurisdiction of the SRO to regulate only current members, s. 21.6 effectively enlarges the power of the SRO to enact rules to fulfill its regulatory mandate". Third, as an alternative, the Court held that "[e]ven if s. 21.1(3) did limit the IDA's jurisdiction to regulate and discipline only current members, it is not clear that such a limitation refers to the timing of discipline, as opposed to the timing of the misconduct". Finally, the Court held that the Commission applied its expertise in the securities industry and concluded that its interpretation not only served the interests of protecting the public "but also that it would be contrary to those interests if former members were allowed to resign from the association in order to avoid discipline" (*Taub (Ont. C.A.)*, *supra*, at paras. 49-52). Accordingly, the Court concluded that the Commission decision was reasonable and should be upheld (*Taub (Ont. C.A.)*, *supra*, at para. 61).

[177] In any event, we are of the view that *Taub (Ont. C.A.)* does not resolve the matter at issue in this case. We agree with counsel for RS that the facts of the case before us are distinguishable from *Taub (Ont. C.A.)*. Unlike the Act (which was at issue in *Taub (Ont. C.A.)*), the *TSX Act* gives the TSX express jurisdiction to commence proceedings against former employees of TSX Participants in relation to conduct while they were employed. Pursuant to subsection 13.0.8(4) of the *TSX Act*, the TSX has (and had at the relevant time) authority to delegate its enforcement powers to RS. The TSX Recognition Order provides that "the TSE shall retain RS as an RSP, as agent for the TSE, to provide the regulation services approved by the Commission (i.e., the enforcement of UMIR)". The TSX has retained RS and delegated its enforcement powers to it. The *TSX Act* is the original source of RS's authority over persons within the jurisdiction of the TSX in this matter.

[178] We agree with the submissions of RS Staff that the absence of a reference to former employees in UMIR 10.3(4) is neither determinative nor limiting in the way subsection 21.1(3) of the Act was found to be in *Taub (Div. Ct.)*. In our view, UMIR 10.3(4) extends responsibility to an employee of a Participant for the employee's conduct, while he or she was employed, where that conduct results in the Participant contravening a requirement. The jurisdiction to enforce those rules against persons who subsequently leave the employ of a Participant is granted by paragraph 13.0.8(1)(c) of the *TSX Act*, and that jurisdiction was assigned or delegated to RS pursuant to subsection 13.0.8(4) of the *TSX Act*.

[179] Accordingly, we conclude that the *TSX Act* provides the basis for RS's jurisdiction to proceed against Berry as a former employee of a Participant in enforcing UMIR.

VII. Conclusion

[180] This case has turned a magnifying glass on the manner in which the TSX migrated much of its regulatory functions to RS, and on the process of implementation of UMIR in 2001, which accompanied this transition.

[181] We do not agree that the actions (or omissions) of the TSX Board created a regulatory void in relation to oversight of TSX Participants by TSX, or RS as its agent and delegate, from 2002 to 2006.

[182] In all of the circumstances, for the reasons discussed above, we conclude as follows:

(a) As set out in the Chronology section of these reasons, in November 2001, the CSA published the ATS Rules. Specifically, in section 7.1 of NI 23-101, a recognized stock exchange is required to "set requirements governing the conduct of its members", and is empowered to assign responsibility for monitoring "the conduct of its members and enforce the [established] requirements" to a "regulation services provider". The standard of conduct of TSX members is included in TSX Rule 4-201, requiring "each person under its jurisdiction" to comply with all applicable securities legislation, Exchange Requirements and provisions of UMIR. By virtue of the regulation services agreement between the TSX and RS, and in accordance with section 7.1 of NI 23-101 and the TSX Recognition Order, the TSX assigned responsibility for monitoring the conduct of its members and enforcing the established requirements.

(b) UMIR (and their subsequent amendments) are rules of RS, an SRO properly and validly recognized by the Commission and other CSA jurisdictions. While UMIR apply to TSX Participants and their employees, they are not rules of TSX. Rather, the steps taken by the TSX Board in establishing and amending UMIR were taken as the legal predecessor of RS, which was "spun off" as an entity distinct from TSX only as of March 1, 2002. In our view, the steps taken by the TSX Board at its November 27, 2001 Meeting with respect to UMIR (summarized at paragraphs 20 to 23 of these reasons) were part of its own internal process to avoid duplication and inconsistency between UMIR and the TSX Rules and requirements applicable to its Participants and their employees. If the process followed by TSX lacked any clarity, that does not affect the enforceability of UMIR and the jurisdiction of RS.

(c) The RS Panel was therefore correct in finding that (i) the Commission's recognition of RS, (ii) RS's actions in making and amending UMIR, and (iii) the Commission's actions in approving UMIR, provided sufficient legal authority for the enforceability of UMIR by RS against persons within the TSX's jurisdiction.

(d) The TSX Board properly passed, and made effective, a requirement that persons under its jurisdiction must comply with UMIR. In doing so, the TSX is not improperly incorporating UMIR by reference, nor is the making of UMIR by RS an exercise by RS of delegated authority from TSX.

(e) The TSX had jurisdiction over former employees of TSX Participants at the time that it delegated compliance and enforcement jurisdiction to RS and, in our view, that jurisdiction was retained when RS made UMIR and sought and obtained recognition and approval of UMIR from the Commission. Under the RS Recognition Order, RS enforces UMIR as agent for TSX. In our view, this distinguishes this case from the circumstances in *Taub*.

[183] Accordingly, we conclude, for the reasons discussed above, that RS had authority to commence and has jurisdiction to continue the RS Proceeding against Berry and did not err in making the RS Stay Decision. The Application is therefore dismissed.

DATED in Toronto this 23rd day of September, 2009.

"Lawrence E. Ritchie"
Lawrence E. Ritchie

"James E. A. Turner"
James E. A. Turner

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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
Firstgold Corp.	25 Sept 09	07 Oct 09		09 Oct 09
American Insulock Inc.	07 Oct 09	19 Oct 09		
Redcorp Ventures Ltd.	02 Oct 09	14 Oct 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
Strategic Resource Acquisition Corporation	23 Sept 09	05 Oct 09	05 Oct 09		
Coalcorp Mining Inc.	07 Oct 09	19 Oct 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
Sprylogics International Corp.	02 June 09	15 June 09	15 June 09		
Norwall Group Inc.	02 Sept 09	14 Sept 09	14 Sept 09		
Strategic Resource Acquisition Corporation	23 Sept 09	05 Oct 09	05 Oct 09		
Coalcorp Mining Inc.	07 Oct 09	19 Oct 09			

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Chapter 5

Rules and Policies

5.1.1 NI 23-102 Use of Client Brokerage Commissions and Companion Policy 23-102CP

CANADIAN SECURITIES ADMINISTRATORS

NOTICE OF

NATIONAL INSTRUMENT 23-102
USE OF CLIENT BROKERAGE COMMISSIONS

AND

COMPANION POLICY 23-102CP

I. INTRODUCTION

The Canadian Securities Administrators (the CSA or we) have made National Instrument 23-102 – *Use of Client Brokerage Commissions* (Instrument) and Companion Policy 23-102CP (Companion Policy). The Instrument and Companion Policy set out requirements pertaining to brokerage transactions involving client brokerage commissions that are directed to a dealer in return for the provision of order execution goods and services or research goods and services.

The final text of the Instrument and Companion Policy is being published concurrently with this Notice and can also be obtained on the websites of various CSA members.

Subject to Ministerial approval requirements, the Instrument will come into force on June 30, 2010 in all CSA jurisdictions. The Companion Policy will come into force at the same time. Additional information regarding the implementation or adoption of the Instrument in each province or territory is included in Appendix A to this Notice.

Ontario Securities Commission Policy 1.9 – *Use by dealers of brokerage commissions as payment for goods or services other than order execution services ("Soft Dollar" Deals)*, and Autorité des marchés financiers Policy Statement Q-20 of the same name (together, the Existing Provisions), will be rescinded, effective on the date that the Instrument and Companion Policy come into force in Ontario and Québec, respectively.

II. BACKGROUND

A. First publication for comment

On July 21, 2006, the CSA published for comment a notice, a proposed National Instrument (2006 Instrument) and a proposed Companion Policy (together, the 2006 Proposal)[1], relating to the subject matter of the final Instrument.

Forty-three comment letters were received by the CSA in response to the 2006 Proposal. A summary of the comments and our responses were published at (2008) 31 OSCB 499.

B. Second publication for comment

After consideration of the comments received, material changes were made to the 2006 Proposal. The CSA published a revised proposal for comment on January 11, 2008 (2008 Proposal)[2], which included the following:

- Notice of Proposed National Instrument 23-102 and Companion Policy 23-102CP (2008 Notice);
- Proposed National Instrument 23-102 – *Use of Client Brokerage Commissions as Payment for Order Execution Services or Research Services* (2008 Instrument); and
- Proposed Companion Policy 23-102CP (2008 Policy).

[1] Published at (2006) 29 OSCB 5923.
[2] Published at (2008) 31 OSCB 489.

The CSA invited public comment on all aspects of the 2008 Proposal and specifically requested comments on four questions. A total of 21 comment letters were received. We have considered the comments received and thank all of the commenters for their submissions. A list of those who submitted comments, as well as a summary of comments and our responses to them, are attached as Appendix B to this Notice.

III. SUBSTANCE AND PURPOSE OF INSTRUMENT AND COMPANION POLICY

After consideration of the comments to the 2008 Proposal, some changes have been made to the Instrument and Companion Policy since the 2008 Proposal. However, the purpose of the Instrument and Companion Policy remain the same.

The Instrument provides a specific framework for obtaining goods and services other than order execution in connection with client brokerage commissions. It clarifies the broad characteristics of the goods and services that may be acquired by advisers in these circumstances, and also describes the advisers' disclosure obligations. The Instrument also sets out the obligations of registered dealers.

The Companion Policy gives guidance regarding the types of goods and services that may be obtained, as well as non-permitted goods and services. It also gives guidance on the disclosure that would be considered acceptable to meet the requirements of the Instrument.

IV. SUMMARY OF CHANGES TO 2008 PROPOSAL

The changes made to the Instrument and Companion Policy since the 2008 Proposal are intended to clarify and simplify the requirements of the Instrument, and respond to comments received.

A summary of the key revisions made to the Instrument and the Companion Policy since the 2008 Proposal are set out below. More information on certain of these changes, and on other changes not included in the discussion below, is available in the summary of comments and responses included at Appendix B.

A. Definitions of Order Execution Goods and Services and Research Goods and Services

(i) Temporal standard for order execution goods and services

The temporal standard for order execution goods and services generally defines the points where eligibility for these goods and services begins and ends. In the 2008 Proposal, we proposed that the temporal standard should start after the point at which an investment decision has been made. Some commenters expressed support for the proposed temporal standard, but others expressed concern with the difference between the standard proposed and that included in the SEC's 2006 interpretive release (SEC Release)[3].

As a result, we have decided to return to the temporal standard for order execution goods and services proposed in the 2006 Instrument to more closely align its starting point with that included in the SEC Release, and to avoid any potential for confusion. More specifically, subsection 3.2(2) of the Companion Policy now refers to the starting point for the temporal standard as being the point after which an investment or trading decision has been made. In addition, we have also amended paragraph (a) of the definition of 'research goods and services' under Part 1 of the Instrument to revert back to similar language from the 2006 Instrument. The definition now indicates that research goods and services includes "advice relating to the value of a security or the advisability of effecting a transaction in a security".

In our view, these changes will only affect the classification of a good or service previously considered eligible as order execution goods and services under the 2008 Proposal. For example, trading advice provided to an adviser before an order is transmitted (which may be advice relating to the advisability of effecting a transaction in a security) and post-trade analytics from prior transactions (to the extent they are used in the subsequent determination of how, when or where to place an order) might now be eligible as research goods and services.

B. Application of the Instrument

(i) Application to trades in futures

Some commenters requested clarification regarding the application of the Instrument to trades in futures contracts. We note that the 2008 Instrument proposed to apply to "any trade in securities … where brokerage commissions are charged by a

[3] The SEC Release was issued on July 18, 2006 under Exchange Act Release No. 34-54165. Under the temporal standard included in the SEC Release, "brokerage begins when the money manager communicates with the broker-dealer for the purpose of transmitting an order for execution and ends when funds or securities are delivered or credited to the advised account or account holder's agent" (SEC Release, pp. 40-41).

dealer." Consequently, it was intended to apply to trades in a futures contract to the extent that the futures contract would meet the definition of a security, and brokerage commissions were charged.

However, in certain jurisdictions, the definition of "security" does not include futures contracts. Part 1 of the Instrument has been changed to clarify this intention, and to reflect the CSA's view that the same conflicts and issues arise, regardless of the type of security involved.

(ii) Application to principal transactions where an embedded mark-up is charged

Comments received suggested that the guidance included in subsection 2.1(2) of the 2008 Policy which would have left principal transactions where an embedded mark-up is charged, outside of the scope of the Instrument, would lead to an inconsistent level of disclosure compared to trades that are subject to the Instrument.

We have amended the guidance in subsection 2.1(2) of the Companion Policy to add that an adviser that obtains goods and services other than order execution in conjunction with such transactions is subject to its duty to deal fairly, honestly, and in good faith with clients, and its obligation to make reasonable efforts to achieve best execution when acting for clients. We continue to believe that it may be more difficult for an adviser to demonstrate that it has met its duty to deal fairly, honestly, and in good faith with its clients, and its obligation to make reasonable efforts to achieve best execution, if it does not have sufficient information regarding the amount of mark-up that might have been charged in aggregate for the execution and additional goods and services obtained.

In addition, an adviser that obtains goods and services other than order execution in conjunction with such a trade outside of the Instrument should also consider any relevant conflict of interest provisions, given the incentives created for advisers to place their interests ahead of their clients. For example, we note that in connection with the conflict of interest provisions included in section 13.4 of National Instrument 31-103 *Registration Requirements and Exemptions* (NI 31-103), an adviser would have to consider issues such as how to control the existing or potential conflicts of interest associated with the use of client assets in such a manner, and whether and what disclosure it might need to provide to clients regarding the nature and extent of the conflicts of interest.

We will continue to monitor the use of such principal trades to obtain goods and services other than order execution, and will consider whether the Instrument should be amended in the future to bring such trading within the scope of the Instrument.

(iii) Application to unsolicited goods or services

Some commenters sought clarification about the intention of the guidance included in subsection 4.1(4) of the 2008 Policy pertaining to unsolicited goods or services.

To provide additional clarification, we have amended the guidance in the Companion Policy (now subsection 4.1(5)) to clarify that an adviser that is provided with access to or receives goods or services on an unsolicited basis should consider whether or how usage of those goods or services has affected its obligations under the Instrument as part of its process for assessing compliance with the Instrument. Additional details can be found in subsection 4.1(5) of the Companion Policy.

C. Obligations under the Instrument

(i) Obligations of advisers

Drafting changes have been made in relation to the obligations of advisers under section 3.1 of the Instrument, and were intended to better clarify these obligations.

First, subsection 3.1(1) of the 2008 Instrument has been revised to state that "an adviser must not direct any brokerage transactions involving client brokerage commissions to a dealer in return for the provision of goods or services by the dealer or a third party,…"[4] This change is intended to reflect that the client brokerage commissions are ultimately associated with the brokerage transactions directed by the adviser on behalf of its client or clients. In addition, language has been added to ensure that it is clear that goods and services other than order execution obtained by the adviser, under the Instrument, can be provided by either the dealer or a third party. We also note that the resulting language is consistent with the long-standing language of the Existing Provisions.

Second, paragraph 3.1(2)(a) of the 2008 Instrument, which would have required an adviser to ensure that the order execution goods and services and research goods and services obtained benefit the client or clients, has been revised. The 2008 Policy

[4] As a result of this drafting change, similar drafting changes were also required elsewhere in the Instrument and Companion Policy to ensure consistency of the language used throughout, including drafting changes to Part 4 of the Instrument regarding disclosure requirements.

explained that, in order to benefit a client, the goods or services obtained should be used to assist with investment or trading decisions, or with effecting securities transactions. This expectation is now more clearly reflected in paragraph 3.1(2)(a) of the Instrument which explicitly requires the adviser to ensure that the goods or services are to be used to assist with investment or trading decisions, or with effecting securities transactions, on behalf of the client or clients.

Finally, the concept of reasonable benefit to an adviser's client or clients that had been discussed in subsection 4.1(3) of the 2008 Policy has now been combined with the requirement to ensure that a good faith determination is made that the amount of client brokerage commissions paid is reasonable in relation to the value of the order execution goods and services or research goods and services received (from paragraph 3.1(2)(b) of the 2008 Instrument). We note that benefit (and value) to the client is generally derived from the use of the goods and services (that is, the assistance provided in relation to investment or trading decisions made, or securities transactions effected, on behalf of the client or clients), and is generally relative to the amount of client brokerage commissions paid. Subsection 3.1(2)(b) of the Instrument now indicates that the adviser must ensure that "a good faith determination is made that the client or clients receive reasonable benefit considering both the use of the goods or services and the amount of client brokerage commissions paid." Further clarification regarding this obligation is included in subsection 4.1(3) of the Companion Policy.

(ii) Obligations of dealers

Some commenters to the 2008 Instrument requested clarification regarding the expected level of due diligence to be performed by dealers in meeting their obligations under the Instrument when assessing the eligibility of goods and services being provided to the adviser in return for client brokerage commissions.

To provide more guidance, we have amended Section 4.2 of the Companion Policy to reflect our expectation that a dealer would have to make an assessment that the goods or services being paid for, or those that the dealer has been asked to pay for, meet the definitions of order execution goods and services or research goods and services.

We think that a dealer should be able to identify when a good or service clearly does not meet the definition of order execution goods and services or research goods and services, including when it has been asked by an adviser to pay a third-party invoice. When it is not clear as to whether the good or service meets one of the definitions, or when the description on the invoice is insufficient to determine the nature of the good or service, an inquiry should be made with the adviser before accepting payment or agreeing to pay.

D. Disclosure

(i) General

In response to comments, we have made amendments to the disclosure requirements contained in Part 4 of the Instrument to separate the requirements for initial and periodic disclosure.

We have not, as suggested from certain comments, made changes to Part 4 of the Instrument to require explicit statements pertaining to the conflicts of interest that are inherent when obtaining goods and services other than order execution in connection with client brokerage commissions.

However, we note that subsection 13.4(3) of NI 31-103 requires disclosure, in a timely manner, of the nature and extent of the conflict of interest to the client whose interest conflicts with the interest identified, if a reasonable investor would expect to be informed of a conflict of interest identified under subsection 13.4(1) of NI 31-103. The guidance provided in section 13.4 of the Companion Policy 31-103CP indicates that, among other things, the disclosure should explain the conflict of interest and how it could affect the service the client is being offered.

In our view, under subsection 13.4(3) of NI 31-103, an adviser should also explicitly identify and explain the conflicts of interest inherent when obtaining goods and services other than order execution in connection with client brokerage commissions, and how those conflicts could affect the service the client is being offered.

(ii) Narrative disclosure

We agree with the suggestion that, for some clients, disclosure of a list of dealers and third-party suppliers may not be useful information. Accordingly, we have revised Part 4 of the Instrument to evidence an 'upon request' approach for disclosure of the names of dealer and third-party suppliers, except in relation to affiliated entities.

We maintain our view that clients would find disclosure of the types of goods and services acquired in connection with brokerage transactions involving client brokerage commissions to be useful information. We also maintain that, for goods and services provided by affiliated entities, the inherent conflicts of interest in dealings with such entities necessitates that the names of these entities and the types of goods and services they provided should be separately identified.

(iii) Quantitative disclosure

Numerous comments were received in relation to the quantitative disclosure proposed in the 2008 Instrument. The commenters' primary concerns can be summarized as follows:

- Persisting valuation issues associated with bundled goods and services will likely result in differences in the methodologies used by advisers for purposes of estimating value for disclosure. This will likely affect both the comparability and usefulness of the disclosure to clients.

- To go further than the requirements of the SEC or other international regulators at this time would create difficulties for Canadian advisers conducting business in multiple jurisdictions, particularly for those that contract a foreign sub-adviser subject to lesser disclosure requirements in their home jurisdiction (who may or may not be willing to undertake systems changes to provide the needed information). This could have an impact on costs to Canadian investors, or result in differences in the quality of disclosure.

As a result of the comments received and developments in the U.S. referred to in Appendix B, we have decided not to proceed with quantitative disclosure requirements at this time. However, we will monitor industry and regulatory developments here and in other jurisdictions to determine if it might be appropriate to propose quantitative disclosure requirements in the future. In the interim, we believe that the narrative disclosure requirements will provide useful information to clients and increase accountability on the part of advisers.

We also note that the quantitative disclosure requirements applicable to investment funds under National Instrument 81-106 have been maintained. The reasons for maintaining these requirements include: (i) disclosure under NI 81-106 not only informs, to the extent ascertainable, the amount of commission paid for goods and services other than order execution, but also provides information relevant to other amounts disclosed under NI 81-106, such as the trading expense ratio (which expresses total commissions and other portfolio transaction costs as an annualized percentage of daily average net assets over the period); and (ii) NI 81-106 applies to a narrower scope of advisers (i.e., advisers to an investment fund).

E. Transition Period

As we are not proceeding with quantitative disclosure requirements at this time, we believe that the six month transition period proposed in the 2008 Proposal is sufficient.

V. RELATED INSTRUMENTS

The Instrument and Companion Policy are related to, and are intended to replace, the Existing Provisions. The Existing Provisions will be rescinded, effective on the same date that the Instrument and Companion Policy come into force in Ontario and Québec, respectively.

VI. ALTERNATIVES AND ANTICIPATED COSTS AND BENEFITS

Alternatives that were considered, and the potential costs and benefits were discussed in the cost-benefit analysis included in Appendix B of the 2008 Proposal.

We continue to believe that a National Instrument that governs the practice of directing brokerage transactions involving client brokerage commissions in return for goods and services other than order execution, and that mandates disclosure to investors is the best option. Further, we believe that the net effect of the changes made to the Instrument and Companion Policy since the 2008 Proposal will reduce the potential costs to dealers and advisers associated with the implementation of the Instrument.

VII. QUESTIONS

Please refer any of your questions to any of:

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October 6, 2009

APPENDIX A

IMPLEMENTATION OR ADOPTION OF THE INSTRUMENT

The Instrument will be implemented as:

- a rule in each of Alberta, British Columbia, Manitoba, Newfoundland and Labrador, Nova Scotia, New Brunswick, Ontario and Prince Edward Island;
- a regulation in each of Québec, the Northwest Territories, Nunavut and the Yukon Territory; and
- a commission regulation in Saskatchewan.

The Companion Policy will be adopted as a policy in each of the jurisdictions represented by the CSA.

In Ontario, the Instrument and other required materials were delivered to the Minister of Finance on September 30, 2009. The Minister may approve or reject the Instrument or return it for further consideration. If the Minister approves the Instrument (or does not take any further action), the Instrument will come into force on June 30, 2010.

In Québec, the Instrument is a regulation made under section 331.1 of The Securities Act (Québec) and must be approved, with or without amendment, by the Minister of Finance. The Instrument will come into force on the date of its publication in the Gazette officielle du Québec or on any later date specified in the regulation. It is also published in the Bulletin of the Autorité des marchés financiers.

In British Columbia, the implementation of the Instrument is subject to ministerial approval. Provided all necessary approvals are obtained, British Columbia expects the Instrument to come into force on June 30, 2010.

APPENDIX B

SUMMARY OF COMMENTS AND RESPONSES ON THE 2008 PROPOSAL

I. DEFINITIONS OF ORDER EXECUTION GOODS AND SERVICES AND RESEARCH GOODS AND SERVICES

A. Temporal standard – Comments on Question 1 from the 2008 Notice

Question – What difficulties might be caused by a temporal standard for order execution goods and services that might differ from the standard applied by the SEC, especially in the absence of any detailed disclosure requirements in the U.S.? In the event difficulties might result, do these outweigh any benefit from having a temporal standard that results in consistent classification of goods and services based on use?

Seven commenters were in favour of adopting the proposed temporal standard. Reasons provided included that it:

- better defines where best execution measurements should be applied, as any party controlling a trade from the time an investment decision has been made can enhance or detract from best execution; and
- is broader and more flexible than that of the SEC, allowing many services that have become essential to the investment process and best execution.

Of the commenters that suggested adoption of the proposed temporal standard, three did not see any material problems arising as a result of the difference with the SEC standard or any impact on the eligibility of goods and services, indicating the impact would only be a difference in the actual classification of the eligible goods and services.

Four commenters either expressed indifference between the proposed temporal standard and the SEC temporal standard, or did not explicitly take a position. These commenters generally commented that while they did not see any effect of the difference in the two standards in relation to the eligibility of goods and services, they did believe the difference would have an impact on the systems, tracking, compliance and reporting for advisers operating in both Canada and the U.S. as a result of the difference in quantitative disclosure requirements in these two jurisdictions. One of these commenters also suggested that the proposed temporal standard created a less precise definition of when goods and services are eligible, and that the longer duration relative to the SEC temporal standard may allow for a greater number of order execution goods and services to be eligible.

Four commenters were not in favour of adopting the proposed temporal standard for the following reasons:

- although the proposed temporal standard is better aligned with the trade order life cycle and broader than the SEC temporal standard, the difference would be of little practical benefit to Canadian advisers that transact in the U.S., and an unlevel playing field may result between those advisers using Canadian brokers relative to those that use both Canadian and U.S. brokers;
- using a temporal standard that is different from that used in the U.S. may increase reporting difficulties, add to the cost of disclosure, pose more challenges in the future as new products evolve, and increase client confusion.

Of these four commenters, three recommended adopting the SEC temporal standard. The other recommended adopting the starting point of the FSA's temporal standard of "… the point when the investment manager makes an investment or trading decision…" and the SEC's end-point of "when the funds or securities are delivered or credited to the advised account of the account holder's agent". Despite this recommendation, this commenter did view the proposed temporal standard as being similar enough to the SEC's temporal standard that the differences should not cause substantial difficulties for advisers, and noted that the result might be that some of the services that might be categorized as order execution services proposed in the 2008 Instrument could be defined as research permitted under Section 28(e) of the Exchange Act.

Response:

In our view, and consistent with the view of certain commenters, the difference between the starting point of the SEC's temporal standard and the standard proposed in the 2008 Instrument would not have affected the eligibility of goods and services, and would only have affected the classification of an eligible good or service.

However, in order to avoid potential confusion, as highlighted by some of the comments, we have reverted back to the starting point of the temporal standard proposed in the 2006 Instrument – after an investment or trading decision has been made. We believe that once an adviser has made an investment or trading decision, the next step would generally involve the transmission of an order to the dealer. As a result, we believe we have reasonably harmonized the starting point of the temporal standard with that of the SEC standard.

This change would effectively broaden the scope of eligible 'research goods and services', and narrow the scope of eligible 'order execution goods and services'. To reflect this change, we have also amended paragraph (a) of the definition of 'research goods and services' under the Instrument to revert back to similar language from the 2006 Instrument. The definition now indicates that these services include "advice relating to the value of a security or the advisability of effecting a transaction in a security".

This will affect the previous classification of certain goods and services previously considered eligible as order execution goods and services. For example, trading advice provided to an adviser before an order is transmitted (which would likely constitute 'advice relating to the advisability of effecting a transaction in a security'), and post-trade analytics from prior transactions (to the extent they are used to aid in a subsequent decision of how, when or where to place an order), might now be eligible as 'research goods and services'.

B. Eligibility of certain goods and services

(i) Raw market data

One commenter suggested that the example of possible eligible research goods and services provided in subsection 3.3(2) of the 2008 Policy of "market data from feeds or databases that has been or will be analyzed or manipulated to arrive at meaningful conclusions" may only contribute to confusion as to what kind of analysis or manipulation an adviser needs to undertake, and may add burden for advisers operating in both the U.S. and Canada given the SEC's guidance that would allow raw market data that provides appropriate assistance in the investment-decision making process.

Response:

We agree that the additional language regarding the use of market data is likely not necessary given the obligation in subsection 3.1(2) of the Instrument for an adviser to ensure that the goods and services are to be used to assist with investment or trading decisions, or with effecting securities transactions on behalf of the client or clients, and the related guidance provided in subsection 4.1(2) of the Companion Policy. In our view, in order for raw market data to provide any assistance in the investment or trading decision-making processes, an adviser would have to at least analyze the data in some manner. We have therefore made amendments to subsection 3.3(2) of the Companion Policy to remove the additional language.

(ii) Error or correcting trades

One commenter indicated it is their belief that the costs for correcting error trades are ineligible for commission payment in Canada, and recommended that any controversial commission use addressed in the SEC Release should also be addressed in any final instrument.

Response:

Examples of goods and services that might be eligible, or that are not permissible, are intended solely to help an adviser with its assessment of whether a good or service might meet the definition of order execution goods and services or research goods and services.

However, in relation to error or correcting trades and their associated costs, we believe that an amendment to section 3.5 of the Companion Policy regarding non-permitted goods and services is required to provide clarification that such costs should not be obtained through brokerage transactions involving client brokerage commissions. In our view, if such costs were paid for in such a manner, the adviser would benefit as it would avoid the cost of correcting its own error, and should instead pay for these costs itself as overhead (i.e., a cost of doing business).

(iii) Direct telephone and dedicated connectivity lines

Three commenters suggested that direct telephone and dedicated connectivity lines used for communication of orders to dealers should be eligible goods and services as they:

- assist with order entry as an important first step towards executing the trade;
- are generally located on the trading desks for use to place an order;
- fall within the temporal standard proposed in the 2008 Instrument;
- are often dedicated for order execution purposes only, distinguishing them from other overhead expenses that might be used in the course of a trade but generally not dedicated for such uses;
- have historically been viewed as an integral part of an execution management system;
- are more frequently required as a result of an increase in bandwidth requirements associated with the vast amount of data being aggregated and delivered to the buy-side desk and the introduction of multiple markets; and
- are eligible in the U.S., resulting in an unlevel playing field for Canadian advisers relative to U.S. advisers.

Of these commenters, one suggested that direct telephone and dedicated connectivity lines should be eligible as order execution goods and services so long as they are used solely for the purpose of order execution, another suggested they be considered mixed-use if used for purposes other than order execution, and the other added that while the dedicated connections should be eligible, the networks, computers and other hardware used by the adviser should be viewed as infrastructure and therefore considered ineligible.

Response:

Based on the comments received, and in the interests of harmonizing with the SEC, we agree that dedicated connectivity lines, and other similar dedicated connectivity services, directly related to the execution, clearing and settlement of securities transactions might be eligible as order execution goods and services. This would not include phone systems, computer hardware, or other similar overhead type expenses.

(iv) Inclusion of pre-trade analytics as an example of potentially eligible order execution services

Two commenters noted that the response to questions about the eligibility of pre-trade analytics in the 2008 Comment Summary indicated that these might be eligible as order execution goods and services to the extent used to help determine how, where and when to place an order or effect a trade. These commenters suggested including pre-trade analytics as an example of potentially eligible order execution services in any final Companion Policy, for clarity and future certainty.

Response:

We reiterate the statement made in the 2008 Notice that it is not feasible to attempt to include in the Companion Policy a comprehensive list of all goods and services that might be considered eligible as order execution goods and services or research goods and services. The examples proposed are intended solely to help an adviser with its assessment of whether a good or service might meet the definition of order execution goods and services or research goods and services. On that basis, we continue to believe it is not necessary to explicitly refer to pre-trade analytics in the Company Policy.

Note, however, that the change in the temporal standard referred to earlier now means that pre-trade analytics (to the extent used to help determine how, where and when to place an order or effect a trade) could no longer be eligible as order execution goods and services, but might instead be eligible as research goods and services.

(v) Alternative order execution products and services

One commenter, in reference to the guidance provided in section 3.2(1) of the 2008 Policy that states that "the term 'order execution' means the entry, handling or facilitation of an order whether by a dealer or by an adviser through direct market access…" suggested that the guidance should be amended to include reference to alternative trading systems, electronic communication networks, algorithmic trading systems, etc., in order to recognize that these alternative means of order input can also be part of the order execution process.

Response:

The intention was to define 'order execution' for purposes of the Instrument along the lines of the basic functions of entering, handling, or facilitating an order, regardless of who was performing those functions or how the order was to be executed, and was not intended to create any further limitations. We have amended section 3.2(1) of the 2008 Policy accordingly.

C. "Mixed-use" items

One commenter indicated that the fact that a service may have incidental features that may not be eligible should not mean it cannot be paid for with client brokerage commissions, or that it should be otherwise subject to heightened scrutiny, so long as the adviser's use of the eligible research goods and services or order execution goods and services justifies the payment made. This commenter added that if the value of the non-eligible portion of a mixed-use item is effectively nominal or *de minimis*, advisers should not have to make any allocation between the eligible and ineligible portions.

Response:

The concept of "mixed-use" items included in subsection 3.4 of the Companion Policy does not prevent a purchaser from obtaining mixed-use items through brokerage transactions involving client brokerage commissions. In addition, the guidance included in the Companion Policy does not preclude an adviser from assigning a zero value to an ineligible portion of a mixed-use item, when it can reasonably justify doing so based on the results of an allocation assessment described in subsection 3.4(2) of the Companion Policy.

II. APPLICATION OF THE INSTRUMENT

A. Application to trades in futures

Two commenters requested clarification as to whether trades in futures are included under the 2008 Instrument, and not simply shares as in the U.S. and U.K.. One of these commenters suggested excluding trades in futures from the application of any final instrument on the basis that they are excluded in other jurisdictions, and would increase compliance costs for Canadian advisers and create an un-level playing field. This commenter felt that client interests regarding such products are adequately addressed by the general duty for advisers to deal fairly, honestly, and in good faith with clients.

Response:

Section 2.1 of the 2008 Instrument stated that the "Instrument applies to…any trade in securities…where brokerage commissions are charged by a dealer". The Instrument was intended to apply to trades in a futures contract to the extent that the futures contract would meet the definition of a security, and brokerage commissions were charged in connection with the trade (i.e., a commission or similar transaction-based fee has been charged for a trade where the amount paid for the security is clearly separate and identifiable).

Given that in certain jurisdictions, the definition of "security" does not include futures contracts, changes have therefore been made to Part 1 of the Instrument to clarify this intention, and to reflect the CSA's view that the same conflicts and issues arise, regardless of the type of security involved.

B. Limitation of instrument to trades where brokerage commissions are charged

One commenter suggested that the negative language in subsection 2.1(2) of the 2008 Policy regarding principal transactions could be made more useful if instead it was made into the more positive statement that advisers should look to the proposals in determining how to meet their standards of care in relation to principal transactions, given the general principles could be used as guidance for such transactions.

Another commenter was generally concerned with the lack of clarity regarding a manager's obligation to disclose other services received as a result of trades conducted on a principal basis. This commenter suggested that managers do have a responsibility to disclose to clients whatever information is available, and that such disclosure might include: a listing and description of the services received in conjunction with principal trades; an estimate of the total execution cost of principal trades based on industry estimates of average spreads for such trades; and an implicit estimate of the range of value attributable to the non-execution services received.

Response:

We have amended the guidance in subsection 2.1(2) of the Companion Policy to add that an adviser that obtains goods and services other than order execution in conjunction with principal trades where an embedded mark-up is charged is subject to its duty to deal fairly, honestly, and in good faith with clients, and its obligation to make reasonable efforts to achieve best execution when acting for clients. As a result, in our view, an adviser should consider the goods and services obtained in relation to its duty to deal fairly, honestly, and in good faith with its clients, and in its evaluation of best execution.

However, the Instrument does not expressly prohibit an adviser from obtaining goods and services other than order execution in conjunction with a principal trade where the amount paid for the security is not clearly separate and identifiable (e.g., because a mark-up is embedded in the total amount charged). Should an adviser decide to obtain goods and services other than order execution in conjunction with such trades, we note that it may be more difficult for an adviser to satisfy itself, and demonstrate, that it has met its duty to deal fairly, honestly, and in good faith with its clients, and its obligation to make reasonable efforts to achieve best execution, if it does not have sufficient information regarding the amount of an embedded mark-up that might have been charged in aggregate for the execution and additional goods and services obtained.

In addition, an adviser that obtains goods and services other than order execution in conjunction with such a trade outside of the Instrument should also consider any relevant conflict of interest provisions, given the incentives created for advisers to place their interests ahead of their clients, when obtaining goods and services other than order execution in conjunction with such transactions. For example, we note that in connection with the conflict of interest provisions included in section 13.4 of NI 31-103 – Registration Requirements and Exemptions, an adviser would have to consider issues such as how to control the existing or potential conflicts of interest associated with the use of client assets in such a manner, and whether and what disclosure it might need to provide to clients regarding the nature and extent of the conflicts of interest.

We will continue to monitor the use of such principal trades to obtain goods and services other than order execution, and will consider whether the Instrument should be amended in the future to bring such trading within the scope of the Instrument.

C. Application to unsolicited goods and services

One commenter questioned whether the 2008 Instrument would capture companies that have made a policy decision not to use "soft dollars" and to pay basic order execution prices. This commenter suggested that in such cases, brokers often still provide unsolicited research goods and services, that are then used, and questioned whether this would mean the adviser would now need to implement expensive systems and a number of policies and procedures to deal with the conflict of interest and the requirements of the 2008 Instrument.

Another commenter suggested that an adviser should not be required to identify, allocate cost to and/or pay for with its own funds, any unsolicited services received, whether or not used, so long as the dealer is providing such services to all of its clients on the same basis regardless of the commission rates charged. Another commenter making the same suggestion added that it should instead be the dealers' responsibility to track what is offered for free.

Those two commenters also suggested that it did not appear that dealers are permitted to provide "free" services to their clients under the 2008 Instrument, which is important for attracting business. In addition, they added that it may not be cost effective for a dealer to remove embedded services/applications that may help with administrative functions rather than give it away for free, nor would it be practical for advisers to track all the services received, value which ones are used, and restrict the internal usage of those they are not valuing and/or paying for.

Another commenter requested clarification on what constituted "use" of permitted goods and services in the context of the guidance in subsection 4.1(4) of the 2008 Policy. This commenter questioned whether advisers can attribute a nil value to unsolicited research, even when read by staff, and suggested that more guidance on the CSA's expectations for tracking, using and valuing unsolicited research was needed.

Response:

For purposes of determining whether or how goods and services used by the adviser that were received on an unsolicited basis should be considered under the Instrument, the guidance under subsection 4.1(5) of the Companion Policy provides the ability for the adviser to apply a more principles-based approach.

The guidance in the Companion Policy has been amended to clarify that an adviser that is provided with access to or receives goods or services on an unsolicited basis should consider whether or how usage of those goods or services has affected its obligations under the Instrument as part of its process for assessing compliance with the Instrument.

For example, if an adviser considers unsolicited goods or services as a factor when selecting dealers or allocating brokerage transactions to dealers, the adviser should include these goods or services when assessing compliance with the obligations of the Instrument, and should include these in its disclosure.

We believe this approach provides flexibility to allow an adviser to make a determination regarding the treatment of unsolicited goods and services based on the specific circumstances.

From the dealer's perspective, the Instrument does not prohibit a registered dealer from providing goods and services on an unsolicited basis.

D. Application to foreign advisers and sub-advisers

One commenter stated that it would be unreasonable and impractical to impose the requirements of Proposed NI 23-102 on foreign advisers, particularly those under the jurisdiction of the SEC or the FSA. Another added that to do so would increase costs associated with using foreign sub-advisers, which may result in increased management fees for clients, and could effectively reduce access to international expertise.

Another commenter that supported the view that Canadian investors should enjoy the same protections whether they are dealing with domestic or foreign advisers, indicated that it may not be practical, however, for a foreign adviser to comply with both their local requirements and their Canadian requirements if the two conflict. This commenter suggested that foreign advisers should have the option to comply with their local requirements provided that they make disclosure of that fact to potential investors, similar to a requirement proposed for NI 31-103 that foreign advisers disclose their use of an exemption from the Canadian rules to their Canadian clients.

Another commenter indicated that they welcomed a flexible approach regarding the application of a given regulatory regime, and that the ability to select a particular regulatory framework should be predicated on there being a reasonable relationship between the parties to the regulated arrangement and the jurisdiction whose regulations are sought to be applied – for example based on principal place of business or residence of the parties or location where services are delivered.

Response:

Subsection 2.1(1) of the 2008 Policy included a statement to clarify that the Instrument applies to advisers and registered dealers, and that the reference to "advisers" includes registered advisers and registered dealers that carry out advisory functions but are exempt from registration as advisers. A foreign adviser or sub-adviser not required to register in Canada by virtue of an exemption was not intended to be subject to the Instrument.

Amendments have been made to Part 1 of the Instrument that should clarify this intention.

We note that the question in the 2008 Notice was raised to solicit feedback on whether an adviser should have the flexibility to comply with the disclosure requirements of another regulatory jurisdiction.

E. Application to foreign dealers

One commenter requested clarification regarding the application of the 2008 Instrument to non-Canadian registered dealers. This commenter indicated that it was unclear whether it would apply to foreign dealers registered in a Canadian jurisdiction, particularly for those cases where the foreign dealer has an arrangement with a foreign adviser servicing both Canadian and non-Canadian clients. This commenter suggested providing guidance that would allow any final instrument to apply only to goods and services provided to Canadian advisers, on the basis that the foreign dealer would not ordinarily be in a position to know whether any good or service provided to a foreign adviser involves the use of commissions generated from trades executed for Canadian clients.

Response:

Section 2.1 of the Instrument indicates that the Instrument applies to registered dealers. This would therefore include foreign dealers registered in a Canadian jurisdiction.

We note that Part 5 of the Instrument would provide a foreign dealer registered in Canada, that believes it has just cause to be exempted from the Instrument, in whole or in part, with an opportunity to apply for such an exemption, subject to such conditions or restrictions as may be imposed in any such exemption.

III. OBLIGATIONS UNDER THE INSTRUMENT

A. Obligations of advisers

(i) Allocation of benefits to clients

Two commenters requested further clarification on the first sentence of subsection 4.1(3) of the 2008 Policy which stated that "A specific order execution service or research service may benefit more than one client, and may not always directly benefit each particular client whose brokerage commissions were used as payment for the particular service." One commenter specifically sought confirmation that "directly" does not infer an intangible benefit that the investment adviser may not be capable of identifying, while the other suggested amendments to clarify that the benefit to clients can occur "over time".

Two others commented on the second sentence of subsection 4.1(3) of the 2008 Policy which stated that "… the adviser should have adequate policies and procedures in place to ensure that all clients whose brokerage commissions were used as payment for these goods and services have received fair and reasonable benefit from such usage." One commenter suggested that a general statement should be added to clarify that where an investment fund is concerned, the client generating the brokerage commissions is the fund as a whole and not the individual investor. The other suggested that the standard "fair and reasonable benefit" is unrealistic given that research services typically benefit clients generally, because it is difficult, if not impossible, to track benefits to specific clients.

Response:

The statement in subsection 4.1(3) of the 2008 Policy that included the word "directly" was intended to acknowledge concerns of some of the commenters to the 2006 Instrument that goods and services received typically benefit a number of clients, and may not always be specifically matched to each client account generating the commissions. The difficulties in matching goods and services paid for to each client account is also the reason why advisers should have adequate policies and procedures in place, and apply those policies and procedures, so that, over time, all clients receive fair and reasonable benefit.

We agree that these benefits can occur "over time" and have amended subsection 4.1(4) of the Companion Policy accordingly (formerly subsection 4.1(3) of the 2008 Policy).

We do not think that, for purposes of the guidance in subsection 4.1(4) of the Companion Policy, it would make any difference whether the adviser were to consider the client to be the investment fund or the individual investors in the fund, as the benefit to the fund should represent the sum of the proportional benefit conferred on the individual investors in the fund.

B. Obligations of Dealers

Two commenters requested clarification on the proposed obligations for dealers, and the expected level of due diligence to be performed by dealers in meeting their obligations when assessing the eligibility of goods and services being paid for through brokerage transactions involving client brokerage commissions, given that in many cases, the dealer will never see the end product provided by a third-party service provider, and will not know how it is used by the adviser. These commenters felt that in most cases the consumer of the service was the only person that could provide a meaningful evaluation.

As a result, these commenters suggested that due diligence should only be required to be performed by dealers on services that are proposed, sponsored or offered by the dealer to the adviser. It was also suggested that dealers should only be responsible for ineligible uses or payments if the dealer had actual or constructive knowledge, or ought to have known, of the ineligibility.

Response:

The Instrument indicates that dealers must not accept, or forward to a third party, client brokerage commissions, or any portion of those commissions, in return for the provision to an adviser of goods or services by the dealer or a third party, other than order execution goods and services or research goods and services.

To meet this obligation, we would expect that a dealer, in conjunction with a trade that is subject to the Instrument, would have to make an assessment that the goods and services being paid for, or for which it has been asked to pay for, meet the definitions of order execution goods and services or research goods and services. We have amended section 4.2 of the Companion Policy to reflect this view.

We think that a dealer should be able to identify when a good or service clearly does not meet the definition of order execution goods or services or research goods and services, including when it has been asked by an adviser to pay a third-party invoice. When it is not clear as to whether the good or service meets one of the definitions, or when the description on the invoice is insufficient to determine the nature of the good or service, an inquiry should be made with the adviser before accepting payment or agreeing to pay.

IV. DISCLOSURE

A. Narrative disclosure

(i) General

One commenter strongly agreed with the focus on narrative disclosure requirements regarding the nature and scope of services received. This commenter also noted that the SEC had proposed amendments to its Form ADV subsequent to the publishing of the 2008 Instrument, and suggested that the narrative disclosure should include a meaningful discussion of the potential conflicts of interest, as was included in the proposed Form ADV. Another commenter suggested that the current and proposed Form ADV qualitative disclosure regime of the SEC clearly addresses the CSA's goal of increased transparency and accountability with respect to brokerage commission practices.

Response:

For purposes of the disclosure requirements in the Instrument, we have not specifically required explicit statements regarding the conflicts of interest that arise when an adviser obtains goods and services other than order execution in connection with client brokerage commissions.

However, we note that subsection 13.4(3) of NI 31-103 requires disclosure, in a timely manner, of the nature and extent of the conflict of interest to the client whose interest conflicts with the interest identified, if a reasonable investor would expect to be informed of a conflict of interest identified under subsection 13.4(1) of NI 31-103. The guidance provided in section 13.4 of the Companion Policy 31-103CP indicates that, among other things, the disclosure should explain the conflict of interest and how it could affect the service the client is being offered.

In our view, under subsection 13.4(3) of NI 31-103, an adviser should also explicitly identify and explain the conflicts of interest inherent when obtaining goods and services other than order execution in connection with client brokerage commissions, and how those conflicts could affect the service the client is being offered.

(ii) Disclosure of dealer and third-party suppliers, along with types of goods and services

Four commenters raised concerns with the proposed requirement in paragraph 4.1(c) of the 2008 Instrument to disclose the names of dealers and third-party suppliers, and the types of goods and services provided.

Three of these commenters generally were of the view that it would be unduly cumbersome and burdensome to produce such lists, particularly if produced at anything other than the firm-wide level, and questioned the utility to clients, for example given each manager may utilize different services for each client account or the same series of services for all client accounts. One of these commenters suggested that a general description of the goods and services received, and the types of broker-dealers utilized would be sufficient for clients.

The other of the four commenters referred to above raised concerns relating to competitive advantage, suggesting that disclosure of the suppliers and the nature of the goods and services received constitutes proprietary competitive information. This commenter believed the likelihood of the disclosure becoming public was relatively high, and suggested making this disclosure item an "upon request" requirement to allow for the privacy of information, while making the disclosure more meaningful as a client will make such a request only if they consider it to be important. This commenter also noted that disclosure requirements similar to those proposed in paragraph 4.1(c) of the 2008 Instrument currently exist for mutual funds under Form 81-101F2, and suggested that adopting a different "upon request" approach for any final instrument could be justified for pooled funds, as these private funds are sold to accredited investors and not to the general public, as are mutual funds.

Response:

We continue to believe that clients would find disclosure of the types of goods and services acquired in connection with brokerage transactions involving client brokerage commissions to be useful information. Subsection 5.3(4) of the Companion Policy continues to include guidance that the disclosure of each type of good or service should be sufficient to provide adequate description of the goods or services received (e.g., algorithmic trading software, research reports, trading advice, etc.)

Based on the comments received, we agree that, for some clients, disclosure of a list of dealers and third-party suppliers may not be useful information. As a result, we have amended the Instrument to reflect an 'upon request' approach to the disclosure of the names of dealer and third-party suppliers, except in relation to affiliated entities.

Given the conflicts of interest inherent in any dealings involving affiliated entities, we continue to believe that the names of affiliated entities and the types of goods or services each such entity provided should be separately identified and disclosed to all clients, at least annually. This disclosure should not only assist with the identification of potential conflicts of interest, but should also increase accountability on the part of the adviser in relation to such dealings.

Amendments are being proposed to Form 81-101F2 – Contents of Annual Information Form and Form 41-101F2 – Information Required in an Investment Fund Prospectus to require narrative soft dollars disclosure for investment funds that is similar to the disclosure required under Part 4 of the Instrument.

B. Quantitative disclosure

(i) General

Most of the commenters raised general questions or concerns with the quantitative disclosure requirements proposed in paragraph 4.1(g) of the 2008 Instrument that would require advisers to make, on an aggregated basis, a reasonable estimate of the portion of those aggregated commissions representing the amounts paid for goods and services other than order execution. Of less concern was the disclosure of total client brokerage commissions proposed in paragraph 4.1(f). Commenters generally questioned the usefulness to clients and need for the proposed quantitative disclosure, and raised concerns with the difficulties and costs associated with meeting these requirements. Some of the more specific comments provided are as follows:

- the bundled nature of proprietary goods and services, and the differing levels of information that may be provided by willing dealers, will lead to subjectivity and differences in advisers' estimates and estimate methodologies, and will result in disclosure that cannot be compared across advisers, and may be confusing or even meaningless for investors;

- it may not be possible to obtain the necessary information from sub-advisers to meet the disclosure requirements, when those sub-advisers are not required by the laws in their jurisdiction to maintain such information, or the disclosure would likely be inconsistent between advisers as a result of the differing levels of information likely to be received from sub-advisers;

- experience in the U.K. with the IMA Pension Fund Disclosure Code suggests that without a methodology provided for estimating research and execution costs, advisers have adopted varied and inconsistent methodologies – for example, by valuing research and deeming the remainder execution; by valuing execution and deeming the remainder research; or estimating the cost to reproduce the research;

- quantification of the components of bundled commissions will be difficult, and therefore costly;

- the actual cost of trade execution has so many variables that it is practically impossible to individually value them on a per trade basis;

- both advisers and dealers view the costs of trading as relationship pricing where services are often offered as part of an overall package, making value very subjective;

- it would be unworkable for small firms, and extremely difficult for even the larger firms, to accurately allocate commissions;

- new systems would be required to track and value the commission usage, and any differences in disclosure requirements between Canada and the U.S. may add further complications or costs for advisers doing business in both jurisdictions;

- the majority of jurisdictions cited in IOSCO's report *Soft Commission Arrangements for Collective Investment Schemes* issued in November 2007 did not appear to require the quantitative disclosure proposed in the 2008 Instrument;

- many clients do not typically request from their advisers, and are not interested in receiving, the type of information proposed to be disclosed; and

- experience in the U.K. has shown that even the most sophisticated investors are not using the disclosure provided, and the movement in the U.S. is towards refocusing on what questions should be asked rather than prescribing standard industry disclosure.

Generally, many of the commenters suggested that if the quantitative disclosure requirements proposed in the 2008 Instrument were to be approved, then a requirement should be imposed on dealers to provide advisers with estimates of the costs of goods and services provided in addition to the execution cost of trades (whether as a dollar amount or a percentage), as they are in a much better position to estimate such costs. Various commenters also suggested alternatives to the proposed quantitative disclosure requirements that they thought may be more useful for clients, as follows:

- disclosure of just the total brokerage commissions paid by the client, and an aggregated total of client brokerage commissions paid;

- disclosure of an aggregate percentage of client brokerage commissions associated with the payment made for independent third-party research and other services on a firm-wide basis, or disclosure of a ratio of total firm-wide commission costs to the assets managed, instead of disclosure of the aggregate commissions paid by the firm across all accounts which could result in the disclosure of confidential and proprietary information, and adversely impact an adviser's business;

- disclosure of the total amount of soft dollar expenses in relation to metrics such as total assets under management or total commissions paid;

- disclosure of an investment fund or account's portfolio turnover rate and trading expense ratio, as is currently required for investment funds under NI 81-106; and

- quantification of only the third-party goods and services, with payments for independent third-party research goods and services and goods and services being tracked across client accounts individually and across the firm in aggregate.

Response:

Based on the comments received and in light of developments in the U.S., including the proposed amendments to the SEC's Form ADV[5], we have decided not to proceed with quantitative disclosure requirements at this time.

We will continue to monitor industry developments and developments in other regulatory jurisdictions to determine whether it might be appropriate to propose quantitative disclosure requirements at some point in the future.

In the interim, we believe that the narrative disclosure requirements will help to provide useful information to clients, and to increase accountability on the part of advisers.

(ii) 'Reasonable estimate' standard

Five commenters raised specific concerns with the 'reasonable estimate' standard proposed under paragraph 4.1(g) of the 2008 Instrument relating to the estimation of the portion of aggregated client brokerage commissions representing amounts paid for goods and services other than order execution. These commenters were generally of the view that the more appropriate standard would be that currently included in NI 81-106, which requires quantification of the amount paid for goods and services other than order execution "to the extent the amount is ascertainable". The reasons for this view included:

- a 'reasonable estimate' standard may not be feasible, as evidenced by the vast majority of fund companies taking the view that proprietary research cannot be valued for purposes of disclosure under the lower 'ascertainable' standard in NI 81-106;

- the standard for investment funds requires disclosure if the adviser can obtain information about costs, and does not require a "guess" as to the amounts to use when otherwise unable to obtain the needed information; and

[5] The SEC proposed amendments to Form ADV on March 3, 2008 under Release No. IA-2711; 34-57419; File No. S7-10-00.

- funds have already built systems and developed reporting to comply with the NI 81-106 standard, and to meet the 'reasonable estimate' standard, a model will have to be created that ties to accounting records, and that can be supported and audited.

In addition to the general view that the 'ascertainable' standard of NI 81-106 should instead be adopted, one of the commenters suggested also adopting a position similar to that in the *Frequently Asked Questions on National Instrument 81-106* which states that in those cases where an investment fund cannot ascertain the value of the soft dollar portion, a statement should be included in the notes indicating that the soft dollar portion is unascertainable.

One other commenter suggested that if the CSA proposed to maintain the 'reasonable estimate' standard, that guidance would be needed on how this should be estimated given the above-mentioned view of the majority of fund companies that proprietary research cannot be valued. If, instead, an 'ascertainable' standard is adopted, this commenter suggested completely deleting any requirement for the disclosure of the value of any portion of research, as disclosing the value of this research, but not the value of proprietary research, creates an unlevel playing field between these two types of research based on source, and may provide incentives for advisers to send trades to dealers for reasons other than best execution. This commenter also argued that in its own experience, quantifying only third-party research would significantly understate soft dollar use and be highly misleading to investors.

Two commenters suggested that the related investment funds disclosure contained in NI 81-101 and NI 81-106 should be made consistent with the disclosure included in any final instrument, regardless, in order to avoid increased costs, compliance burdens, and confusion.

Response:

As noted earlier, we have decided not to proceed with quantitative disclosure requirements at this time.

We note that investment funds should refer to the quantitative disclosure requirements under NI 81-106 and the related guidance in Companion Policy 81-106CP, and to the additional information provided in CSA Staff Notice 81-315 – Frequently Asked Questions on National Instrument 81-106 Investment Fund Continuous Disclosure.

The quantitative disclosure requirements applicable to investment funds under subparagraph 3.6(1)3 of NI 81-106 have been maintained. The reasons for maintaining these requirements include that disclosure under NI 81-106 would not only inform, to the extent ascertainable, the amount of commissions paid for goods and services other than order execution, but would also provide information relevant to other amounts disclosed under NI 81-106, such as the trading expense ratio (which expresses portfolio transaction costs as a percentage of net assets), and that NI 81-106 applies to a narrower scope of advisers (i.e., applies to advisers to an investment fund).

(iii) Presentation of quantitative disclosure – Comments on Question 2 from the 2008 Notice

Question – What difficulties might be encountered by requiring the estimate of the aggregated commissions to be split between order execution and goods and services other than order execution? What difficulties might be encountered if instead the requirement was for the aggregate commissions to be split between research goods and services and order execution goods and services?

Most commenters' responses to this question focused on their concerns with the proposed quantitative disclosure, and the inherent difficulties in making any quantified estimates when bundled goods and services are involved. These concerns were discussed in more detail above in section B of this Part IV.

Of those commenters that did specifically address the subject of this question, two commenters did not see many difficulties with estimates being made based on a split between order execution and goods and services other than order execution. One of these commenters suggested that advisers could make this estimate by applying an average of the "execution-only" rates being charged by dealers, against trading volumes, with the remainder representing research and brokerage services over-and-above "execution only", which could then be split out further.

Another commenter suggested splitting trading cost estimates into execution-only costs, research services costs, and order execution services costs that add to the proficiency of the trade execution process, but noted that any such estimates may be difficult as execution-only costs vary from trade to trade because dealers have different cost structures, and the nature and difficulty of specific trades will vary. However, this commenter did not think that the fact that any quantitative disclosure would involve estimates was a valid reason for not making the disclosure. This commenter also added that as execution-only trading becomes more prevalent, industry standards for execution-only costs will be established for purposes of making the split.

Two commenters, however, argued that there is no standard "execution-only" commission rate that could be used to value execution services and indirectly derive the value of all other services given the variety of factors impacting a particular trade.

Response:

As noted earlier, we have decided not to proceed with quantitative disclosure requirements at this time.

We note that investment funds should refer to the quantitative disclosure requirements under NI 81-106 and the related guidance in Companion Policy 81-106CP, and to the additional information provided in CSA Staff Notice 81-315 – Frequently Asked Questions on National Instrument 81-106 Investment Fund Continuous Disclosure.

C. Other specific comments relating to disclosure

(i) Flexibility to follow disclosure requirements of another regulatory jurisdiction – Comments on Question 3 from the 2008 Notice

Question – As order execution goods and services and research goods and services are increasingly offered in a cross-border environment, should the Proposed Instrument allow an adviser the flexibility to follow the disclosure requirements of another regulatory jurisdiction in place of the proposed disclosure requirements, so long as the adviser can demonstrate that the requirements in that other jurisdiction are, at a minimum, similar to the requirements in the Proposed Instrument? If so, should this flexibility be solely limited to quantitative disclosure given that the issues associated with differences in quantitative disclosure requirements between regulatory jurisdictions are likely greater than the problems associated with differences in narrative disclosure requirements? In addition, should there be limitations on which regulatory jurisdictions an adviser may look to for purposes of identifying suitable alternative disclosure requirements and, if so, which jurisdictions should be considered eligible and why?

Nine commenters were generally of the view that flexibility should be provided to allow an adviser to follow the disclosure requirements of another jurisdiction in place of the disclosure requirements for any final instrument. Reasons provided included that it would alleviate any additional burden that might be caused by the indirect imposition of disclosure requirements on foreign sub-advisers not otherwise subject to a final instrument. One of these suggested that if such flexibility was permitted, an adviser should not be permitted to provide disclosure that is at a lower standard than that proposed in the 2008 Instrument (i.e., the most restrictive standard should be applied). Others suggested that advisers should be permitted to follow the disclosure requirements of the SEC or the IMA Disclosure Code in the U.K. One commenter indicated that the CSA should determine and communicate which jurisdictions' disclosure requirements are acceptable, with another suggesting that the adviser should be left to make that determination.

Four commenters were generally of the view that allowing such flexibility should either not be considered or should be approached with caution. Reasons for this view included:

- differences in requirements in other jurisdictions would affect the comparability of disclosure, and may result in disclosures that are more difficult for clients to comprehend;
- clients should receive the disclosure that the jurisdiction they live in requires;
- there could be significant and unproductive disagreement between the CSA and advisers over which foreign disclosure regimes would be considered similar for purposes of the proposed disclosure requirements; and
- it may cause market participants to be incentivized to execute trades in different jurisdictions in order to provide lesser disclosure to clients.

One commenter that was not in favour of permitting flexibility suggested greater harmonization between the disclosure requirements of any final instrument and the SEC requirements, to allow for greater comparability between Canadian and U.S. advisers. Similar sentiments regarding the adoption of the SEC's disclosure requirements were echoed by two other commenters in different contexts.

Another commenter did not comment on the approach, on the basis that they would require more information on how 'similarity' between jurisdictions would be determined, if the CSA did not identify the jurisdictions considered similar for the purpose of disclosure.

Response:

Given that we have decided not to proceed with quantitative disclosure requirements at this time, we think it is no longer necessary to consider whether advisers should be permitted to follow disclosure requirements of another jurisdiction.

We note that investment funds should refer to the quantitative disclosure requirements under NI 81-106 and the related guidance in Companion Policy 81-106CP, and to the additional information provided in CSA Staff Notice 81-315 – Frequently Asked Questions on National Instrument 81-106 Investment Fund Continuous Disclosure.

(ii) Customization of disclosure

One commenter requested whether disclosure could be generic and non-customized for each individual client, indicating that the proposed disclosure in paragraphs 4.1(c) and (f) of the 2008 Instrument, at a minimum, would have to reflect an individual client's situation and may be more onerous than the CSA anticipates.

Response:

As noted earlier, we have decided not to proceed with quantitative disclosure requirements at this time. We have added guidance to subsection 5.3(1) of the Companion Policy to clarify that the information disclosed by an adviser may be client-specific, based on firm-wide information, or based on some other level of customization, so long as the information disclosed relates to those clients to whom the disclosure is directed.

We note that investment funds should refer to the quantitative disclosure requirements under NI 81-106 and the related guidance in Companion Policy 81-106CP, and to the additional information provided in CSA Staff Notice 81-315 – Frequently Asked Questions on National Instrument 81-106 Investment Fund Continuous Disclosure.

(iii) Initial disclosure

One commenter requested clarification regarding the exact disclosure to be given to new clients of an adviser, given that there will be no disclosure available for that new client under paragraph 4.1(f) of the 2008 Instrument, and there is question as to what might be relevant for a new client in relation to paragraphs 4.1(c) and (g). This commenter suggested breaking Part 4 of the 2008 Instrument into two separate subsections delineating the requirements for initial and annual disclosure, with the initial disclosure being comprised of only paragraphs (a), (b), (d) and (e), and the annual disclosure being comprised of the whole of the proposed section 4.1.

Response:

In accordance with the comments received, we have amended Part 4 of the Instrument to clarify the disclosure to be provided on an initial and periodic basis. We think this will reduce any confusion in relation to the intended application of the requirements, and reflect that it might not always be relevant for a new client to receive disclosure of the types of goods and services previously disclosed by the adviser to other clients.

(iv) Guidance relating to disclosure to the Independent Review Committee

Four commenters had concerns with the guidance provided in section 5.1 of the 2008 Policy regarding conflicts of interest and the possibility for disclosure to be made under any final instrument to a fund's Independent Review Committee (IRC).

All four generally questioned the appropriateness of the guidance itself, and whether and why it might be more appropriate for disclosure to be made to the IRC in those cases where the adviser to an investment fund is also the trustee and/or manager of the fund, or an affiliate of either, and some indicated that the guidance provided suggested disclosure to the IRC in these cases was required. Comments on the guidance included the following:

- disclosure to the IRC is not necessary if any conflict relating to the use of client brokerage commissions is mitigated by virtue of following the requirements of any final rule;
- NI 81-107 does not create different rules based on whether the fund manager is also the trustee, nor does it prescribe what constitutes a conflict of interest, leaving this determination to the adviser/manager;

- a requirement that a determination be made by the manager as to whether there is a conflict of interest matter requiring the disclosure information be provided to the IRC should not be embedded in proposed NI 23-102, whose primary purpose is not related to IRCs; and

- if the IRC is expected to assess whether the commissions paid achieve "a fair and reasonable result" – that is, expected to assess an adviser's business judgment – this would be inconsistent with section 5.1 of NI 81-107 which indicates that "the CSA do not consider it the role of the IRC to second-guess the investment or business decisions of a manager…".

Three of these commenters generally were of the view that any reference to the IRC and NI 81-107 should be deleted from any final companion policy, and replaced with either a provision allowing advisers the discretion to determine which fund oversight body should receive the disclosure, or with a requirement for the required disclosure to be made in the Annual Information Form required under NI 81-101.

Response:

We agree that the reference to the IRC should be removed from the Companion Policy on the basis that the requirements of, and related commentary to, NI 81-107 provide adequate guidance on the types of conflict of interest matters that should be referred to the IRC for its review and decision.

It should be noted, however, that Section 5.1 of NI 81-107 requires that a manager refer all conflict of interest matters to the IRC for its review and decision, regardless of whether the manager believes the conflict has been sufficiently mitigated through compliance with any final rule. Guidance has been provided in the commentary to NI 81-107 that would suggest that conflict of interest matters subject to IRC review and decision might include conflicts relating to the trading practices of the investment funds, including the negotiation of soft dollar arrangements with dealers with whom the adviser places portfolio transactions for the investment fund.

(v) Disclosure in the case of a pooled fund

Two commenters requested clarification as to whether it would be sufficient to disclose the total brokerage commissions paid at the pooled fund level, for purposes of the client-level disclosure requirement under paragraph 4.1(f) of the 2008 Instrument. These commenters indicated it would be difficult to attribute pro rata commission amounts to each client (unitholder), as it would require a daily analysis of each client's pro rata holding given to account for changes in any particular client's account holdings.

Another commenter requested that similar clarification be provided regarding the proposed disclosure as a whole, suggested that disclosure should be made on a fund-by-fund basis for pooled funds, as is the case for publicly offered investment funds.

Response:

As noted earlier, we have decided not to proceed with quantitative disclosure requirements at this time. For the remaining narrative disclosure requirements, there is nothing in the Instrument or Companion Policy that would preclude an adviser from providing disclosure at the pooled fund level to clients.

(vi) Disclosure of sub-adviser commission usage

One of the commenters questioned whether the CSA could mandate in a companion policy that disclosure by advisers must include commissions paid on brokerage transactions that might be directed by sub-advisers. Issues were also raised by some commenters with the practicality of obtaining disclosure from sub-advisers given there is no obligation (other than contractual) on those sub-advisers to provide such disclosure. A few of the commenters raised concerns as to whether such contracting could even be achieved, particularly for unrelated foreign sub-advisers, and suggested it may not even be possible to obtain the necessary information when sub-advisers are not required by the laws in their jurisdiction to maintain it, and disclosure would likely be inconsistent between advisers as a result of the differing levels of information likely to be received from their sub-advisers.

One of these commenters suggested that if the guidance was not changed, the disclosure requirements should be made to be identical to the requirements of the other countries, or Canadian advisers should be permitted to disclose only that information provided to them by a sub-adviser where there is also a disclosure requirement in the sub-adviser's jurisdiction. Another two commenters cautioned that the proposed guidance might cause some sub-advisers to choose not to do business with Canadian advisers, particularly if Canada is a small market for them.

Response:

Subsection 5.3(1) of the 2008 Policy stated "For the purposes of the disclosure made under section 4.1 of the Instrument, the requirement on the adviser to provide disclosure regarding the use of its client brokerage commissions would include the use of those commissions by its sub-advisers."

We have revised subsection 4.1(1) of the Instrument to clarify that an adviser must provide the required disclosure to a client if any brokerage transactions involving the client brokerage commissions of that client have been or might be directed to a dealer in return for the provision of any good or service by the dealer or a third party, other than order execution. The guidance provided in subsection 5.3(1) of the Companion Policy has also been amended to clarify the expectation that the disclosure required to be made by the adviser under section 4.1 of the Instrument would also reflect information pertaining to the processes, practices, arrangements, types of goods and services, etc., associated with brokerage transactions involving client brokerage commissions that have been or might be directed to dealers by its sub-advisers in return for the provision of any goods and services other than order execution.

As noted earlier, we have decided not to proceed with quantitative disclosure requirements at this time. As a result, we believe that the primary concerns expressed in relation to disclosure when a foreign sub-adviser is involved have been mitigated. We do not believe that obtaining the information to meet the narrative disclosure requirements should present the same level of difficulty, nor do we believe it is unreasonable for such disclosure to be provided by the adviser.

V. TRANSITION PERIOD

A. Transition period length – Comments on Question 4 from the 2008 Notice

Question – Should a separate and longer transition period be applied to the disclosure requirements to allow time for implementation and consideration of any future developments in the U.S.? If so, how long should this separate transition period be?

Four commenters suggested that the transition period was adequate, with one of these noting that the proposed time period was similar to that allowed when similar proposals were implemented in the U.K. and U.S. Two of these commenters also suggested that future regulatory developments in the U.S. or FSA could be addressed as they arise.

One commenter suggested that a relatively short transition period would be appropriate only if the quantitative disclosure requirements were reduced to just aggregated commission disclosure, or if the CSA did not expect advisers to take extraordinary efforts in preparing their "reasonable estimates" for purposes of the quantitative disclosure requirements.

The majority of commenters did not believe that the proposed transition period was adequate. Reasons for this view included that:

- systems would need to be changed or implemented in order to meet the proposed quantitative disclosure requirements;
- a full reporting cycle would have to pass in order to collect the data required to be disclosed; and
- the disclosure requirements in the U.S. have not yet been finalized, and the proposed transition period did not allow for consideration of the impact of any difference in disclosure requirements.

Four of these commenters suggested that a transition period ranging from 12 to 24 months would be appropriate. Another five commenters suggested either waiting until the SEC published and/or finalized its own proposals, or at least allowing for enough time to take any SEC proposals into account (i.e., by setting a transition period after discussion with the SEC, by setting a separate transition period for the proposed disclosure requirements that would apply to the first fiscal year-end commencing at least six months after the effective date of any U.S. rule on client brokerage commission disclosure, or by delaying the adoption of the disclosure portion of any final instrument until the SEC had finalized its own proposals). Another two commenters suggested that advisers should be given until their next annual information statement, or until the following one if the first fell within six months of the finalization of any rule. Another of these commenters suggested that if a separate longer transition period was to be applied to the disclosure requirements, a reasonable transition period for the non-disclosure requirements might be the six months proposed in the 2008 Instrument, but a more appropriate transition period for these requirements might be to apply these to the first fiscal year that commences at least six months after the effective date of any final instrument, to allow for better comparability across firms, and for advisers to have the option of providing the disclosure in conjunction with other client reporting.

Response:

As noted earlier, the Instrument does not include quantitative disclosure requirements. As a result, we believe a six month transition period is adequate.

B. Effect of transition period

One commenter questioned whether instead of an effective date of six months from its approval, the final rule should become effective immediately but with an appropriate transition period for purposes of compliance with its requirements, as would be consistent with the approach taken by the CSA in relation to the introduction of other rules.

Response:

Section 6.1 of the Instrument states that the Instrument will come into force on June 30, 2010. This provides for a transition period before compliance with the Instrument becomes mandatory.

C. Status of Existing Policies

One commenter questioned whether OSC Policy 1.9 and AMF Policy Statement Q-20 would be revoked at the end of the transition period.

Response:

OSC Policy 1.9 and AMF Policy Statement Q-20 will be rescinded on June 30, 2010.

VI. OTHER COMMENTS / REQUESTS FOR CLARIFICATION

A. Lack of explicit link to 'best execution' obligations

One commenter suggested that the link between the use of client brokerage commissions and 'best execution' should be written into any final rule, and noted that such linkage exists in section 11.6.11 of the FSA's Conduct of Business Sourcebook, and in the SEC Release.

Response:

We agree and have amended Section 1.2 of the Companion Policy to discuss the duty to make reasonable efforts to achieve 'best execution' when acting for a client.

B. "Banking" of soft dollar commissions

One commenter requested clarification as to whether the CSA approves of accumulating soft dollar payments that could be "banked" for future use, and how such payments should be disclosed given that items acquired with those funds would not be easy to link back to commissions that may have been paid in a previous year.

Response:

The concept of a dealer accumulating or pooling portions of commissions, to be later directed by an adviser to acquire goods and services other than order execution was contemplated in paragraph 4.1(g) of the 2008 Instrument, when proposing to require that advisers disclose a reasonable estimate of the portion of the aggregated commissions representing the "amounts paid or accumulated to pay for goods and services other than order execution…".

However, the accumulation of balances that go unused, or large balances that are carried forward over long periods of time, would raise questions as to whether the adviser is and has acted in the best interests of its client or clients in relation to the amount of client brokerage commissions paid to dealers. We would think if such situations occur that an adviser would take any actions necessary in relation to the accumulated balances to ensure the interests of its clients are being served.

Given that the Instrument does not include quantitative disclosure requirements, we believe the concerns relating to disclosure have been mitigated. We note that the current disclosure requirements under paragraph 3.6(1)3 of NI 81-106 requires disclosure of the amounts paid or payable to dealers for goods and services other than order execution. In our view, amounts payable would include disclosure of the amounts 'banked' as at the reporting date.

C. Use of term "third party beneficiaries"

One commenter recommended replacing the term "third party beneficiaries" in section 2.1 of the 2008 Instrument, with "clients" for consistency, and because certain clients may not be considered third party beneficiaries.

Response:

For consistency, we have replaced "third party beneficiaries" with "client".

D. Costs

Three commenters suggested the CSA's estimates of costs for compliance in relation to the additional burden that would be placed on foreign sub-advisers asked to provide quantitative disclosure information, were greatly underestimated. Two of these indicated that these increased costs for sub-advisers would increase the overall costs to the fund manager, which would therefore increase the cost of obtaining global diversification for Canadian investors.

One of these commenters also suggested that the cost-benefit analysis did not consider the significant implementation and enhancement costs to the investment fund industry, including those to be incurred by those companies that had previously made a policy decision not to use "soft dollars", and was concerned that the estimate was not made based on consultation with Canadian firms, but was extrapolated based on research from other jurisdictions. This commenter also questioned the validity of the scope of the analysis, indicating that it provided cost estimates only for the review of current brokerage arrangements and not, as noted above, for the creation of monitoring systems, for the additional required disclosures, or for other necessary implementation costs. This commenter also added that the analysis failed to meaningfully address the benefits, and cited the IOSCO report – *Soft Commission Arrangements for Collective Investment Schemes* issued in November 2007 that reported that no jurisdictions were able to quantify the number or probability of soft commission abuses occurring in their jurisdictions in the last three years, including Ontario, Quebec, the U.S. and the U.K.

Response:

Given the Instrument has been finalized without quantitative disclosure requirements, we believe the concerns pertaining to the additional burden that might be placed on foreign sub-advisers in relation to such disclosure have been adequately addressed.

We also believe that the principles-based approach taken in relation to unsolicited goods and services (see the guidance on unsolicited goods and services in subsection 4.1(5) of the final Companion Policy, and the related discussion in Section C of Part II of this summary of comments) should provide sufficient flexibility to reasonably address the concerns associated with the potential impact of the guidance included in the 2008 Policy.

In response to the comment regarding the November 2007 IOSCO report, we note that the report does indicate that none of the surveyed IOSCO jurisdictions were able to quantify any soft-dollar abuses. However, there is the risk that the current lack of clear requirements and guidance in Canada creates uncertainty – one of the anticipated benefits of the 2008 Instrument is that it adds certainty by providing improved guidance to advisers. A lack of clear requirements and guidance could lead to the inadvertent misuse of client brokerage commissions.

For example, we note that the Cost-Benefit Analysis published with the 2008 Instrument reports that between 2003 and 2007, OSC compliance staff found deficiencies in 35% of the 31 firms reviewed that purchased third-party products in connection with client brokerage commissions. Over the same period, the British Columbia Securities Commission's compliance staff identified seven deficiencies, only one which they considered serious in 23 Investment Counsel/Portfolio Manager firms that had soft dollar arrangements.

E. Harmonization across CSA

One commenter expressed disappointment that it appeared possible that advisors might be subject to different sets of rules within Canada if the British Columbia Securities Commission did not support the implementation of a National Instrument,

particularly when the purpose of the policy review was to harmonize requirements with those in foreign jurisdictions such as the U.S. and U.K. This commenter added that such lack of consistency among Canadian regulators is confusing to market participants and contributes to a weakening of perception of Canada's capital markets.

Another commenter urged the CSA to move forward with the proposals with a view to ensuring that each jurisdiction passes uniform rules and that staff in each jurisdiction administer and interpret the rules in a uniform and consistent fashion. This commenter added that most securities industry participants in Canada are not "local" market participants, in that they often participate in multiple jurisdictions. This commenter also suggested that to the extent an industry participant chose to operate only in a limited number of provinces or territories, it is generally done to avoid being subject to all regulators and laws of each province and territory. This commenter did not see a need for any local rules or regulation, nor for any need for there to be differing interpretations or administrative positions (particularly unwritten administrative positions). This commenter was also troubled with the position of the British Columbia Securities Commission regarding possible adoption of any final rule, and stated that the prolonged discussions about client brokerage commissions practices by regulators and industry alike, not only in Canada, but also in the U.S. and U.K., demonstrate completely the need for clearly defined rules and regulatory guidance.

Response:

The Instrument has been finalized as a National Instrument and applies in each jurisdiction.

List of commenters

1. Alternative Investment Management Association – Canada Chapter
2. Baillie Gifford & Co.
3. Bloomberg L.P.
4. BNY ConvergEx Group LLC
5. Borden Ladner Gervais LLP
6. Canadian Advocacy Council of CFA Institute Canadian Societies
7. Commission Direct Inc.
8. Fidelity Investments Canada Limited
9. Greystone Managed Investments Inc.
10. Investment Adviser Association
11. Investment Counsel Association of Canada
12. Investment Company Institute
13. The Investment Funds Institute of Canada
14. IGM Financial Inc.
15. Investment Industry Association of Canada
16. Leith Wheeler Investment Counsel Ltd.
17. National Society of Compliance Professionals Inc.
18. RBC Asset Management Inc.
19. Securities Industry and Financial Markets Association
20. TD Asset Management Inc.
21. TD Newcrest

NATIONAL INSTRUMENT 23-102 – USE OF CLIENT BROKERAGE COMMISSIONS

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PART 1 – DEFINITIONS

1.1 Definitions – In this Instrument,

"affiliated entity" has the meaning ascribed to it in section 1.3 of National Instrument 21-101 *Marketplace Operation*;

"client brokerage commissions" means brokerage commissions paid for out of, or charged to, a client account or investment fund managed by the adviser;

"managed account" has the meaning ascribed to it in section 1.1 of National Instrument 31-103 *Registration Requirements and Exemptions*;

"order execution goods and services" means

(a) order execution; and

(b) goods or services to the extent that they are directly related to order execution;

"research goods and services" means

(a) advice relating to the value of a security or the advisability of effecting a transaction in a security,

(b) an analysis, or report, concerning a security, portfolio strategy, issuer, industry, or an economic or political factor or trend, and

(c) a database, or software, to the extent that it supports goods or services referred to in paragraphs (a) and (b).

1.2 Interpretation – Security – For the purposes of this Instrument,

(a) in Alberta, British Columbia, New Brunswick and Saskatchewan, "security" includes an exchange contract; and

(b) in Québec, "security" includes a standardized derivative.

1.3 Interpretation – Adviser – For the purposes of this Instrument, "adviser" means

(a) a registered adviser; or

(b) a registered dealer that carries out advisory functions but is exempt from registration as an adviser.

PART 2 – APPLICATION

2.1 Application – This Instrument applies to an adviser or a registered dealer in relation to a trade in a security if brokerage commissions are charged by a dealer for an account, or portfolio, over which the adviser has discretion to make investment decisions without requiring the express consent of the client, including, for greater certainty,

(a) an investment fund; and

(b) a managed account.

PART 3 – COMMISSIONS ON BROKERAGE TRANSACTIONS

3.1 Advisers – (1) An adviser must not direct any brokerage transactions involving client brokerage commissions to a dealer in return for the provision of goods or services by the dealer or a third party, other than any of the following:

(a) order execution goods and services;

(b) research goods and services.

(2) An adviser that directs any brokerage transactions involving client brokerage commissions to a dealer, in return for the provision of any order execution goods and services or research goods and services by the dealer or a third party, must ensure that:

(a) the goods or services are to be used to assist with investment or trading decisions, or with effecting securities transactions, on behalf of the client or clients; and

(b) a good faith determination is made that the client or clients receive reasonable benefit considering both the use of the goods or services and the amount of client brokerage commissions paid.

3.2 Registered Dealers – A registered dealer must not accept, or forward to a third party, client brokerage commissions, or any portion of those commissions, in return for the provision to an adviser of goods or services by the dealer or a third party, other than any of the following:

(a) order execution goods and services;

(b) research goods and services.

PART 4 – DISCLOSURE OBLIGATIONS

4.1 Disclosure – (1) An adviser must provide the following disclosure to a client if any brokerage transactions involving the client brokerage commissions of that client have been or might be directed to a dealer in return for the provision of any good or service by the dealer or a third party, other than order execution:

(a) before the adviser opens a client account or enters into a management contract or a similar agreement to advise an investment fund,

(i) a description of the process for, and factors considered in, selecting a dealer to effect securities transactions, including whether receiving goods or services in addition to order execution is a factor, and whether and how the process may differ for a dealer that is an affiliated entity;

(ii) a description of the nature of the arrangements under which order execution goods and services or research goods and services might be provided;

(iii) a list of each type of good or service, other than order execution, that might be provided; and

(iv) a description of the method by which the determination in paragraph 3.1(2)(b) is made; and

(b) at least annually,

(i) the information required to be disclosed under paragraph (a) other than subparagraph (a)(iii);

(ii) a list of each type of good or service, other than order execution, that has been provided;

(iii) the name of any affiliated entity that provided any good or service referred to in subparagraph (ii), separately identifying each affiliated entity and each type of good or service provided by each affiliated entity; and

(iv) a statement that the name of any other dealer or third party that provided a good or service referred to in subparagraph (ii), if that name was not disclosed under subparagraph (iii), will be provided to the client upon request.

(2) An adviser must maintain a record of the name of any dealer or third party that provided a good or service, other than order execution under section 3.1, and must provide that information to the client upon request.

PART 5 – EXEMPTION

5.1 Exemption – (1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario only the regulator may grant an exemption.

(3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

PART 6 – EFFECTIVE DATE AND TRANSITION

6.1 Effective Date – This Instrument comes into force on June 30, 2010.

6.2 Transition – On or before December 31, 2010, an adviser must provide to a client, if the client was a client on June 30, 2010, the disclosure required under paragraph 4.1(1)(a) or (b).

COMPANION POLICY 23-102 CP – USE OF CLIENT BROKERAGE COMMISSIONS

TABLE OF CONTENTS

PART 1 – INTRODUCTION

1.1 Introduction – The purpose of this Companion Policy is to provide guidance regarding the various requirements of National Instrument 23-102 Use of Client Brokerage Commissions (the "Instrument"), including:

(a) a discussion of the general regulatory purposes for the Instrument;

(b) the interpretation of various terms and provisions in the Instrument; and

(c) guidance on compliance with the Instrument.

1.2 General – Registered dealers and advisers have a fundamental obligation to deal fairly, honestly, and in good faith with their clients. Registered dealers and advisers are also required to make reasonable efforts to achieve best execution when acting for clients, and have certain obligations to identify and respond to conflicts of interest. Directing brokerage transactions involving client brokerage commissions to a dealer in return for the provision of goods or services other than order execution should therefore also be evaluated in light of the duty to deal fairly, honestly, and in good faith with clients, the obligation to make reasonable efforts to achieve best execution, and any requirements pertaining to conflicts of interest. The Instrument is therefore intended to provide more specific parameters for obtaining such goods or services when client brokerage commissions are involved. The Instrument also sets out disclosure requirements for advisers. This Companion Policy provides guidance on (a) the characteristics of the types of goods and services that might be eligible, including some examples; (b) the obligations of advisers and registered dealers; and (c) the disclosure obligations.

PART 2 – APPLICATION OF THE INSTRUMENT

2.1 Application – (1) The Instrument applies to advisers and registered dealers. Section 1.3 of the Instrument indicates that for the purposes of the Instrument, adviser means a registered adviser or a registered dealer that carries out advisory functions but is exempt from registration as an adviser. The Instrument governs certain trades in securities where payment for the transaction is made with client brokerage commissions, as set out in section 2.1 of the Instrument. The reference to "client brokerage commissions" includes any brokerage commission or similar transaction-based fee charged for a trade where the amount paid for the security is clearly separate and identifiable (e.g., the security is exchange-traded, or there is some other independent pricing mechanism that enables the adviser to accurately and objectively determine the amount of commissions or fees charged).

(2) The limitation of the Instrument to trades for which a brokerage commission is charged is based on the practical difficulties in applying these requirements to transactions such as principal transactions where an embedded mark-up is charged. An adviser that obtains goods or services other than order execution in conjunction with such transactions is subject to its duty to deal fairly, honestly, and in good faith with clients, and its obligation to make reasonable efforts to achieve best execution when acting for clients. As a result, an adviser should consider the goods or services obtained in relation to its duty to deal fairly, honestly, and in good faith with its clients, and in its evaluation of best execution. In addition, an adviser should also consider any relevant conflict of interest provisions, given the incentives created for advisers to place their interests ahead of their clients when obtaining goods or services other than order execution in conjunction with such transactions.

PART 3 – ORDER EXECUTION GOODS AND SERVICES AND RESEARCH GOODS AND SERVICES

3.1 Definitions of Order Execution Goods and Services and Research Goods and Services – (1) Section 1.1 of the Instrument includes the definitions of order execution goods and services and research goods and services and provides the broad characteristics of both.

(2) The definitions do not specify what form (e.g., electronic or paper) the goods or services should take, as it is their substance that is relevant in assessing whether the definitions are met.

(3) An adviser's responsibilities include determining whether any particular good or service, or portion of a good or service, may be obtained through brokerage transactions involving client brokerage commissions. In making this determination, the adviser is required under Part 3 of the Instrument to ensure both that the good or service meets the definition of order execution goods and services or research goods and services and that it is to be used to assist with investment or trading decisions or with effecting securities transactions on behalf of the client or clients.

3.2 Order Execution Goods and Services – (1) Section 1.1 of the Instrument defines "order execution goods and services" as including the actual execution of the order itself, as well as goods or services to the extent that they are directly related to order execution. For the purposes of the Instrument, the term "order execution", as opposed to "order execution goods and services", refers to the entry, handling or facilitation of an order whether by a dealer or by an adviser (for example, through direct market access or as a subscriber to an alternative trading system), but not other goods or services provided to aid in the execution of trades.

(2) To be considered directly related to order execution, goods or services should generally be integral to the arranging and conclusion of the transactions that generated the commissions. A temporal standard should be applied to ensure that only goods or services used by an adviser that are directly related to the execution process are considered order execution goods and services. As a result, we generally consider that goods or services directly related to the execution process would be provided or used between the point at which an adviser makes an investment or trading decision and the point at which the resulting securities transaction is concluded. The conclusion of the resulting securities transaction occurs at the point that settlement is clearly and irrevocably completed.

(3) For example, order execution goods and services may include order management systems (to the extent they help arrange or effect a securities transaction), algorithmic trading software and market data (to the extent they assist in the execution of orders), and custody, clearing and settlement services that are directly related to an executed order that generated commissions.

3.3 Research Goods and Services – (1) The Instrument defines research goods and services as including advice, analyses or reports regarding various subject matter relating to investments, as well as databases and software to the extent that they support these goods or services. In order to be eligible, research goods and services generally should reflect the expression of reasoning or knowledge and be related to the subject matter referred to in the definition (i.e., securities, portfolio strategy, etc.). We would also consider databases and software that are used by advisers in support of or as an alternative to the provision by dealers of advice, analyses and reports to be research goods and services to the extent they relate to the subject matter referred to in the definition. Additionally, a general characteristic of research goods and services is that, in order to link these to order execution, they should be provided or used before an adviser makes an investment or trading decision.

(2) For example, traditional research reports, publications marketed to a narrow audience and directed to readers with specialized interests, seminars and conferences (i.e., fees, but not incidental expenses such as travel, accommodations and entertainment costs), and trading advice, such as advice from a dealer as to how, when or where to trade an order (to the extent it is provided before an order is transmitted), would generally be considered research goods and services. Databases and software that could be eligible as research goods and services could include quantitative analytical software, market data from feeds or databases, post-trade analytics from prior transactions (to the extent they are used to aid in a subsequent investment or trading decision), and possibly order management systems (to the extent they provide research or assist with the research process).

3.4 Mixed-Use Items – (1) Mixed-use items are those goods or services that contain some elements that may meet the definitions of order execution goods and services or research goods and services, and other elements that either do not meet the definitions or that would not meet the requirements of Part 3 of the Instrument. Where mixed-use items are obtained by an adviser through brokerage transactions involving client brokerage commissions, the adviser should make a reasonable allocation of those commissions paid according to the use of the goods or services. For example, client brokerage commissions might be involved when paying for the portion of order management systems used in the order execution process, but an adviser should use its own funds to pay for any portion of the systems used for compliance, accounting or recordkeeping purposes.

(2) For purposes of making a reasonable allocation, an adviser should make a good faith estimate supported by a fact-based analysis of how the good or service is used, which may include inferring relative costs from relative benefits. Factors to consider might include the relative utility derived from, or the time for which the good or service is used, eligible and ineligible uses.

(3) Advisers are expected to keep adequate books and records concerning the allocations made.

3.5 Non-Permitted Goods and Services – We consider certain goods and services to be clearly outside the scope of the permitted goods and services under the Instrument because they are not sufficiently linked to the securities transactions that generated the commissions. Goods and services that relate to overhead associated with the operation of an adviser's business rather than to the provision of services to its clients would not meet the requirements of Part 3 of the Instrument. Examples of non-permitted goods and services include office furniture and equipment (including computer hardware), trading surveillance or compliance systems, costs associated with correcting error trades, portfolio valuation and performance measurement services, computer software that assists with administrative functions, legal and accounting services relating to the management of an adviser's own business or operations, memberships, marketing services, and services provided by the adviser's personnel (e.g. payment of salaries, including those of research staff).

PART 4 – OBLIGATIONS OF ADVISERS AND REGISTERED DEALERS

4.1 Obligations of Advisers – (1) Subsection 3.1(1) of the Instrument restricts an adviser from directing any brokerage transactions involving client brokerage commissions to a dealer in return for the provision of goods or services by the dealer or a third party, other than order execution goods and services or research goods and services, as defined in the Instrument. This applies when brokerage transactions involving client brokerage commissions are used to obtain order execution goods and services or research goods and services under both formal and informal arrangements, including informal arrangements for the receipt of these goods and services from a dealer offering proprietary, bundled services. This would also apply when brokerage transactions involving client brokerage commissions are directed to any dealer, including where the adviser has direct market access or is a subscriber to an alternative trading system.

(2) Subsection 3.1(2) of the Instrument requires an adviser that directs any brokerage transaction involving client brokerage commissions to a dealer, in return for the provision of order execution goods and services or research goods and services by the dealer or a third party, to ensure that certain criteria are met. The criteria included under paragraph 3.1(2)(a) requires the adviser to ensure that the goods or services acquired are to be used to assist with investment or trading decisions, or with effecting securities transactions, on behalf of the adviser's client or clients. The goods or services should therefore be used in a manner that provides appropriate assistance to the adviser in making these decisions, or in effecting such transactions. A good or service that meets the definition of order execution goods and services or research goods and services, but is not to be used to assist the adviser with investment or trading decisions, or with effecting securities transactions, should not be obtained through brokerage transactions involving client brokerage commissions. The adviser should be able to demonstrate how the goods or services obtained under the Instrument are used to provide appropriate assistance.

(3) Paragraph 3.1(2)(b) of the Instrument requires the adviser to ensure that a good faith determination is made that the client or clients receive reasonable benefit considering both the use of the goods or services and the amount of client brokerage commissions paid. Benefit to the client is generally derived from the use of the goods and services (i.e., the assistance provided in relation to investment or trading decisions made, or securities transactions effected, on behalf of the client or clients), and is generally relative to the amount of client brokerage commissions paid. The determination required under paragraph 3.1(2)(b) can be made either with respect to a particular transaction or the adviser's overall responsibilities for client accounts.

(4) Also for the purposes of subsection 3.1(2) of the Instrument, a specific order execution good or service or research good or service may be used to benefit more than one client, and may not always be used to directly benefit each particular client whose brokerage commissions paid for the brokerage transactions through which the particular good or service was obtained. However, the adviser should have adequate policies and procedures in place, and apply those

policies and procedures, so that, over time, all clients whose brokerage commissions may have been involved with such transactions receive fair and reasonable benefit.

(5) An adviser that, by virtue of paying client brokerage commissions on brokerage transactions, is provided with access to or receives goods or services on an unsolicited basis should consider whether or how usage of those goods or services has affected its obligations under the Instrument as part of its process for assessing compliance with the Instrument. For example, if an adviser considers unsolicited goods or services as a factor when selecting dealers or allocating brokerage transactions to dealers, the adviser should include these goods or services when assessing compliance with the obligations of the Instrument, and should include these in its disclosure.

4.2 Obligations of Registered Dealers – Section 3.2 of the Instrument indicates that a registered dealer must not accept, or forward to a third party, client brokerage commissions, or any portion of those commissions, in return for the provision to an adviser of goods or services by the dealer or a third party, other than order execution goods and services and research goods and services. A dealer may forward to a third party, on the instructions of an adviser, any portion of those commissions in return for order execution goods and services or research goods and services provided to the adviser by that third party. In either situation, the dealer would need to make an assessment as to whether or not the goods or services being paid for meet the definitions of order execution goods and services or research goods and services, in order to be meeting its obligations.

PART 5 – DISCLOSURE OBLIGATIONS

5.1 Disclosure Recipient – Part 4 of the Instrument requires an adviser to provide certain disclosure to a client if any brokerage transactions involving the client brokerage commissions of that client have been or might be directed to a dealer in return for the provision of any goods or services by the dealer or a third party, other than order execution. The recipient of the disclosure should typically be the party with whom the contractual arrangement to provide advisory services exists. For example, for an adviser to an investment fund, the client would typically be considered the fund for purposes of the disclosure requirements.

5.2 Timing of Disclosure – Part 4 of the Instrument requires an adviser to make certain initial and periodic disclosure to its clients. Initial disclosure should be made before an adviser opens a client account or enters into a management contract or a similar agreement to advise an investment fund and then periodic disclosure should be made at least annually. The period of time chosen for the periodic disclosure should be consistent from period to period.

5.3 Adequate Disclosure – (1) For the purposes of the disclosure made under section 4.1 of the Instrument, the information disclosed by an adviser may be client-specific, based on firm-wide information, or based on some other level of customization, so long as the information disclosed relates to those clients to whom the disclosure is directed. In any case, the disclosure required to be made by the adviser under section 4.1 of the Instrument would also reflect information pertaining to the processes, practices, arrangements, types of goods and services, etc., associated with brokerage transactions involving client brokerage commissions that have been or might be directed to dealers by its sub-advisers in return for the provision of any goods and services other than order execution.

(2) Also for the purposes of the disclosure under section 4.1 of the Instrument the use of the phrase “might be” in the requirement to make disclosure in situations where brokerage transactions involving client brokerage commissions have been or might be directed relates primarily to the disclosure to be made on an initial basis under paragraph 4.1(1)(a) of the Instrument. It is intended to require that the initial disclosure be made if it is or becomes reasonably foreseeable that brokerage transactions involving a new client’s brokerage commissions could be directed in such a manner – for example, if brokerage transactions involving other existing clients’ brokerage commissions are directed in such a manner, and it is likely that trades to be made on behalf of the new client will be aggregated with those made on behalf of the other existing clients.

(3) For the purposes of subparagraph 4.1(1)(a)(ii) of the Instrument, disclosure of the nature of the arrangements under which order execution goods and services or research goods and services might be provided should include whether goods and services are provided directly by a dealer or by a third party, and a description of the general mechanics of how client brokerage commissions are charged and might translate into payment for order execution goods and services and research goods and services.

(4) For the purposes of subparagraphs 4.1(1)(a)(iii) and 4.1(1)(b)(ii) of the Instrument, disclosure of each type of good or service should be sufficient to provide adequate description of the goods or services received (e.g., algorithmic trading software, research reports, trading advice, etc.).

(5) For purposes of subparagraph 4.1(1)(a)(iv), to the extent that more than one method is used, the description should be of those methods.

5.4 **Form of Disclosure –** Part 4 of the Instrument does not specify the form of disclosure. The adviser may determine the form of disclosure based on the needs of its clients, but the disclosure should be provided in conjunction with other initial and periodic disclosure relating to the management and performance of the account or portfolio. For managed accounts and portfolios, the initial disclosure could be included as a supplement to the management contract or similar agreement or the account opening form, and the periodic disclosure could be provided as a supplement to a statement of portfolio.

RESCISSION OF
ONTARIO SECURITIES COMMISSION POLICY 1.9 – *USE BY DEALERS OF BROKERAGE COMMISSION AS PAYMENT FOR GOODS OR SERVICES OTHER THAN ORDER EXECUTION SERVICES – ("SOFT DOLLAR" DEALS)*

1. Ontario Securities Commission Policy 1.9 – *Use by Dealers of Brokerage Commission as Payment for Goods or Services other than Order Execution Services – ("Soft Dollar" Deals)* is rescinded on June 30, 2010.

Chapter 6

Request for Comments

6.1.1 Notice of Proposed Amendments to NI 81-101 Mutual Fund Prospectus Disclosure and Form 81-101F2 Contents of Annual Information Form and to NI 41-101 General Prospectus Requirements and Form 41-102F2 Information Required in an Investment Fund Prospectus

NOTICE OF PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 81-101 *MUTUAL FUND PROSPECTUS DISCLOSURE*
AND
FORM 81-101F2 *CONTENTS OF ANNUAL INFORMATION FORM*

AND TO

NATIONAL INSTRUMENT 41-101 *GENERAL PROSPECTUS REQUIREMENTS*
AND
FORM 41-101F2 *INFORMATION REQUIRED IN AN INVESTMENT FUND PROSPECTUS*

Substance and Purpose of the Proposed Amendments

The CSA, with this Notice, are publishing for a 90-day comment period amendments to the following investment fund prospectus disclosure forms (the Forms):

(a) Form 81-101F2 *Contents of Annual Information Form* under National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, and

(b) Form 41-101F2 *Information Required in an Investment Fund Prospectus* under National Instrument 41-101 *General Prospectus Requirements*.

These proposed amendments are consequential to, and are being published concurrently with, the final publication of National Instrument 23-102 *Use of Client Brokerage Commissions* (NI 23-102).

The substance and purpose of these amendments is to ensure consistency between the disclosure requirements under NI 23-102 relating to client brokerage commissions and similar disclosure prescribed for investment funds in the Forms.

Summary of the Proposed Amendments to the Forms

The amendments proposed in Form 81-101F2 consist of a change to an existing disclosure requirement relating to brokerage arrangements involving client brokerage commissions, while the amendments proposed to Form 41-101F2 consist of the addition of a new disclosure item concerning such matters. These amendments are intended to ensure consistency with similar disclosure requirements in NI 23-102.

The disclosure is intended to provide investment fund investors with relevant qualitative information concerning goods and services other than order execution obtained in connection with client brokerage commissions.

This qualitative disclosure is further intended to complement the related quantitative disclosure requirement concerning client brokerage commissions that currently applies to investment funds under National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106).

Authority for Proposed Amendments (Ontario)

In those jurisdictions in which the proposed amendments to the Forms are to be adopted or made as rules or regulations, the securities legislation in each of those jurisdictions provides the securities regulatory authority with rule-making or regulation-making authority.

In Ontario, the following provisions of the *Securities Act* (Ontario) (the Act) provide the Ontario Securities Commission (the OSC) with authority to make the proposed consequential amendments to the Forms:

- Paragraph 143(1)16 of the Act authorizes the OSC to make rules in respect of the distribution of securities, including by establishing requirements in respect of distributions of securities by means of a simplified prospectus or other form of disclosure document.

- Paragraph 143(1)31 of the Act authorizes the OSC to make rules regulating investment funds and the distribution and trading of securities of investment funds, including by prescribing additional disclosure requirements in respect of investment funds.

- Paragraph 143(1)39 of the Act authorizes the OSC to make rules requiring or respecting the media, format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents required under or governed by the Act, the regulations or the rules and all documents determined by the regulations or the rules to be ancillary to the documents.

Alternatives Considered and Anticipated Costs and Benefits

The CSA have not considered any alternatives to the proposed amendments as they consider it essential that the amendments be made to ensure consistency between the disclosure requirements pertaining to client brokerage commissions under NI 23-102 and similar disclosure requirements under the Forms.

The revised disclosure requirement will provide investment fund investors with enhanced transparency on how order execution goods and services and research goods and services are obtained in connection with client brokerage commissions paid on the investment fund's portfolio transactions.

Investment funds that use Form 81-101F2 should not incur additional costs in complying with the proposed disclosure requirements given that they are already subject to, and have been complying with, a similar existing disclosure requirement in Form 81-101F2 pertaining to brokerage arrangements and client brokerage commissions.

Investment funds that use Form 41-101F2 may incur additional costs in complying with the proposed disclosure requirements given that these disclosure requirements are new for investment funds that offer securities under the long form prospectus. The CSA are of the view that investment funds using a long form prospectus should be subject to the same qualitative disclosure requirements pertaining to client brokerage commissions as open-end investment funds using a simplified prospectus (Form 81-101F2), particularly when we consider that the current quantitative disclosure requirement under NI 81-106 is applicable to all types of investment funds.

The CSA expect that the costs entailed in complying with the new disclosure requirements will consist mainly of legal costs associated with the preparation of disclosure documents. For greater detail on the costs that portfolio advisers of investment funds may incur to comply with the requirements of NI 23-102, please refer to the cost-benefit analysis at Appendix B to the Notice of Proposed National Instrument 23-102 *Use of Client Brokerage Commissions as Payment for Order Execution Services or Research Services* published on January 11, 2008 at (2008) 31 OSCB 489.

Unpublished Materials

In proposing the amendments to the Forms, the CSA have not relied on any significant unpublished study, report, or other material.

Request for Comments

We invite interested parties to make written submissions concerning the proposed consequential amendments.

Please submit your comments in writing before **January 7, 2010**. If you are not sending your comments by fax, mail or hand delivery, please forward an electronic file containing your submission in Word, Windows format.

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period.

Where to Send Your Comments

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

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission

Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Office of the Attorney General, Prince Edward Island
Nova Scotia Securities Commission
Financial Services Regulation Division, Consumer and Commercial Affairs Branch, Department of Government Services, Newfoundland and Labrador
Registrar of Securities, Government of Yukon
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Superintendent, Securities Office, Government of Nunavut

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

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
Email: jstevenson@osc.gov.on.ca

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

Questions

Please refer your questions to any of:

Susan Thomas
Legal Counsel, Investment Funds
Ontario Securities Commission
Phone: (416) 593-8076
Email: sthomas@osc.gov.on.ca

Vera Nunes
Assistant Manager, Investment funds
Ontario Securities Commission
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Email: vnunes@osc.gov.on.ca

Meg Tassie
Senior Advisor
British Columbia Securities Commission
Phone: (604) 899-6819
Email: MTassie@bcsc.bc.ca

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Senior Legal Counsel
Alberta Securities Commission
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Director and Chief Administration Officer
Manitoba Securities Commission
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Email: Bob.Bouchard@gov.mb.ca

Doug Brown
Director, Commission Secretary
Manitoba Securities Commission
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Shirley Lee
Securities Analyst
Nova Scotia Securities Commission
Phone: (902) 424-5441
Email: leesp@gov.ns.ca

Donald MacDougall
Deputy Superintendent,
Legal and Enforcement
Securities Office, Northwest Territories
Phone: (867) 920-8984
Email: Donald_macdougall@gov.nt.ca

Winston Morris
Assistant Deputy Minister,
Consumer and Commercial Affairs and
Superintendent of Securities
Newfoundland and Labrador Securities Commission
Phone: (709) 729-2570
Email: Winston.Morris@gov.nl.ca

Fred Pretorius
Director of Corporate Affairs
Superintendent of Securities, Yukon Territory
Phone: (867) 667-5225
Email: Fred.Pretorius@gov.yk.ca

Louis Arki
Chair, Superintendent
Securities Office, Government of Nunavut
Phone: (867) 975-6587
Email: larki@gov.nu.ca

The text of the proposed amendments follows or can be found on a CSA member website.

October 9, 2009

NATIONAL INSTRUMENT 81-101
***MUTUAL FUND PROSPECTUS DISCLOSURE* AND**
FORM 81-101F2 *CONTENTS OF ANNUAL INFORMATION FORM*
AMENDMENT INSTRUMENT

1. National Instrument 81-101 *Mutual Fund Prospectus Disclosure* is amended by this Instrument.

2. Form 81-101F2 *Contents of Annual Information Form* is amended by repealing Item 10.4, including the Instructions under that Item, and substituting the following:

"*10.4 – Brokerage Arrangements*

(1) If any brokerage transactions involving the client brokerage commissions of the mutual fund have been or might be directed to a dealer in return for the provision of any good or service, by the dealer or a third party, other than order execution, state

(a) the process for, and factors considered in, selecting a dealer to effect securities transactions for the mutual fund, including whether receiving goods or services in addition to order execution is a factor, and whether and how the process may differ for a dealer that is an affiliated entity;

(b) the nature of the arrangements under which order execution goods and services or research goods and services might be provided;

(c) each type of good or service, other than order execution, that might be provided; and

(d) the method by which the portfolio adviser makes a good faith determination that the mutual fund, on whose behalf the portfolio adviser directs any brokerage transactions involving client brokerage commissions to a dealer in return for the provision of any order execution goods and services or research goods and services, by the dealer or a third party, receives reasonable benefit considering both the use of the goods or services and the amount of client brokerage commissions paid.

(2) Since the date of the last annual information form, if any brokerage transactions involving the client brokerage commissions of the mutual fund have been or might be directed to a dealer in return for the provision of any good or service, by the dealer or third party, other than order execution, state

(a) the information required to be disclosed under subsection (1) other than subparagraph (1)(c);

(b) each type of good or service, other than order execution, that has been provided to the manager or the portfolio adviser of the mutual fund; and

(c) the name of any affiliated entity that provided any good or service referred to in paragraph (b), separately identifying each affiliated entity and each type of good or service provided by each affiliated entity.

(3) If any brokerage transactions involving the client brokerage commissions of the mutual fund have been or might be directed to a dealer in return for the provision of any good or service, by the dealer or a third party, other than order execution, state that the name of any other dealer or third party that provided a good or service referred to in paragraph (2)(b), that was not disclosed under paragraph (2)(c), will be provided upon request by contacting the mutual fund or mutual fund family at [insert telephone number] or at [insert mutual fund or mutual fund family e-mail address].

INSTRUCTIONS:

Terms defined in NI 23-102 – Use of Client Brokerage Commissions have the same meaning where used in this Item."

3. This Instrument comes into force on _____, 2009.

NATIONAL INSTRUMENT 41-101
***GENERAL PROSPECTUS REQUIREMENTS* AND**
FORM 41-101F2 *INFORMATION REQUIRED IN AN INVESTMENT FUND PROSPECTUS*
AMENDMENT INSTRUMENT

1. National Instrument 41-101 *General Prospectus Requirements* is amended by this Instrument.

2. Form 41-101F2 *Information Required in an Investment Fund Prospectus* is amended by adding the following Item and accompanying Instructions immediately after Item 19.2:

"*19.2.1 – Brokerage Arrangements*

Under the sub-heading "Brokerage Arrangements",

(a) If any brokerage transactions involving the client brokerage commissions of the investment fund have been or might be directed to a dealer in return for the provision of any good or service, by the dealer or a third party, other than order execution, state

(i) the process for, and factors considered in, selecting a dealer to effect securities transactions for the investment fund, including whether receiving goods or services in addition to order execution is a factor, and whether and how the process may differ for a dealer that is an affiliated entity;

(ii) the nature of the arrangements under which order execution goods and services or research goods and services might be provided;

(iii) each type of good or service, other than order execution, that might be provided; and

(iv) the method by which the portfolio adviser makes a good faith determination that the investment fund, on whose behalf the portfolio adviser directs any brokerage transactions involving client brokerage commissions to a dealer in return for the provision of any order execution goods and services or research goods and services, by the dealer or a third party, receives reasonable benefit considering both the use of the goods or services and the amount of client brokerage commissions paid;

(b) If any brokerage transactions involving the client brokerage commissions of the investment fund have been or might be directed to a dealer in return for the provision of any good or service, by the dealer or a third party, other than order execution, since the date of the investment fund's last prospectus or last annual information form, whichever one is the most recent, state

(i) the information required to be disclosed under paragraph (a) other than subparagraph (iii);

(ii) each type of good or service, other than order execution, that has been provided to the manager or the portfolio adviser of the investment fund; and

(iii) the name of any affiliated entity that provided any good or service referred to in subparagraph (ii), separately identifying each affiliated entity and each type of good or service provided by each affiliated entity; and

(c) If any brokerage transactions involving the client brokerage commissions of the investment fund have been or might be directed to a dealer in return for the provision of any good or service, by the dealer or a third party, other than order execution, state that the name of any other dealer or third party that provided a good or service referred to in paragraph (b)(ii), that was not disclosed under paragraph (b)(iii), will be provided upon request by contacting the investment fund or investment fund family at [insert telephone number] or at [insert investment fund or investment fund family e-mail address].

INSTRUCTIONS:

Terms defined in NI 23-102 – Use of Client Brokerage Commissions have the same meaning where used in this Item.

3. This Instrument comes into force on _____, 2009.

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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	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
09/16/2009	17	Alda Pharmaceuticals Corp. - Units	493,000.00	1,972,000.00
08/20/2009	6	American Creek Resources Ltd. - Units	1,250,000.00	4,166,666.00
09/18/2009	5	Aztech Assocates Inc. - Units	515,000.00	515.00
09/15/2009	1	Banco Popular Espanol, S.A. - Common Shares	8,792,000.00	800,000.00
09/17/2009	4	Bayfield Ventures Corp. - Common Shares	34,300.00	70,000.00
09/17/2009	21	Boxxer Gold Corp. - Units	275,000.00	5,500,000.00
09/23/2009	1	Cal Dive International, Inc. - Common Shares	3,752,000.00	350,000.00
08/11/2009	1	Excel Maritime Carriers Ltd. - Common Shares	1,508,780.00	175,000.00
09/14/2009	3	FideliSoft Inc. - Preferred Shares	97,500.00	650,000.00
09/17/2009	2	Frontier Communications Corporation - Note	2,086,949.20	1.00
09/24/2009	43	FT Capital Investment Fund - Units	434,000.00	868.00
09/21/2009	4	Genworth Financial, Inc. - Common Shares	607,824,118.98	48,000,000.00
09/21/2009	1	Genworth Financial, Inc. - Common Shares	3,798,000.00	300,000.00
01/01/2008 to 12/31/2008	133	GS+ EAFE Fund - Units	9,596,467.18	105,165.44
01/01/2008 to 12/31/2008	83	GS+A Canadain Bond Index Fund - Units	19,535,432.08	197,490.18
01/01/2008 to 12/31/2008	1194	GS+A Enhanced Bond Fund - Units	233,818,943.09	2,337,458.47
01/01/2008 to 12/31/2008	222	GS+A Income Long/Short Trust - Units	29,945,930.36	303,008.66
01/01/2008 to 12/31/2008	152	GS+A Incubator Fund - Units	19,885,500.00	198,855.00
01/01/2008 to 12/31/2008	232	GS+A Quantitative Long/Short Fund - Units	32,595,051.92	330,953.57
01/01/2008 to 12/31/2008	957	GS+A Quantitative Long/Short Fund - Units	6,543,669.49	66,295.09
01/01/2008 to 12/31/2008	1697	GS+A RRSP Fund - Units	35,325,173.37	16,156,189.08
01/01/2008 to 12/31/2008	8	KJH Financial Franchises Fund - Trust Units	14,308,567.52	143,740.99

01/01/2008 to 12/31/2008	19	KJH Fixed Income Fund - Trust Units	6,673,079.59	66,497.24
01/01/2008 to 12/31/2008	3	KJH Small Companies CISSEMT Fund - Trust Units	8,856,828.30	79,416.03
01/01/2008 to 12/31/2008	2	KJH Strategic Energy Fund - Trust Units	13,871.73	241.56
01/01/2008 to 12/31/2008	381	KJH Strategic Investors Fund - Trust Units	570,390,107.01	548,916.69
01/01/2008 to 12/31/2008	28	KJH Strategic Investors Fund #2 - Trust Units	987,795.56	12,462.88
01/01/2008 to 12/31/2008	123	KJH Sweet Sixteen Fund - Trust Units	14,549,362.91	137,761.94
09/23/2009	11	Mueller Water Products, Inc. - Common Shares	1,119,800.00	220,000.00
09/21/2009 to 09/29/2009	28	Network Exploration Ltd. - Units	300,000.00	7,125,000.00
09/21/2009	81	P2P Health Systems Inc. - Receipts	1,500,000.00	18,750,000.00
09/21/2009	1	Palm Holdings Canada Inc. - Loans	11,500,000.00	11,500,000.00
09/21/2009	35	Paramax Resources Ltd. - Common Shares	4,000,000.00	50,000,000.00
09/22/2009	7	Pebble Creek Mining Ltd. - Units	950,946.85	13,584,955.00
09/23/2009	10	Petrostar Petroleum Corporation - Units	89,000.00	1,112,500.00
09/16/2009	1	ROI Private Capital Trust Series R - Units	6,250,000.00	59,180.56
09/15/2009	1	UBS AG, London Branch - Certificate	48,411.69	20.00
09/01/2009	1	UBS AG, London Branch - Units	44,512.68	40.00
09/10/2009	1	West Timmins Mining Inc. - Common Shares	376,500.00	150,000.00

Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Argosy Energy Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated October 1, 2009
NP 11-202 Receipt dated October 1, 2009
Offering Price and Description:
$6,000,000.00 - 4,800,000 Common Shares Issuable upon Exercise of Outstanding Special Warrants Price: $1.25 per Special Warrant
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
Canaccord Capital Corporation
Maison Placements Canada Inc.
Promoter(s):
-
Project #1482320

Issuer Name:
BMO American Equity Class
BMO Asset Allocation Fund
BMO Bond Fund
BMO Canadian Equity Class
BMO Emerging Markets Fund
BMO European Fund
BMO Global Dividend Class
BMO Global Infrastructure Fund
BMO LifeStage 2017 Class
BMO LifeStage 2020 Class
BMO LifeStage 2025 Class
BMO LifeStage 2030 Class
BMO LifeStage 2035 Class
BMO LifeStage 2040 Class
BMO Money Market Fund
BMO U.S. Dollar Money Market Fund
BMO U.S. Dollar Monthly Income Fund
BMO U.S. High Yield Bond Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated September 28, 2009
NP 11-202 Receipt dated September 30, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
BMO Investments Inc.
Promoter(s):
BMO Investments Inc.
Project #1480290

Issuer Name:
Calloway Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated October 1, 2009
NP 11-202 Receipt dated October 1, 2009
Offering Price and Description:
$2,000,000,000.00:
Units
Subscription Receipts
Warrants
Debt Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1482043

Issuer Name:
Canadian Natural Resources Limited
Principal Regulator - Alberta
Type and Date:
Preliminary Base Shelf Prospectus dated October 1, 2009
NP 11-202 Receipt dated October 1, 2009
Offering Price and Description:
$3,000,000,000.00 - Medium Term Notes (unsecured)
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
Scotia Capital Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
Merrill Lynch Canada Inc.
Desjardins Securities Inc.
Promoter(s):
-
Project #1482206

Issuer Name:
Central Alberta Well Services Corp.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated September 29, 2009
NP 11-202 Receipt dated September 30, 2009
Offering Price and Description:
$33,000,000 .00 - Offering of Rights to Subscribe for Common Shares at a Price of $• per Common Share
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1481263

Issuer Name:
Colossus Minerals Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated October 6, 2009
NP 11-202 Receipt dated October 6, 2009
Offering Price and Description:
$63,250,000.00 - 11,000,000 Common Shares Price: $5.75 per Common Share
Underwriter(s) or Distributor(s):
Macquarie Capital Markets Canada Ltd.
Thomas Weisel Partners Canada Inc.
Canaccord Capital Corporation
GMP Securities L.P.
Promoter(s):
-
Project #1483327

Issuer Name:
Desco Resources Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary CPC Prospectus dated September 28, 2009
NP 11-202 Receipt dated September 30, 2009
Offering Price and Description:
$250,000.00 - 1,250,000 Common Shares Price: $0.20 per Common Share
Underwriter(s) or Distributor(s):
Richardson Partners Financial Limited
Promoter(s):
Robert J. Dales
Massimo Geremia
Project #1481732

Issuer Name:
Extract Resources Limited
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated October 1, 2009
NP 11-202 Receipt dated October 2, 2009
Offering Price and Description:
$40,300,000.00 - 5,200,000 Ordinary Shares Issuable on Exercise of 5,200,000 Special Warrants Price: $7.75 per Special Warrant
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Haywood Securities Inc.
Promoter(s):
-
Project #1482494

Issuer Name:
Fidelity American Disciplined Equity Currency Neutral Fund
Fidelity ClearPath 2015 Portfolio
Fidelity Global Disciplined Equity Currency Neutral Fund
Fidelity International Disciplined Equity Currency Neutral Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated September 29, 2009
NP 11-202 Receipt dated September 30, 2009
Offering Price and Description:
Series O, S5, S8, T5 and T8 Units
Underwriter(s) or Distributor(s):
Fidelity Investments Canada ULC
Fidelity Investments Canada Limited
Promoter(s):
Fidelity Investments Canada ULC
Project #1481108

Issuer Name:
GENIVAR Income Fund
Principal Regulator - Quebec
Type and Date:
Preliminary Short Form Prospectus dated October 1, 2009
NP 11-202 Receipt dated October 2, 2009
Offering Price and Description:
$99,999,375.00 - 3,809,500 Units Price: $26.25 per Unit
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
Raymond James Ltd.
TD Securities Inc.
Canaccord Capital Corporation
Desjardins Securities Inc.
Laurentian Bank Securities Inc.
Macquarie Capital Markets Canada Ltd.
Blackmont Capital Inc.
Cormark Securities Inc.
Dundee Securities Corporation
Promoter(s):
-
Project #1482129

Issuer Name:
Guardian Capital Tactical Yield Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated September 30, 2009
NP 11-202 Receipt dated October 1, 2009
Offering Price and Description:
$ * - * Units Price: $10.00 per Unit Minimum Purchase: 200 Units
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
National Bank Financial Inc.
Canaccord Capital Corporation
Dundee Securities Corporation
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Blackmont Capital Inc.
GMP Securities L.P.
Manulife Securities Incorporated
Wellington West Capital Markets Inc.
MGI Securities Inc.
WorldSource Securities Inc.
Promoter(s):
Guardian Capital Management Inc.
Project #1481850

Issuer Name:
Horizons AlphaPro Inflation/Deflation Protection Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated September 30, 2009
NP 11-202 Receipt dated October 1, 2009
Offering Price and Description:
Maximum $100,000,000.00 Class A Units and Class F Units; (Maximum 10,000,000 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):
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
National Bank Financial Inc.
Scotia Capital Inc.
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Wellington West Capital Markets Inc.
Canaccord Capital Corporation
Desjardins Securities Inc.
Dundee Securities Corporation
GMP Securities L.P.
MGI Securities Inc.
Blackmont Capital Inc.
Research Capital Corporation
Promoter(s):
-
Project #1482112

Issuer Name:
Manitoba Telecom Services Inc.
Principal Regulator - Manitoba
Type and Date:
Preliminary Base Shelf Prospectus dated October 1, 2009
NP 11-202 Receipt dated October 6, 2009
Offering Price and Description:
$500,000,000.00 - Medium Term Notes (unsecured)
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
Promoter(s):
-
Project #1482238

Issuer Name:
Mega Uranium Ltd.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated October 6, 2009
NP 11-202 Receipt dated October 6, 2009
Offering Price and Description:
$ * - * Units Price: $ * per Unit
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
UBS Securities Canada Inc.
Macquarie Capital Markets Canada Ltd.
Thomas Weisel Partners Canada Inc.
Haywood Securities Inc.
Salman Partners Inc.
Dundee Securities Corporation
Promoter(s):
-
Project #1483449

Issuer Name:
Northland Power Income Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated September 29, 2009
NP 11-202 Receipt dated September 30, 2009
Offering Price and Description:
$60,340,500.00 - 5,830,000 Trust Units; and $80,000,000.00 -6.25% Convertible Unsecured Subordinated Debentures, Series A Due December 31, 2014 Price: $10.35 per Trust Unit
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
Canaccord Capital Corporation
FirstEnergy Capital Corp.
Cormark Securities Inc.
Macquarie Capital Markets Canada Ltd.
Promoter(s):
-
Project #1481615

Issuer Name:
OCP Credit Strategy Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated September 29, 2009
NP 11-202 Receipt dated September 30, 2009
Offering Price and Description:
$ * - * Units Price: $10.00 per Trust Unit
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
Canaccord Capital Corporation
Dundee Securities Corporation
GMP Securities L.P.
HSBC Securities (Canada) Inc.
Blackmont Capital Inc.
Desjardins Securities Inc.
Manulife Securities Incorporated
Raymond James Ltd.
Research Capital Corporation
Wellington West Capital Markets Inc.
Promoter(s):
Onex Credit Partners, LLC
Project #1481634

Issuer Name:
Pathfinder Convertible Debenture Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated October 2, 2009
NP 11-202 Receipt dated October 5, 2009
Offering Price and Description:
$100,000,008.00 - 8,333,334 Combined Units Price: $12.00 per Combined Unit Minimum Purchase: 100 Combined Units
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
Canaccord Capital Corporation
GMP Securities L.P.
HSBC Securities (Canada) Inc.
Manulife Securities Incorporated
Middlefield Capital Corporation
Raymond James Ltd.
Blackmont Capital Inc.
Dundee Securities Corporation
Wellington West Capital Markets Inc.
Promoter(s):
Middlefield Group Limited
Middlefield Fund Management Limited
Project #1482944

Issuer Name:
Prospero Silver Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated October 1, 2009
NP 11-202 Receipt dated October 1, 2009
Offering Price and Description:
$1,800,000.00 - 5,142,856 Units Per Unit $0.35
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
Promoter(s):
William Murray
Tawn Albinson
Project #1482237

Issuer Name:
Qwest Energy 2009-II Flow-Through Limited Partnership
Principal Regulator - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated September 30, 2009
NP 11-202 Receipt dated September 30, 2009
Offering Price and Description:
$3,000,000 to $20,000,000.00 - 120,000 to 800,000 Units Price: $25 per Unit Minimum Purchase: 100 Units
Underwriter(s) or Distributor(s):
Dundee Securities Corporation
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
HSBC Securities (Canada) Inc.
Canaccord Capital Corporation
GMP Securities L.P.
Manulife Securities Inc.
Raymond James Ltd.
Wellington West Capital Markets Inc.
Desjardins Securities Inc.
Promoter(s):
Qwest Investment Management Corp.
Project #1481793

Issuer Name:
Second Wave Petroleum Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated October 5, 2009
NP 11-202 Receipt dated October 5, 2009
Offering Price and Description:
$13,501,600.00 - 9,644,000 Common Shares and $3,000,500.00 - 1,765,000 Flow-Through Shares Price: $1.40 per Common Share and $1.70 per Flow-Through Share
Underwriter(s) or Distributor(s):
Wellington West Capital Markets Inc.
CIBC World Markets Inc.
Acumen Capital Finance Partners Limited
Promoter(s):
-
Project #1483119

Issuer Name:
The Canadian Shield Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated September 30, 2009
NP 11-202 Receipt dated October 2, 2009
Offering Price and Description:
$250,000,000.00 Maximum - 25,000,000 Combined Units Price: $10.00 per Combined Unit Minimum Purchase: 100 Combined Units
Underwriter(s) or Distributor(s):
CIBC World Market Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
Canaccord Capital Corporation
HSBC Securities (Canada) Inc.
Blackmont Capital Inc.
Desjardins Securities Inc.
Dundee Securities Corporation
GMP Securities L.P.
Manulife Securities Incorporated
Raymond James Limited
Wellington West Capital Markets Inc.
Promoter(s):
Mackenzie Financial Corporation
Project #1482410

Issuer Name:
The Descartes Systems Group Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated October 5, 2009
NP 11-202 Receipt dated October 5, 2009
Offering Price and Description:
$40,002,300.00 - 6,838,000 Common Shares Price: $5.85 per Common Share
Underwriter(s) or Distributor(s):
GMP Securities L.P.
CIBC World Markets Inc.
Thomas Weisel Partners Canada Inc.
Versant Partners Inc.
Paradigm Capital Inc.
Promoter(s):
-
Project #1483009

Issuer Name:
Vector Aerospace Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated October 5, 2009
NP 11-202 Receipt dated October 5, 2009
Offering Price and Description:
$45,085,000.00 - 7,100,000 Common Shares Price: $6.35 per Common Share
Underwriter(s) or Distributor(s):
TD Securities Inc.
Dundee Securities Corporation
CIBC World Markets Inc.
Scotia Capital Inc.
Versant Partners Inc.
Promoter(s):
-
Project #1482918

Issuer Name:
ARISE Technologies Corporation
Principal Regulator - Ontario
Type and Date:
Final Short Form Base Shelf Prospectus dated September 29, 2009
NP 11-202 Receipt dated October 2, 2009
Offering Price and Description:
$50,000,000.00:
Common Shares
Debt Securities
Warrants
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1462719

Issuer Name:
BE Resources Inc.
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated September 30, 2009
NP 11-202 Receipt dated October 1, 2009
Offering Price and Description:
Cdn$1,500,000.00 - 5,000,000 Shares at Cdn $0.30 per Share
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
Promoter(s):
-
Project #1444606

Issuer Name:
BMO Global Equity Class (Series A and Series I)
BMO Global Infrastructure Fund (Series A and Series I)
Principal Regulator - Ontario
Type and Date:
Amendment #4 dated October 2, 2009 to the Simplified Prospectuses and Annual Information Forms dated May 8, 2009
NP 11-202 Receipt dated October 6, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
BMO Investments Inc.
Promoter(s):
BMO Investments Inc.
Project #1402935

Issuer Name:
BMO Global Equity Class
(BMO Guardian Global Equity Class Advisor Series and BMO Guardian Global Equity Class Series H)
Principal Regulator - Ontario
Type and Date:
Amendment #4 dated October 2, 2009 to the Simplified Prospectus and Annual Information Form dated October 29, 2008
NP 11-202 Receipt dated October 6, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
BMO Investments Inc.
Promoter(s):
BMO Investments Inc.
Project #1322437

Issuer Name:
Celestica Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated October 5, 2009
NP 11-202 Receipt dated October 6, 2009
Offering Price and Description:
$113,300,000.00 - 11,000,000 Subordinate Voting Shares Price: $10.30 per Offered Share
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
GMP Securities L.P.
Thomas Weisel Partners Canada Inc.
Promoter(s):
-
Project #1479934

Issuer Name:
CFI Trust
Principal Regulator - Ontario
Type and Date:
Final Short Form Base Shelf Prospectus dated September 29, 2009
NP 11-202 Receipt dated September 30, 2009
Offering Price and Description:
Up to $500,000,000 of Receivables-Backed Notes
Underwriter(s) or Distributor(s):
-
Promoter(s):
CorpFinance International Limited
Project #1473361

Issuer Name:
Chartwell Seniors Housing Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated October 1, 2009
NP 11-202 Receipt dated October 1, 2009
Offering Price and Description:
$75,000,000.00 - 12,500,000 Units Price: $6.00 per Unit
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
National Bank Financial Inc.
TD Securities Inc.
Blackmont Capital Inc.
Canaccord Capital Corporation
HSBC Securities (Canada) Inc.
Promoter(s):
-
Project #1478313

Issuer Name:
Cirrus Energy Corporation
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated October 5, 2009
NP 11-202 Receipt dated October 5, 2009
Offering Price and Description:
$45,013,500.00 - 14,290,000 Common Shares $3.15 per Common Share
Underwriter(s) or Distributor(s):
Cormark Securities Inc.
FirstEnergy Capital Corp.
BMO Nesbitt Burns Inc.
Haywood Securities Inc.
Macquarie Captial Markets Canada Ltd.
Raymond James Ltd.
Promoter(s):
-
Project #1479393

Issuer Name:
Connor, Clark & Lunn Natural Resources Fund Inc.
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated September 30, 2009
NP 11-202 Receipt dated October 5, 2009
Offering Price and Description:
Class A Shares @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
Connor, Clark & Lunn Capital Markets Inc.
Project #1475132

Issuer Name:
Elson Energy Enterprises Ltd.
Principal Regulator - Alberta
Type and Date:
Final CPC Prospectus dated October 5, 2009
NP 11-202 Receipt dated October 6, 2009
Offering Price and Description:
$200,000.00 - 1,000,000 Common Shares Price: $0.20 per Common Share
Underwriter(s) or Distributor(s):
Lightyear Capital Inc.
Promoter(s):
Elson J. McDougald
Project #1472254

Issuer Name:
Emera Incorporated
Principal Regulator - Nova Scotia
Type and Date:
Amendment No.1 dated September 25, 2009 to the Short Form Base Shelf Prospectus dated January 24, 2008, as supplemented by the Prospectus Supplement dated January 24, 2008
Mutual Reliance Review System Receipt dated October 1, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc.
Promoter(s):
-
Project #1194641

Issuer Name:
Greenscape Capital Group Inc.
Principal Regulator - British Columbia
Type and Date:
Final Long Form Prospectus dated September 30, 2009
NP 11-202 Receipt dated October 1, 2009
Offering Price and Description:
$2,100,000.00 - 4,200,000 SHARES at $.50 per share
Underwriter(s) or Distributor(s):
Wolverton Securities Ltd.
Promoter(s):
Bryan Slusarchuk
Project #1446770

Issuer Name:
InnVest Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated October 2, 2009
NP 11-202 Receipt dated October 2, 2009
Offering Price and Description:
$50,001,075.00 - 12,658,500 Units Price: $3.95 per Unit
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
TD Securities Inc.
Canaccord Capital Corporation
Blackmont Capital Inc.
Promoter(s):
-
Project #1479251

Issuer Name:
Offering Series A Shares or Units of all funds except Trimark Interest Fund and Trimark U.S. Money Market Fund, and offering Series B, Series D, Series DCA, Series DCA Heritage, Series DSC, Series F, Series F4, Series F6, Series F8, Series H, Series I, Series T4, Series T6, Series T8 and Series SC Shares or Units as indicated of:
Invesco Trimark Retirement Payout 2023 Portfolio
(also Series F and Series I)
Invesco Trimark Retirement Payout 2028 Portfolio
(also Series F and Series I)
Invesco Trimark Retirement Payout 2033 Portfolio
(also Series F and Series I)
Invesco Trimark Retirement Payout 2038 Portfolio
(also Series F and Series I)
Invesco Trimark Dialogue Allocation Fund
(also Series SC, Series D and Series F)
Invesco Trimark Dialogue Income Portfolio
(also Series F, Series I, Series T4 and Series T6)
Invesco Trimark Dialogue Income with Growth Portfolio
(also Series F, Series I, Series T4 and Series T6)
Invesco Trimark Dialogue Growth with Income Portfolio
(also Series F, Series I, Series T4, Series T6 and Series T8)
Invesco Trimark Dialogue Growth Portfolio
(also Series F, Series I, Series T4, Series T6 and Series T8)
Invesco Trimark Dialogue Long-Term Growth Portfolio
(also Series F, Series I, Series T4, Series T6 and Series T8)
Invesco Trimark Core Canadian Balanced Class of Invesco Trimark Canada Fund Inc.
(also Series F, Series I, Series T4, Series T6 and Series T8)
Invesco Trimark Core Canadian Equity Class of Invesco Trimark Canada Fund Inc.
(also Series F and Series I)
Invesco Trimark Core Global Equity Class of Invesco Trimark Corporate Class Inc.
(also Series F and Series I)
Trimark Interest Fund
(Series SC and Series DSC)
AIM Canada Money Market Fund
(also Series DCA and Series DCA Heritage)
AIM Short-Term Income Class of Invesco Trimark Corporate Class Inc.
(also Series B and Series F)
Trimark U.S. Money Market Fund
(Series SC and Series DSC)
Trimark Government Plus Income Fund
(also Series F and Series I)
Trimark Canadian Bond Fund
(also Series F and Series I)
Trimark Floating Rate Income Fund
(also Series F and Series I)
Trimark Advantage Bond Fund
(also Series F and Series I)
Trimark Global High Yield Bond Fund
(also Series F and Series I)
Trimark Income Growth Fund
(also Series SC, Series F, Series I, Series T4, Series T6 and Series T8)
Trimark Select Balanced Fund
(also Series F, Series I, Series T4, Series T6 and Series T8)
Trimark Diversified Income Class of Invesco Trimark Canada Fund Inc.
(also Series F, Series F8, Series I, Series T4, Series T6 and Series T8)
AIM Canadian Balanced Fund
(also Series D, Series F, Series I, Series T4, Series T6 and Series T8)
Trimark Global Balanced Fund
(also Series D, Series F, Series H, Series I, Series T4, Series T6 and Series T8)
Trimark Global Balanced Class of Invesco Trimark Corporate Class Inc.
(also Series F, Series H, Series T4, Series T6 and Series T8)
AIM Global Balanced Fund
(also Series F, Series H and Series I)
Invesco Canadian Focus Fund
(also Series F and Series I)
Invesco Canadian Focus Class of Invesco Trimark Corporate Class Inc.
(also Series F and Series I)
Trimark Canadian Plus Dividend Class of Invesco Trimark Corporate Class Inc.

(also Series F, Series F4, Series F6, Series F8, Series I, Series T4, Series T6 and Series T8)
Trimark Canadian Fund
(also Series SC, Series F and Series I)
Trimark Canadian Endeavour Fund
(also Series F and Series I)
Invesco Select Canadian Equity Fund
(also Series D, Series F, Series I, Series T4, Series T6 and Series T8)
Trimark Canadian First Class of Invesco Trimark Canada Fund Inc.
(also Series F, Series I, Series T4, Series T6 and Series T8)
AIM Canadian Premier Fund
(also Series D, Series F and Series I)
AIM Canadian Premier Class of Invesco Trimark Canada Fund Inc.
(also Series F, Series I, Series T4, Series T6 and Series T8)
Trimark Canadian Small Companies Fund
(also Series F)
Trimark North American Endeavour Class of Invesco Trimark Corporate Class Inc.
(also Series F and Series I)
Trimark U.S. Companies Fund
(also Series D, Series F, Series H and Series I)
Trimark U.S. Companies Class of Invesco Trimark Corporate Class Inc.
(also Series F and Series H)
Trimark U.S. Small Companies Class of Invesco Trimark Corporate Class Inc.
(also Series D, Series F and Series I)
Trimark Global Dividend Class of Invesco Trimark Corporate Class Inc.
(also Series F, Series F4, Series F6, Series F8, Series I, Series T4, Series T6 and Series T8)
Trimark Fund
(also Series SC, Series F, Series H, Series I, Series T4, Series T6 and Series T8)
Trimark Select Growth Fund
(also Series F, Series H, Series I, Series T4, Series T6 and Series T8)
Trimark Select Growth Class of Invesco Trimark Corporate Class Inc.
(also Series F, Series H, Series I, Series T4, Series T6 and Series T8)
Invesco Global Equity Fund
(also Series F and Series I)
Invesco Global Equity Class of Invesco Trimark Corporate Class Inc.
(also Series F and Series I)
AIM Global Growth Class of Invesco Trimark Corporate Class Inc.
(also Series F, Series H and Series I)
Trimark Global Endeavour Fund
(also Series D, Series F, Series H and Series I)
Trimark Global Endeavour Class of Invesco Trimark Corporate Class Inc.
(also Series F and Series H)
Trimark Global Small Companies Class of Invesco Trimark Corporate Class Inc.
(also Series F and Series I)
Trimark International Companies Fund
(also Series F and Series I)
AIM International Growth Fund
(also Series F and Series I)
AIM International Growth Class of Invesco Trimark Corporate Class Inc.
(also Series F and Series I)
Trimark Europlus Fund
(also Series F and Series I)
AIM European Growth Class of Invesco Trimark Corporate Class Inc.
(also Series F)
Perpetual Indo-Pacific Fund
(also Series F and Series I)
Trimark Canadian Resources Fund
(also Series F and Series I)
Invesco Global Real Estate Fund
(also Series F, Series I, Series T4, Series T6 and Series T8)
Trimark Global Health Sciences Class of Invesco Trimark Corporate Class Inc.
(also Series F)
Principal Regulator - Ontario
Type and Date:
Amended and Restated Simplified Prospectuses and Annual Information Forms dated September 25, 2009 (the amended prospectus) amending and restating the Simplified Prospectuses and Annual Information Forms dated August 14, 2009
NP 11-202 Receipt dated October 2, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1444709

Issuer Name:
Marret IGB Trust
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated September 29, 2009
NP 11-202 Receipt dated September 30, 2009
Offering Price and Description:
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Marret Asset Management Inc.
Project #1478196

Issuer Name:
Mavrix Québec 2009 Flow Through LP
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated September 29, 2009
NP 11-202 Receipt dated September 30, 2009
Offering Price and Description:
Maximum offering: $20,000,000.00 (2,000,000 Units) @ $10/Unit Minimum offering: $2,000,000.00 (200,000 Units) @ $10/Unit
Underwriter(s) or Distributor(s):
Desjardins Securities Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
Dundee Securities Corporation
Canaccord Capital Corporation
Industrial Alliance Securities Inc.
Laurentian Bank Securities Inc.
GMP Securities L.P.
Wellington West Capital Markets Inc.
Promoter(s):
Mavrix Fund Management Inc.
Project #1463783

Issuer Name:
Midway Energy Ltd.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated September 30, 2009
NP 11-202 Receipt dated September 30, 2009
Offering Price and Description:
$25,000,000.00 - 20,000,000 Common Shares Price $1.25 per Common Share
Underwriter(s) or Distributor(s):
GMP Securities L.P.
Wellington West Capital Markets Inc.
FirstEnergy Capital Corp.
Promoter(s):
-
Project #1478049

Issuer Name:
Norrep Performance 2009 Flow-Through Limited Partnership
Principal Regulator - Alberta
Type and Date:
Final Long Form Prospectus dated September 30, 2009
NP 11-202 Receipt dated September 30, 2009
Offering Price and Description:
$30,000,000.00 (Maximum Offering) $3,000,000 (Minimum Offering) A minimum of 300,000 Limited Partnership Units and a maximum of 3,000,000 Limited Partnership Units Purchase Price: $10.00 per Unit Minimum Purchase: 500 Units ($5,000)
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
GMP Securities Inc.
Blackmont Capital Inc.
Canaccord Capital Corporation
Haywood Securities Inc.
Raymond James Ltd.
Wellington West Capital Markets Inc.
Promoter(s):
Hesperian Capital Management Ltd.
Project #1473432

Issuer Name:
Polymet Mining Corp.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Base Shelf Prospectus dated September 30, 2009
NP 11-202 Receipt dated September 30, 2009
Offering Price and Description:
US$500,000,000.00:
Debt Securities
Common Shares
Warrants
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1476734

Issuer Name:
Primary Energy Recycling Corporation
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated October 1, 2009
NP 11-202 Receipt dated October 1, 2009
Offering Price and Description:
US$50,000,005.00 - Rights to Subscribe for 96,153,855 Subscription Receipts each Subscription Receipt representing the right to receive one Common Share at a Price of US$0.52 per Subscription Receipt
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1478439

Issuer Name:
Russel Metals Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated October 2, 2009
NP 11-202 Receipt dated October 2, 2009
Offering Price and Description:
$175,000,000.00 - 7.75% Convertible Unsecured Subordinated Debentures due September 30, 2016
Underwriter(s) or Distributor(s):
GMP Securities L.P.
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc.
Promoter(s):
-
Project #1479237

Issuer Name:
Sandstorm Resources Ltd.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated October 6, 2009
NP 11-202 Receipt dated October 6, 2009
Offering Price and Description:
Up to $32,000,400.00 - Up to 71,112,000 Units Price: $0.45 per Unit
Underwriter(s) or Distributor(s):
Paradigm Capital Inc.
Cormark Securities Inc.
GMP Securities L.P.
Promoter(s):
David E. De Witt
Project #1477956

Issuer Name:
Sulliden Exploration Inc.
Principal Regulator - Quebec
Type and Date:
Final Short Form Prospectus dated September 30, 2009
NP 11-202 Receipt dated October 1, 2009
Offering Price and Description:
$18,000,000.00 - 22,500,000 Units PRICE: $0.80 per Unit
Underwriter(s) or Distributor(s):
Cormark Securities Inc.
Macquarie Capital Markets Canada Ltd.
Canaccord Capital Corporation
Fraser Mackenzie Limited
Wellington West Capital Markets Inc.
Promoter(s):
-
Project #1476622

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Consent to Suspension	The Business Place Ltd.	Limited Market Dealer	September 30, 2009
New Registration	VWK Capital Management Inc.	Exempt Market Dealer and Portfolio Manager	October 5, 2009

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Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 Comments Received in Response to Request for Comments – IIROC Amendments to Implement the Registration Reform Project

COMMENTS RECEIVED IN RESPONSE TO
REQUEST FOR COMMENTS
IIROC AMENDMENTS TO IMPLEMENT THE REGISTRATION REFORM PROJECT

On September 26, 2008 IIROC published for comment proposed changes to its Dealer Member Rules to implement the Registration Reform Project of the Canadian Securities Administrators (collectively the "IIROC Registration Reform Rule Amendments"). A copy of the September 2008 publication is publicly available on IIROC's website (www.iiroc.ca) under the heading "Policy" and sub-heading "Dealer Proposals/Comments". IIROC received 7 submissions on the rule amendments from the following commenters:

- BMO Nesbitt Burns
- CSI Global Education Inc.
- Edward Jones
- IGM Financial Inc.
- The Investment Funds Institute of Canada ("IFIC")
- Investment Industry Association of Canada ("IIAC")
- RBC Dominion Securities

A copy of each comment letter submitted in response to the IIROC Registration Reform Amendments can also be found on IIROC's website.

The following table presents a summary of the comments received on the IIROC Registration Reform Rule Amendments together with IIROC's response to those comments. Commenters were generally supportive of the IIROC Registration Reform Rule Amendments and in some cases also indicated support for specific rule changes. The summary below does not generally address comments in support of the amendments. We also received a number of comments on topics which are outside the scope of these particular amendments, such as IIROC's Client Relationship Model and CSA requirements applicable to exempt market dealers. These comments have also not been summarized.

Applicable Rule Sections	Commenter and Summary of Comment	IIROC Response to Comment and Additional IIROC Commentary
General - Timing	One commenter questions the timing of the IIROC amendments given that the CSA has delayed the release of NI 31-103 until April 2009, and at that time, we are uncertain if there will be another comment period. If there are significant changes to the new instrument that would impact IIROC's rule proposals, the commenter respectfully reserves the right to have the opportunity to comment again. [BMO Nesbitt Burns]	IIROC Staff have been working closely with the CSA on the Registration Reform Project to ensure that our respective rule proposals can be implemented on the same timetable and that there are no inconsistencies between CSA and IIROC regulations regarding registration requirements. The CSA published a notice in April indicating that subject to applicable government approval they intend to implement NI 31-103 by the end of September 2009. Subject to CSA approval, IIROC intends to implement these rules proposals on the same time frame. We have also not made material changes to the

Applicable Rule Sections	Commenter and Summary of Comment	IIROC Response to Comment and Additional IIROC Commentary
		rule proposals that we published for comment in September 2008 which require a second publication for comment.
Rule 1 – Interpretation and Effect	Commenter seeks clarification on the role and accountabilities that can be associated with the term "Supervisor". [RBC Dominion Securities]	A Supervisor is any person to whom a Member has given responsibility and authority to manage the activities of other partners, directors, officers, employees or agents of the Member so as to ensure their compliance with laws and regulations governing their and the Member's securities-related activities. The new Supervisor approval category encompasses the following current IIROC approval categories of: Branch Manager, Assistant Branch Manager, Sales Manager, Alternate Designated Person, Registered Options Principals, Registered Futures Principals and Futures Contract Options Supervisor. The new Supervisor category will also capture a potentially broader class of persons, however, as it includes any person whom the Member has given both the responsibility and authority to supervise operational or other issues that are subject to securities-related or regulatory requirements.
Rule 4 – Business Locations	Commenter appreciates the changes made to Rule 4 as it allows more flexibility with respect to non-retail locations being supervised from a firm's head office. Commenter would appreciate, however, guidance for the continued registration and operation of sub-branch offices. [RBC Dominion Securities]	We are eliminating the currently mandatory Branch Office supervision structure. Firms can, however, continue to use the branch structure. IIROC will only require notification of a firm's business locations and notification upon the closure of a business location. Moreover a firm's policies and procedures must specify the firm's supervision regime.
Section 7.7 – Conflict of Interest Disclosure	One commenter notes that section 7.7 [Multiple Employments of Officers] will be replaced with the more principles based approach to dealing with conflicts of interest contained in NI 31-103. The commenter believes it would be helpful to supplement this section with guidance and examples to compensate for the precision that is lost with the move to principles based regulation. The guidance should make it clear that only conflicts that need to be disclosed to clients are ones that are relevant to the dealer-client relationship and could have materially adverse effects on such clients. [IIAC]	We note that NI 31-103 has been revised to clarify that only *material* existing and potential conflicts of interest must be identified and responded to by a registered firm. The companion policy to NI 31-103 also contains numerous examples of where a registrant may be in a conflict of interest and how to manage such conflicts. IIROC regulated firms will be subject to the conflict related parts of NI 31-103. It should be noted that IIROC also published for comment on April 24, 2009 changes to the client relationship model related rule amendments which include requirements requiring the management and disclosure of conflicts of interest. We will consider the request for further guidance as we finalize those rule proposals.
Rule 18 – Registered Representatives and Investment	Commenter believes there is some inconsistency between the inclusive nature of "retail business" in Rule 18, as currently drafted, and the proposed definition of "Retail	We do not believe there is an inconsistency between the definition of "retail business" in Rule 18 and the definition of "retail customer" in Rule 1 as the terms are used in different contexts in

Applicable Rule Sections	Commenter and Summary of Comment	IIROC Response to Comment and Additional IIROC Commentary
Representatives	customer" in Rule 1. The Commenter believes it would be preferable to allow for certain RRs and IRs to deal with all types of clients without exception, subject to the notification requirements set out in Rule 18. [RBC Dominion Securities]	different Dealer Member Rules. The term "retail business" is used principally in Dealer Member Rule 18 which contains the approval and notice requirements for Registered Representatives (RR) and Investment Representatives (IR). Under Rule 18, a Dealer Member must notify IIROC prior to an RR or IR beginning to conduct certain types of business. If a firm notifies IIROC that an RR or IR will be conducting "retail business", this means that the RR or IR may be conducting both retail and institutional business. Where a firm notifies IIROC that an RR or IR will be conducting institutional business, the RR or IR will only be conducting institutional business. The term "retail customer" is used in the context of a variety of different rules which set out specific requirements for RR and IR who deal with "retail customers" (i.e., not institutional customers), such as specific proficiency and supervisory requirements.
	One commenter notes that the scope of an RR has been expanded to include those that trade in securities that are exempt. [BMO Nesbitt Burns]	The current definition exempts only those that trade in debt securities of Canadian government, not all exempt products. That exemption is proposed to be removed so that all those selling investment products on behalf of members must be approved.
Proprietary Traders	One commenter asked whether IIROC expects that proprietary traders dealing in exempt securities seek IIROC approval and satisfy the same proficiencies as that of retail investment advisors. [BMO Nesbitt Burns] One commenter believes that if proprietary traders are to be registered, they should have a separate category with proficiency requirements related only to their functions, recognizing that they do not deal with public clients. [IIAC]	If the proprietary trader is trading in markets that do not have requirements and do not deal with customers, they do not require IIROC approval. We note that the Companion Policy to National Instrument 31-103 has been amended to remove the suggestion that proprietary traders must be registered.
Section 18.6(a)	Commenter recommends that IIROC consider adopting a supervision report similar to the MFDA model in which the supervisor affirms at the end of the six month period that supervision has been completed on a monthly basis rather than requiring six separate monthly reports. [RBC Dominion Securities]	We have considered the comment but continue to believe that monthly supervision reports are appropriate where an RR or IR has not previously been approved by IIROC. The approach taken for new RRs and IRs is also consistent with the reporting format that IIROC requires when an individual is approved subject to terms and conditions requiring some form of heightened supervision.
Rule 18.7 Representatives	One commenter noted that the amendments continue the existing rules that requires IRs or	We agree and the provision has been retained.

Applicable Rule Sections	Commenter and Summary of Comment	IIROC Response to Comment and Additional IIROC Commentary
restricted to sale of mutual funds	RRs that are restricted to the sale of mutual funds to upgrade to a full approval within 18 months. The commenter supports this approach and encourages IIROC to retain the provision. [IGM Financial]	
Rule 20.18 – Power of District Council and automatic transfers	One commenter while generally supportive of the initiative to allow for automatic transfers between registrants and the strengthening of Rule 20.18 (which allows for the imposition of terms and conditions), the commenter is concerned that there are situations where such transfers are not in the public interest (for example, if registrants are walking away from trouble at their former dealers). In the commenter's view there should be the ability to hold up such transfers in extraordinary cases where such circumstances exist. [IGM Financial]	We share the commenter's concern and have raised the issue with the CSA for their consideration. Both Dealer Member Rule 40.7 and NI 33-109 have been revised to prevent automatic transfers where an individual has been dismissed for cause or was asked by his/her firm to resign, following an allegation against the individual of (i) criminal activity; (ii) a breach of securities laws; or (iii) a breach of SRO rules. The IIROC rule proposals have also been amended to include in Rule 20.18 a power for district council to revoke or suspend an approval at any time if it appears to District Council that the individual no longer meets the "fit or proper requirements" or that their continued approval is not in the public interest. The revocation, suspension or imposition of terms and conditions will be subject to the approved person's right to an opportunity to be heard and right of appeal to a hearing panel and ultimately to the applicable securities regulator. The amendment to give District Council enhanced power to intervene is an important investor protection tool whose importance has been magnified in light of the move to automatic reinstatements.
Rule 38 – Compliance and Supervision Section 38.4(b)	Commenter seeks confirmation that a firm has the discretion to determine whether a person is qualified by virtue of training or experience; if not, please consider amending the rules to set out what is required with respect to the necessary training or experience required of a person to whom a Supervisor may delegate supervisory functions. [RBC Dominion Securities] One commenter notes that there may be supervisors whose authority deals solely with operational or other issues that are not subject to securities related legal or regulatory requirements and who are not, therefore, required to be approved by IIROC as "Supervisors" (e.g., approval of specified types of material as noted in proposed Rule 29.7(3)). The commenter seeks clarification that these types of functions can be delegated to individuals who are not approved as Supervisors but are qualified by virtue of training or experience to properly execute them	A Supervisor who delegates specific supervisory functions or procedures must satisfy himself/herself that the delegatee has the appropriate training and experience necessary to properly execute the delegated functions. We acknowledge that there are supervisors whose authority deals solely with operational or other issues that are not subject to securities related or regulatory requirements and who are not therefore required to be approved by IIROC. The supervisors cited in the example by the commenter could, however, require approval given that the Supervisors would be responsible for ensuring compliance with IIROC rules. We note, however, that there would be no proficiency requirements for the supervisory functions noted by the commenter.

Applicable Rule Sections	Commenter and Summary of Comment	IIROC Response to Comment and Additional IIROC Commentary
	as per Rule 38.4(b). The commenter further notes that completion of the PDO or the Branch Manager Examination and approval as a Supervisor does not appear to be relevant to these functions. [Edward Jones]	
Section 38.5	Two commenters are opposed to the requirement that the UDP category occupied by the CEO. The commenters believe that this requirement does not provide firms with sufficient flexibility to manage the critical elements of compliance in a manner that is best suited to varying management structure. One of the commenters believes that the current IIROC rules that permit the UDP to be the CFO or the COO is a much more appropriate model. It may also be appropriate to permit the President to fulfil this role. [RBC Dominion Securities and IIAC]	The CSA continues to believe that the appropriate person to be registered as UDP is the most senior directing mind of a registered firm or the operating division carrying out its registerable activity. In light of the direction taken by the CSA, IIROC's rules must be amended to ensure that there is no inconsistency between CSA and IIROC regulations regarding registration and approval of the UDP. We have also made a number of changes to the UDP and CCO requirements in Rule 38 to align with the requirements of NI 31-103.
	One commenter believes it would be advisable to retain the Alternate Designated Person (ADP) and the CFO as registration categories consistent with IIROC regulation. [IIAC]	The CFO will continue to be an approval category. We continue to believe that the Alternate Designated Person category should be eliminated as part of the initiative to simplify approval categories. Those currently approved as Alternate Designated Persons will become Supervisors under the new category structure.
Rule 38.5 and 38.7	One commenter questioned why it is necessary for a firm to seek IIROC approval where the firm seeks to designate more than one individual as the CCO or UDP. The commenter notes that in a principle based environment, the firm should be able to determine whether their business model requires more than one person to fulfill these roles.	The appointment of multiple UDPs or CCOs is tantamount to seeking an exemption to the general rules regarding the designation of the UDP and CCO and therefore requires IIROC approval. The designation of multiple UDPs or CCOs would also require an exemption by securities regulators under NI 31-103. We recognize, however, that in especially large firms the scale and kind of activities undertaken by different operating divisions may warrant the designation of more than one CCO. IIROC and the CSA will consider applications, on a case-by-case basis, for different individuals to act as the CCO of a firm's operating divisions.
Rule 1300 – Supervision of Accounts	Commenter believes the proposed repeal of section 1300.9(b) which allows an individual who has held registration under Canadian securities legislation as an Investment Counsel/Portfolio Manager (IC/PM) to transfer to an IIROC firm without requalification is a significant change. The commenter encourages IIROC to harmonize its rule proposals with NI 31.103 and either consider maintaining section 1300.9(b), or redefine the registration requirements for RRs with managed accounts relative to an individual with IC/PM experience.	We believe the repeal continues to be appropriate. In this context, we note that historically IC/PMs could not effect an "automatic transfer" to IIROC because most securities legislation included a requirement for salespeople of investment dealers to have successfully completed the Conduct and Practices Handbook Course and the Canadian Securities Course. We would expect most individuals in this situation would have the requisite proficiency with the exception possibly of the Conduct and

Applicable Rule Sections	Commenter and Summary of Comment	IIROC Response to Comment and Additional IIROC Commentary
	[RBC Dominion Securities]	Practices Handbook Course which we believe is a core proficiency requirement for IIROC approved persons. This issue was discussed with the Education and Proficiency Committee who were in agreement with the approach taken by IIROC in the rule proposals.
	One commenter asks for additional guidance on the approval process for new policies and procedures that have significant impact on the compliance system. What would be deemed significant? Who would be an acceptable individual to approve such changes? Are there different levels of approvals required for varying levels of significance? How does one measure the efficacy of its business conduct procedures? The commenter would appreciate further commentary on these issues. [BMO Nesbitt Burns]	These are important questions that a dealer member must consider in crafting or changing its supervisory systems. They are not ones that can readily by answered out of the context of a firm's particular business. They should be specified in the dealer's policies and procedures as outlined in Rule 2500.A.1. Current rules require that all policies, procedures and amendments thereto be approved by senior management, without specifying who that is. If a dealer member follows the current rule it will be in compliance with the new requirements. The new rules permit, however, a dealer member to make less important changes without senior management approval.
Rule 1300.6 Supervision of Discretionary and Managed Accounts	One commenter notes that rule 1300.6 indicates that the designated supervisor for discretionary accounts cannot delegate the review of these accounts to any other person. The commenter urges that IIROC consider allowing for the delegation of an alternate supervisor to fulfill these duties. This would be consistent with other supervisory roles and with the practicality of ensuring there is adequate coverage of these duties. [BMO Nesbitt Burns]	We believe that the review of discretionary account performance is a critical function of the designated supervisory of discretionary accounts. The firm can take into account the time and resources involved in conducting that review when it designates a particular person as the supervisor of discretionary accounts.
Section 1300.15(c)	Two commenters asked for clarification as to the use of the term "direct supervision" in the context of section 1300.15(c). The commenters are concerned that, as currently drafted, the section could lend itself to the interpretation that the Supervisor of an RR with less than two years experience related to discretionary management of managed accounts be required to be physically present at the same branch location in order to be considered to be performing supervisory tasks in a "direct" fashion. [BMO Nesbitt Burns and RBC Dominion Securities]	"Direct Supervision" means that an experienced portfolio manager must be designated to supervise the portfolio management activities. The means of supervision must be spelled out in the firm's policies and procedures and should be reasonably designed to ensure that the management of the customer accounts is suitable for the clients and in keeping with their investment objectives and risk tolerance. The term "direct supervision" does not mean that the supervisor must be in the same location, although a resident Supervisor may be in the best position to conduct such supervision.

Applicable Rule Sections	Commenter and Summary of Comment	IIROC Response to Comment and Additional IIROC Commentary
	Given that the category of Associate Portfolio Manager (APM) is proposed to be repealed, one commenter notes that to obtain registration as a Portfolio Manager (PM) one requires two years of experience managing money on a discretionary basis. In this context, the commenter believes that there is a disconnect between the proficiency and experience requirements. The commenter questions how an individual would be able to manage accounts on a discretionary basis without the appropriate registration; and also be able to obtain the requisite experience if they cannot be registered as a PM without the experience. [BMO Nesbitt Burns]	We have eliminated the PM approval category. The term "portfolio manager" is used in the revised Rule 1300 to refer to a registered representative who exercises discretionary authority over managed accounts. Before an RR conducts portfolio management, the dealer member must ensure that the registered representative meets the proficiency and experience requirements in Rule 2900 and provides notice to IIROC that the person will exercise discretionary authority over managed accounts. For the first two years of doing so, they must be directly supervised by a portfolio manager who is not under the same supervision.
Section 1300.15	Two commenters believe that the rule requiring that the CCO be a member of the committee to conduct an annual review of its policies and procedures to supervise managed accounts, does not afford firms with the flexibility to determine if that person is the most appropriate to fulfill this role. The provision should permit the firms to determine who is most suited to serve on this committee, based on the structure and competencies within their organization, consistent with the principles based approach of the proposed amendments. [BMO Nesbitt Burns and IIAC]	The role of the managed accounts committee is limited to do at least an annual review of the firm's supervisory system and procedures for managed accounts. We believe that as the senior officer responsible for a dealer member's supervisory systems and procedures, who must report to the Board at least annually on compliance matters, the CCO should be a member of that committee.
	One commenter asked whether individuals that perform supervisory functions at a head office level that do not deal with retail clients will now be required to complete the Branch Manager's course and continuing education, where previously the Partners, Directors and Officers examination was sufficient. [BMO Nesbitt Burns]	An individual conducting second level review at a firm's head office is not expected to be a designated Supervisor or have the supervisor proficiencies. We would expect, however, that where second level reviews are conducted by personnel or a department responsible only for monitoring activity that the Dealer Member would have procedures for referring issues that cannot be resolved with first level Supervisors to a higher level Supervisor or CCO who has the authority to resolve them. We would expect that firms will have at least one individual (or multiple individuals) who are responsible for looking at the accounts of producing Supervisors. This individual or individuals have the responsibility, but are not required to perform all review functions. The individual or individuals may delegate review functions to other individuals in the firm's compliance group, who themselves do not need approval as a Supervisor. The "ultimate" supervisor of a producing Supervisor may be a Sales Manager at the firm (who would be an approved Supervisor) or the firm's Chief Compliance Officer. The Chief Compliance Officer exam will be considered an acceptable

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		alternate course for a CCO who is ultimately responsible for the review of a producing Supervisor's client accounts.
	Once commenter is unsure where there are two designated supervisors (e.g. Co-managers or Branch Managers, or Branch Managers/Assistant Branch Managers) how this information will be recorded with IIROC to differentiate these arrangements. [BMO Nesbitt Burns]	The specific responsibilities and relative authority of supervisors in any branch will become a matter for the firm's policies, procedures and records. In the example cited by the commenter, the firm may have co-managers or a manager and an assistant manager in a given branch. All will require approval by IIROC only as supervisors. Their specific responsibilities must therefore be spelled out in the firm's policies and procedures. Those procedures must specify the supervision duties and ensure that all necessary duties are indentified and assigned. The procedures or additional documents such as job description or delegations of authority must spell out the responsibilities and authority of each supervisor consistent with the overall supervisory structure of the firm.
Rule 2500 – Minimum Standards for Retail Account Supervision Part II	Two commenters request that IIROC provide guidance on how a dealer's gatekeeping responsibility is to be met. For example, do the proposed amendments contemplate other obligations beyond reviewing documentation as part of the requirements of anti-money laundering and terrorist financing legislation and regulations? [IFIC and IGM Financial]	The gatekeeper responsibility of investment dealers extends beyond anti-money laundering and terrorist financing legislation and related regulations. In response to the commenters request we have added some additional commentary in Rule 2500 about a firm's gatekeeper responsibility.
Rule 2500 – Minimum Standards for Retail Account Supervision Part II A.6	One commenter recommends that the review of account information be required to have occurred prior to future trades in the account, with allowance for automated trades to continue. [IFIC]	We do not believe it is necessary to specify this in the rules. We would expect Member firms' policies and procedures to deal with such matters together with the mechanics of how such a policy would be implemented.
Rule 2700 – Minimum Standards for Institutional Account Opening, Operation and Supervision Section 2700 I (4)	Two commenters questioned why the Permitted Client exemption is not available for retail clients under the IIROC rule proposals. The commenters noted that if NI 31-103 is implemented as proposed, those operating as an IC/PM outside of the IIROC structure would be able to deal with individual Permitted Clients without complying with suitability obligations if a waiver is received. The differences between the CSA and IIROC rule proposals will create the possibility for regulatory arbitrage if the rule proposals are not aligned. [IIAC and IFIC]	We continue to believe for investor protection reasons that there should be a suitability requirement for permitted clients that are individuals. We are not prepared from a policy perspective to provide a suitability exemption in favour of IIROC regulated firms for high net worth individuals. We note that such individuals can ultimately open an order execution only account where there would be no suitability obligation imposed on the IIROC regulated firm.
Rule 2900 Proficiency	One commenter questioned whether IIROC will accept courses from education providers other then CSI. [BMO Nesbitt Burns]	CSI Global Education (CSI) is currently the exclusive course provider to IIROC for the entrance level proficiency requirements specified under Rule 2900. IIROC and CSI work closely together to ensure that CSI's course offerings

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		meet the proficiency and accreditation requirements of IIROC and fulfill IIROC's public interest mandate. IIROC pre-reviews all material changes to these core courses. CSI and IIROC have also agreed to specified quality and service standards which CSI is required to adhere to. In this context, CSI is required to annually submit to IIROC a self-assessment that reports on CSI's compliance with these standards. We do not currently intend to change our exclusive arrangement with CSI as it provides us with a desired and manageable level of control over the content and quality of core IIROC proficiency requirements. We note, however, that continuing education requirements under Rule 2900 Part III are more general and can be met by the courses of many providers.
Rule 2900 – Proficiency and Education (Part 1) Section A.1	One commenter notes that IIROC does not allow for a registration for non-trading Supervisors. The rule, as currently proposed, contemplates supervisor proficiency for purposes of dealing with retail customers and institutional accounts. An individual hired with the sole purpose of approving marketing materials and supervising advertising activities as a compliance function does not need to meet these requirements. The commenter recommends that each Dealer Member establish, maintain, and enforce written policies and procedures that are reasonably designed to supervise the review and subsequent approval of certain types of advertisements, sales literature or correspondence prior to publication. The commenter suggests that there be no mandated/required prerequisite proficiency in this regard, and urges IIROC to adopt a principles based approach. [IFIC]	The rules do allow for approval for non-trading Supervisors. We note, however, that the rules specify proficiency requirements for only certain types of Supervisors versus mandating proficiency requirements for all Supervisors. We agree with the commenter that an individual hired with the sole purpose of approving marketing materials would not have a specific proficiency requirement under IIROC rules. We would expect, however, that such an individual would have knowledge of IIROC rules governing marketing materials.
Supervisor proficiency - Options	One commenter notes that the rule appears to require designated supervisors of retail options accounts to have additional proficiencies than those of institutional accounts. The commenter questions why an institutional supervisor would not require the Options Supervisors course, but rather the Branch Manager's course, which is specific to retail account supervision. [BMO Nesbitt Burns]	Under proposed rule 2900.I.A.1(b)(ii) a supervisor of institutional business has to have "the proficiency requirements necessary to conduct or supervise any trading activity carried on by Approved Persons he or she supervises". This is the same requirement currently in place for non-retail branch managers. For options this means that the person has to have either the proficiencies required to trade in options (Derivatives Fundamentals and Options Licensing Course) or to supervise options (the Options Supervisors Course). The firm can determine which of the alternatives it is prepared to accept.
	Three commenters made several general observations about IIROC's proposed proficiency requirements. Two of these commenters noted that the IIROC rule proposals do not generally include a	In response to the comments received and feedback from the Education and Proficiency Committee we have amended Rule 2900 to require Supervisors supervising RRs dealings with retail customers and IRs to have

Applicable Rule Sections	Commenter and Summary of Comment	IIROC Response to Comment and Additional IIROC Commentary
	requirement for all supervisors to meet the same proficiency level of those they supervise [Edward Jones; CSI]. Two of these commenters also noted an inconsistency in the approach taken in the rules between supervisors of approved persons dealing with retail customers and supervisors of approved persons dealing with institutional clients, with the latter appearing to require proficiency requirements necessary to conduct any trading activity carried on by approved persons he/she supervises [Edward Jones; BMO Nesbitt Burns]	successfully completed the Canadian Securities Course and the Conduct and Practices Handbook Course. The change ensures that Supervisors of retail RRs and IRs will have the same core proficiencies of an RR or IR. We have also amended Rule 2900 to require Supervisors of approved persons dealing in options with retail customers to have successfully completed The Derivatives Fundamental Course and The Options Licensing Course (in addition to The Options Supervisor Course). This change was also discussed with the Education and Proficiency Committee who were supportive of the amendment. We have built in a transition period for 24 months for existing Supervisors who do not currently have these proficiencies.
Rule 2900 – Proficiency and Education (Part I) I.A.3.(a)(i)(C)1	One commenter notes that registration as an RR cannot be granted until the 91st day after completion of the CSC, and therefore suggests that the rule be specific and refer to a 90 day training program and not a three month training program. [Edward Jones]	We agree with the commenter and have made the change.
Rule 2900 – Proficiency and Education (Part I) Section A.4	One commenter recommended a number of editorial changes to this section to reflect the CSI 2007 purchase of The Institute of Canadian Bankers. [CSI]	We agree with the commenter and have made the changes.
2900.5 Traders	One commenter notes that this section is specific only to the TSX and Bourse de Montréal. Given the increasing number of exchanges and alternative trading systems that are now in operation, the commenter suggests drafting this section to be more general in nature. [BMO Nesbitt Burns]	The TSX, TSX Venture Exchange and Bourse are the only exchanges that have proficiency requirements. Newer exchanges and ATSs have not as of yet shown an inclination to impose course requirements on their participants. If one does, we will amend our rules accordingly.
Rule 2900 – Proficiency and Education (Part I) Section A.6	Commenter recommends that the rule proposals permit individuals who are registered under Canadian securities legislation as IC/PMs and who act only as portfolio managers do not need to meet the licensing requirements of a RR. [RBC Dominion Securities]	We continue to believe that it is important that RRs providing discretionary portfolio management for managed accounts be required to complete the Conduct and Practices Handbook Course. IIROC Staff consulted further with the Education and Proficiency Committee in response to this comment and the committee also felt strongly that the CPH is a core proficiency requirement that all RRs should meet.
Rule 2900 – Proficiency and Education (Part I) Section A.6.1	One commenter recommends that the proficiency requirements for registered representatives providing discretionary portfolio management for managed accounts that do not trade in futures contracts be further aligned	We agree with the commenter and have amended Rule 2900 A.6.1 to include a requirement that such RRs must have the Canadian Investment Manager (CIM) designation. We note that there are currently two

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	with NI 31-103 where the holding of a CFA designation or completion of the elements in the CIM program plus relevant experience is the proposed requirement. [CSI]	ways to earn the CIM designation. Stream 1 involves completion of the Canadian Securities Course (CSC), the Investment Management Techniques Course (IMT) and Portfolio Management Techniques Course (PMT). Stream 2 involves completion of the CSC, the Wealth Management Essentials Course (WME), the WME-Investment Management Supplement and the PMT. The change therefore includes the course requirements previously contemplated in the first publication of these rules amendments (i.e., the PMT and the IMT) but results in greater harmonization with proposed CSA proficiency requirements for advising representatives of a portfolio manager.
Rule 2900 - Proficiency and Education (Part II) Section A.2	Commenter recommends that applicants who have never been approved should be required to rewrite a required examination or course if it was completed more than three years before the date of application versus the current two years. The commenter believes that the move to three years would be consistent with IIROC's current administrative practices. [RBC Dominion Securities]	IIROC does not have such an administrative practice as the commenter has suggested and we continue to believe that the two year timeline is appropriate.
	One commenter suggests that A.2 contradicts A.3(a)(ii). The commenter asks whether the CSC and the New Entrants Course will continue to be valid for three years as indicated under A.3(a)(ii). If so, the commenter recommends that A.2 be amended to specify that it applies to all courses except the CSC and the New Entrants Course. [Edward Jones]	We agree with the commenter and will make the change with respect to the CSC. We don't believe a drafting change is necessary for the New Entrance Course.
Rule 2900 – Proficiency and Education (Part II) A.3.(a)(i) – A.3.(b) and A.7	The commenter notes that the Wealth Management Essentials Course (WME) or the Managing High Net Worth have not been included in Section A.3.(a)(i) or A.3.(b) or A.7. [Edward Jones]	We agree with the commenter that the Wealth Management Essential Course should be included in the section and have amended the rule accordingly. We disagree, however, that the Managing High Net Worth course should be included as the course has never been recognized for these purposes.
Rule 2900 – Proficiency and Education (Part II) Section A.4	Commenter recommends that IIROC consider providing an automatic exemption from re-writing the Partners, Directors, and Senior Officers Course for those applicants who have been working closely with the CEO or an approved Supervisor similar to the exemption afforded under current rules from re-writing the CFO exam. [RBC Dominion Securities]	We believe that providing such an exemption for applicants who have been working closely with the CEO and approved Supervisor would be too broad and do not believe from a policy perspective that such an exemption is warranted. We believe that the exemption afforded from re-writing the CFO exam is distinguishable given the specialized nature of the function.
	Commenter is concerned with the repercussions of transferring an individual who is the subject of an IIROC investigation or	A critical part of the hiring process in the securities industry is the background investigation of prospective personnel. For

Applicable Rule Sections	Commenter and Summary of Comment	IIROC Response to Comment and Additional IIROC Commentary
	pending disciplinary action. Specifically, the commenter requests guidance on what a firm should do when there is a negative outcome to an IIROC investigation or disciplinary action imposed with respect to an individual the firm has hired. [RBC Dominion Securities]	instance, background investigations can help member firms determine whether a prospective employee is subject to an IIROC rule or statutory disqualification or whether he or she may present a regulatory risk for the firm and its clients. In addition to reviewing and discussing with an applicant his/her 33-109F4, hiring firms should proactively ask applicants about the existence of and nature of any pending proceedings or regulatory investigations. Firms must carefully consider and scrutinize prospective personnel before hiring decisions are made.
Rule 2900 – Proficiency and Education (Part II) Sections A.8 and A.9	One commenter believes the reference in A.8 should be changed to Part 1, Section 3(a)(i)(C)2 and the reference in A.9 should be changed to Part 1, Section 3(a)(i)(C)1. [Edward Jones]	We agree with the commenter and will make the necessary changes.
Rule 2900 – Proficiency and Education (Part III – Continuing Education Program)	Commenter notes that current Part III of Rule 2900 was not included in the proposed amendments and would like to know if IIROC will be revising this section and publishing for comment at a later date. [RBC Dominion Securities]	We acknowledge the oversight. We do not believe that the changes made to Part III are material and have been included in this final rule package. The changes made are consequential in nature and simply reflect the changes made to IIROC's approval category structure.
Other comments		
Definitions of Investment Representative and Registered Representative	Commenter notes that the broadened definition of "Investment Representative" and "Registered Representative" includes individuals who trade in or advise on products that were previously exempt. This implies that individuals who previously traded or advised in exempt products must meet the new proficiency requirements. The commenter recommends, in order to be consistent with NI 31-103 that IIROC allow for a transition period of twelve months as provided for in NI 31-103. [RBC Dominion Securities]	We agree with the commenter that immediate implementation of the changes to the definitions would not be practicable. The changes to the definitions are proposed to come into effect with the changes to the definition of "securities related business". We believe that this should provide an adequate transition period for an RR or IR who does not currently meet existing proficiency requirements, although we would expect that most would have completed the required courses.
Officer registration	Commenter notes that the elimination of the registration requirements for officers will have considerable impact on firms with respect to a firm's continued obligation to review and/or approve specific documents, such as registration forms and outside business activities requests. Commenter asks that IIROC clarify whether an officer appointment under corporate law provides sufficient authority to perform to review and/or approve documents as required by IIROC's rules. [RBC Dominion Securities]	We have reinserted the definition of "officer" back into Rule 1 in response to the firm's comment.

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	Commenter requests guidance on the process that firms are to follow for the de-registration of officers. For example: • Will there be a bulk termination submission or a staggered submission schedule; • Will the usual Notice of Termination questions need to be answered; • Will IIROC waive the fees for the filing of Termination Notices? • Will there be mapping to the NRD for registrants currently approved as Trading Officers in some jurisdictions, and Non-Trading Officers in others? [RBC Dominion Securities]	Active individuals will be converted to the new IIROC approval categories under Registration Reform through a bulk category change process. As a result of the new bulk category change process there will be minimal work effort required on behalf of firms. All individuals currently approved by IIROC as partners and officers will be mapped onto the new "Executive" approval category. All officers that no longer fall within the definition of "Executive" will be required to submit a change or surrender of individual category submission for those individuals remaining approved or registered in some other capacity (e.g. Registered Representative) or a notice of termination for those individuals who no longer require approval. There will be no fees associated with the filing of termination notices. There will also be no transitional requirement imposed upon firms to remove this category, although we expect most firms will seek to do so before the end of December 2009 to avoid the imposition of annual NRD user fees. IIROC will be publishing a notice which will provide more detail regarding the bulk category change process.
	Commenter notes that the proposed amendments do not set out a transition period for the new requirements. Commenter recommends extended time frames to allow individuals to satisfy the proficiency requirements for their applicable category of registration. [RBC Dominion Securities]	We have amended our rules to include transition periods for changes made to IIROC's proficiency requirements where applicable.

13.1.2 IIROC Rules (blacklined) – Amendments to Implement the Registration Reform Project

RULE 1

INTERPRETATION AND EFFECT

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

"Affiliate" or "Affiliated Corporation" means in respect of two corporations, either corporation if one of them is the subsidiary of the other or if both are subsidiaries of the same corporation or if each of them is controlled by the same person;

"Approved Lender" means a chartered bank, an acceptable counterparty or acceptable institution as defined in Form 1, an industry investor, a Dealer Member or any other lender so designated by the Board ~~of Directors~~;

"Approved Person" means, in respect of a Dealer Member, an individual who is a partner, ~~director, officer~~Director, Officer, employee or agent of a Dealer Member who is approved by the Corporation or another Canadian Self Regulatory Organization to perform any function required under any Rule~~.~~;

"Applicable" in relation to a District Council means the District Council for the District:

(1) In which the applicant for Membership or the Dealer Member has its principal office and, in the case of a holding company of a Dealer Member corporation, in which the Dealer Member corporation has its principal office;

(2) In which the ~~branch office or sub-branch office~~business location will be located or in which the applicant for approval as a ~~branch manager, sales manager or assistant or co-branch manager~~Supervisor resides;

(3) In which the applicant for approval as a new ~~partner, director, officer~~Executive of a Dealer Member or investor resides provided that if such ~~partner, director, officer~~Executive or investor has changed his or her place of residence to another District within 3 months prior to the change for which approval is being sought then the applicable District Council shall be the District Council for the District where the applicant formerly resided;

(4) In which the applicant for approval as a ~~registered representative or investment representative~~Registered Representative or Investment Representative resides;

(5) In which the applicant for approval as a futures contract principal, futures contract options principal or a person who deals with customers with respect to futures contracts or futures contract options resides;

(6) In which the applicant for approval as a portfolio manager, securities option portfolio manager, futures contract options portfolio manager or futures contracts portfolio manager resides;

(7) In which the respondent, if an individual, in a disciplinary action pursuant to Rule 20 was approved at the time the activities which are the subject of the disciplinary action primarily occurred, provided that,

(a) If the individual was approved in more than one District at the relevant time, and the matter which is the subject of the disciplinary action involves a client in a District where the respondent was approved other than that in which the respondent resides, in which such client resided at the time such activities occurred; or

(b) If the applicable District Council cannot otherwise be determined, in which the respondent resided at the relevant time; or

(8) In which the activities which are the subject of a disciplinary action against a respondent Dealer Member pursuant to Rule 20 primarily occurred, or, if such activities are not referable to any specific District, in which the principal office of the respondent Dealer Member is located, provided that, if a disciplinary action involves both an individual and a Dealer Member, the District Council having jurisdiction pursuant to clause (7) herein~~.~~;

"Beneficial Ownership" in respect of any securities includes ownership by:

(i) A person other than a corporation, of securities beneficially owned by a corporation controlled by him or her or by an affiliate of such corporation; and

(ii) A corporation of securities beneficially owned by its affiliates;

"Board" means the board of directors of the Corporation;

"Business Location" means a physical location at which any employee or agent of a Dealer Member conducts on a regular and ongoing basis business requiring approval of the Corporation or registration under Provincial securities legislation;

"Callable Debt Security" means a security described in Rule 100.2A(a), which allows the issuer to redeem the security at a fixed price (the call price), subject to the call protection period;

"Call Protection Period" means the period of time during which the issuer cannot redeem a callable debt security;

"Chartered Bank" means a bank incorporated under the Bank Act (Canada);

"Control" or "Controlled", in respect of a corporation by another person or by two or more corporations, means the circumstances where:

(i) Voting securities of the first-mentioned corporation carrying more than 50% of the votes for the election of directors are held, other than by way of security only, by or for the benefit of the other person or by or for the benefit of the other corporations; and

(ii) The votes carried by such securities are entitled, if exercised, to elect a majority of the board of directors of the first-mentioned corporation,

And where the applicable District Council in respect of a particular Dealer Member or its holding company orders that a person shall, or shall not, be deemed to be controlled by another person, then such order shall be determinative of their relationships in the application of the Rules and Rulings with respect to that Dealer Member or holding company;

"Dealer Member Corporation" means an incorporated Dealer Member;

"Debt" means an investment which provides the holder with a legal right, in specified circumstances, to demand payment of the amount owing and includes a debtor-creditor relationship whether or not represented by a written instrument or security;

"Designated ~~Person" or a "Designated" Partner, Director, Officer, Futures Contract Principal, Futures Contract Options Principal or Registered Options Principal means either:~~

~~(i) An Ultimate Designated Person who is either~~

~~(a) The Chief Executive Officer,~~

~~(b) President,~~

~~(c) Chief Operating Officer,~~

~~(d) Chief Financial Officer, or (e) Such other officer designated with the equivalent supervisory and decision-making responsibility who has been granted approval by the Corporation to act as the Ultimate Designated Person;~~Supervisor" means a Supervisor designated by a Dealer Member as having responsibility to fulfill a supervisory role defined in a Rule, including but not limited to:

~~(ii) An Alternate Designated Person who~~

~~(a) Has been appointed by the Dealer Member to ensure continuous supervision,~~

~~(b) Is registered as a partner, director, officer or is in the process of applying as one, and~~

~~(c) Has been granted approval by the Corporation to act as an Alternate Designated Person; or~~

~~(iii) Except where expressly prohibited, a Chief Compliance Officer who~~

~~(a) Has been appointed by the Dealer Member,~~

~~(b) Is registered as a partner, director, officer or is in the process of applying as one, and~~

~~(c) Has been granted approval by the Corporation to act as a Chief Compliance Officer.~~

(1) the Supervisor designated to be responsible for the opening of new accounts and the supervision of account activity under Rule 1300.2

(2) the Supervisor designated to be responsible for the supervision of discretionary accounts under Rule 1300.4

(3) the Supervisor designated to be responsible for the supervision of managed accounts under Rule 1300.15

(4) the Supervisor designated to be responsible for the supervision of options accounts under Rule 1800.2(a)

(5) the Supervisor designated to be responsible for the supervision of futures contract accounts under Rule 1900.2

(6) the Supervisor or Supervisors designated to pre-approve advertising, sales literature and correspondence, including research reports, under Rule 29.7(3) and Rule 3400, Guideline 7;

"Director" means a member of the board of directors of, as the context dictates, a Dealer Member or the Corporation or a person performing a similar function in a Dealer Member that is not a corporation;

"Equity Investment" means an investment the holder of which has no legal right to demand payment until the issuing corporation or its board of directors has passed a resolution declaring a dividend or other distribution, or winding-up of the issuing corporation;

"Executive" means a partner, Director or Officer of a Dealer Member who is involved in the senior management of the Dealer Member, including anyone fulfilling the role of chair or a vice-chair of the board of directors, chief executive officer, president, chief administrative officer, chief financial officer, chief compliance officer, member of an executive management committee, any person in a managerial position who has significant authority over daily operations, or any position designated by a Dealer Member as being an Executive position;

"Extendible Debt Security" means a security described in Rule 100.2A(b), which allows the holder, during a fixed time period, to extend the maturity date of the security to the extension maturity date, and to change the principal amount of the security to a fixed percentage (the extension factor) of the original principal amount;

"Extension Election Period" means the period of time during which the holder may elect to extend the maturity date and change the principal amount of, an extendible debt security;

"Extension Factor" means, if any, the fixed percentage that should be used to change the original principal amount of the extendible debt security when the maturity date is deemed to be equal to the extension maturity date;

"Fully Participating Security" means a participating security other than a limited participation security;

"Guaranteeing" includes becoming liable for, providing security for or entering into an agreement (contingent or otherwise) having the effect or result of so becoming liable for or providing security for a person, including an agreement to purchase an investment, property or services, to supply funds, property or services or to make an investment primarily for the purpose of directly or indirectly enabling such person to perform its obligations in respect of such security or investment or assuring the investor of such performance;

"Holding Company" means, in respect of any corporation, any other corporation which owns more than 50 per cent of each class or series of voting securities and more than 50 per cent of each class or series of participating securities of the corporation or of any other corporation which is a holding company of the corporation, but an industry investor shall not be considered to be a holding company by reason of the ownership of securities in its capacity as an industry investor and the applicable District Council in its discretion may deem any person (including but not limited to a corporation) to be or not to be a holding company for the purposes of the Rules;

"Individual" means a natural person, other than an individual who is a Dealer Member;

"Industry Investor" means, in respect of any Dealer Member or holding company of a Dealer Member corporation, any of the following who owns a beneficial interest in an investment in the Dealer Member or holding company:

(i) The Dealer Member's full-time ~~officers~~Officers and employees or the full-time officers and employees of a related company or affiliate of the Dealer Member which carries on securities related activities;

(ii) Spouses of individuals referred to in clause (i);

(iii) An investment corporation, if:

(a) A majority of each class of the voting securities of the investment corporation is held by individuals referred to in clause (i); and

(b) All interests in all other equity securities of the investment corporation are beneficially owned by individuals referred to in clause (i) or (ii) or their children or by industry investors with respect to the particular Dealer Member or holding company;

(iv) A family trust established and maintained for the benefit of individuals referred to in clause (i) or (ii) or their children, if

(a) Full direction and control of the trust, including, without limitation, its investment portfolio and the exercise of voting and other rights attaching to instruments and securities contained in the investment portfolio, are maintained by individuals referred to in clause (i) or (ii); and

(b) All beneficiaries of the trust are individuals referred to in clause (i) or (ii) or their children or industry investors with respect to the particular Dealer Member or holding company of a Dealer Member corporation;

(v) A registered retirement savings plan established under the *Income Tax Act (Canada)* by an individual referred to in clause (i) or (ii) if control over the investment policy of the registered retirement savings plan is held by that individual and if no other person has any beneficial interest in the registered retirement savings plan;

(vi) A pension fund established by a Dealer Member for its ~~officers~~Officers and employees if the pension fund is organized so that full power of its investment portfolio and the exercise of voting and other rights attaching to instruments and securities contained in the investment portfolio is held by individuals referred to in clause (i);

(vii) The estate of an individual referred to in clause (i) or (ii) for a period of one year after the death of such individual or such longer period as may be permitted by the applicable District Council;

(viii) Any investor referred to in clause (i), (ii), (iii), (iv) or (v) for a period of 90 days or such longer period as the Corporation may permit after the individual who, in the case of clause (i), is the investor or, in the case of such other clauses, is the person through whom the industry investor qualifies as such, is no longer in the employment of the Dealer Member, related company or affiliate, as the case may be, in respect of which he or she has been approved;

But any of the foregoing is an industry investor only if an approval for purposes of this definition has been given, and not withdrawn, by the board of directors of such Dealer Member or holding company, as the case may be, and by the applicable District Council;

"Institutional Customer" means:

(1) An Acceptable Counterparty (as defined in Form 1);

(2) An Acceptable Institution (as defined in Form 1);

(3) A Regulated Entity (as defined in Form 1);

(4) A Registrant (other than an individual registrant) under securities legislation; or

(5) A non-individual with total securities under administration or management exceeding $10 million;

"Investment" in any person means any security or debt obligation issued, assumed or guaranteed by such person, any loan to such person, and any right to share or participate in the assets, profit or income of such person;

"Investment Representative" means ~~any person~~a partner, Director, Officer, employee or agent of a Dealer Member who trades in but does not advise on ~~trades in securities, options, futures contracts or futures contract options with the~~

~~public in Canada, other than a person who trades exclusively in securities of or guaranteed by the government of Canada or any province of Canada or any municipality in Canada, and shall include an investment representative (mutual funds) approved pursuant to Rule 18.7~~an investment product on behalf of the Dealer Member;

"Investor" means any person who has an interest in an investment;

"Junior Subordinated Debt" means subordinated debt, which is subordinated to other subordinated debt;

"Limited Participation Security" means indebtedness or a preferred share that

(i) Carries interest or dividends at a fixed rate, and, if dividends, cumulative and payable in priority to any dividends to the holders of common shares;

(ii) If indebtedness, is repayable at any time and, if a preferred share, is redeemable at any time, in either case at a price that may include a premium if the premium is not based on earnings or retained earnings;

(iii) Is limited in its participation in earnings to an amount not exceeding annually one-half of the annual fixed interest or dividend rate, although such participation may be cumulative; and

(iv) Is subject to subordination or equivalent arrangements such that the return to the holders thereof on a bankruptcy would not be adversely affected by section 110 of the Bankruptcy Act (Canada) or equivalent legislation,

And which is approved as a limited participation security by the applicable District Council;

"Membership" means membership in the Corporation as a Dealer Member;

"Non-participating Security" means a security with a claim limited to interest or dividends at a fixed rate;

"Non-subordinated Debt" means debt, which is not subordinated debt;

"Officer" means the chair and vice-chair of the board of directors, president, vice-president, chief executive officer, chief financial officer, chief operating officer, secretary, any other person designated an officer of a Dealer Member by law or similar authority, or any person acting in a similar capacity on behalf of a Dealer Member;

"Ordinary Course Indebtedness" means all debt other than debt which is a restrictive or participating security or subordinated debt;

"Ownership Interest" means all direct or indirect ownership of the participating securities;

"Parent" (where used to indicate a relationship with another corporation) means a corporation that has the other corporation as a subsidiary;

"Participating Security" means a security which entitles the holder thereof to participation, limited or unlimited, in the earnings or profits of the issuer, either alone or in addition to a claim for interest or dividends at a fixed rate, and includes, except where the reference is to "outstanding" participating securities, a security which entitles the holder thereof, on conversion, exchange, the exercise of rights under a warrant, or otherwise, to acquire a participating security;

"Person" means an individual, a partnership, or corporation, a government or any department or agency thereof, a trustee, any unincorporated organization and the heirs, executors, administrators or other legal representatives of an individual;

"Predecessor Organization" means the Investment Dealers Association of Canada;

"Public Ownership of Securities" means the ownership of securities (other than ordinary course indebtedness) by any person other than an industry investor, except that ownership by approved lenders of securities of a Dealer Member or a holding company does not, of itself, constitute public ownership of securities;

"Qualified Independent Underwriter" means, in respect of the distribution of securities of a Dealer Member corporation or a holding company of a Dealer Member corporation, a securities firm which is a member of a self-regulatory organization, and:

(i) Has engaged in the securities business for at least five years immediately preceding the filing of the prospectus or other equivalent document;

(ii) As of the date the distribution commences:

(a) If a corporation, the majority of the members of its board of directors

(b) If a partnership, the majority of its general partners

Has engaged in the securities business for the five-year period immediately preceding that date;

(iii) Has engaged in the underwriting of public offerings of securities for the five-year period immediately preceding the date the distribution commences; and

(iv) Is not an associate or affiliate of the corporation whose securities it is underwriting;

"Recognized Stock Exchange" means any stock exchange designated by the Board ~~of Directors~~ for the purposes of any one or more of these Rules;

"Registered Representative" means ~~any person~~a partner, Director, Officer, employee or agent of a Dealer Member who trades ~~or advises on trades in securities, options, futures contracts, or futures contract options with the public in Canada other than a person who trades or advises on trades exclusively in securities of or guaranteed by the government of Canada or any province of Canada or any municipality in Canada, and shall include a registered representative (mutual funds) approved pursuant to Rule 18.7 and a registered representative (non-retail) approved pursuant to Rule 18.8;~~and advises on trades in an investment product on behalf of the Dealer Member;

"Related Company" means a sole proprietorship, partnership or corporation which:

(i) Is related to a Dealer Member in that either of them, or its partners in, and directors, officers, shareholders and employees of, it, individually or collectively, have at least a 20% ownership interest in the other of them, including an interest as a partner or shareholder, directly or indirectly, and whether or not through holding companies;

(ii) Is a securities dealer or adviser in Canada; and

(iii) Is a member of a participating institution of the Canadian Investor Protection Fund;

Provided that the Board ~~of Directors~~ may, from time to time, include in, or exclude from this definition any sole proprietorship, partnership or corporation, and change those included or excluded;

"Restrictive Security" means a security of a Dealer Member or a holding company of a Dealer Member corporation which, in the opinion of the applicable District Council, entitles the holder thereof to rights which give it a more extensive or substantial degree of influence on the Dealer Member or holding company of the operations thereof than is usual for a holder of the same amount of securities of the same type;

"Retail Customer" means a customer of a Dealer Member that is not an institutional customer;

"Retractable Debt Security" means a security described in Rule 100.2A(c), which allows the holder of the security, during a fixed time period to retract the maturity date of the security to the retraction maturity date, and to change the principal amount of the security to a fixed percentage (the retraction factor), of the original principal amount;

"Retraction Election Period" means the period of time during which the holder may elect to retract the maturity date, and change the principal amount of, a retractable debt security;

"Retraction Factor" means, if any, the fixed percentage that should be used to change the original principal amount of the retractable debt security when the maturity date is deemed to be equal to the retraction maturity date;~~"~~

"Rules" means these Rules and any Rules made pursuant to the By-laws of the Corporation.~~"Sales Manager" shall include any person who has been assigned direct or indirect supervisory responsibility over any sales management personnel of a Dealer Member~~;

"Secretary" means the Secretary of the Corporation;

"Securities Commission" means in any jurisdiction, the commission, person or other authority authorized to administer any legislation in force relating to the offering and/or sale of securities or commodity futures to the public and/or to the registration or licensing of persons engaged in trading securities or commodity futures;

"Securities Dealer" means 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;

"Securities Held for Safekeeping," means those securities held by a Dealer Member for a client pursuant to a written safekeeping agreement. These securities must be free from any encumbrance, be kept apart from all other securities and be identified as being held in safekeeping for a client in a Dealer Member's security position record, customer's ledger and statement of account. Securities so held can only be released pursuant to an instruction from the client and not solely because the client has become indebted to the Dealer Member.;

"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;

"Segregated Securities" means those clients' securities which are unencumbered and which have either been fully paid for or are excess margin securities. Segregated securities must be distinguished as being held in trust for the client owning the same. These securities must be described as being held in segregation on the Dealer Member's security position record (or related records), customer's ledger and statement of account. Whenever a client becomes indebted to a Dealer Member, the Dealer Member has the right to use, by sale or loan, previously segregated securities to the extent reasonably necessary to cover the indebtedness."Senior Officer" means the chairman or a vice-chairman of the board of directors, the president, a vice-president, the secretary, the treasurer or the general manager of a Dealer Member or any other individual who performs functions for a Dealer Member similar to those normally performed by an individual occupying any such office;

"Self-Regulatory Organization" means any of the Corporation, The TSX Venture Exchange, the Montreal Exchange and The Toronto Stock Exchange;

"Sub-branch Office" means any office of a Dealer Member having in total less than four registered representatives and supervised by a branch manager or a director, partner or officer designated pursuant to Rule 1300, who is not normally present at such sub-branch office;

"Subordinated Debt" means any debt the terms of which specify that its holder will not be entitled to receive payment if any payment to any holder of a senior class of debt is in default;

"Subsidiary", in respect of a corporation and another corporation, means the first mentioned corporation if:

(i) It is controlled by:

  (a) That other; or

  (b) That other and one or more corporations each of which is controlled by that other; or

  (c) Two or more corporations each of which is controlled by that other; or

(ii) It is a subsidiary of a corporation that is that other's subsidiary;

"Supervisor" means a person to whom a Dealer Member has given responsibility and authority and who is approved by the Corporation to manage the activities of other partners, Directors, Officers, employees or agents of the Dealer Member so as to ensure their compliance with laws and regulations governing their and the Dealer Member's securities-related activities;

"Voting Securities" of a Dealer Member or holding company of a Dealer Member corporation means all securities of the Dealer Member or holding company outstanding from time to time that carry the right to vote for the election of directors, and includes:

(i) Except where the reference is to "outstanding" voting securities, those securities which entitle the holders thereof, on conversion, exchange, the exercise of rights under a warrant, or otherwise, to acquire voting securities; and

(ii) Preference shares which carry the right to vote for the election of directors only upon the occurrence of a specific event if such specific event has occurred.

~~1.2.~~1.2 Words importing the singular include the plural and vice versa and words importing any gender include any other gender.

1.3 Where the context indicates, references to a Dealer Member include the partners, Directors, Officers, employees and agents of the Dealer Member.

~~1.3.~~1.4 In the event of any dispute as to the intent or meaning of the By-laws or Rules or Rulings or Forms, the interpretation of the Board ~~of Directors~~, subject to the provisions of Rule 33, shall be final and conclusive.

~~1.4.~~1.5 The enactment of these Rules shall be without prejudice to any right, obligation or action acquired, incurred or taken under the By-laws of the Corporation and its Predecessor Organization as heretofore in effect or under the Rules, Rulings or Forms passed pursuant thereto, and any proceedings taken under the By-laws as heretofore in effect or under such Rules, Rulings or Forms shall be taken up and continued under and in conformity with these By-laws and the Rules, Rulings and Forms as from time to time in effect.

~~1.5~~1.6 Terms used in these Rules which are not defined herein shall have the same meanings as used or defined in General By-law No. 1 and the Hearing Committees and Hearing Panels Rule.

RULE 4

~~**BRANCH OFFICE DEALER MEMBERS, BRANCH OFFICES AND SUB-BRANCH OFFICES**~~

BUSINESS LOCATIONS

4.1. ~~Where any Dealer Member has one or more branch offices having a manager and staff either in the District in which the principal office of such Dealer Member is situated or in any other District, each such branch office shall be a Branch Office Dealer~~Every Business Location of a Dealer Member in a District having a Supervisor who is normally present at the Business Location is a Branch Office Member~~.~~ of the District.

4.2. ~~No~~There is no Membership or other fees ~~and assessments shall be payable in respect of any~~for Branch Office ~~Membership~~Members.

4.3. A Branch Office ~~Dealer~~ Member ~~shall have~~has the same privileges in its District as any other ~~Dealer~~Branch Office Member except that at ~~all~~a District ~~meetings~~meeting each Dealer Member ~~shall have one vote only in respect of all its offices, whether principal or branch,~~has only one vote no matter how many Branch Office Members it has in the District.

4.4. The representative of any Branch Office ~~Dealer~~ Member in any District ~~shall be~~is eligible for election as Chair or member of the District Council of ~~such~~the District.

4.5. Each Branch Office ~~Dealer~~ Member ~~shall be entitled to~~may send one or more representatives to the Annual Meeting of the District.

4.5A. Repealed.

4.6.

~~(a) Each Dealer Member shall appoint a branch manager to be in charge of each of its branch offices and, where necessary to ensure continuous supervision of the branch office, a Dealer Member may appoint one or more assistant or co-branch managers who shall have the authority of a branch manager in the absence or incapacity of the branch manager. A branch manager shall be normally present at the branch of which he or she is in charge.~~

~~(b) A Dealer Member having a branch office that has no client accounts other than accounts for institutional clients as defined in Rule 2700 may appoint a branch manager (non-retail) to be in charge of the branch and, where necessary to ensure continuous supervision of the branch office, a Dealer Member may appoint one or more assistant or co-branch managers (non-retail), who shall have the authority of a branch manager in the absence or incapacity of the branch manager. A branch manager (non-retail) shall be normally present at the branch of which he or she is in charge.~~(c) ~~A Dealer Member shall~~A Dealer Member must notify the Corporation ~~as required~~ in accordance with Rule ~~40~~,40 of the opening or closure of a ~~branch office~~Business Location.

~~4.7. A Dealer Member having a sub-branch office shall designate as the supervisor of such office, a branch manager, or a director, partner or officer who is not normally present at such office. The business of the sub-branch office, including the entry of orders, shall be conducted through the head office of the Dealer Member or through the branch office designated as having supervisory responsibility for the sub-branch office. A Dealer Member shall notify the Corporation of the opening and closure of a sub-branch office in accordance with Rule 40.~~

~~4.7A. The Corporation may approve a proposed branch or sub-branch office to be established and maintained outside of Canada, provided that:~~

~~(a) The Dealer Member seeking approval for the branch or sub-branch office provides evidence satisfactory to the Corporation that the persons to be employed in such office are registered or licensed to carry on the business which is intended to be carried on at that office, pursuant to the laws of the jurisdiction in which the office will be located; and~~

~~(b) In the case of a proposed sub-branch, the proposed sub-branch office is within the same territorial jurisdiction as the branch office designated as having supervisory responsibility for such sub-branch office.~~

4.7. Repealed.

4.7A. Repealed.

4.8. Repealed.

~~4.9. No person shall act as a sales manager, branch manager, assistant branch manager, co-branch manager, branch manager (non-retail), assistant branch manager (non-retail) or co-branch manager (non-retail) unless the person:~~

~~(a) Has satisfied the applicable proficiency requirements outlined in Part I of Rule 2900; and~~

~~(b) Has been approved by the Corporation.~~

~~4.9A. Failure to satisfy subclause A.1(a)(iii)C of Part I of Rule 2900 will result in the automatic suspension of approval. Approval will be reinstated only at such time as the individual has satisfied the applicable course requirement.~~

4.9. Repealed.

4.9A. Repealed.

4.10. Repealed.

4.11. Repealed.

~~4.12. Every person whose application for approval as a branch manager, assistant or co-branch manager or sales manager has been approved shall be subject to the jurisdiction of the Corporation, shall comply with the Rules and Rulings of the Corporation as the same are from time to time amended or supplemented and, if such approval is subsequently revoked, shall forthwith terminate his or her employment as a branch manager, assistant or co-branch manager or sales manager with the Dealer Member with whom he or she is employed at the time of such revocation.~~

~~4.13. No branch manager or assistant or co-branch manager shall accept, or permit any associate to accept, directly or indirectly, any remuneration, gratuity, advantage, benefit or any other consideration from any person other than the Dealer Member or its affiliates or its related companies in respect of the activities carried out by such branch manager or assistant or co-branch manager on behalf of the Dealer Member or its affiliates or its related companies and in connection with the sale or placement of securities on behalf of any of them.~~

~~4.14 Each Dealer Member shall be liable and pay to the Corporation fees in the amounts prescribed from time to time by the Board of Directors for the failure of the Dealer Member to file within ten business days of the end of each month, a report with respect to the conditions imposed on approval or continued approval of a branch manager, assistant or co-branch manager or sales manager of the Dealer Member pursuant to Rule 20.~~

4.12. Repealed.

4.13. Repealed.

4.14. Repealed.

RULE 7

DEALER MEMBER ~~PARTNERS,~~ DIRECTORS AND ~~OFFICERS~~EXECUTIVES

7.1 Definitions

For the purposes of this Rule ~~7.(a)~~ 7, "actively engaged in the business of the Dealer Member" means, participating in any regular business activities of the Dealer Member~~ including but not limited to trading in securities or futures contracts and related services, research, investment banking, operations or promotion of the Dealer Member's services~~, but shall not include participation in meetings of the board of directors or related corporate governance committees of the board of directors or occasional referrals to the Dealer Member where such referrals do not result from solicitation of business on behalf~~ of the Dealer Member;(b) "director" means a member of the board of directors~~ of the Dealer Member.

7.2 Approval

No person ~~shall~~may be a ~~partner, director or officer~~Director or Executive of a Dealer Member unless that person has been approved as such by the Corporation.

7.3 ~~Partners and~~ Directors

(a) At least 40% of the ~~partners or directors of a Dealer Member shall~~Directors of a Dealer Member must:

(1) Either:

(A) Be actively engaged in the business of the Dealer Member and devote the major portion of their time to the securities industry, except those on active government services, or who for health reasons are prevented from such active engagement; or,

(B) Occupy equivalent positions at related or affiliated securities dealers or affiliated financial institutions;

and

(2) Have satisfied the applicable proficiency requirements in Rule 2900, Part I.A(2); and

(3) Have experience acceptable to the Corporation in the financial services industry for at least five years or such lesser period as may be approved by the Corporation.

(b) The remaining Directors of a Dealer Member, if actively engaged in the business of the Dealer Member or a related company of the Dealer Member must have the qualifications described in paragraphs 7.3(a)(1) and (2).

7.4 Executives

(a) All of the Executives of a Dealer Member must:

(1) Be actively engaged in the business of the Dealer Member and devote the major portion of their time to the securities industry, except those on active government services, or who for health reasons are prevented from such active engagement; or,

(2) ~~Be partners, officers or directors of related or affiliated securities dealers, or affiliated financial institutions such as Canadian chartered banks, Quebec savings banks, trust or insurance companies licensed to do business in Canada or pension funds with aggregate net assets of not less than $5,000,000; and~~

~~(3) Have satisfied the applicable proficiency requirements outlined in Rule 2900, Part I.A(2); and~~

~~(4) Have experience acceptable to the Corporation in the financial services industry for at least five years or such lesser period as may be approved by the Corporation.~~

(b) The remaining directors, if actively engaged in the business of the Dealer Member or a related company of the Dealer Member, or the remaining partners, shall have the qualifications described in paragraphs 7.3(a) (1) or (2) and (3).

7.4 Officers

(a) All of the officers of a Dealer Member shall:

(1) Be actively engaged in the business of the Dealer Member and devote the major portion of their time to the securities industry, except those on active government services, or who for health reasons are prevented from such active engagement; or,(2) Be partners, officers or directors ofOccupy equivalent positions at related or affiliated securities dealers, or affiliated financial institutions such as Canadian chartered banks, Quebec savings banks, trust or insurance companies licensed to do business in Canada or pension funds with aggregate net assets of not less than $5,000,000; and

(3) Have satisfied the applicable proficiency requirements outlined in Rule 2900, Part I.A(2);

(b) Not less than 60% of the officersExecutives of a Dealer Member shallmust have experience acceptable to the Corporation in the financial services industry for at least five years or such lesser period as may be approved by the Corporation.

(c) At least two officers shall be engaged in the business of the Dealer Member; one of whom shall be engaged full time, while the other may be engaged on a part-time basis.

7.5 Chief Financial Officer

(a) Each Dealer Member shall appoint one officer as chief financial officer who, in addition to the requirements under 7.4(a), shall have the qualification required pursuant to Rule 2900, Part I.A(2A). The chief financial officer need not be engaged full time in the business of the Dealer Member.

(b) Notwithstanding subsection (a), if the chief financial officer of a Dealer Member terminates his/her employment with the Dealer Member and the Dealer Member is unable to immediately appoint another qualified person as chief financial officer, the Dealer Member may, with the Corporation's approval, appoint an officer as acting chief financial officer, provided that within 90 days of the termination:

(1) the acting chief financial officer meets the requirement of subsection (a) and is approved by the Corporation as chief financial officer; or

(2) another qualified person is appointed chief financial officer by the Dealer Member and approved by the Corporation.**7.6 Exemptions**

The applicable District Council may grant an exemption, in whole or in part, from any requirement under Rules 7.3 to 7.5,and 7.4, where it is satisfied that to do so would not be prejudicial to the interest of the memberDealer Member, its clients, the public or the Corporation and, in granting such an exemption, it may impose such terms and conditions as it considers necessary.

7.7 Multiple Employments of Officers

Where permitted by the securities legislation of the applicable jurisdiction, a person may be employed as a trading officer of a Dealer Member and affiliated or related Dealer Member or non-member registered dealers provided that:

(a) the reasons for such multiple employments are disclosed to the Corporation;

(b) the Dealer Members employing such a trading officer have filed with the Corporation their policies and procedures that will address any potential for conflicts of interest resulting from such multiple employments; and

(c) the clients of the Dealer Members whose accounts are personally handled by the trading officer are informed of the details of the multiple employments and the potential for conflict of interest.

~~7.8~~7.6 Persons Owning or Controlling a Significant Equity Interest in a Dealer Member

(a) Any ~~partner or director~~Director of a Dealer Member who directly or indirectly owns or controls ~~10% or more of the~~a voting ~~shares of a~~interest in the Dealer Member ~~shall~~of 10% or more must have the proficiency requirement outlined in Rule 2900, Part I.A(2)(a);

(b) Any person other than a ~~partner or director~~Director of a Dealer Member, who is actively engaged in the business of a Dealer Member and directly or indirectly owns or controls a voting interest in the Dealer Member of 10% or more ~~of the voting securities of the Dealer Member, shall~~must have the proficiency requirement outlined in Rule 2900, Part I.A(2)(a).

~~7.9~~7.7 Remuneration of ~~Partners, Directors~~ and ~~Officers~~Executives

No ~~partner, director~~Director or ~~officer~~Executive of a Dealer Member shall accept or permit any associate to accept, directly or indirectly, any remuneration, gratuity, advantage, benefit or any other consideration from any person other than the Dealer Member, its affiliates or related companies, in respect of the activities carried out by the ~~partner, director or officer~~Director or Executive on behalf of the Dealer Member, its affiliates or related companies in connection with the ~~sale or placement of~~ securities ~~on behalf~~-related activities of any of them.

~~7.10~~7.8 Jurisdiction~~.~~

Every person whose application for approval as a ~~partner, director~~Director or ~~officer~~Executive of a ~~member~~Dealer Member has been accepted ~~shall be~~is subject to the jurisdiction of the Corporation, ~~shall~~must comply with the Rules of the Corporation as they are from time to time amended or supplemented and, if such approval is subsequently revoked, ~~shall~~must forthwith terminate his or her relationship as a ~~partner, director or officer~~Director or Executive with the Dealer Member in respect of which he or she is approved at the time of such revocation.

~~7.11~~7.9 Late Filing Fees re ~~Partners, Officers~~Executives and Directors

A Dealer Member ~~shall be~~is liable for and must pay ~~to~~ the Corporation fees in the amounts prescribed from time to time by the Board ~~of Directors~~ for the failure of the Dealer Member to file within ten business days after the end month a report in writing with respect to the conditions imposed on approval or continued approval of a ~~partner, director, officer of the Dealer Member~~Director or Executive pursuant to Rule 20.

RULE 18

REGISTERED REPRESENTATIVES AND INVESTMENT REPRESENTATIVES

~~18.1. For the purposes of Rule 18, the Toronto, Montreal and TSX Venture Exchanges are recognized stock exchanges~~

18.1. Repealed.

18.2. (a) No person may act and no Dealer Member ~~shall employ~~may permit any person to act as a ~~registered representative or investment representative in any province in Canada~~Registered Representative or Investment Representative on behalf of the Dealer Member unless:

~~(a) Such person~~

(i) The Dealer Member is registered or licensed to ~~sell securities~~trade, as the case may be, in securities or futures contracts under the ~~statute relating to the sale of securities in the province in which the person proposes to act as a registered representative or investment representative; and~~statutes relating to the sale of securities or futures contracts in all jurisdictions in which customers of the Dealer Member reside or is exempt from the registration or licensing requirements under those statutes;

(ii) The person is registered or licensed to trade, as the case may be, in securities or futures contracts under the statutes relating to the sale of securities or futures contracts in all jurisdictions in which customers of the person reside or is exempt from the registration or licensing requirements under those statutes ; and

(iii) The Corporation has approved the person as a Registered Representative or Investment Representative under this Rule.

(b) A Dealer Member must notify the Corporation of the types of businesses which a Registered Representative or Investment Representative will conduct, as follows:

(i) **Customer Type:** the types of customers the Registered Representative or Investment Representative will deal with, either:

A. retail business – taking orders from or giving advice to all types of customers regarding trades in securities, or

B. institutional business – restricted to taking orders from or giving advice to Institutional Customers

(ii) **Product(s):** the types of financial instruments in which the Registered Representative or Investment Representative will deal, being:

A. restricted to mutual funds, Government or Government-guaranteed debt instruments and deposit instruments issued by a federally-regulated bank, trust company, credit union or caisse populaire, excluding those on which all or part of the interest or return is indexed to the performance of another financial instrument or index

B. general securities business, including equities, fixed income and other investment products other than options or futures

C. options business

D. futures contracts and futures contracts options

(iii) **Portfolio Management**: whether the Registered Representative will engage in discretionary portfolio management under the provisions of Rule 1300.

(c) A person may not conduct on behalf of a Dealer Member and a Dealer Member may not permit a person to conduct on its behalf a type of business described in (b) unless the Dealer Member has notified the Corporation:

(i) that the person will conduct the type of business; and

(ii) that the person has successfully completed the proficiencies required to conduct the type of business as specified in Rule 2900, Part I within the proficiency time limits specified in Rule 2900, Part II.

~~(b) Approval as a registered representative or investment representative has been granted by the Corporation in accordance with the provisions of this Rule.~~For the purposes of this subsection (c), an application to the Corporation for initial approval is notice that the person will conduct the types of business identified in the application.

18.3. ~~Approval as a registered representative or investment representative may be granted where the applicant has satisfied~~(a) An applicant for approval as a Registered Representative or Investment Representative must complete or obtain an exemption from the applicable proficiency requirements ~~outlined in Part I~~in Rule 2900, Part I, section A.3(a) before the Corporation will grant approval.

(b) A Dealer Member must take reasonable steps to ensure that all of its Registered Representatives and Investment Representatives are proficient and understand the products they trade in or advise on to a sufficient degree to meet the requirements of the Rules of the Corporation. At a minimum, the Dealer Member must ensure that all Registered Representatives and Investment Representatives meet the applicable proficiency requirements of Rule 2900.

18.4. ~~Failure~~The approval of a Registered Representative is suspended automatically if the person fails to satisfy the requirement in paragraph A.3(c~~b~~) of Part I of Rule 2900 ~~will result in the automatic suspension of approval. Approval will be reinstated only at such time as the individual~~until the person has satisfied the ~~applicable course~~ requirement.

~~18.5. Upon approval as a registered representative, (other than a registered representative (non-retail)) or investment representative, a six-month period of supervision, as outlined in Rule 18.6, unless he or she has worked for at least two years in a registered capacity with a securities firm which is a Dealer Member of a self-regulatory organization or a recognized foreign self-regulatory organization.~~

18.5. Repealed.

18.6. ~~Upon approval as a registered representative or investment representative, commence and complete a six-month period of supervision defined to be~~(a) A Dealer Member must closely supervise a Registered Representative or Investment Representative who conducts retail business in accordance with the "Registered / Investment Representative Monthly Supervision Report" as specified by the ~~Board of Directors. A copy of this report must be maintained on file by the Dealer Member,~~Corporation for a period of six months after the Corporation is notified that the person will deal with retail customers. The Dealer Member must keep this report for inspection by the Corporation.

(b) Subsection (a) does not apply if:

(i) the Registered Representative was previously approved for six months or more to advise on trades for retail customers for a securities firm which is a member of a self-regulatory organization or a recognized foreign self-regulatory organization; or

(ii) the Investment Representative was previously approved for six months or more to advise on trades or to trade for retail customers for a securities firm which is a member of a Self-Regulatory Organization or a recognized foreign self-regulatory organization.

~~18.7. Provided that it is not contrary to either the provisions of the appropriate securities or insurance legislation or any policy made pursuant thereto, the Corporation may grant approval of a person as a registered representative (mutual funds) or an investment representative (mutual funds) if, at the date of such application, the person~~

~~(a) Is employed by a Dealer Member solely for the purpose of soliciting orders for mutual fund securities or mutual fund securities and contracts of life insurance;~~

~~(b) Is registered under any applicable securities or insurance legislation of each jurisdiction in which he or she deals with the public to sell mutual fund securities or mutual fund securities and contracts of life insurance, as the case may be; and~~

18.7. (a) A Registered Representative or Investment Representative qualified to conduct mutual funds business only must:

(i) within 270 days of initial approval, complete the proficiency requirements in Rule 2900, Part I, sections A.3(a)(i)(A) and (B); and

(ii) within 18 months of initial approval, complete the training programme required under Rule 2900, Part I, section A.3(a)(i)(C).

(b) A Dealer Member must notify the Corporation:

(i) when a Registered Representative or Investment Representative restricted to mutual funds business only has completed the requirements in each of subsections (a)(i) and a(ii); and

(ii) within 18 months of initial approval, that the Registered Representative or Investment Representative will conduct either retail or institutional business without restriction to mutual funds.

(c) Subsections (a) and (b) do not apply to a Registered Representative or Investment Representative who was restricted to mutual funds only on the date on which this section becomes effective and who is registered only in Provinces in which a restriction on an Investment Representative or Registered Representative with a Dealer Member to mutual funds business only complies with the securities legislation, rules and policies of the Province.

~~(c) Has satisfied the applicable proficiency requirements outlined in Part I of Rule 2900;Provided that, in the course of employment with a Dealer Member firm, such person shall not accept orders for the purchase or sale of any securities other than mutual fund securities or contracts of life insurance and provided, further, that the Dealer Member establishes and maintains procedures approved by the Corporation to ensure compliance by such person with the Rules and Rulings.~~d) The approval of a Registered Representative or Investment Representative is suspended automatically if the person fails to satisfy the requirement in paragraph (a) until the person has satisfied the requirements and notified the Corporation.

~~18.8. Provided that it is not contrary to the provisions of the appropriate securities legislation or any policy made thereto, the Corporation may grant approval of a person as a registered representative (non-retail) if, at the date of such application, such person is employed by a Dealer Member for the purposes of engaging in the activities of a registered representative solely with or in respect of the accounts of non-retail clients or on account of the Dealer Member. For the purposes of this Rule "non-retail" clients shall be defined as:~~

~~- Acceptable Counterparties;~~

~~- Acceptable Institutions;~~

~~- Registrants under securities legislation or members of a recognized stock exchange;~~

~~- qualified Institutions registered in the United States which include:~~

~~(1) Institutions (e.g. pension funds, investment companies, financial institutions other than banks, partnerships and industrial companies, but not individuals), that own or have investment discretion over $100 million of securities.~~

~~(2) Banks and savings and loan associations that own or have investment discretion over $100 million in securities and have a net worth of at least $25 million;~~

~~- Foreign Broker Dealers that are members of the following self-regulatory organizations: any Canadian SRO, the International Stock Exchange in the UK and any Stock Exchange registered with the United States Securities and Exchange Commission.~~

~~18.9. Notwithstanding the provisions of Rule 18.3, the Corporation may grant approval of a person in the category of "Options Representative – Restricted" if, at the date of such application, such person is approved as a Registered Futures Contract Representative pursuant to Rule 1800 and;~~

~~(a) Takes or solicits orders only for trades in options for which the underlying interest is not an equity security; and~~

~~(b) Has satisfied the applicable proficiency requirements outlined in Part I of Rule 2900.~~

18.8. Repealed.

18.9. Repealed.

18.10. Repealed.

18.11. ~~Every person whose application for approval as a registered representative or investment representative~~(a) A Registered Representative or Investment Representative of a Dealer Member ~~has been accepted shall be~~is subject to the jurisdiction of the Corporation, ~~shall~~must comply with the Rules and Rulings of the Corporation as the same are from time to time amended or supplemented ~~and, if such approval is subsequently revoked, shall forthwith terminate his or her employment as a registered representative or investment representative with the Dealer Member with whom he or she is employed at the time of such revocation.~~ .

(b) If the approval of a Registered Representative or Investment Representative is revoked, the Registered Representative or Investment Representative must immediately cease acting as a Registered Representative or Investment Representative of his or her Dealer Member.

18.12. Repealed.

~~18.13. The Corporation shall give notice to all recognized stock exchanges in Canada and to all securities commissions in Canada of all approvals of registered representatives, investment representatives and of all revocations or terminations of approval of registered representatives and investment representatives.~~

18.13. Repealed.

18.14. A ~~registered representative or investment representative~~Registered Representative or Investment Representative may have, and continue in, another gainful occupation if:

(a)

(i) Either the ~~registered representative's or investment representative~~Registered Representative's or Investment Representative's other gainful occupation is in a remote area where there is no office of a broker or dealer in securities and the ~~designated registered representative's or investment representative~~Registered Representative's or Investment Representative's activities as such are limited to such remote area in which he or she resides; or

(ii) The securities commission in the jurisdiction in which the ~~registered representative or investment representative~~Registered Representative or Investment Representative acts or proposes to act as a ~~registered representative or investment representative~~Registered Representative or Investment Representative, or the securities legislation or policies administered by such securities commission, specifically permit him or her to devote less than his or her full time to the securities business of the Dealer Member employing him or her; and

~~(b) The Dealer Member employing such registered representative or investment representative acknowledges in writing to the Corporation its responsibility for the supervision of such registered representative or investment representative; and~~

(b) Repealed.

(c) The Dealer Member establishes and maintains procedures ~~approved by~~acceptable to the Corporation to ensure continuous service to clients and to address potential problems of conflict of interest; and

(d) Any other occupation of the ~~registered representative or investment representative must not be:~~Registered Representative or Investment Representative is not

(i) ~~Such as to~~One which would bring the securities industry into disrepute; or

(ii) With another ~~Dealer Member~~dealer that is a member of a recognized self-regulatory organization unless

(1) Such ~~Dealer Member~~dealer is a related company of the Dealer Member employing the ~~registered representative or investment representative~~Registered Representative or Investment Representative and the Dealer Member and related company provide cross-guarantees pursuant to Rule 6.6, and

(2) Such dual employment is not contrary to the provisions of the applicable securities legislation or any policy made pursuant thereto.

18.15. No ~~registered representative or investment representative in respect of a Dealer Member shall~~Registered Representative or Investment Representative may accept or permit any associate to accept, directly or indirectly, any remuneration, gratuity, benefit or any other consideration from any person other than the Dealer Member or its affiliates or ~~its~~ related companies, ~~in respect of~~for the securities-related activities ~~carried out by such registered representative or investment representative~~her or she conducts on behalf of the Dealer Member or its affiliates or its related companies ~~and in connection with the sale or placement of securities on behalf of any of them~~.

18.16. No Dealer Member shall permit a ~~registered representative or investment representative who has been approved in accordance with this Rule to use a designation other than "registered representative", "registered representative (mutual funds) or (non-retail)", "investment representative" or "investment representative (mutual funds) or (non-retail)", as the case may be,~~Registered Representative or Investment Representative to use a designation when dealing with the public that wrongly indicates that he or she conducts or has been approved by the Corporation to conduct a type of business or fulfils or has been approved by the Corporation to fulfil a role.

~~18.17. Nothing in Rule 18.16 shall preclude a registered representative or investment representative from using another designation contained in the Corporation's Rules, provided that he or she has been approved for such designation according to the appropriate Rules.~~

18.17. Repealed.

18.18. Each Dealer Member ~~shall be~~is liable for and must pay to the Corporation fees in the amounts prescribed from time to time by the Board ~~of Directors~~ for the failure of the Dealer Member to file within ten business days of the end of each month a report with respect to the conditions imposed under Rule 20 on the approval or continued approval of a ~~registered representative, restricted registered representative, investment representative or restricted investment representative~~Registered Representative, or Investment Representative of the Dealer Member pursuant to Rule 20.

PART 7 – INDIVIDUAL AND MEMBERSHIP APPROVALS

APPROVAL APPLICATIONS

20.18 Powers of District Council

(1) The District Council shall have the power, which it may delegate to a Sub-Committee of the District Council comprised of three industry members or to Corporation Staff, to:

(a) approve an application for approval as~~, or the transfer of~~ a:

~~(i) sales manager, branch manager, assistant or co-branch manager, pursuant to Rule 4,~~

(i) Supervisor under Rule 4,

(ii) ~~partner, director or officer, pursuant to~~Director or Executive under Rule 7,

~~(iii) registered representative or investment representative, pursuant to Rule 18,~~

~~(iv) trader, pursuant to Rule 500, or~~

~~(v) portfolio manager, futures contracts portfolio manager and associate portfolio manager pursuant to Rule 1300.~~

(iii) Registered Representative or Investment Representative, under Rule 18,

(iv) Ultimate Designated Person, Chief Financial Officer or Chief Compliance Officer under Rule 38, or

(v) Trader under Rule 500.

(2) The District Council shall have the power, which it may delegate to a Sub-Committee of the District Council or to Corporation Staff, pursuant to subsection (1), to:

(a) approve an application for approval ~~or transfer~~ referred to in Rule 20.18(1)(a) subject to such terms and conditions as ~~may be considered~~the District Council considers just and appropriate;

(b) refuse an application for approval ~~or transfer~~ referred to in Rule 20.18(1)(a), if in its opinion:

(i) the Applicant does not meet any requirements prescribed by the Rules or Rulings;

(ii) the Rules and Rulings of the Corporation will not be complied with by the Applicant;

(iii) the Applicant is not qualified for approval by reason of integrity, solvency, training or experience; or

(iv) such approval is otherwise not in the public interest.

(3) The District Council shall have the power, which it may delegate to a Sub-Committee of the District Council or to Corporation Staff, pursuant to subsection (1), to impose such terms and conditions on the continued approval of an Approved Person as the District Council considers just and appropriate.

(4) The District Council shall have the power, which it may delegate to a Sub-Committee of the District Council, pursuant to subsection (1), to revoke or suspend the approval of an individual at any time during the period of approval of the individual if it appears to the District Council,

(i) that the individual is not suitable for approval by reason of integrity, solvency, training or experience or has failed to comply with the Rules or Rulings of the Corporation; or

(ii) that the approval is otherwise not in the public interest.

(5) The District Council shall not do any of the following without giving an individual an opportunity to be heard:

(i) Refuse to approve the individual.

(ii) Impose terms and conditions on the approval, either as a condition of approval or at any time during the period in which the individual is approved.

(iii) Suspend or revoke the approval of the individual under (4).

20.19 Review Hearings

(1) Corporation Staff ~~or~~, the Applicant or an Approved Person may request a review of ~~an approval~~a decision under Rule 20.18 by a Hearing Panel within ten business days after release of the decision.

(2) If a review is not requested within ten business days after release of the decision, the ~~approval~~ decision under Rule 20.18 becomes final.

(3) No member of a District Council who has participated in a decision t~~o refuse an application or impose conditions on an application, pursuant to Rule 20.18,~~under Rule 20.18 shall participate on the Hearing Panel.

(4) A review hearing held under this Part shall be held in accordance with the Corporation Practice and Procedure.

(5) The Hearing Panel may:

(a) affirm the decision;

(b) quash the decision;

(c) vary or remove any terms and conditions imposed on approval or continued approval;

(d) limit the ability to re-apply for approval for such period of time as it determines just and appropriate; and

(e) make any decision that could have been made by the District Council pursuant to Rule 20.18.

(6) A decision of the Hearing Panel is a decision for which no further review or appeal is provided in the Rules.

RULE 29

BUSINESS CONDUCT

29.1. Dealer Members and each partner, ~~director, officer, sales manager, branch manager, assistant or co-branch manager, registered representative, investment representative~~Director, Officer, Supervisor, Registered Representative, Investment Representative and employee of a Dealer Member (i) shall observe high standards of ethics and conduct in the transaction of their business, (ii) shall not engage in any business conduct or practice which is unbecoming or detrimental to the public interest, and (iii) shall be of such character and business repute and have such experience and training as is consistent with the standards described in clauses (i) and (ii) or as may be prescribed by the Board ~~of Directors~~.

For the purposes of disciplinary proceedings pursuant to the Rules, each Dealer Member shall be responsible for all acts and omissions of each partner, ~~director, officer, sales manager, branch manager, assistant or co-branch manager, registered representative, investment representative~~Director, Officer, Supervisor, Registered Representative, Investment Representative and employee of a Dealer Member; and each of the foregoing individuals shall comply with all Rules required to be complied with by the Dealer Member.

29.2. During the period of distribution to the public (as that term is defined in the relevant securities legislation) of any securities a Dealer Member shall not offer for sale or accept any offer to buy all or any part of the securities acquired by such Dealer Member through its participation in such distribution as an underwriter or as a member of a banking or selling group at a price or prices in excess of the stated initial public offering price of such securities.

29.3. During such period of distribution to the public a Dealer Member shall make a bona fide offering of the total amount of such participation to public investors. The term "public investors" does not include any officer or employee of a bank, insurance company, trust company, investment fund, pension fund or similar institutional body or the immediate families of any such officer or employee of any such institution regularly engaged in the purchase or sale of securities for such institution, unless such sales are demonstratively for bona fide personal investment in accordance with the person's normal investment practice. For the purposes of this Rule 29.3 the term "normal investment practice" shall mean the history of investment in an account with the Dealer Member and if such history discloses a practice of purchasing mainly "hot issues" such record would not constitute a "normal investment practice".

29.3A. A Dealer Member shall give priority to orders for the accounts of customers of the Dealer Member over all other orders for the same security at the same price. The phrase "orders for the accounts of customers of the Dealer Member" shall not include an order for an account in which the Dealer Member or an employee of the Dealer Member has an interest, direct or indirect, other than an interest in a commission charged.

29.4. The period of distribution to the public in respect of any securities shall continue until the Dealer Member shall have notified the applicable securities commission that it has ceased to engage in the distribution to the public of such securities.

29.5. Every director of a corporation any of whose securities are held by the public has a fiduciary obligation not to reveal any privileged information to anyone not authorized to receive it. Except to the extent referred to in the third paragraph of this Rule 29.5, a director is not released from the necessity of keeping information of this character to himself or herself until there has been full public disclosure of such information, particularly when the information might affect the market price of the corporation's securities. Any director of such corporation who is also a ~~director, partner, officer,~~Director, Executive or employee of a Dealer Member should recognize that his or her first responsibility in this area is to the public corporation on whose board he or she serves and that he or she must, except to the extent referred to in the third paragraph of this Rule 29.5, meticulously avoid any disclosure of inside information to the ~~partners, directors, officers~~Directors, Executives, employees, customers, or research or trading departments of the Dealer Member.

Where a representative of a Dealer Member is not a director of a corporation but is acting in an underwriting or advisory capacity to such corporation and is discussing confidential matters, his or her responsibilities regarding disclosure are the same as those that would apply if such representative were a director of such corporation.

With reference to the two preceding paragraphs of this Rule 29.5, a ~~director~~Director or a representative, as the case may be, of a Dealer Member may consult with other personnel of the Dealer Member if a matter requires such consultation but in this event adequate measures should be taken to guard the confidential nature of the information to prevent its misuse within or outside the organization of the Dealer Member and the responsibilities of any such other personnel regarding disclosure are the same as those that would apply if such personnel were directors of the relevant corporation.

29.6. No Dealer Member or any ~~partner, director, officer,~~Director, Executive or employee or shareholder of a Dealer Member shall give, offer or agree to give or offer, directly or indirectly, to any partner, director, officer, employee, shareholder or agent of a customer, or any associate of such persons, a gratuity, advantage, benefit or any other consideration in relation to any business of the customer with the Dealer Member, unless the prior written consent of the customer has first been obtained.

29.7. Definitions

For the purposes of this Rule 29.7;

"advertisement(s) or advertising" shall include television or radio commercials or commentaries, newspaper and magazine advertisements or commentaries, and any published material including materials disseminated or made available electronically promoting the business of a Dealer Member.

"sales literature" shall include any written or electronic communication other than advertisements and correspondence, distributed to or made generally available to a client or potential client which includes a recommendation with respect to a security or trading strategy. Sales literature includes but is not limited to records, videotapes and similar material, market letters, research reports, circulars, promotional seminar text, telemarketing scripts and reprints or excerpts of any other sales literature or published material, but does not include preliminary prospectuses and prospectuses.

"correspondence" means any written or electronic business related communication prepared for delivery to a single current or prospective client, and not for dissemination to multiple clients or to the general public.

"trading strategy" means a broad general approach to investments including matters such as the use of specific products, leverage, frequency of trading or a method of selecting particular investments but does not include specific trade or sectoral weighting recommendations.

29.7 (1) No Dealer Member shall issue to the public, participate in or knowingly allow its name to be used in respect of any advertisement, sales literature or correspondence, and no registered or ~~approved persons~~Approved Persons shall issue or send any advertisement, sales literature or correspondence in connection with its or his or her business which:

(a) contains any untrue statement or omission of a material fact or is otherwise false or misleading;

(b) contains an unjustified promise of specific results;

(c) uses unrepresentative statistics to suggest unwarranted or exaggerated conclusions, or fails to identify the material assumptions made in arriving at these conclusions;

(d) contains any opinion or forecast of future events which is not clearly labeled as such;

(e) fails to fairly present the potential risks to the client;

(f) is detrimental to the interests of the public, the Corporation or its Dealer Members; or

(g) does not comply with any applicable legislation or the guidelines, policies or directives of any regulatory authority having jurisdiction.

29.7 (2) Each Dealer Member shall develop written policies and procedures that are appropriate for its size, structure, business and clients for the review and supervision of advertisements, sales literature and correspondence relating to its business. All such policies and procedures shall be approved by the Corporation.

29.7 (3) The policies and procedures referred to in subsection (2) may provide that such review and supervision will be done by pre-use approval, post use review or post use sampling, as appropriate to the type of material. However, the following types of advertisements, sales literature or correspondence must be approved prior to publication or use by ~~a partner, director, officer or branch manager of the Dealer Member who is~~one or more Supervisors specifically designated to approve ~~such materials:~~ each specified type of material:

(a) Research reports,

(b) Market letters,

(c) Telemarketing scripts,

(d) Promotional seminar texts (not including educational seminar texts),

(e) Original advertisements/original template advertisements; and

(f) Any material used to solicit clients that contain performance reports or summaries.

29.7 (4) Where such policies and procedures do not require the approval of advertisements, sales literature or correspondence prior to being issued, the Dealer Member must include provisions for the education and training of registered and ~~approved persons~~Approved Persons as to the Dealer Member's policies and procedures governing such materials as well as follow-ups to ensure that such procedures are implemented and adhered to.

29.7(5) Copies of all advertisements, sales literature and correspondence and all records of supervision under the policies and procedures required by subsection (2) shall be retained so as to be readily available for inspection by the Corporation. All advertisements, sales literature and related documents must be retained for a period of 2 years from the date of creation and all correspondence and related documents must be retained for a period of 5 years from the date of creation.

29.7A.

(1) Ownership of Trade Name

Subject to subsection (7) all business carried on by a Dealer Member or by any person on its behalf shall be in the name of the Dealer Member or a business or trade or style name owned by the Dealer Member, an ~~approved person~~Approved Person in respect of the Dealer Member or an affiliated corporation of either of them.

(2) Approval of Trade Name

No ~~approved person~~Approved Person shall conduct any business in accordance with subsection (1) in a business or trade or style name that is not owned by the Dealer Member or its affiliated corporation unless the Dealer Member has given its prior written consent.

(3) Notification of Trade Name

Prior to the use of any business or trade or style name other than the Dealer Member's legal name, the Dealer Member shall notify the Corporation.

(4) Transfer of Trade Name

Prior to the transfer of a business or trade or style name to another Dealer Member, the Dealer Member shall notify the Corporation.

(5) Single Use of Trade Name

Except where Dealer Members are related or affiliated, no Dealer Member or ~~approved person~~Approved Person shall use any business or trade or style name that is used by any other Dealer Member unless the relationship with such other Dealer Member is that of an introducing broker/carrying broker arrangement, pursuant to Rule 35.

(6) Legal Name

The Dealer Member's full legal name shall be included in all contracts, account statements and confirmations.

(7) Trade Name of Approved Person to Accompany Legal Name

A business or trade or style name used by an ~~approved person~~Approved Person may accompany, but not replace, the full legal name of the Dealer Member on materials that are used to communicate with the public. The Dealer Member's legal name must be at least equal in size to the business or trade or style name used by the ~~approved person~~Approved Person.

For greater certainty, "materials" that are used to communicate with the public include, but are not limited to, the following:

(a) Letterhead;

(b) Business Cards;

(c) Invoices;

(d) Trade Confirmations;

(e) Monthly Statements;

(f) Websites;

(g) Research Reports; and

(h) Advertisements.

(8) Misleading Trade Name

No Dealer Member or ~~approved person~~Approved Person shall use any business or trade or style name that is deceptive, misleading or likely to deceive or mislead the public.

(9) Prohibition on Use of Trade Name

The Corporation may prohibit a Dealer Member or ~~approved person~~Approved Person from using any business or trade or style name in a manner that is contrary to the provisions of this Rule or is objectionable or contrary to the public interest.

29.8. No Dealer Member shall impose on any customer or deduct from the account of any customer any service fee or service charge relating to services provided by the Dealer Member for the administration of the customer's account unless written notice shall have been given to the customer on the opening of the account or not less than 60 days prior to the imposition or revision of the fee or charge. For the purposes of this Rule, service fees or charges shall not include interest charged by the Dealer Member in respect of the account and commissions charged for executing trades.

29.9. A Dealer Member which purchases debt securities taken in trade shall purchase the securities at a fair market price at the time of purchase.

A Dealer Member, in the course of a distribution of a fixed price offering of debt securities, shall ensure that any purchase of other debt securities taken in trade in relation to that offering is done at fair market price.

29.10. For the purpose of Rule 29.9, unless the subject matter or context otherwise requires, the expression:

"Taken in Trade" means the purchase by a Dealer Member as principal, or as agent, of a debt security from a customer pursuant to an agreement or understanding that the customer purchase other debt securities from or through the Dealer Member;

"Fair market Price" means a price not higher than the price at which the securities would be purchased from the customer or from a similarly situated customer in the ordinary course of business by a dealer in such securities in transactions of similar size and having similar characteristics but not involving a security taken in trade."

29.11. No Dealer Member shall pay or make any payment on account or in respect of any debt owing by such Dealer Member to any creditor of such Dealer Member contrary to the provisions of, or otherwise fail to comply with, any subordination or other agreement to which such Dealer Member and the Corporation are parties.

29.12. Mutual Fund Sales Incentives

(a) No Dealer Member or related company in respect of a Dealer Member, or partner, ~~director, officer, registered representative~~Director, Officer, Registered Representative, Investment Representative or employee of such Dealer Member or related company, shall accept from any person, directly or indirectly, any non-cash sales incentive in connection with the sale or distribution of mutual fund products.

(b) No Dealer Member or related company in respect of a Dealer Member shall pay to any partner, ~~director, officer, registered representative~~Director, Officer, Registered Representative, Investment Representative or employee of such Dealer Member or related company any non-cash sales incentive in connection with the sale or distribution of mutual fund products.

(c) Nothing in this Rule shall prohibit a Dealer Member or related company in respect of a Dealer Member or any partner, ~~director, officer, registered representative~~Director, Officer, Registered Representative, Investment Representative or employee of such Dealer Member or related company from accepting or paying, as the case may be:

(i) Non-cash sales incentives earned or awarded for the internal incentive programme of such Dealer Member for which eligibility is determined with respect to all services and products offered by the Dealer Member;

(ii) Commissions or fees payable in cash and calculated with reference only to particular sales or volumes of sales of mutual fund securities;

(iii) Service fees or trailing commissions;

(iv) Marketing materials; or

(v) Reasonable business promotion activities that are undertaken in the normal course and take place in the locale where the recipient is employed or resides.

(d) For the purposes of this Rule 29.12, the term "non-cash sales incentive" shall include, without limitation, domestic or foreign trips, goods, services, gratuities, advantages, benefits or any other non-cash consideration.

29.13. Premarketing

(a) In this Rule 29.13 the expression:

"Bought Deal" means a transaction pursuant to an agreement under which an underwriter, as principal, agrees to purchase securities from an issuer or selling security-holder with a view to a distribution of such securities pursuant to the POP System (as defined in National Policy Statement No. 47) or comparable system in any Canadian province and such agreement is entered into prior to or contemporaneously with the filing of the preliminary short form prospectus;

"Commencement of Distribution" means the time when a Dealer Member has had distribution discussions which are of sufficient specificity that it is reasonable to expect that the Dealer Member (alone or with other underwriters) will propose an underwriting of equity securities to the issuer or selling security-holder;

"Distribution" means a potential offering of equity securities which may proceed as a bought deal;

"Distribution Discussions" means discussions by a Dealer Member with an issuer or a selling security-holder, or with another underwriter that has had discussions with an issuer or selling security-holder, concerning a distribution;

"Equity Security" means any security of an issuer that carries a residual right to participate in earnings of the issuer and, upon liquidation or winding up of the issuer, in its assets and includes a security convertible into an equity security. A security shall be deemed to be convertible into an equity security if the rights attaching to the security include the right or option to purchase, convert or exchange or otherwise acquire any equity security of the issuer or any other security that itself includes the right or option to purchase, convert or exchange or otherwise acquire any equity security of the issuer.

(b) From the commencement of distribution until the earliest of

(i) The time at which the receipt for the preliminary prospectus in respect of the distribution is issued;

(ii) The time at which a press release that announces the entering into of an enforceable agreement in respect of the distribution is issued and filed in accordance with any blanket ruling or order, or notice made pursuant to an existing blanket ruling or order, of a securities regulatory authority of a province

or territory of Canada and provided that all of the conditions set forth in such blanket ruling or order or such notice and its related blanket ruling or order are met; and

(iii) The time at which the Dealer Member determines not to pursue the distribution

no member shall have communications with a person or company wherever resident which are designed to have the effect of determining the interest of that person or company (or any person or company that it represents) in purchasing securities of the type that are the subject of distribution discussions if such communications are undertaken by any ~~director, officer~~Director, Officer, employee or agent of the Dealer Member:

(A) Who participated in or had actual knowledge of the distribution discussions, or

(B) Whose communications were directed, suggested or induced by a person who participated in or had actual knowledge of the distribution discussions or another person acting directly or indirectly at or upon the direction, suggestion or inducement of a person referred to in (B).

A press release is deemed to have been issued when it is disseminated in accordance with the policies of applicable stock exchanges or, in the case of unlisted securities, when it is released to Canada News-Wire or any other national news distribution service for distribution and is deemed to have been filed when delivered or sent by facsimile to the relevant securities regulatory authority of a province or territory of Canada.

(c) No Dealer Member shall, in connection with a potential offering of equity securities, have communications of the nature described in Rule 29.13(b) even if such communications would otherwise be exempt from prospectus requirements of securities law, unless the Dealer Member and the issuer or selling security-holder can demonstrate a bona fide intention to distribute the securities pursuant to a prospectus exemption. The restrictions referred to in Rule 29.13(b) shall apply from the time it is reasonable to expect that a decision to abandon an exempt offering of equity securities in favour of a prospectus offering will be taken.

(d) No Dealer Member shall engage in market making or other principal trading activities in securities that are the subject of distribution discussions if such activities are engaged in by a person referred to in Rule 29.13(b)(A) or at or upon the direction, suggestion or inducement of a person referred to in Rule 29.13(b)(A) or (B).

(e) A Dealer Member involved in a distribution as an underwriter shall file a certificate with respect to compliance with this Rule 29.13 in respect of such distribution with the Corporation not later than three business days after the date the preliminary short form prospectus (or equivalent document) with respect to such distribution is filed with the principal jurisdiction (as defined in National Policy Statement No. 47). Such certificate shall be signed by the chief executive officer of the Dealer Member or the next most senior officer or by such other person as is fulfilling the duties of the chief executive officer in his or her absence and shall be in such form and contain such information as may from time to time be prescribed by the Corporation and approved by the Director of Corporate Finance of the Ontario Securities Commission or his or her equivalent of any member of the Canadian Securities Administrators who notifies the Corporation that approval of the form of such certificate is required.

CERTIFICATE

To: Investment Industry Regulatory Organization of Canada ("Corporation")

I (**name**), in my capacity as (**title**) of (**dealer name**) hereby certify on behalf of (**dealer name**), that (i) policies and procedures are in place designed to ensure compliance with Rule 29.13, and (ii) to the best of my knowledge, information and belief, after making, or having caused to be made, enquiries that I believe to be appropriate, in connection with the distribution of securities of (**issuer name**), the preliminary prospectus (or an equivalent document) for which was dated (**date**), from the commencement of distribution there have not been any communications by (**dealer name**) undertaken by any ~~director, officer~~Director, Officer, employee or agent of (**dealer name**) with any person or company wherever resident about the interest that such person or company or any person or company that it represented had in purchasing securities of the type that were the subject of distribution discussions which would contravene Rule 29.13.

The terms "commencement of distribution" and "distribution discussions" used in this certificate have the meanings given to those terms in Rule 29.13.

Dated at _____this _____day of _____20 __.
(city)

_____
Signature

_____
Name

_____
Title

29.14.

(a) Definitions. For the purposes of these Rules 29.14 to 29.25, the term:

"Advertising" means any promotional material used in or on any newspaper, magazine, radio, video, television, telephone or cassette recording, motion picture, slide presentation or sign or billboard;

"Applicable Securities Laws" means:

(i) Ontario Securities Commission Rule 61-501 relating to Insider Bids, Issuer Bids, Going Private Transactions and Related Party ~~Transations~~Transactions; and

(ii) section 190 of the *Business Corporations Act* (Ontario);

"Corporation Standards" means the disclosure standards specified in Rules 29.14 through 29.24;

"CIPF" means Canadian Investor Protection Fund and "FCPE" means Fonds canadien de protection des épargnants;

"CIPF official explanatory statement" means the following statement:

> "Customers' accounts are protected by the Canadian Investor Protection Fund within specified limits. A brochure describing the nature and limits of coverage is available upon request."

Or such other statement as may be prescribed as such by CIPF from time to time for use by Members;

"CIPF official brochure" means any brochure or publication prescribed as such by CIPF for use by Members;

"CIPF official symbol" means the symbol, mark or other designation prescribed as such by CIPF for use by Dealer Members with the word "Dealer Member" appearing on top of the official symbol;

"Fairness Opinion" means a report of a Valuer that contains the Valuer's opinion as to the fairness, from a financial point of view, of a transaction;

"Formal Valuation" means a report of a Valuer that contains the Valuer's opinion as to the value or range of values of the subject matter of the valuation;

"Professional Opinion" means a Formal Valuation or a Fairness Opinion;

"Subject ~~Trasaction~~Transaction" means an insider bid, issuer bid, going private transaction or related party transaction as each such term is defined in Applicable Securities Laws; and

"Valuer" means the person who provides a Professional Opinion.

The terms "disclosure document", "interested party" and "prior valuation" as used in these Rules 29.14 to 29.25 have the same respective meanings as in Applicable Securities Laws.

(b) Display at Premises. Each Dealer Member shall conspicuously display in a prominent place at each of its locations to which customers have access the CIPF official symbol. No Dealer Member shall be required to display the CIPF official symbol until 30 days after the first day of operation as a Dealer Member.

(c) Account Statements and Confirmations. Each Dealer Member shall include on the front of each confirmation and account statement sent to a customer the CIPF official symbol, and shall also include in legible print on either the front or the back (at the Dealer Member's option) of each confirmation and account statement sent

to a customer the CIPF official explanatory statement in either English or French. No Dealer Member need comply with this paragraph (c) until its existing supplies of confirmation forms and account statements have been exhausted or until a date which is one year after the date this Rule comes into force, whichever is the earlier.

(d) CIPF Official Brochure. Each Dealer Member shall make available to its customers on request the current version of the CIPF official brochure in either English or French as requested.

(e) Advertising. Each Dealer Member shall include in any written, visual or audio advertising the words "Member CIPF" together with, at the option of the Dealer Member, a reproduction of the CIPF official symbol. Except as provided in this paragraph (e), no Dealer Member shall display any symbol relating to CIPF other than the CIPF official symbol or include any symbol, statement or explanation relating to CIPF or the Members' membership in CIPF in any advertising, promotional or other materials other than the CIPF official symbol or CIPF official explanatory statements.

(f) Members of CIPF. For the purposes only of complying with this Rule 29.14 and to the extent permitted by CIPF from time to time, Dealer Members shall identify themselves as members of CIPF.

(g) English/French Language. Subject to applicable laws, a Dealer Member may comply with the requirements of this Rule in either the English or French language.

(h) Termination of Membership. Upon the termination or suspension of its Membership, each Dealer Member shall immediately cease using the CIPF official explanatory statement, CIPF official brochure or CIPF official symbol, and shall cease identifying itself as a member of CIPF.

(i) Exemptions. A Dealer Member may be exempted from all or part of the requirements of paragraph (e) of this Rule 29.14 to the extent prescribed by CIPF from time to time.

29.15 No Dealer Member shall prepare a Professional Opinion in connection with a Subject Transaction unless it complies with Corporation Standards.

29.16 Corporation Standards apply only to Professional Opinions that are prepared either pursuant to a requirement of Applicable Securities Laws or for the express purpose of publication, in whole or in part (including summaries thereof), in a disclosure document to be filed with any Canadian securities regulatory authority or delivered to security holders in connection with their consideration of the Subject Transaction. For greater certainty, Corporation Standards do not apply to Professional Opinions (i) rendered in connection with transactions other than the Subject Transactions, whether or not they are reproduced or summarized in a disclosure document, or (ii) reproduced or summarized in a disclosure document in response to a legal or regulatory requirement for the disclosure of prior valuations in respect of an issuer.

29.17 The requirements relating to the preparation and disclosure of Professional Opinions prescribed herein shall not be a substitute for the professional judgment and responsibility of the Valuer. Compliance with the Corporation Standards, without the Valuer also exercising professional judgment and responsibility regarding disclosure in a Professional Opinion, shall not be considered compliance with Corporation Standards. Professional judgment and responsibility may, in appropriate cases, justify a departure from the strict application of the requirements under the Corporation Standards.

29.18 Professional Opinions prepared in connection with the Subject Transactions shall contain disclosure sufficient to enable the directors and security holders of the particular issuer to understand the principal judgments and principal underlying reasoning of the Valuer in its Professional Opinion so as to form a reasoned view on the valuation conclusion or the opinion as to fairness expressed therein.

29.19 A Valuer shall consider the level of disclosure described in Rules 29.20 through 29.24 when considering the appropriate level of disclosure in a Professional Opinion concerning valuation methodologies or matters not specifically addressed in such Rules but that are important in reaching a valuation or fairness conclusion.

29.20 A Professional Opinion that is a Formal Valuation prepared by a Dealer Member shall disclose the following information:

1. The identity and credentials of the Dealer Member, including the general experience of the Dealer Member in valuing other businesses in the same or similar industries as the business or issuer in question or similar transactions to the Subject Transaction, the Dealer Member's understanding of the specific marketable

securities involved in the Subject Transaction and the internal procedures followed by the Dealer Member to ensure the quality of the Professional Opinion;

2. The date the Valuer was first contacted in respect of the Subject Transaction and the date that the Valuer was retained;

3. The financial terms of the Valuer's retainer;

4. A description of any past, present or anticipated relationship between the Valuer and any interested party or the issuer which may be relevant to the Valuer's independence for purposes of the Applicable Securities Laws;

5. The subject matter of the Formal Valuation;

6. The effective date of the Formal Valuation;

7. A description of any specific adjustments that have been made in the Valuer's conclusions by reason of an event or occurrence after the effective date;

8. The scope and purpose of the Formal Valuation, including the following statement:

> "This Formal Valuation has been prepared in accordance with the Disclosure Standards for Formal Valuations and Fairness Opinions of Investment Industry Regulatory Organization of Canada but the Corporation has not been involved in the preparation or review of this valuation.";

9. A description of the scope of the review conducted by the Valuer, including a summary of the type of information reviewed and relied upon (such as the documents reviewed, individuals interviewed, facilities visited, other expert reports considered and management representations concerning information requested and furnished to the Valuer);

10. A description of any limitation on the scope of review and the implications of such limitation on the Valuer's conclusions;

11. A description of the business, assets or securities being valued sufficient to allow the reader to understand the valuation rationale and approach and the various factors influencing value that were considered;

12. Definitions of the terms of value used in the Formal Valuation (such as "fair market value", "market value" and "cash equivalent value");

13. The valuation approach and methodologies considered, including the rationale for valuing the business as a going concern or on a liquidation basis and the reasons for selecting a particular valuation methodology and a summary of the key factors considered in selecting the valuation approach and methodologies considered;

14. The key assumptions made by the Valuer;

15. Any distinctive material value that the Valuer has determined might accrue to an interested party, whether this value is included in the value or range of values arrived at for the subject matter of the Formal Valuation and the reasons for its inclusion or exclusion;

16. A discussion of any prior *bona fide* offers or prior valuations or other material expert reports considered by the Valuer pertaining to the subject matter of the transaction and, where the Formal Valuation differs materially from any such prior valuation, an explanation of the material differences where reasonably practicable to do so based on the information contained in the prior valuation or, if it is not reasonably practicable to do so, the reasons why it is not reasonably practicable to do so; and

17. The valuation conclusions reached and any qualifications or limitations to which such conclusions are subject.

29.21 A Professional Opinion that is a Fairness Opinion prepared by a Dealer Member shall disclose the following information:

1. The identity and credentials of the Dealer Member, including the general experience of the Dealer Member in providing Fairness Opinions in connection with transactions similar to the Subject Transaction, the Dealer

Member's understanding of the specific marketable securities involved in the Subject Transaction and the internal procedures followed by the Dealer Member to ensure the quality of the Professional Opinion;

2. The date the Dealer Member was first contacted in respect of the Subject Transaction and the date that the firm was retained;

3. The financial terms of the Dealer Member's retainer;

4. A description of any past, present or anticipated relationship between the Dealer Member and any interested party which may be relevant to the Dealer Member's independence for purposes of providing the Fairness Opinion;

5. The scope and purpose of the Fairness Opinion, including the following statement:

> "This fairness opinion has been prepared in accordance with the Disclosure Standards for Formal Valuations and Fairness Opinions of Investment Industry Regulatory Organization of Canada but the Corporation has not been involved in the preparation or review of this fairness opinion.";

6. The effective date of the Fairness Opinion;

7. A description of the scope of the review conducted by the Dealer Member, including a summary of the type of information reviewed and relied upon (such as the documents reviewed, individuals interviewed, facilities visited, other expert reports considered and management representations concerning information requested and furnished to the Dealer Member);

8. A description of any limitation on the scope of review and the implications of such limitation on the Dealer Member's opinion or conclusion;

9. A description of the relevant business, assets or securities sufficient to allow the reader to understand the rationale of the Fairness Opinion and the approach and various factors influencing financial fairness that were considered;

10. A description of the valuation or appraisal work performed or relied upon in support of the Dealer Member's opinion or conclusion;

11. A discussion of any prior bona fide offer or prior valuation or other material expert report considered by the Dealer Member in coming to the opinion or conclusion contained in the Fairness Opinion;

12. The key assumptions made by the Dealer Member;

13. The factors the Dealer Member considered important in performing its fairness analysis;

14. The statement of opinion or conclusion as to the fairness, from a financial point of view, of the Subject Transaction and the supporting reasons; and

15. Any qualifications or limitations to which the opinion or conclusion is subject.

29.22 If concern is expressed to a Dealer Member regarding the proposed disclosure in a Professional Opinion of competitively or commercially sensitive information regarding an interested party or issuer, the Dealer Member may seek a decision of the special committee of the issuer's independent directors (the "special committee") as to whether the perceived detriment to an interested party, the issuer or its security holders of the disclosure of such information in the Professional Opinion outweighs the benefit of disclosure of such information to the readers of the Professional Opinion. Compliance with any such decision of a special committee shall also constitute compliance with the Corporation Standards in respect of the matters that are the subject of the decision.

29.23 A Professional Opinion that is a Formal Valuation prepared by a Dealer Member in connection with a Subject Transaction shall disclose the following:

1. Annual Financial Information. Unless otherwise disclosed through the Canadian continuous disclosure obligations of the issuer or in a disclosure document published in connection with the transaction to which the Professional Opinion applies, the Professional Opinion shall disclose a summary of selected material financial information derived from the most recent year-end balance sheet and income statement and statement of

changes in financial position for the most recently completed fiscal year as well as from the balance sheet, income statement and statement of changes in financial position for the immediately preceding fiscal year.

2. Interim Financial Information. Unless otherwise disclosed through the Canadian continuous disclosure obligations of the issuer or in a disclosure document published in connection with the transaction to which the Professional Opinion applies, the Professional Opinion shall disclose a summary of selected material financial information derived from the most recent interim balance sheet (if any), income statement and statement of changes in financial position for the current fiscal year and the comparable statements for the same interim period of the immediately preceding fiscal year.

3. Discussion of Historical Financial Statements or Financial Position. The Professional Opinion shall include comment on material items or changes in the issuer's financial statements together with appropriate commentary on items which may have particular relevance to the Professional Opinion. Examples of such items include unusual capital structures, unrecognized tax-loss carryforwards and redundant assets.

4. Future-Oriented Financial Information. To the extent that the Valuer has relied upon future-oriented financial information ("FOFI"), the Valuer shall disclose the FOFI, at least in summary form, unless otherwise determined by a decision of the special committee referred to in Rule 29.22. To the extent that the FOFI relied upon by the Valuer varies materially from the FOFI provided to the Valuer by the issuer or the interested party, the Valuer shall disclose the nature and extent of such differences and the rationale of the Valuer supporting its judgments.

5. FOFI Assumptions. To the extent that FOFI is relied upon (whether or not the FOFI itself is disclosed), key financial assumptions (such as sales, growth rates, operating profit margins, major expense items, interest rates, tax rates, depreciation rates, etc.), together with a brief statement supporting the rationale for each specific assumption, shall also be disclosed, unless otherwise determined by a decision of the special committee referred to in Rule 29.22.

6. Economic Assumptions. Any key economic assumptions having a material impact on the Professional Opinion shall be disclosed, noting the authoritative source used by the Valuer, including interest rates, exchange rates and general economic prospects in the relevant markets.

7. Valuation Approach, Methodologies and Analysis. The Professional Opinion shall set out the valuation approach and methodologies adopted by the Valuer, together with the principal judgments made in selecting a particular approach or methodology, a comparison of valuation calculations and conclusions arrived at through the different methods considered and the relative importance of each methodology in arriving at the overall valuation conclusion. Depending upon the valuation techniques used by the Valuer, the specific information referred to in items 8 through 12 below shall be disclosed.

8. Discounted Cash Flow Approach. The Professional Opinion shall include a discussion of all relevant qualitative and quantitative judgments used to calculate discount rates, multiples and capitalization rates. If the Capital Asset Pricing Model is used, disclosure shall include the basis for determining the discount rate including the risk-free rate, market risk premium, beta, tax rates and debt-to-equity capital structure assumed. The Valuer shall also disclose the basis for the determination of the terminal/residual value together with the underlying assumptions made. The source of the financial data which formed the basis of the discounted cash flow analysis, summary of major assumptions (if not already disclosed) and the details and sources of any economic statistics, commodity prices and market forecasts used in the valuation approach shall also be disclosed. In addition, a summary of the sensitivity variables considered and the general results of the application of such sensitivity analysis shall be disclosed along with an explanation of how such sensitivity analysis was used in the determination of the range of valuation estimates resulting from the discounted cash flow approach. Where the nature of the FOFI and the subject matter of the valuation make it reasonably practicable and meaningful to do so, selected quantitative sensitivity analyses performed by the Valuer shall be disclosed to illustrate the effects of variations in the key assumptions on the valuation results. In determining whether quantitative sensitivity analyses would be meaningful to the reader of the Professional Opinion, the Valuer shall consider whether such analyses adequately reflects the Valuer's judgment concerning the inter-relationship of the key underlying assumptions.

9. Asset Based Valuation Approach. The Professional Opinion shall separately disclose the values of each significant asset and liability including off-balance sheet items (unless otherwise determined by a decision of the special committee referred to in Rule 29.22). If a liquidation-based valuation approach has been utilized, the Professional Opinion shall set out the liquidation values for each significant asset and liability together with summary estimates for significant liquidation costs.

10. Comparable Transaction Approach. The Professional Opinion shall disclose (preferably in tabular form) a list of relevant transactions involving businesses the Valuer considers similar or comparable to the business being valued. Adequate disclosure shall include the date of the transaction, a brief descriptive note, and relevant multiples implicit in the transaction which may include earnings before interest and taxes ("EBIT"), earnings before interest, taxes depreciation and amortization ("EBITDA"), earnings, cash flow and book value multiples and take-over premium percentages. In the body of the Professional Opinion there shall be a discussion of such transactions together with an explanation as to how such transactions were used by the Valuer in arriving at a valuation conclusion with regard to the comparable transaction approach.

11. Comparable Trading Approach. The Professional Opinion shall disclose (preferably in tabular form) a list of relevant publicly traded companies the Valuer considers similar or comparable to the business being valued. Adequate disclosure shall include the date of the market data, the relevant fiscal periods for the comparable company, a brief descriptive note regarding the comparable company and relevant multiples implicit in the trading data which may include EBIT, EBITDA, earnings, cash flow and book value multiples. In the body of the Professional Opinion there shall be a discussion as to the comparability of such companies, together with an explanation as to how such data was used by the Valuer in arriving at a valuation conclusion with regard to the comparable trading approach.

12. Valuation Conclusions. The Valuer shall develop a final valuation range by using a single valuation methodology or some combination of value conclusions determined under different methodologies/approaches. The Professional Opinion shall include a comparison of the valuation ranges developed under each methodology and a discussion of the reasoning in support of the Valuer's final conclusion.

29.24 A Professional Opinion that is a Fairness Opinion prepared by a Dealer Member in connection with a Subject Transaction shall include the following:

1. Fairness Opinion Valuation Analyses. While it is generally acknowledged that both the scope and the objectives of a Fairness Opinion differ from those of a Formal Valuation (whether or not the Fairness Opinion is delivered in a transaction where a Formal Valuation exemption is being relied upon), a Fairness Opinion shall include a general description of any valuation analysis performed by the opinion provider or specific disclosure of a valuation opinion of another Valuer which is being relied upon. However, the opinion provider is not required to reach or disclose specific conclusions as to a valuation range or ranges in a Fairness Opinion.

2. Fairness Conclusions. The specific reasons for the conclusion that the Subject Transaction is fair or not fair to security holders, from a financial point of view, shall be set out in the conclusion section of the Professional Opinion. Support for each of these specific reasons shall be contained in the body of the Professional Opinion in sufficient detail to allow the reader of the opinion to understand the principal judgments and principal underlying reasoning of the opinion provider in reaching its opinion as to the fairness of the transaction.

29.25 Repealed.

29.26

(1)

(a) Each Dealer Member, or partner, ~~director, officer or registered or approved person~~or Director, or Officer or Approved Person of a Dealer Member shall provide to each client a Leverage Risk Disclosure Statement:

i) at the time a new account is opened,

ii) when a recommendation is made to a client to purchase securities using, in whole or in part, borrowed money, or

iii) when the Dealer Member, partner, ~~director, officer, registered or approved person~~Director, Officer or Approved Person of the Dealer Member becomes aware of a client's intent to purchase securities using, in whole or in part, borrowed money.

(b) ~~No~~The Dealer Member or partner, ~~director, officer, registered or approved person of a~~Director, Officer or Approved Person of the Dealer Member is not required to comply with subsection (a)(ii)or

(iii) if within the preceding six month period a Leverage Risk Disclosure Statement has been provided to the client.

(c) The Leverage Risk Disclosure Statement shall be in substantially the following words:

> Using borrowed money to finance the purchase of securities involves greater risk than using cash resources only. If you borrow money to purchase securities, your responsibility to repay the loan and pay interest as required by its terms remains the same even if the value of the securities purchased declines.

(2) Section 29.26(1) does not apply to the purchase of securities by a client on margin if the client's margin account is operated in accordance with the Rules of the Corporation.

29.27 Repealed.

RULE 38

COMPLIANCE AND SUPERVISION

~~(a) Each~~38.1 A Dealer ~~Members shall~~Member must establish and maintain a system to supervise the activities of each partner, ~~director, officer, registered representative~~Director, Officer, Registered Representative, Investment Representative, employee and agent of the Dealer Member that is reasonably designed to achieve compliance with the Rules of the Corporation and all other laws, regulations and policies applicable to the Dealer Member's securities and commodity futures business. Such a supervisory system shall provide, at a minimum, the following:

(i) The establishment, maintenance and enforcement of written policies and procedures acceptable to the Corporation regarding the conduct of the types of business in which it engages and the supervision of each partner, ~~director, officer, registered representative~~Director, Officer, Registered Representative, Investment Representative, employee and agent of the Dealer Member that are reasonably designed to achieve compliance with the applicable laws, rules, regulations and policies;

(ii) Procedures reasonably designed to ensure that each partner, ~~director, officer, registered representative~~Director, Officer, Registered Representative, Investment Representative, employee and agent of the Dealer Member understands his or her responsibilities under the written policies and procedures in (i);

(iii) Procedures to ensure that the written policies and procedures of the Dealer Member are amended as appropriate within a reasonable time after changes in applicable laws, regulations, rules and policies and that such changes are communicated to all relevant personnel;

(iv) Sufficient personnel and other resources to fully and properly enforce the written policies and procedures in (i);

(v) The designation of ~~supervisory personnel~~Supervisors with the qualifications and authority to carry out the supervisory responsibilities assigned to them. Each Dealer Member shall maintain an internal record of the names of all ~~persons who are designated as having supervisory~~Supervisors, the scope of their responsibility and the dates for which such ~~designation~~responsibility and authority is or was in effect. ~~Such record shall~~The records must be preserved by the Dealer Member for seven years, and on-site for the first year;

(vi) Procedures for follow-up and review to ensure that supervisory personnel are properly executing their supervisory functions. Where the supervision is conducted and supervisory records are maintained at a branch office, the follow-up and review procedures shall include periodic on-site reviews of branch office supervision and record-keeping as necessary depending on the types of business and supervision conducted at the branch office~~.~~;

(vii) The maintenance of adequate records of supervisory activity, including on-site reviews of branch offices as described in (vi), compliance issues identified and the resolution of those issues.

38.2 ~~(b) Each partner, director, officer, registered representative or agent of a Dealer Member who has supervisory authority over any partner, director, officer, registered representative or agent of a Dealer Member shall~~a) A Dealer Member must appoint as many Supervisors as are necessary to properly supervise the Officers, partners, employees and agents of the Dealer Member, taking into account the scope and complexity of its businesses to ensure that the businesses of the Dealer Member are carried out in compliance with the Rules and Rulings of the Corporation and any other laws or regulations governing the Dealer Member's business conduct.

(b) A Dealer Member must take reasonable steps to ensure that all of its Supervisors are proficient and understand the products that persons under their supervision trade in or advise on and the services that persons under their supervision provide to a sufficient degree to properly supervise those persons. At a minimum, the Dealer Member must ensure that all Supervisors meet the applicable proficiency requirements of Rule 2900.

38.3 (a) No person may act and no Dealer Member may permit a person to act as a Supervisor without the approval of the Corporation.

(b) Failure to satisfy sub-clause A.1(a)(ii)D of Part I of Rule 2900 will result in the automatic suspension of approval. Approval will be reinstated only at such time as the individual has satisfied the applicable proficiency requirement and notified the Corporation.

38.4 (a) A Supervisor must fully and properly supervise ~~such partner, director, officer, registered representative~~each partner, Director, Officer, Registered Representative, Investment Representative or agent in accordance with the supervisory responsibilities assigned to the Supervisor, the Rules of the Corporation and the written policies and procedures of the Dealer Member so as to ensure their compliance with the Rules of the Corporation and all other laws, regulations and policies applicable to the Dealer Member's securities and commodity futures business.

~~(c) A partner, director, officer, registered representative or agent of a Dealer Member~~b) A Supervisor may delegate specific supervisory functions or procedures, provided that:

(i) the delegation of such functions in not contrary to applicable laws, regulations, rules or policies;

(ii) the person to whom such functions are delegated is qualified by virtue of registration, training or experience to properly execute them;

(iii) the ~~supervisor~~Supervisor conducts sufficient follow-up and review to ensure that the person to whom the functions have been delegated is properly executing them; and

(IV) THE DEALER MEMBER RECORDS THE TERMS OF THE DELEGATION AND THE FOLLOW UP AND REVIEW.~~RULE 38~~

~~**RESPONSIBILITIES OF THE CHIEF COMPLIANCE OFFICER AND**~~

~~**ULTIMATE DESIGNATED PERSON**~~

38.5 **Ultimate Designated Person**

~~38.1 Every Dealer Member shall designate its Chief Executive Officer, its President, its Chief Operating Officer or its Chief Financial Officer (or such other officer designated with the equivalent supervisory and decision-making responsibility) to act as the~~(a) A Dealer Member must designate an individual who is approved under the Corporation's rules in the category of Ultimate Designated Person ~~(the "UDP")~~and who shall be responsible to the ~~applicable self-regulatory organization~~Corporation for the conduct of the firm and the supervision of its employees and to perform the functions described in paragraph (c).

~~38.2 Where a Dealer Member is organized into two or more separate business units or divisions, a Dealer Member may designate a UDP for each separate business unit or division.~~

~~38.3 Every Dealer Member shall appoint an Alternate Designated Person (an "ADP"), who shall be so approved, to act as Chief Compliance Officer (the "CCO").~~

~~38.4 Notwithstanding section 38.3, a Dealer Member may appoint the UDP to act as the CCO.~~

~~38.5 Where a Dealer Member is organized into two or more separate business units or divisions, a Dealer Member may designate a CCO for each separate business unit or division.~~

(b) A Dealer Member must not designate an individual to act as the firm's Ultimate Designated Person unless the individual is:

(i) the chief executive officer or sole proprietor of the Dealer Member;

(ii) an Officer in charge of a division of the Dealer Member, if the activity that requires the firm to register under provincial or territorial securities laws occurs only within the division, or

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

(c) The Ultimate Designated Person must

(i) supervise the activities of the Dealer Member that are directed towards ensuring compliance with the Corporation's Dealer Member rules and applicable securities law requirements by the firm and each individual acting on the Dealer Member's behalf, and

(ii) promote compliance by the Dealer Member, and individuals acting on its behalf, with the Corporation's Dealer Member rules and applicable securities laws.

38.6 ~~The Chief Compliance Officer shall have the qualification required pursuant to Rule 2900, Part IA, Section 2B~~**Chief Financial Officer**

(a) Each Dealer Member must, subject to the approval of the Corporation, appoint one Executive as Chief Financial Officer who, in addition to the requirements under Rule 7.4(a), must have met the proficiency requirements of Rule 2900, Part I, section A.2A. The Chief Financial Officer need not be engaged full time in the business of the Dealer Member.

(b) Notwithstanding subsection (a), if the Chief Financial Officer of a Dealer Member terminates his/her employment with the Dealer Member and the Dealer Member is unable to immediately appoint another qualified person as Chief Financial Officer, the Dealer Member may, with the Corporation's approval, appoint an Executive as Acting Chief Financial Officer, provided that within 90 days of the termination:

(1) the Acting Chief Financial Officer meets the requirement of subsection (a) and is approved by the Corporation as Chief Financial Officer; or

(2) another qualified person is appointed Chief Financial Officer by the Dealer Member and approved by the Corporation.

(c) The Chief Financial Officer must monitor adherence to the Dealer Member's policies and procedures as necessary to provide reasonable assurance that the Dealer Member complies with the financial rules of the Corporation.

38.7 **Chief Compliance Officer**

(a) Every Dealer Member must designate an individual who is approved under the Corporation's rules in the category of Chief Compliance Officer to perform the functions described in paragraph (h).

(b) A Dealer Member must not designate an individual to act as the firm's Chief Compliance Officer unless the individual is one of the:

(i) an Officer or partner of the Dealer Member;

(ii) the sole proprietor of the Dealer Member.

(c) A Dealer Member may appoint the Ultimate Designated Person to act as the Chief Compliance Officer.

(d) Where a Dealer Member is organized into two or more separate business units or divisions, a Dealer Member may, with the approval of the Corporation, designate a Chief Compliance Officer for each separate business unit or division.

(e) The Chief Compliance Officer must have the qualifications required under Rule 2900, Part I, section A.2B.

~~38.7~~(f) Notwithstanding ~~Rule 38.6,~~subsection (a), a Dealer Member may, with the Corporation's approval, ~~appoint~~designate an ~~officer~~Officer as Acting Chief Compliance Officer~~,~~ if the Chief Compliance Officer ~~suddenly~~ terminates his or her employment with the Dealer Member and the Dealer Member is unable to immediately ~~appoint~~designate another qualified person as ~~chief compliance officer~~Chief Compliance Officer provided that, within 90 days of the termination of the previous Chief Compliance Officer:

(i) the ~~acting chief compliance officer successfully completes the~~Acting Chief Compliance ~~Officers Qualifying Examination and is approved~~Officer meets the requirement of subsection (e) and is designated by the Corporation as Chief Compliance Officer; or

(ii) another qualified person is ~~appointed~~designated Chief Compliance Officer by the Dealer Member and is approved by the Corporation.

~~38.8~~(g) The Corporation may grant to a Dealer Member an exemption from ~~Rule 38.6~~subsection (e) where it is satisfied that the nature of the Dealer Member's business is such that the qualification is not relevant to the Dealer Member and that to do so would not be prejudicial to the interests of the Dealer Member, its clients, the public or the Corporation. In granting such an exemption, it may impose such terms and conditions as it considers necessary.

~~38.9 Every Dealer Member shall also appoint as many additional ADPs as are necessary, given the scope and complexity of its businesses, who shall be partners, directors or officers of the Dealer Member.~~

~~38.10 The ADPs referred to in Rule 38.6 shall report to the UDP as necessary to ensure that the businesses of the Dealer Member are carried out in compliance with applicable self-regulatory by-laws, regulations, policies and forms.~~

~~38.11 The CCO shall report to the board of directors (or equivalent) of the Dealer Member as necessary but at least annually on the status of compliance at the Dealer Member.~~

(h) The Chief Compliance Officer of a Dealer Member must do all of the following:

(i) establish and maintain policies and procedures for assessing compliance with the Rules and applicable securities laws by the Dealer Member and individuals acting on its behalf;

(ii) monitor and assess compliance by the Dealer Member, and individuals acting on its behalf, with the Rules and applicable securities laws;

(iii) report to the Ultimate Designated Person as soon as possible if the Chief Compliance Officer becomes aware of any circumstances indicating that the firm, or any individual acting on its behalf, may be in non-compliance with the Rules or applicable securities laws and

(A) the non-compliance creates a reasonable risk of harm to a client;

(B) the non-compliance creates a reasonable risk of harm to the capital markets; or

(C) the non-compliance is part of a pattern of non-compliance;

(iv) submit an annual report to the firm's board of directors, or individuals acting in a similar capacity for the firm, for the purposes of assessing compliance by the firm, and individuals acting on its behalf, with the Corporation's Dealer Member rules and applicable securities laws.

(i) The Chief Compliance Officer must have access to the Ultimate Designated Person and the board of directors (or equivalent) at such times as the Chief Compliance Officer may consider necessary or advisable in view of his or her responsibilities.

~~38.12~~38.8 The board of directors (or equivalent) ~~shall~~of the Dealer Member must review the report of the ~~CCO~~Chief Compliance Officer and determine what actions are necessary ~~and ensure such actions are carried out in order to address~~to rectify any compliance deficiencies noted in the report~~.~~ and ensure such actions are carried out. The board of directors (or equivalent) must maintain records of the actions it determines to be necessary and the monitoring to ensure that those actions are carried out.

~~38.13 The UDP shall ensure that policies and procedures are developed and implemented which adequately reflect the regulatory requirements of the Dealer Member.~~

~~38.14 The CCO shall monitor adherence to the Dealer Member's policies and procedures as necessary to ensure that the management of the compliance function is effective and to provide reasonable assurance that standards of the applicable self-regulatory organization are met.~~

~~38.15 Every~~38.9 A Dealer Member ~~shall~~must file with the ~~applicable self-regulatory organization~~Corporation:

(a) A copy of a governance document setting out the organizational structure and reporting relationships, which support the compliance arrangement set out above; and

(b) Notice of any material changes to the organizational structure and reporting relationships as set out in ~~paragraph~~subsection (a).

RULE 40

INDIVIDUAL APPROVALS, NOTIFICATIONS AND FEES AND

THE NATIONAL REGISTRATION DATABASE

40.1 Definitions

For the purposes of this Rule 40,

(1) "authorized firm representative" or "AFR" means, for a Dealer Member, an individual with his or her own NRD user ID and who is authorized by the Dealer Member to submit information in NRD format for that Dealer Member and individual applicants with respect to whom the Dealer Member is the sponsoring Dealer Member.

(2) "chief AFR" means, for a Dealer Member filer, an individual who is an AFR and has accepted an appointment as a chief AFR by the Dealer Member.

(3) "Form 33-109F1" means ~~the form for the submission through NRD of a~~Form 33-109F1 *Notice of Termination of* ~~an individual~~*Registered Individuals and Permitted Individuals* mandated by ~~NRD Multilateral~~National Instrument 33-~~109.~~109 *Registration Information.*

(4) "Form 33-109F2 ~~means the form for the submission through NRD of an application for change or surrender of categories of registration mandated by NRD Multilateral~~" means Form 33-109F2 *Change or Surrender of Individual Categories* mandated by National Instrument 33-~~109.~~109 *Registration Information.*

(5) "Form 33-109F3 ~~means the form for the submission through NRD of information regarding business locations of registered dealers mandated by NRD Multilateral Instrument 33-109.~~" means Form 33-109F3 *Business Locations other than Head Office* mandated by National Instrument 33-109 *Registration Information.*

~~(6) Form 33-109F4 means the form for submission through NRD of applications for individual registration and information on non-registered individuals mandated by NRD Multilateral Instrument 33-109.~~

~~(7) Form 33-109F5 means the paper form of a notification of a change in information regarding an individual registrant or Dealer Member mandated by NRD Multilateral Instrument 33-109.~~

(6) "Form 33-109F4" means Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals* mandated by National Instrument 33-109 *Registration Information.*

(7) "Form 33-109F5" means Form 33-109F5 *Change of Registration Information* mandated by National Instrument 33-109 *Registration Information.*

(8) "Form 33-109F7" means Form 33-109F7 *Reinstatement of Registered Individuals and Permitted Individuals* mandated by National Instrument 33-109 *Registration Information.*

(9) "National Registration Database" or "NRD" means the online electronic database of registration and approval information regarding Dealer Members, their registered or approved partners, ~~officers, directors~~Officers, Directors, employees or agents and other firms and individuals registered under securities legislation in Canada, and includes the computer system providing for the transmission, receipt, review and dissemination of that registration information by electronic means.

(~~9~~10) "NRD account" means an account with a member of the Canadian Payments Association from which fees may be paid with respect to NRD by electronic pre-authorized debit.~~(10) "NRD access date" means the date a Dealer Member receives notice that it has access to NRD to make NRD submissions~~.

(11) "NRD Administrator" means CDS INC. or a successor appointed by the Canadian securities regulatory authorities and the Corporation to operate NRD.

(12) "NRD format" means the electronic format for submitting information through the NRD website.

(13) "NRD Multilateral Instrument 31-102" means Multilateral Instrument 31-102 National Registration Database adopted by the Canadian securities regulatory authorities.

(14) "NRD Multilateral Instrument 33-109" means Multilateral Instrument 33-109 Registration Information adopted by the Canadian securities regulatory authorities.

(15) "NRD submission" means information that is submitted under this Rule 40 in NRD format, or the act of submitting information under this Rule 40 in NRD format, as the context requires.

(16) "NRD website" means the website operated by the NRD Administrator for the NRD submissions.

~~(17) "transition Dealer Member" means a Dealer Member that~~

~~(a) was a Dealer Member on February 3, 2003, or~~

~~(b) was not a Dealer Member on February 3, 2003 and applied for Membership before March 31, 2003.~~

~~(18) "Quebec transition Dealer Member" means a Dealer Member registered in the Province of Quebec as of January 1, 2005.~~

40.2 Obligations of Dealer Members regarding the National Registration Database

(1) Each Dealer Member shall

(a) enrol in NRD and pay to the NRD Administrator an enrolment fee calculated as prescribed by the Board ~~of Directors~~;

(b) have one and no more than one chief AFR enrolled with the NRD Administrator;

(c) maintain one and no more than one NRD account;

(d) notify the NRD Administrator of the appointment of a chief AFR within ~~5 business~~7 days of the appointment;

(e) notify the NRD Administrator of any change in the name of the firm's chief AFR within ~~5 business~~7 days of the change; ~~and~~

(f) submit any change in the name of an AFR, other than the firm's chief AFR, in NRD format within ~~5 business~~7 days of the change; and

(g) submit any change in the phone number, fax number or e-mail address of the chief AFR in NRD format within 7 days of the change.

40.3 Approvals and Notifications

(1) Each Dealer Member making an application for approval of an individual in any capacity required under any Rule of the Corporation or an application for reinstatement of approval shall make such application to the Corporation through the NRD on Form 33-109F4.~~4~~ or Form 33-109F7 as applicable.

(2) Each Dealer Member ~~shall notify the Corporation of the appointment of an Ultimate Designated Person pursuant to Rule 38.1, a Chief Compliance Officer pursuant to Rule 38.3 or a Chief Financial Officer pursuant to Rule 7.5(a) through the NRD on Form 33-109F4.(3)Each Dealer Member~~ making an application under subsection (1) shall be liable for and pay such fees as are prescribed from time to time by the Board ~~of Directors~~, including but not limited to application fees payable to the NRD Administrator for use of the NRD for the making of such an application.

(4~~3~~) Any fees payable to the Corporation or to the NRD Administrator pursuant to subsection (3) above shall be submitted by electronic pre-authorized debit through NRD.

40.4 ~~Application for~~ Change of Approval Category or Type of Business

(1) Each Dealer Member making an application for approval of any Approved Person in a different or additional capacity requiring approval under any Rule of the Corporation or to surrender an existing approval shall make such application to the Corporation through the NRD on Form 33-109F2.

(2) Each Dealer Member making an application under subsection (1) shall be liable for and pay such change of status fees as are prescribed from time to time by the Board ~~of Directors~~, including but not limited to application fees payable to the NRD Administrator for use of the NRD for the making of such an application.

(3) Any fees payable to the Corporation or the NRD Administrator pursuant to subsection (2) above shall be submitted by electronic pre-authorized debit through NRD.

(4) Each Dealer Member must notify the Corporation through NRD on Form 33-109F2 when an Approved Person changes the type of business in which he or she engages or customer type as described in Rule 18.2(b).

(5) Prior to providing notice of a change in the type of business in which an Approved Person will engage, a Dealer Member must ensure that it has notified the Corporation through NRD of the successful completion of the proficiency requirements under Rule 2900 necessary to undertake the type of business or that the Approved Person has been granted an exemption from the proficiency requirements under Rule 2900 and Rule 20.

40.5 Report of Changes pursuant to Rule 3100

(1) Each Dealer Member making a report of a change regarding an Approved Person required pursuant to section I.B.1(a) of Rule 3100 of the Corporation shall make the report through the NRD on Form 33-109F4~~5~~ in the time required pursuant to NRD ~~Multilateral~~National Instrument 33-109.

40.6 Exemption request

(1) Each Dealer Member making an application for an exemption of an Approved Person or applicant for approval from a proficiency requirement pursuant to the Corporation's Rule 2900 that is submitted with an application for approval made through the NRD shall make such application to the Corporation through the NRD.

(2) Each Dealer Member making an application under subsection (1) above shall be liable for and pay to the Corporation an exemption request fee as prescribed from time to time by the Board ~~of Directors~~.

(3) Any fees payable to the Corporation and to the NRD Administrator pursuant to subsection (2) above shall be submitted by electronic pre-authorized debit through NRD.

40.7 Termination of Approved Persons

(1) Each Dealer Member shall notify the Corporation of the termination of the Dealer Member's employment of or principal/agent relationship with any individual approved in any capacity under any Rule of the Corporation through the NRD on Form 33-109F1 within the time period and in the manner prescribed in NRD ~~Multilateral~~National Instrument 33-109 for a registered firm, as defined in NRD ~~Multilateral~~National Instrument 33-109, to notify the regulator of the same type of event.

(2) If an Approved Person ceases to have an employment, partnership or agency relationship with a Dealer Member, the individual's approval with the Dealer Member is suspended until reinstated by the Corporation or under the Rules of the Corporation.

(3) Despite 40.3(1), the approval of an individual suspended under paragraph (2) is reinstated on the date the individual submits a completed Form 33-109F7 in accordance with NRD National Instrument 31-102 if:

(a) the Form 33-109F7 is submitted on or before the 90th day after the cessation date;

(b) after the cessation date there have been no changes to the information previously submitted in respect of any of the following items of the individual's Form 33-109F4:

(A) item 13 [*Regulatory disclosure*];

(B) item 14 [*Criminal disclosure*];

(C) item 15 [*Civil disclosure*];

(D) item 16 [*Financial disclosure*];

(c) the individual's employment, partnership or agency relationship with the former sponsoring firm did not end because the individual was asked by the firm to resign, or was dismissed, following an allegation against the individual of any of the following:

(A) criminal activity,

(B) a breach of securities laws, or

(C) a breach of the rules of the Corporation;

(d) the individual is seeking reinstatement in the same category of approval in which the individual was approved on the cessation date.

(4) Each Dealer Member shall be liable for and pay to the Corporation fees in the amounts prescribed from time to time by the Board ~~of Directors~~ for the failure of the Dealer Member to file a notification required under subsection (1) above within the time period referred to in subsection (1).

(~~3~~5) Any fees payable to the Corporation pursuant to subsection (~~2~~4) above shall be submitted by electronic pre-authorized debit through NRD.

40.8 Notification of Opening or Closing of ~~Branch or Sub-branch Office~~a Business Location

(1) Each Dealer Member required to notify the Corporation of the opening or closing of a ~~branch~~Business Location pursuant to Rule 4.6 ~~or sub-branch office pursuant to Rule 4.7 shall~~must do so through the NRD on Form 33-109F3 within the time period prescribed in NRD ~~Multilateral~~National Instrument 33-109 for a registered firm, as defined in NRD ~~Multilateral~~National Instrument 33-109, to notify the regulator of the opening or closing, as applicable, of a business location.

(2) Each Dealer Member ~~shall~~must notify the Corporation through the NRD of any change in the address~~, type of location~~ or supervision of any ~~branch or sub-branch office~~Business Location within the time period prescribed in NRD ~~Multilateral~~National Instrument 33-109 for a registered firm, as defined in ~~Multilateral~~NRD National Instrument 33-109, to notify the regulator of a change in a business location.

40.9 Annual NRD User Fee

(1) Each Dealer Member shall be liable for and pay to the NRD Administrator an annual user fee as prescribed from time to time by the Board ~~of Directors~~ for each person approved in any capacity under any Rule of the Corporation and recorded as such on the NRD as of the date of calculation of such annual fee as prescribed by the Board ~~of Directors~~.

(2) Any fees payable to the NRD Administrator pursuant to subsection (1) above shall be submitted by electronic pre-authorized debit through NRD.

40.10 ~~Transition~~Repealed.

~~(1) Accuracy of Branch or Sub-branch Information - If the information recorded on NRD for a branch or sub-branch office of a transition Dealer Member is missing or inaccurate on the NRD access date, the transition Dealer Member must submit a completed Form 33-109F3 in NRD format in respect of that branch or sub-branch by February 28, 2005.~~

~~(2) Identification of Branch or Sub-branch of Approved Persons - Each Dealer Member must make submissions through the NRD identifying the branch or sub-branch location of all Approved Persons of the Dealer Member by February 28, 2005.~~

~~(3) Approved Persons Included in the Data Transfer~~

~~(a) Except as provided in subsection (b), in respect of Approved Persons who were recorded on NRD as Approved Persons of a transition Dealer Member on the NRD access date, the transition Dealer Member must submit completed Forms 33-109F4 in NRD format for~~

(i) 5 percent of those Approved Persons by the end of April 2004,

(ii) 10 percent of those Approved Persons by the end of May 2004,

(iii) 15 percent of those Approved Persons by the end of June 2004,

(iv) 20 percent of those Approved Persons by the end of July 2004,

(v) 25 percent of those Approved Persons by the end of August 2004,

(vi) 30 percent of those Approved Persons by the end of September 2004,

(vii) 35 percent of those Approved Persons by the end of October 2004,

(viii) 40 percent of those Approved Persons by the end of November 2004,

(ix) 45 percent of those Approved Persons by the end of December 2004,

(x) 50 percent of those Approved Persons by the end of March 2005,

(xi) 55 percent of those Approved Persons by the end of April 2005,

(xii) 60 percent of those Approved Persons by the end of May 2005,

(xiii) 65 percent of those Approved Persons by the end of June 2005,

(xiv) 70 percent of those Approved Persons by the end of July 2005,

(xv) 75 percent of those Approved Persons by the end of August 2005,

(xvi) 80 percent of those Approved Persons by the end of September 2005,

(xvii) 85 percent of those Approved Persons by the end of October 2005,

(xviii) 90 percent of those Approved Persons by the end of November 2005,

(xix) 95 percent of those Approved Persons by the end of December 2005, and

(xx) all of those Approved Persons by the end of March 2006.

(b) Despite subsection (a), a transition Dealer Member is not required to submit a completed Form 33-109F4 in respect of an Approved Person if another Dealer Member or a non-Dealer Member firm registered under securities legislation has submitted a completed Form 33-109F4 in respect of the Approved Person.

(4) Reporting Changes to Information regarding Approved Persons

A transition Dealer Member making a report of a change regarding an Approved Person required pursuant to section I.B.1(a) of Rule 3100 after the NRD access date for an Approved Person for whom a completed Form 33-109F4 in NRD format has not been submitted pursuant to subsection 40.10(3)(a) shall:

(a) submit within 5 business days of the change a completed Form 33-109F5 in paper form showing the change, and

(b) if the notification concerns any change with regard to:

~~Item 1 of Form 33-109F4 – Name~~

~~Item 2 of Form 33-109F4 – Residential Address where the change is a move out of province~~

~~Item 14 of Form 33-109F4 – Criminal Disclosure~~

~~Item 15 of Form 33-109F4 – Civil Disclosure, or~~

~~Item 16 of Form 33-109F4 – Financial Disclosure~~

~~submit within 15 days of the submission of the completed Form 33-109F5 a completed Form 33-109F4 in NRD format regarding the Approved Person.~~

~~(5) Currency of Form 33-109F4 - For greater certainty, a completed Form 33-109F4 that is submitted under this section must be current on the date that it is submitted despite any prior submission in paper format.~~

~~(6) Termination of Relationship - Despite a requirement under this section to submit a completed Form 33-109F4, a transition Dealer Member is not required to submit a Form 33-109F4 in respect of an Approved Person if the Dealer Member has submitted a completed Uniform Termination Notice or Form 33-109F1 in respect of the Approved Person in paper form before the Dealer Member's NRD access date or through the filing of a Form 33-109F1 through the NRD after the Dealer Member's NRD access date.~~

40.11 Temporary Hardship Exemption

(1) If unanticipated technical difficulties prevent a Dealer Member from making a submission in NRD format within the time required under this Rule 40, the Dealer Member is exempt from the requirement to make the submission within the required time period, if the Dealer Member makes the submission in paper format or NRD format no later than ~~5 business~~7 days after the day on which the information was required to be submitted.

(2) ~~Form 33-109F5 is the paper format for submitting a notice of a change to Form 33-109F4 information.(3)~~ If unanticipated technical difficulties prevent a Dealer Member from submitting an application in NRD format, the Dealer Member may submit the application ~~in paper format~~ other than through the NRD website.

(4~~3~~) If a Dealer Member makes a paper format submission under this section, the Dealer Member must include the following legend in capital letters at the top of the first page of the submission:

> IN ACCORDANCE WITH CORPORATION RULE 40.11 AND SECTION 5.1 OF ~~MULTILATERAL~~NATIONAL INSTRUMENT 31-102 NATIONAL REGISTRATION DATABASE (NRD), THIS [SPECIFY DOCUMENT] IS BEING SUBMITTED IN PAPER FORMAT UNDER A TEMPORARY HARDSHIP EXEMPTION.

(5~~4~~) If a Dealer Member makes a ~~paper format~~ submission other than through the NRD website under this section, the Dealer Member must resubmit the information in NRD format as soon as practicable and in any event within ~~10 business~~14 days after the unanticipated technical difficulties have been resolved.

40.12 Due Diligence and Record Keeping

(1) Each Dealer Member must make reasonable efforts to ensure that information submitted in any submission through the NRD is true and complete.

(2) Each Dealer Member must retain all documents used by the Dealer Member to satisfy its obligation under subsection (1) for a period of no less than 7 years after the individual ceases to be an Approved Person of the Dealer Member.

(3) A Dealer Member that retains a document under subsection (2) in respect of an NRD submission must record the NRD submission number on the document.

~~40.13 Transition of Quebec Transition Members~~

~~(1) Each Quebec transition Dealer Member having Approved Persons registered solely in the Province of Quebec as of January 1, 2005 shall submit to the Corporation a completed Form 33-109F4 for each such Approved Person by November 30, 2005.~~4) A Dealer Member must obtain from each individual who is approved to act

on behalf of the firm a copy of the Form 33-109F1 most recently submitted by the individual's former sponsoring firm in respect of that individual, if any, within 60 days of the firm becoming the individual's sponsoring firm.

~~(2) Despite subsection (1), a Quebec transition Dealer Member is not required to submit a Form 33-109F4 for an Approved Person registered solely in the Province of Quebec if the Dealer Member terminates its employment of or principal/agent relationship with the person prior to having submitted a Form 33-109F4 pursuant to subsection (1) and files with the Corporation a completed Uniform Termination Notice or Form 33-109F1 in paper form.~~

~~(3) A Quebec transition Dealer Member making a report of a change regarding an Approved Person required pursuant to section I.B.1(a) of Rule 3100 after January 1, 2005 for an Approved Person registered solely in the Province of Quebec for whom a completed Form 33-109F4 in NRD format has not been submitted pursuant to subsection (1) shall:~~

~~(a) submit within 5 business days of the change a completed Form 33-109F5 in paper form showing the change, and~~

~~(b) submit within 15 business days of the filing in subsection (a) above through the NRD a completed Form 33-109F4 regarding the Approved Person showing the correct information as of the date of filing.~~

~~(4) A Quebec transition Dealer Member applying to make a change of registration or Approval category or add or surrender an Approval category of an Approved Person approved solely in the Province of Quebec as of January 1, 2005 for whom a completed Form 33-109F4 has not been submitted shall:~~

~~(a) submit a Form 33-109F4 through the NRD showing the Approved Persons current registration and Approval categories, and~~

~~(b) submit a Form 33-109F2 through the NRD showing the change, addition or surrender of registration or Approval category for which application is being made.~~

~~(5) A Dealer Member applying for transfer of the Approval of a person formerly registered solely in the Province of Quebec for whom a completed Form 33-109F4 has not been submitted through NRD shall:~~

~~(a) submit an application for transfer in paper form; and~~

~~(b) within 15 days of the date of the application in (a) above, submit through the NRD a completed Form 33-109F4 regarding the person.~~

~~(6) Each Quebec transition Dealer Member having Approved Persons registered in the Province of Quebec and in other provinces as of January 1, 2005 shall submit to the Corporation a completed Form 33-109F4 for each such Approved Person adding the categories of their registration in the Province of Quebec by November 30 , 2005.~~

~~(7) A Quebec transition Dealer Member that terminates its employment of or principal/agent with an Approved Person registered in the Province of Quebec and one or more other provinces prior to the filing of a completed From 33-109F4 pursuant to subsection (6) above shall file a Form 33-109F1 through the NRD with respect to the Approved Person's registration in the other provinces and a Uniform Termination Notice or Form 33-109F1 in paper form with respect to the Approved Persons registration in the Province of Quebec.~~

~~(8) A Quebec transition Dealer Member required to make a report of a change regarding an Approved Person required pursuant to section I.B.1(a) of Rule 3100 after January 1, 2005 for an Approved Person registered in the Province of Quebec and other provinces for whom a completed Form 33-109F4 in NRD format has not been submitted pursuant to subsection (6) above shall submit through the NRD the Form 33-109F4 pursuant to subsection (6) and then a completed Form 33-109F5 regarding the change within 5 business days of the change.~~

~~(9) A Quebec transition Dealer Member applying to make a change of registration or Approval category or add or surrender an Approval category of an Approved Person registered in the Province of Quebec and other provinces as of January 1, 2005 for whom a completed Form 33-109F4 pursuant to subsection (6) above has not been submitted shall submit through the NRD the Form 33-109F4 pursuant to subsection (6) showing only~~

~~the addition of the current registration categories in Quebec and then a Form 33-109F2 with respect to the change, addition or surrender or registration or Approval category.~~

~~(10) A Quebec transition member applying for the transfer of an Approved Person registered and Approved at his or her previous Dealer Member firm in Quebec and another province for whom a completed Form 33-109F4 pursuant to subsection (6) above has not been submitted shall:~~

~~(a) Submit an application for transfer in any other provinces through the NRD system;~~

~~(b) Submit an application for transfer in Quebec in paper form;~~

~~(c) Within 15 days of the approval of the transfer in (b) above, submit a Form 33-109F4 pursuant to subsection (6) above adding the registration and Approval categories in Quebec.~~

~~(11) Subsections 40.10(1) and (2) do not apply to the branch and sub-branch offices located in the Province of Quebec of a Quebec transition Dealer Member.~~

40.13 Repealed.

RULE 1300

SUPERVISION OF ACCOUNTS

1300.1.

Identity and Creditworthiness

(a) Each Dealer Member shall use due diligence to learn and remain informed of the essential facts relative to every customer and to every order or account accepted.

(b) When opening an initial account for a corporation or similar entity, the Dealer Member shall:

(i) ascertain the identity of any ~~natural person~~individual who is the beneficial owner of,~~ directly or indirectly, of~~ or exercises direct or indirect control or direction over, more than 10% of the corporation or similar entity, including the name, address, citizenship, occupation and employer of each such beneficial owner, and whether any such beneficial owner is an insider or controlling shareholder of a publicly traded corporation or similar entity; and

(ii) as soon as is practicable after opening the account, and in any case no later than six months after the opening of the account, verify the identity of each individual ~~beneficial owner~~ identified in (i) using such methods as enable the Dealer Member to form a reasonable belief that it knows the true identity of each individual and that are in compliance with any applicable legislation and regulations of the Government of Canada or any province.

(c) Subsection (b) does not apply to:

(i) a corporation or similar entity that is or is an affiliate of a bank, trust or loan company, credit union, caisse populaire, insurance company, mutual fund, mutual fund management company, pension fund, securities dealer or broker, investment manager or similar financial institution subject to a satisfactory regulatory regime in the country in which it is located

(ii) a corporation or similar entity whose securities are publicly traded or an affiliate thereof.

(d) The Corporation may, at its discretion, direct Dealer Members that the exemption in subsection (c) does not apply to some or all types of financial institutions located in a particular country.

(e) When opening an initial account for a trust, a Dealer Member shall:

(i) ascertain the identity of the settlor of the trust and, as far as is reasonable, of any known beneficiaries of more than 10% of the trust, including the name, address, citizenship, occupation and employer of each such settlor and beneficiary and whether any is an insider or controlling shareholder of a publicly traded corporation or similar entity.

(ii) as soon as is practicable after opening the account, and in any case no later than six months after the opening of the account, verify the identity of each individual identified in (i) using such methods as enable the Dealer Member to form a reasonable belief that it knows the true identity of each individual and that are in compliance with any applicable legislation and regulations of the Government of Canada or any province.

(f) Subsection (e) does not apply to a testamentary trust or a trust whose units are publicly traded.

(g) If a Dealer Member, on inquiry, is unable to obtain the information required under subsections (b)(i) and (e)(i), the Dealer Member shall not open the account.

(h) If a Dealer Member is unable to verify the identities of individuals as required under subsections (b)(ii) and (e)(ii) within six months of opening the account, the Dealer Member shall restrict the account to liquidating trades and transfers, payments or deliveries out of funds or securities only until such time as the verification is completed.

(i) No Dealer Member shall open or maintain an account for a shell bank.

(j) For the purposes of section (i) a shell bank is a bank that does not have a physical presence in any country.

(k) Subsection (i) does not apply to a bank which is an affiliate of a bank, loan or trust company, credit union, other depository institution that maintains a physical presence in Canada or a foreign country in which the affiliated bank, loan or trust company, credit union, other depository institution is subject to supervision by a banking or similar regulatory authority.

(l) Any Dealer Member having an account for a corporation, similar entity or trust other than those exempt under subsections (c) and (f) and which does not have the information regarding the account required in subsections (b)(i) and (e)(i) at the date of implementation of those subsections shall obtain the information within one year from date of implementation of subsections (b) and (e).

(m) If the Dealer Member does not or cannot obtain the information required under subsection (l) the Dealer Member shall restrict the account to liquidating trades and transfers, payments or deliveries out of funds or securities until such time as the required information has been obtained.

(n) Dealer Members must maintain records of all information obtained and verification procedures conducted under this Rule 1300.1 in a form accessible to the Corporation for a period of five years after the closing of the account to which they relate.

Business Conduct

(o) Each Dealer Member shall use due diligence to ensure that the acceptance of any order for any account is within the bounds of good business practice.

Suitability Generally

(p) Subject to Rule 1300.1(r) and 1300.1(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.

Suitability Determination Required When Recommendation 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.

Suitability Determination Not Required

(r) Each Dealer Member that has applied for and received approval from the Corporation pursuant to Rule 1300.1(t), 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.

(s) Each Dealer Member that executes a trade on the instructions of another Dealer Member, portfolio manager, investment counsel, ~~limited~~exempt 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 Approval

(t) 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.

1300.2.

(a) ~~Each Dealer Member shall designate a director, partner or officer or, in the case of a branch office, a branch manager reporting directly to the designated director, partner or officer who shall~~A Dealer Member must designate a Supervisor to be responsible for the opening of new accounts and ~~the supervision of account activity. Each such designated person shall be approved by the applicable District Council and, where necessary to ensure continuous supervision, the Dealer Member may appoint one or more alternates to such designated person who shall be so approved. The director, partner or officer as the case may be, shall be responsible~~ for establishing and maintaining procedures acceptable to the Corporation for account supervision

~~and such persons or, in the case of a branch office, the branch manager shall~~to ensure that the handling of client business is within the bounds of ethical conduct, consistent with just and equitable principles of trade and not detrimental to the interests of the securities industry. As part of this supervision each new account ~~shall~~must be opened pursuant to a new account form which includes~~, at a minimum, the~~ the applicable information required by Form No. ~~2, and the designated person (other than a branch manager in the case of discretionary accounts) shall prior to or promptly after the completion of any transaction specifically approve the opening of such account. In the absence or incapacity of the designated director, partner or officer or when the trading activity of the Dealer Member requires additional qualified persons in connection with the supervision of the Dealer Member's business, an alternate, if any, shall assume the authority and responsibility of such designated persons.~~ 2 for Retail Customer accounts, Institutional Customer accounts and for accounts exempt from suitability reviews.

(b) Where a Dealer Member conducts more than one of retail business, institutional business and suitability-exempt business under Rules 1300.1(t) and 3200.B, the Dealer Member may designate separate Supervisors for each type of business.

(c) The Supervisor designated under this section or another Supervisor assigned the responsibility for doing so in the policies and procedures of the Dealer Member must approve and record the approval of the opening of an account prior to or promptly after the completion of any transaction.

~~(b) Notwithstanding Rule 1300.2(a), a Dealer Member or separate business unit of the Dealer Member is exempt from the requirement that a new account form include, at a minimum, the information required by Form No. 2 where the Dealer Member or separate business unit of the Dealer Member does not provide recommendations to any of its customers and has received approval pursuant to Rule 1300.1(e). In such circumstances, the Dealer Member or separate business unit of the Dealer Member shall not be required to include in the new account form the information currently set out in Form No. 2 of the Corporation that relates to suitability."~~

Discretionary and Managed Accounts

1300.3. In this Rule 1300 unless the context otherwise requires, the expression:

~~"associate portfolio manager" means any partner, director, officer or employee of a Dealer Member designated by the Dealer Member and approved pursuant to this Rule to manage managed accounts under the supervision of an approved portfolio manager or futures contracts portfolio manager;~~

"discretionary account" means an account of a customer other than a managed account in respect of which a Dealer Member or any person acting on behalf of the Dealer Member exercises any discretionary authority in trading by or for such account , provided that an account shall not be considered to be a discretionary account for the sole reason that discretion is exercised as to the price at which or time when an order given by a customer for the purchase or sale of a definite amount of a specified security, option, futures contract or futures contract option shall be executed;

"futures contracts managed account" means a managed account which includes only investments in commodity futures contracts or commodity futures contract options;

~~"futures contracts portfolio manager" means any partner, director, officer or employee of a Dealer Member designated by the Dealer Member and approved pursuant to this Rule to make investment decisions for futures contracts managed accounts only;~~

"investment" includes a commodity futures contract and a commodity futures contract option;

"managed account" means any account solicited by a Dealer Member ~~or any partner, director, officer or registered representative of a Dealer Member,~~ in which the investment decisions are made on a continuing basis by the Dealer Member or by a third party hired by the Dealer Member;"

"portfolio manager" means ~~any partner, director, officer or employee of a Dealer Member designated by the Dealer Member and approved pursuant to this Rule to make investment decisions for managed accounts~~a Registered Representative exercising discretionary authority over a managed account;

"responsible person" means ~~every individual who is a~~ a partner, ~~director, officer~~Director, Officer, employee or agent of ~~any~~a Dealer Member who:

(a) exercises discretionary authority over the account of a client or approves discretionary orders for an account when exercising such discretion or giving such approval pursuant to Rule 1300.4, or

(b) participates in the formulation of, or has prior access ~~prior to implementation of,~~information regarding investment decisions made on behalf of or advice given to a managed account

but ~~shall~~does not include a sub-adviser under Rule 1300.7(a)(ii);

~~1300.4. No person, other than a partner, director, officer or registered representative (other than a registered representative (mutual funds) or (non-retail)) who has been approved as such pursuant to the applicable Rules of the Corporation, shall effect trades for a customer in a discretionary account and any such permitted trades shall only be effected if:~~

1300.4. A Registered Representative may not exercise discretionary authority over a customer account unless:

(a) the Dealer Member has designated a Supervisor or Supervisors to be responsible for discretionary accounts;

(b) the customer has given prior written authorization ~~has been given by the customer to the Dealer Member and accepted by the Dealer Member~~in compliance with in compliance with Rule 1300.5; ~~and~~

~~(b) the account~~c) a Supervisor designated under subsection (a) has ~~been specifically~~ approved ~~and accepted in writing~~the account as a discretionary account ~~by the designated director, partner, officer, branch manager, futures contract principal or futures contract options principal, as the case may be, who authorized the opening of the account,~~ and recorded that approval;

~~and provided that any such person permitted~~(d) the Registered Representative authorized to effect discretionary trades ~~shall have~~for the account has actively dealt in, advised ~~in respect of~~on or performed analysis for a period of two years with respect to ~~the securities or commodity futures contracts or options~~all types of products which are to be traded on a discretionary basis ~~for a period of two years~~; and

(e) the account is maintained at the Dealer Member of the Registered Representative.

1300.5. The prior written authorization provided for by clause (a) of Rule 1300.4 ~~shall~~must:

(a) define the extent of the discretionary authority which has been given to the Dealer Member;

(b) except for a managed account, have a term of no more than twelve months, unless the Dealer Member has satisfied the Corporation that a longer term is appropriate and the customer is aware of such longer term;

(c) except for a managed account, only be renewable in writing;

(d) only be terminated by the customer by notice in writing, ~~which notice shall be~~ effective on receipt of the notice by the Dealer Member except with respect to transactions entered into prior to ~~such~~the receipt; and

(e) only be terminated by the Dealer Member by notice in writing, ~~which notice shall be~~ effective not less than 30 days from the date of ~~mailing the notice~~delivery to the customer ~~by pre-paid ordinary mail at the customer's last address appearing in the records of the Dealer Member~~.

1300.6. In addition to any other account supervision requirements under the Rules, the ~~designated partner, director, officer, branch manager, futures contract principal or futures contract options principal, as the case may be, with respect to each discretionary account (other than a managed account) shall~~Designated Supervisor must review at least monthly the financial performance of each ~~account~~discretionary account other than a managed account, including a review to determine whether any person permitted to effect discretionary trades for ~~such~~the account ~~in accordance with Rule 1300.4~~ should continue to do so. The ~~duties of the designated partner, director, officer, branch manager, futures contract principal or futures contract options principal hereunder may not be delegated~~Designated Supervisor may not delegate the conduct of the review to any other person.

1300.7. ~~No~~A Dealer Member ~~or any person acting on its behalf, shall~~may not exercise any discretionary authority with respect to a managed account unless:

(a) the individual who is responsible for the management of ~~such~~the account is:

(i) ~~a partner, director, officer, employee or agent of the Dealer Member who has been approved by the Corporation as a portfolio manager or associate~~ portfolio manager; or

(ii) a sub-adviser with which the Dealer Member has entered into a written sub-adviser agreement, provided that

A. the sub-adviser is an individual or firm registered in the jurisdiction in which it resides, in a category of registration that permits the person or company to provide discretionary portfolio management services or as a broker or investment dealer active as a portfolio manager; and

B. the Dealer Member has determined that the sub-adviser is subject to legislation or regulations containing conflict of interest provisions at least equivalent to Rules 1300.18 and 1300.19 or has entered into an agreement with the sub-adviser that the sub-adviser will comply with Rules 1300.18 and 1300.19.

(b) ~~prior authorization has been given by the customer to the Dealer Member~~the client has signed a managed account agreement in accordance with Rule 1300.8 ~~and recorded in a manner acceptable to the Corporation;~~

(c) the ~~account has been~~Supervisor designated under Rule 1300.15(b) or in the Dealer Member's policies and procedures has specifically approved ~~and accepted~~the account as a managed account ~~by a partner, director, officer or, in the case of a branch office, a branch manager, in a manner acceptable to the Corporation~~and the approval has been recorded in writing;

(d) the Dealer Member has provided to the accountholder a copy of its policy ensuring fair allocation of investment opportunities.

1300.8. The ~~prior written authorization~~managed account agreement provided for by clause (b) of Rule 1300.7 ~~shall~~must:

(a) describe the investment objectives and risk tolerance of the customer with respect to the managed account or accounts;

(b) where permitted by the Dealer Member, describe any constraints imposed by customer on investments to be made in the managed account or accounts;

(c) only be terminated by the customer by notice in writing, ~~which notice shall be e~~ffective on receipt by the Dealer Member except with respect to transactions entered into prior to ~~such~~the receipt; and

(d) only be terminated by the Dealer Member by notice in writing, ~~which notice shall be e~~ffective not less than 30 days from the date of ~~mailing~~delivery of the notice to the customer ~~by pre-paid ordinary mail at the customer's last address appearing in the records of the Dealer Member."~~.

~~1300.9. Application for approval as a portfolio manager shall be made to the Corporation and may be granted where the applicant:~~

~~(a) has satisfied the applicable proficiency requirements outlined in Part I of Rule 2900; or~~

~~(b) has within the past three years held registration under Canadian securities legislation as a portfolio manager, investment counsel or any equivalent registration category;~~

~~(c) is a partner, director, officer, employee or agent of a Dealer Member; and~~

~~(d) makes an application for approval in such form as the Board of Directors may from time to time prescribe.~~

~~1300.10. Application for designation and approval as an associate portfolio manager shall be made to the Corporation and may be granted where the applicant:~~

~~(a) has satisfied the applicable proficiency requirements outlined in Part I of Rule 2900;~~

~~(b) is a partner, director, officer, employee or agent of a Dealer Member; and~~

~~(c) makes an application for approval in such form as the Board of Directors may from time to time prescribe.~~

~~1300.11 Approval as a portfolio manager or associate portfolio manager shall constitute approval to trade and advise in securities provided that a portfolio manager or associate portfolio manager shall not trade or advise in options,~~

~~commodities or commodities futures contracts unless such person is approved to trade or advise in options, commodities or commodities futures contracts, as the case may be.~~

~~1300.12. Application for approval as a futures contracts portfolio manager shall be made to the Corporation and may be granted where the applicant:~~

~~(a) has satisfied the applicable proficiency requirements outlined in Part I of Rule 2900; or~~

~~(b) has within the past three years held registration under Canadian securities or commodity futures legislation as a portfolio manager, investment counsel or any equivalent registration category with respect to futures contracts;~~

~~(c) is a partner, director, officer, employee or agent of a Dealer Member; and~~

~~(d) makes an application for approval in such form as the Board of Directors may from time to time prescribe.~~

~~1300.13. Application for approval as an associate portfolio manager with discretionary authority with respect to futures contracts managed accounts shall be made to the Corporation and may be granted where the applicant:~~

~~(a) has satisfied the applicable proficiency requirements outlined in Part I of Rule 2900;~~

~~(b) is a partner, director, officer, employee or agent of a Dealer Member;~~

~~(c) makes an application for approval in such form as the Board of Directors may from time to time prescribe.~~

~~1300.14. Approval as a futures contracts portfolio manager or associate futures contracts portfolio manager shall constitute approval to trade and advise in futures contracts and futures contracts options.~~

1300.9. Repealed

1300.10. Repealed

1300.11. Repealed.

1300.12. Repealed.

1300.13. Repealed.

1300.14. Repealed.

1300.15. ~~Each~~A Dealer Member that has managed accounts or futures contracts managed accounts ~~shall~~must establish and maintain a system acceptable to the Corporation to supervise the activities of those responsible for the management of such accounts under Rule 1300.7. ~~Such~~ The system ~~should~~must be reasonably designed to achieve compliance with the Rules and Forms of the Corporation. A Dealer Member firm's supervisory system ~~shall~~must provide, at a minimum, for the following:

(a) the establishment and maintenance of written procedures, including:

(i) procedures designed to disclose when a responsible person has contravened Rules 1300.18 or 1300.19;

(ii) procedures to ensure fairness in the allocation of investment opportunities among its managed accounts;

(b) the designation of one or more ~~partners, directors, officers or futures contracts principals, as the case may be,~~Supervisors specifically responsible for the supervision of managed accounts. ~~The tasks of this Rule may be delegated by the persons designated to other persons who have the qualifications to perform them; however, pursuant to Rule 2500, responsibility for the tasks may not be delegated;~~

(c) direct supervision of any Registered Representative providing discretionary management to managed accounts who has less than two years experience providing such discretionary management, including at least one year managing on a discretionary basis more than $5 million in assets, by

(i) a Registered Representative at the Dealer Member or another Dealer Member who is authorized to provide discretionary management to managed accounts and who is not in the period of supervision, or

(~~c~~ii) a person registered as an advisor under Canadian securities legislation who has entered into a contract with the Dealer Member to provide the supervision.

The period of experience includes any period spent providing discretionary management as a registered advisor under Canadian securities legislation or while employed by a government-regulated institution.

(d) in addition to any other account supervision requirements under the Rules, a review by the ~~person designated under subsection (b)~~Designated Supervisor with respect to each managed account, to be conducted at least quarterly, to ensure that the investment objectives of the client are being diligently pursued and that the managed account or futures contracts managed account is being conducted in accordance with the Rules. The review may be conducted at an aggregate level for managed accounts for which key investment decisions are made centrally and applied across a number of managed accounts, subject to minor variations to allow for client-directed constraints and the timing of client cash flows into the managed account.

(~~d~~e) the establishment of a ~~managed account committee, which shall include at a minimum one person responsible for the supervision of such~~committee, including at least the Designated Supervisor of managed accounts and the Chief Compliance Officer, that shall review at least annually the supervisory system and procedures ~~established by the Dealer Member~~for managed accounts and recommend to senior management ~~the appropriate~~any action ~~that will~~necessary to achieve the Dealer Member's compliance with applicable securities legislation and with the Rules and Forms of the Corporation. ~~Such review shall be completed at least annually.~~

1300.16. ~~The~~A Dealer Member may charge a client directly for services rendered to a managed account but, except with the written agreement of the client, ~~such~~the charge ~~shall~~may not be based on the volume or value of transactions initiated for the account or be contingent upon profits or performance.

1300.17. ~~Remuneration paid to an associate portfolio manager, portfolio manager, or futures contracts portfolio manager for managing an account must not be~~A Dealer Member may not pay remuneration to anyone managing a managed account that is computed ~~in terms~~on the basis of the value or volume of transactions in the account.

1300.18. No Dealer Member or responsible person shall trade for his or her or the Dealer Member's own account, or knowingly permit or arrange for any associate or affiliate to trade, in reliance upon information as to trades made or to be made for any discretionary or managed account.

1300.19. No Dealer Member or responsible person shall, without the written consent of the client, knowingly cause any managed account to:

(a) invest in the securities of, or a futures contract or option that is based on the securities of, the Dealer Member or an issuer that is related or connected to the Dealer Member;

(b) invest in the securities of any issuer, or a futures contract or option that is based on the securities of an issuer, of which a responsible person is an officer or director, and no such investment shall be made even with the written consent of the client unless such office or directorship shall have been disclosed to the client;

(c) invest in new or secondary issues underwritten by the Dealer Member;

(d) purchase or sell the securities of any issuer, or a futures contract or option that is based on the securities of an issuer, from or to the account of a responsible person, or from or to the account of an associate of a responsible person; or

(e) make a loan to a responsible person or to an associate of a responsible person.

A Dealer Member or related company or a partner, ~~director, officer~~Director, Officer, employee or associate of either of them shall be deemed not to have breached any provision of this Rule 1300.19 in connection with any trade or activity if conducted in compliance with any securities legislation or rule, policy, directive or order of any securities commission which specifically applies to the trade or activity.

1300.20. Where investment decisions are made centrally and applied across a number of managed accounts, Rule 29.3A ~~shall~~does not apply ~~with regard~~ to the managed accounts of partners, ~~directors, officers, registered persons~~Directors,

Officers, Approved Persons, employees or agents of the Dealer Member ~~that~~who participate on the same basis as client accounts in the implementation of ~~such~~those decisions.

1300.21. Except as specifically permitted in the Rules or Rulings, ~~no~~a Dealer Member ~~shall~~may not charge a customer a fee that is contingent upon the profit or performance of the customer's account.

RULE 1800

COMMODITY FUTURES CONTRACTS AND OPTIONS

1800.1. For the purpose of this Rule 1800, unless the subject matter or context otherwise requires, the expression:

"Clearing Corporation" or "Clearing House" means an association or organization, whether incorporated or unincorporated, or part of a commodity futures exchange through which trades in contracts entered into on such exchange are cleared;

"Commodity" means, anything which (i) is defined or designated as a commodity in or pursuant to the Commodity Futures Act (Ontario) or similar legislation in any province of Canada not inconsistent therewith, or (ii) is the subject of a futures contract;

"Commodity Futures Exchange" means an association or organization whether incorporated or unincorporated, operated for the purpose of providing the physical facilities necessary for the trading of contracts by open auction;

"Contract" means any futures contract and any futures contract option;

~~"Dealer" means a person or company that trades in contracts in the capacity of principal or agent;~~

"Futures Contract" means a contract to make or take delivery of a specified quantity and quality, grade or size of a commodity during a designated future month at a price agreed upon when the contract is entered into on a commodity futures exchange pursuant to standardized terms and conditions set forth in such exchange's by-laws, rules or regulations;

"Futures Contract Option" means a right, acquired for a consideration, to assume a long or short position in relation to a futures contract at a specified price and within a specified period of time and any other option of which the subject is a futures contract;

"Omnibus Account" means an account carried by or for a Dealer Member in which the transactions of two or more persons are combined and effected in the name of a Dealer Member without disclosure of the identity of such persons.

1800.2. ~~No Dealer Member or any person acting on its behalf, shall trade or advise in respect of futures contracts or futures contract options without prior approval of the Corporation and unless:~~(a) A Dealer Member that trades in futures contracts or futures contract options on behalf of customers must designate a Supervisor qualified to supervise trading in futures contracts and futures contract options to be responsible for the opening of new accounts and establishing and maintaining procedures acceptable to the Corporation for account supervision to ensure that the handling of client business is within the bounds of ethical conduct, consistent with just and equitable principles of trade and not detrimental to the interests of the securities industry.

~~(a) In the case of trading or advising in respect of futures contracts:~~

~~(i) One or more of the partners, directors or officers of the Dealer Member is appointed in writing by the Dealer Member as a designated futures contract principal and, if necessary to ensure continuous supervision, one or more alternate designated futures contract principals, who shall have the authority and be responsible for the matters described in Rule 1800.5; and~~

~~(ii) Any person designated as a futures contract principal or alternate under item (i) above, and every partner, director, officer or employee of a Dealer Member who deals with customers with respect to trading or advising in respect of futures contracts has been approved pursuant to Rule 1800.3;~~

~~(b) In the case of trading or advising in respect of futures contract options:~~

~~(i) One or more of the partners, directors or officers of the Dealer Member is appointed in writing by the Dealer Member as a designated futures contract options principal and, if necessary to ensure continuous supervision, one or more alternate designated futures contract options principals who shall have the authority and be responsible for the matters described in Rule 1800.5; and~~

~~(ii) Any person designated as a futures contract options principal or alternate under item (i) above, and every partner, director, officer or employee of the Dealer Member who deals with customers with respect to trading or advising in respect of futures contract options has been approved pursuant to Rule 1800.3;~~

~~(c) Each of the Dealer Member's customers has acknowledged receipt of a futures contract trading agreement or futures contract options trading agreement referred to in Rule 1800.9;~~

~~(d) The account of each customer of the Dealer Member trading in futures contracts or futures contract options has been authorized in accordance with Rule 1800.5 by a futures contracts principal in the case of futures contracts or by a futures contract options principal in the case of futures contract options, or (other than a branch manager in the case of discretionary or managed accounts) by the branch manager of the branch office handling the trade if the branch manager has been approved pursuant to Rule 1800.3 to supervise accounts trading in futures contracts or futures contract options, as applicable;~~

(b) A Dealer Member must enter into a futures contract trading agreement or futures contract options trading agreement in compliance with Rule 1800.9 with a customer before effecting the customer's initial trade in futures contracts or futures contract options;

(c) The Supervisor designated under Rule 1800.2(a) or another Supervisor qualified to supervise futures contracts or futures contract options trading must approve the opening of the account of each customer of the Dealer Member for trading in futures contracts or futures contract options before the customer's first trade in futures contracts or futures contract options.

(d) A Dealer Member must:

(i) provide to each customer the then current risk disclosure statement approved by the Corporation and obtain from the customer acknowledgement of its receipt before the customer's initial trade in futures contracts or futures contract options

(ii) distribute to each customer having a futures contract or futures contract options account any amendments to the risk disclosure statement approved by the Corporation; and

(iii) maintain records showing the names and addresses of all persons to whom a current risk disclosure statement or an amendment thereto has been provided and the date or dates on which they were provided;

(e) ~~In the case of trading or advising in respect of trades in futures contracts, the Member:(i) Has available at each of its offices (other than a sub-branch office) to serve customers two or more persons qualified in accordance with Rule 1800.3 or 1800.4 to deal with customers in respect of futures contracts and one or more persons to carry out trading instructions, but only two of such persons must be available to serve customers at any time in normal circumstances and during usual business hours provided one of such persons is qualified in accordance with Rule 1800.3 or 1800.4;~~A Dealer Member must have systems and procedures to ensure that in normal circumstances customers of the Dealer Member have access at any time during usual business hours to a Registered Representative or Investment Representative, as appropriate to the services provided to the client, qualified to advise on or trade in futures contracts or futures contract options and registered as necessary in the jurisdiction in which the client resides.

~~(ii) Distributes to each customer, prior to opening a futures contract account, a copy of the then current risk disclosure statement of the Dealer Member, the form of which has been approved by the Corporation and obtains from the customer written acknowledgement of the receipt thereof, and thereafter distributes to each such customer any amendments which have been approved by the Corporation to the then current risk disclosure statement; and~~

~~(iii) Maintains a record available for inspection by the Corporation showing the names and addresses of all persons to whom a current risk disclosure statement or an amendment thereto has been distributed and the date or dates of such distribution;~~

(f) ~~In the case of trading or advising in respect of trades in futures contract options, the Member:~~

~~(i) Has available at each of its offices (other than a sub-branch office) to serve customers two or more persons qualified in accordance with Rule 1800.3 or 1800.4 to deal with customers in respect of futures contract options and one or more persons to carry out trading instructions, but only two of such persons must be available to serve customers at any time in normal circumstances and during usual business hours provided one of such persons is qualified in accordance with Rule 1800.3 or 1800.4;~~

(ii) Distributes to each customer, prior to opening a futures contract options account, a copy of the then current risk disclosure statement of the Dealer Member, the form of which has been approved by the Corporation and obtains from the customer written acknowledgement of the receipt thereof, and thereafter distributes to each such customer any amendments which have been approved by the Corporation to the then current risk disclosure statement; and

(iii) Maintains a record available for inspection by the Corporation showing the names and addresses of all persons to whom a current risk disclosure statement or an amendment thereto has been distributed and the date or dates of such distribution; and(g) TheA Dealer Member must obtain the approval of the Corporation shall have been obtained in respect of the procedures required by Rule 1800.5 and theof its accounting, settlement and credit control systems that the Dealer Member uses in trading and dealing with customers' accountsfor trading in futures contracts or futures contract options for customer and firm accounts with respect to futures contracts or futures contract options before trading in futures contracts or futures contract options.

1800.3. The Corporation may grant approval as a futures contract principal or alternate, a futures contract options principal or alternate, or a person who deals with clients with respect to futures contracts or futures contract options, to any applicant who has satisfied the applicable proficiency requirements outlined in Part 1 of Rule 2900.

1800.3. Repealed.

1800.3A. Repealed.

1800.4. Repealed.

1800.5. The designated futures contract principal or designated futures contract options principal of a Dealer Member designated pursuant to Rule 1800.2 shall ensure that the handling of customer business relating to futures contracts or futures contract options, as the case may be, is in accordance with the Rules and Rulings of the Corporation. In this respect the Dealer Member shall have written procedures acceptable to the Corporation describing the control, supervisory and delegation procedures used by the Dealer Member to ensure compliance with the Rules and Rulings. In the absence or incapacity of the designated futures contract principal or futures contract options principal or when the trading activity of the Dealer Member requires additional qualified persons in connection with the supervision of the Dealer Member's business, an alternate, if any, shall assume the authority and responsibility of such designated persons. Without limiting the foregoing, each designated futures contract principal and designated futures contract options principal shall be responsible for the following matters with respect to trading or advising in respect of futures contracts and futures contract options, respectively:

(a) Subject to Rule 1300.2 opening all new contracts accounts pursuant to a new account application form approved by the Corporation and the approval of such form for all accounts prior to the commencement of any trading activity;

(b) Using due diligence to learn and remain informed of the essential facts relative to every customer (including the customer's identity, creditworthiness and reputation) and to every order or account accepted, to ensure that the acceptance of any order for any account is within the bounds of good business practice and, subject to Rule 1300.1(e), to 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;

(c) Obtaining prior to the commencement of any trading activity in any futures account the executed futures contract or futures contract trading agreement referred to in Rule 1800.9 or the letter of undertaking referred to in Rule 1800.10;

(d) Imposing any appropriate restriction on futures contracts or futures contract options accounts and the proper designation of accounts and related orders;

(e) The continuous supervision of each day's trading in futures contracts and futures contract options and the completion of a review of each day's trading no later than the next following trading day;

(f) Reviewing on a monthly basis the cumulative trading activity of each futures contracts and futures contract options account no later than the date of mailing of the monthly statement for each month;

(g) Monitoring performance as necessary of any duties that have been delegated by the futures contract principal or futures contract options principal, as the case may be; and

(h) Performing such other responsibilities as the Corporation may prescribe from time to time.

A designated futures contract principal or designated futures contract options principal may delegate by written direction the performance of any of his or her duties under this Rule 1800.5 (except those described in clauses (g) or (h) unless permitted by the Corporation and except those that are expressly stated not to be delegated) to any person whom he or she has reason to believe is capable of performing such duties; provided that the futures contract principal or futures contract options principal shall remain fully responsible for the performance of such duties.

1800.6. Notwithstanding Rule 1800.5 or any other Rule or Ruling, where a futures contracts or futures contract options account is opened by an acceptable institution, acceptable counter-party, another dealer on its own behalf or on behalf of a customer by an adviser or other person qualified pursuant to any applicable legislation to advise in respect of trading or to effect trades, as the case may be, by that specific account in futures contracts or options and provided further that such adviser or other person is required by applicable legislation or other authority to ensure investments by its customers are suitable for them:

(a) Where the person opening the account executes orders in its own name or identifies its clients by means of a code or symbols, the Dealer Member shall satisfy itself as to the credit worthiness of such person opening the account but shall not otherwise have any responsibility for the suitability of any trade for the customers of such person;

(b) Where the person opening the account executes orders in the names of its customers with no agreement that payment of the account is guaranteed by such person, the Dealer Member shall:

(i) Obtain full information concerning the customer with a view to determining the credit worthiness of the client; or

(ii) Obtain a letter of undertaking from the person opening the account which letter shall refer to the familiarity of the person with applicable rules of account supervision and shall contain a covenant to make the investigation contemplated by those rules and to advise, where known, if the customer is a partner, director, officer, employee or security holder of a dealer or an associate of any such persons or an affiliate of the dealer;

But the Dealer Member shall not have the responsibility for determining the suitability of any trade for the customers.

1800.5. Repealed.

1800.6. Repealed.

1800.7. EachA Dealer Member that trades in futures contracts shall file such reports on futures contracts trading as may be prescribed from time to timemust file any reports that are required by the Corporation. EachA Dealer Member shall report tomust report to the Corporation on a form of monthly position report approved by the Corporation the greater of the market value of the total long or the total short futures contracts for each commodity, determined as at the close of business on the last day of each month (or, where suchthat day is not a trading day, on the next preceding trading day). Such report shall be made on a form of monthly position report approved by the Corporation.

1800.8. AllA Registered Representative or Investment Representative must identify all non-customer orders entered for the purchase or sale of futures contracts or futures contract options shall be clearly identified as such. For the purpose of this Rule 1800.8 orders identified as. A "non-customer" shall includeorder is an order for an account in which:

(a) A Dealer Member;

(b) A partner, director, or officer of a Dealer Member; or

(c) An employee of a Dealer Member to the extent that such employee has received approval pursuant to the Rules of the Corporation;Has the Dealer Member or any Approved Person of the Dealer Member has a direct or indirect interest other than an interest in the commission charged.

1800.9. Each Dealer Member shall have and maintain with each customer trading in futures contracts or futures contract options anThe account agreement in writing definingrequired in Rule 1800.2(b) must define the rights and obligations between them on suchthe Dealer Member and the customer on the subjects asthat the Corporation may from time to time determine, and shall includeincluding the following:

(a) The rights of the Dealer Member to exercise discretion in accepting orders;

(b) The ~~obligation of the~~ Dealer Member's obligation with respect to errors and/or omissions and qualification of the time periods during which orders will be accepted for execution;

(c) The customer's obligation ~~of the customer~~ in respect of the payment of his or her indebtedness to the Dealer Member and the maintenance of adequate margin and security, including the conditions under which the funds, securities or other property held in the account or any other accounts of the customer may be applied to such indebtedness or margin;

(d) The obligation of the customer in respect of commissions, if any, on futures contracts or futures contract options bought and sold for his or her account;

(e) The obligation of the customer in respect of the payment of interest, if any, on debit balances in his or her account;

(f) The extent of the right of the Dealer Member to make use of free credit balances in the customer's account either in its own business or to cover debit balances in the same or other accounts, and the consent, if given, of the customer to the Dealer Member taking the other side to the customer's transactions from time to time;

(g) The rights of the Dealer Member in respect of raising money on and pledging securities and other assets held in the customer's account;

(h) The extent of the right of the Dealer Member to otherwise deal with securities and other assets in the customer's account and to hold the same as collateral security for the customer's indebtedness;

(i) The customer's obligation to comply with the rules pertaining to futures contracts or futures contract options with respect to reporting, position limits and exercise limits, as applicable, as established by the commodity futures exchange on which such futures contracts or futures contract options are traded or its clearing house;

(j) The right of the Dealer Member, if so required, to provide regulatory authorities with information and/or reports related to reporting limits and position limits;

(k) The acknowledgement by the customer that he or she has received the current risk disclosure statement ~~provided for in~~required by Rule 1800.2 ~~unless provided for by other approved means~~(d);

(l) The right of the Dealer Member to impose trading limits and to close out futures contracts or futures contract options under specified conditions;

(m) That minimum margin will be required from the customer in such amounts and at such times as the commodity futures exchange on which a contract is entered or its clearing house may prescribe and in such greater amounts at other times as prescribed by the Rules and as determined by the Dealer Member, and that such funds or property may be commingled and used by the Dealer Member in the conduct of its business;

(n) In the case of futures contract options accounts, the method of allocation of exercise assignment notices and the customer's obligation to instruct the Dealer Member to close out contracts prior to the expiry date; and

(o) Unless provided for in a separate agreement, the authority, if any, of the Dealer Member to effect trades for the customer on a discretionary basis, which authority shall be separately acknowledged in a part of the agreement prominently marked off from the remainder and shall not be inconsistent with any Rules relating to discretionary accounts.

1800.10. Rule 1800.9 ~~shall~~does not apply to the opening of a futures contracts or futures contract options account where the customer is a dealer on its own behalf, a dealer on behalf of its customer if the dealer is required to maintain with its customer an account agreement substantially similar to that described in Rule 1800.9, ~~or is~~ an adviser registered under any applicable legislation relating to trading or advising in respect of futures contracts or futures contract options ~~or is~~, an acceptable institution or an acceptable counter-party, provided the Dealer Member has obtained from the customer a letter of undertaking specifying:

(a) That the person opening the account will comply with the by-laws, rules and regulations of the exchange and clearing house upon or through which trades in contracts are to be effected including without limitation, the rules and regulations establishing position and reporting limits; and

(b) Where the customer also maintains with the same Dealer Member an account on which the customer is charged interest when there is a debit balance in the account, the conditions under which transfers of funds, securities or other property held in such other account will be made between accounts, unless provision is made elsewhere in a document signed by the person opening the account.

~~1800.11.~~

1800.11 (a) A ~~record shall be kept by each~~ Dealer Member ~~in its office~~must keep a record of any order or other instruction given or received with respect to a trade in a futures contract or futures contract option, whether executed or unexecuted, showing:

(i) ~~The~~the terms and conditions of the order or instruction and any modification or cancellation of the order or instruction;

(ii) ~~The~~the account to which the order or instruction relates;

(iii) ~~Where~~where the order relates to an omnibus account, the component accounts within the omnibus account on whose behalf the order is to be executed;

(iv) ~~Where~~where the order or instruction is placed by a person other than the customer in whose name the account is operated, the name, or designation, of the party placing the order or instruction;

(v) ~~The~~the time of the entry of the order or instruction, and, where the order is entered pursuant to the exercise of discretionary authority ~~of a~~by the Dealer Member, identification to that effect;

(vi) ~~To~~to the extent feasible, the time of altering instructions or cancellation; and

(vii) ~~The~~the time of report of execution.

(b) A ~~copy~~Dealer Member must keep in a form accessible to the Corporation the records of all unexecuted orders ~~shall be kept for a period of~~ two years and ~~a copy of~~ all executed orders ~~shall be kept for a period of six~~seven years from the date of the order.

RULE 1900

OPTIONS

1900.1. For the purposes of this Rule 1900, unless the subject matter or content otherwise requires:

"Option" means a call option or put option issued by ~~Trans Canada Options Inc., Intermarket Services Inc.~~the Canadian Derivatives Clearing Corporation, The Options Clearing Corporation~~, Intermarket Clearing Corporation, International Options Clearing Corporation~~ or any other corporation or organization recognized by the Board ~~of Directors~~ for the purposes of this Rule but ~~"option"~~ does not include a futures contract or futures contract option as defined in Rule 1800.1.

1900.2. ~~No Dealer Member, or any person acting on its behalf, shall trade or advise in respect of options unless:(a) One or more of the partners, directors or officers of the Dealer Member is designated in writing by the Dealer Member as a registered options principal who shall be responsible for the authorization of new options accounts and~~(a) A Dealer Member that trades in options on behalf of customers must designate a Supervisor qualified to supervise options trading to be responsible for approving customer accounts to trade in options and for establishing and maintaining procedures acceptable to the Corporation for the supervision of account activity involving options ~~and, where necessary to ensure continuous supervision, one or more alternates to such registered options principal are appointed by the Dealer Member~~, to ensure that the handling of customer business is within the bounds of ethical conduct, consistent with just and equitable principles of trade and not detrimental to the interests of the securities industry;

(b) ~~Each person designated as a registered options principal or alternated under subparagraph (a) or trading or advising in respect of options has been approved pursuant to Rule 1900.3;(c) Each of the Dealer Member's clients has entered~~A Dealer Member must enter into an options trading agreement ~~referred to~~ in compliance with Rule 1900.6 with a customer before effecting the customer's initial trade in options;

(c) The Supervisor designated under Rule 1900.2(a) or another Supervisor qualified to supervise options trading must approve each customer account of the Dealer Member for trading in options before the customer's first trade in options;

~~(d) The account of each client of the Dealer Member trading in options has been authorized in accordance with Rule 1900.4 by a registered options principal;~~

~~(e) The Member:~~

~~(i) Delivers or sends by prepaid mail to each client before the first trade made by such client of an option a copy of the then current disclosure statement, or similar disclosure document which complies with applicable securities legislation in the relevant jurisdiction, in respect of the option to be traded; and~~

(d) A Dealer Member must:

(i) provide to each customer the then current disclosure approved by the Corporation and obtain from the customer acknowledgement of its receipt before the customer's first trade in options;

(ii) ~~Delivers or sends by prepaid mail~~provide to each ~~client~~customer having an account approved for options trading ~~each new~~any amendments to the disclosure document in subsection (i); and

(iii) maintain records showing the names and addresses of all persons to whom a current disclosure statement or ~~similar disclosure document which complies with applicable securities legislation in the relevant jurisdiction in respect of the option to be traded; and~~an amendment thereto has been provided and the date or dates on which they were provided.

(f~~e~~) ~~The~~A Dealer Member ~~complies~~must comply with the applicable ~~Rules~~rules and ~~Rulings of the Corporation and~~rulings of any exchange, clearing corporation or other organization on or through which the option is traded or issued including, without limitation, those respecting position limits and exercise limits.

~~1900.3. The Corporation may grant approval as a registered options principal, alternate, or a person trading or advising in respect of options, to any applicant who has satisfied he applicable proficiency requirements outlined in Part 1 of Rule 2900.~~

~~1900.4. A registered options principal of a Dealer Member designated pursuant to Rule 1900.2 shall be responsible for establishing and maintaining procedures for account supervision and shall ensure that the handling of customers' business relating to options is in accordance with the Rules and Rulings including, in particular, Rules 1300.1, 1300.2 and 1900.2(a). As part of this supervision, each new account involving trading in options shall be opened pursuant to an appropriate account application form and the registered options principal shall have, prior to the completion of the initial transaction, specifically approved the opening of such account, provided that in the case of a branch office or sub-branch office, such approval (other than in respect of discretionary or managed accounts) may be given by a branch manager unless such branch manager is not qualified for the supervision of options accounts. All procedures to carry out the provisions of the Rules including Rule 1300 as it relates to options trading shall be in writing and subject to review by the Corporation. In the absence or incapacity of the designated registered options principal or when the trading activity of the Dealer Member requires additional qualified persons in connection with the supervision of the Dealer Member's business, an alternate, if any, shall assume the authority and responsibility of the registered options principal.~~

1900.3. Repealed.

1900.4. Repealed

1900.5. ~~Each~~A Dealer Member that trades in options ~~shall~~must file reports ~~in the form and manner and at the times~~as required by the Corporation on the following matters:

(a) All transactions together with a summary of open positions showing those that are covered and those that are uncovered; and

(b) All holdings on the previous day in aggregate long or short positions of any single class of options of the minimum amount or over as specified by the rules, regulations or by-laws of the exchange or the clearing house on or through which the option is traded. For each class of option the report must include the number of options ~~comprising~~in each position and, in the case of short positions, whether they are covered ~~shall be reported~~.

1900.6. ~~(a) Each Dealer Member shall have and maintain with each customer trading in options an~~ (a) The options trading agreement ~~in writing defining~~required in Rule 1900.2(b) must define the rights and obligations between ~~them on such subjects as~~ the Dealer Member ~~considers appropriate or which~~and the customer on the subjects that the Corporation may from time to time determine, ~~and shall include~~including the following:

(i) ~~The~~the rights of the Dealer Member to exercise discretion in accepting orders;

(ii) ~~The~~the Dealer Member's obligations with respect to errors and/or omissions and qualification of the time periods during which orders will be accepted for execution;

(iii) ~~The~~the method of allocation of exercise assignment notices;

(iv) ~~The~~the notice that maximum limits may be set on short positions and that during the last 10 days to expiry cash only terms may be applied and, in addition, that the Corporation may impose other rules affecting existing or subsequent transactions;

(v) ~~The~~the customer's obligation to instruct the Dealer Member to close out contracts prior to expiry date;

(vi) ~~The~~the customer's obligation to comply with applicable Rules and Rulings of the Corporation and any exchange, clearing corporation or other organization on or through which the option is traded or issued including, without limitation, those respecting position limits and exercise limits;

(vii) ~~The~~the acknowledgement by the customer that he or she has received the current ~~prospectus~~disclosure statement referred to in Rule 1900.2(~~e~~d);

(viii) ~~A~~a statement of the time limit set by the Dealer Member prior to which the client must submit an exercise notice; and

(ix) ~~Any~~any other matter ~~which~~required by the exchange, clearing corporation or other organization on or through which an option is traded or issued ~~may require~~.

(b) Notwithstanding Rule 1900.6(a), if the client is an acceptable institution or acceptable counter-party the Dealer Member may, in lieu of maintaining an options trading agreement, ~~have and maintain~~accept a letter of

undertaking from the acceptable institution or acceptable counter-party in which the institution or counter-party agrees to abide by the Rules, Rulings and requirements of the Corporation ~~or~~and of the exchange, clearing corporation or other organization on or through which an option is traded including those ~~of the same~~ relating to exercise and position limits.

~~1900.7. The Rules and Rulings of the Corporation relating to trading or advising in respect of securities other than this Rule 1900 shall apply to any Dealer Member or person acting on its behalf trading or advising in respect of options except to the extent they are inconsistent with this Rule 1900.~~

RULE 2500

MINIMUM STANDARDS FOR RETAIL CUSTOMER ACCOUNT SUPERVISION

Introduction

This Rule establishes minimum industry standards for ~~retail~~Retail Customer account supervision. ~~These standards were developed by the Joint Industry Compliance Group (now the Compliance and Legal Section).~~

These standards represent the minimum requirements necessary to ensure that a Dealer Member has in place procedures to properly supervise ~~retail~~Retail Customer account activity. The Rule does not:

(a) relieve Dealer Members from complying with specific SRO by-laws, rules, regulations and policies and securities legislation applicable to particular trades or accounts; or

(b) preclude Dealer Members from establishing a higher standard of supervision and in certain situations a higher standard may be necessary to ensure proper supervision.

Many of the standards in this Rule are taken from existing Rules of the Corporation and of other self-regulatory organizations. Securities legislation was generally not canvassed. To ensure that a Dealer Member has met all applicable standards, Dealer Members are required to know and comply with Corporation and other self-regulatory organization by-laws, rules, regulations and policies and 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 Rule has been used to mean a preliminary screening to detect items for further investigation or an examination of unusual trading activity or both. It does not mean that every trade meeting the selection process of this Rule must be investigated. The reviewer must use reasonable judgement in selecting the items for further investigation.

(b) ~~It has been assumed that~~While Dealer Members ~~have or will~~must provide the necessary resources and qualified ~~supervisors~~Supervisors to meet these standards, the standards do not specify what the resources must be. The Dealer Member must determine what resources and Supervisors are necessary based on the nature of the Dealer Member's business.

(c) The compliance with the know-your-client rule and suitability of investment requirements is primarily the responsibility of the ~~registered representative.~~Registered Representative. The supervisory standards in this Rule relating to know-your-client and suitability are intended to provide ~~supervisors with a check-list against which~~Supervisors with guidelines on how to monitor the handling of these responsibilities by the ~~registered representative.~~

~~A Dealer Member shall, for accounts where no commission is generated for trades placed by a client (such as a fee-based account where no commission is charged), develop supervisory policies for the review of such accounts at the branch and head office in lieu of the commission levels specified herein.~~A Dealer Member may, ~~with the written approval of its SRO, establish policies and procedures to carry out the supervision of client accounts pursuant to this Rule using criteria set out in, and by the persons designated by, such policies and procedures. Such policies and procedures may differ from this Rule in establishing the criteria used in selecting accounts for review and in the allocation of supervisory duties between Head Office and the Branch provided that, in the opinion of the SRO, the Dealer Member's policies and procedures are appropriate to supervise trading of its clients~~Registered Representative.

I. Establishing and Maintaining Procedures, Delegation and Education

Introduction

Effective self-regulation begins with the Dealer Member establishing and maintaining a supervisory environment which ~~both~~ fosters the business objectives of the Dealer Member and ~~maintains~~enables the ~~self-~~Dealer Member to meet regulatory ~~process~~requirements and its obligations to its customers. To that end a Dealer 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~~business conduct.

A. Establishing Procedures

1. A Dealer ~~Members~~Member must :

   (a) appoint ~~designated principals~~Supervisors and supervisory personnel who have the necessary knowledge of industry regulations and Dealer Member policy to properly perform ~~the~~their duties.~~;~~

   ~~2. Written~~(b) maintain written policies ~~must be established~~and procedures to document supervision requirements.~~; and~~

   ~~3. Written~~(c) supply written instructions ~~must be supplied~~ to all ~~supervisors~~Supervisors and alternates to advise them on what is expected of them.

~~4. All policies established or amended should have~~2. A Dealer Member must have a procedure establishing the approval process for new policies and procedures. Those having a significant impact on the Dealer Member's compliance system should be approved by senior management ~~approval~~.

B. Maintaining Procedures

1. ~~Evidence of supervisory reviews must be maintained. Evidence of the review, such as inquiries made, replies received, actions taken, date of completion etc. must be maintained for seven years and on-site for 1 year.2. An on-going review of sales compliance~~A Dealer Member must have a reasonable process to review the efficacy of its business conduct procedures and practices ~~must be undertaken both at head office and at branch offices.~~and rectify any deficiencies identified.

C. Risk-based procedures

1. A Dealer Member may select accounts for review on the basis of risk-based procedures, taking into account factors such as the size of account, nature of the trading, products traded, volume of activity, commissions generated or Approved Persons advising the customer.

2. A Dealer Member must document the basis used for selecting accounts for review in its policies and procedures.

3. The procedures for selecting accounts for review must be applied consistently across retail accounts.

~~3. Closer~~4. At a minimum, a Dealer Member must conduct enhanced supervision of trading by ~~approved persons~~Approved Persons who have had a history of questionable conduct ~~must be carried out both in the Branch and at Head Office~~. Evidence of such conduct can include trading activity that frequently raises questions in account reviews, frequent or serious client complaints, regulatory investigations, frequent account credit problems or failure to take appropriate remedial action on account problems identified.

~~C.~~ D. Delegation

1. ~~Tasks and procedures~~Supervisors may ~~be delegated~~delegate tasks but not responsibility.

2. ~~The~~A Dealer Member must advise ~~supervisors~~Supervisors of those specific functions that cannot be delegated~~. However, the accepting of discretionary accounts and the approval of new accounts may be delegated to qualified individuals~~.

3. The ~~supervisor~~Supervisor delegating the task must ensure that these tasks are being performed adequately and that exceptions are brought to his~~/~~ or her attention.

4. Those to whom tasks are delegated must have the qualifications to perform them and should be advised in writing what is expected.

~~D~~E. Education

1. ~~The~~A Dealer Member's ~~current sales practices and policies must be made available to~~ must provide all sales and supervisory personnel~~. Dealer Members~~ with the current sales practices and policies relevant to their functions. The provision can be done through access to electronic systems on which the policies and procedures are maintained, in which case personnel must be trained on use of the systems. A Dealer

Member should obtain and record acknowledgements from all sales and supervisory personnel that they have ~~received,~~ read and understood the policies and procedures relevant to their responsibilities.

2. ~~Introductory~~A Dealer Member must provide introductory and continuing education ~~should be provided for all approved persons~~to all Approved Persons on the Dealer Member's policies and procedures and any relevant changes to them.

3. ~~Information~~A Dealer Member must communicate information contained in compliance-related bulletins from the Corporation and other SROs and Regulatory Organizations ~~must be communicated~~ to all sales and other ~~approved persons. Procedures~~Approved Persons to whom it is relevant. A Dealer Member must maintain procedures relating to the method and timing of distribution of compliance-related bulletins ~~must be clearly detailed in the Dealer Member's written procedures~~.

F. Records

1. A Dealer Member must maintain records of supervisory review for seven years.

2. A Dealer Member must maintain the records in a manner that permits them to be provided to the Corporation promptly for the first two years after its creation and within a reasonable time thereafter.

3. The evidence must record who conducted the review and when, inquiries made, replies received and actions taken.

II. Opening New Accounts

Introduction

To comply with the "Know-Your-Client" rule each Dealer 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 representative~~Registered Representative and the supervisory staff to conduct the necessary review to ensure that recommendations made for any account are appropriate for the client and in keeping with his investment objectives. Maintaining accurate and current documentation will allow the ~~registered representative~~Registered Representative and the supervisory staff to ensure that all recommendations made for any account are appropriate for the client and in keeping with the client's investment objectives.

"Know-Your-Client" procedures must also be directed at meeting a Dealer Member's gatekeeper obligations by identifying clients that present a high risk of conducting improper activities in the securities markets. For example, if a Dealer Member is concerned about a client's reputation, the Dealer Member must make all reasonable inquiries to resolve the concern. This includes making a reasonable effort to determine, for example, the nature of the client's business. Dealer Members should refuse to accept instructions from clients who, in the Dealer Member's judgment, are engaged in illegal, unfair or abusive trading activities. "Know-Your-Client" procedures must also meet the requirements of anti-money laundering and terrorist financial legislation and regulations.

A. Documentation

~~1. A New Account Application Form (NAAF) must be completed for each new account. Such forms shall be duly completed to conform with the "Know-Your-Client" rule.~~

1. A Dealer Member must complete an account application for each new customer that conforms to the account information requirements of this Rule.

2. ~~The new account must be approved by the branch manager or the designated director, partner or officer, prior to the initial trade or promptly thereafter (next day). A NAAF must not be approved by the branch manager or the designated director, partner or officer until it is complete. 'Complete~~A Supervisor authorized in the Dealer Member's policies and procedures to do so must approve a fully completed new account application no later than the business day after the initial trade. 'Fully completed' means that all information necessary to assess suitability ~~and~~, creditworthiness and risk has been obtained (~~and~~but does not mean that the client must have signed the ~~NAAF~~application if the Dealer Member requires that the client ~~sign the NAAF)~~do so. Alternate procedures for securing interim approval ~~will be~~are acceptable to prevent undue delays provided the ~~branch manager~~Supervisor applies prompt final approval following the initial trade. If an account application received after the initial trade is not fully completed, a Dealer Member must restrict the account to liquidating trades only until a fully completed application has been approved.

3. Where the ~~client~~customer is an employee or agent of another registered dealer, a Dealer Member must obtain written approval ~~by~~of the customer's employer ~~to open an account must be obtained prior to the~~or principal before opening ~~of such an~~the account. ~~Such~~A Dealer Member must designate such accounts ~~must be designated~~ as non-client accounts.

4. A Dealer Member must maintain a complete set of documentation ~~must be maintained by the Dealer Member and registered representatives~~regarding each account. The Registered Representative(s) handling an account must maintain a copy of the ~~NAAF~~account application. A Dealer Member can meet this requirement by maintaining the information on the application in an electronic application accessible to the Registered Representative.

5. The ~~registered representative~~Registered Representative must update the ~~NAAF~~information on the application where there is a material change in client information. ~~Such~~ The update must be approved in the manner provided in ~~paragraph (2)~~subsection A.2. A Dealer Member must restrict the access of Registered Representatives and other persons to its electronic systems for maintaining know-your-client information so that material information cannot be changed without the required approval. A Dealer Member must have procedures independent of the Registered Representative for verifying material changes to customer information, such as changes of address, financial situation, investment objectives or risk tolerance.

6. When there is a change of ~~registered representative~~Registered Representative, the new ~~registered representative~~Registered Representative must verify the account information ~~on the NAAF~~ to ensure it is current. ~~There should be a signed acknowledgment by the new RR and branch manager that the NAAF~~ A Dealer Member must have a procedure for recording that the new Registered Representative has reviewed the customer information and that the appropriate Supervisor is satisfied that it has been reviewed and has approved any material changes. It is acceptable ~~to make~~for the Registered Representative to record and initial any changes on a photocopy of the ~~old NAAF (~~existing application provided that ~~the NAAF~~it was previously approved within two years of the review~~) and have the registered representative and branch manager initial any changes~~.

7. ~~Account numbers must not be assigned unless they are accompanied by~~A Dealer Member must not assign an account number for a new customer unless it has the proper name and address of the ~~client and such name and address must be supported by the NAAF no later than the following day~~customer.

B. Pending Documents

1. A Dealer ~~Members~~Member must have procedures in place to ensure supporting documents are received within a reasonable period of time of opening the account.

~~2. Incomplete NAAFs and documentation not received must be noted, filed in a pending documentation file and be reviewed on a periodic basis.~~

2. A Dealer Member must have systems or procedures to prevent:

- Trading on margin until the customer has entered into a margin agreement as described in Rule 200.1(i)(2)
- Trading in futures contracts or futures contract options until the customer has entered into a futures contracts or futures contract options trading agreement as described in Rule 1800.2(b)
- Trading in options until the customer has entered into an options trading agreement as described in Rule 1900.2(b)

3. ~~Failure~~A Dealer Member must have a system for recording pending account documentation and following up where it is not received in a reasonable time.

4. A Dealer Member must take positive action specified in its policies and procedures to obtain required documentation not obtained within 25 ~~clearing days must result in positive actions being taken. The nature of the positive action must be specified in the Dealer Member's written procedures~~business days of the opening of the account.

~~**C. Client Master Files**~~

C. Other Requirements

1. ~~Entering and amending client master files must be controlled and accompanied by proper documentation.~~2. ~~~~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~~Supervisor.

~~3.~~ 2. Returned mail ~~is to~~must be properly investigated and controlled by a person who is independent of the sales function ~~although such person~~but may be located within a ~~branch~~Business Location.

~~4.~~ 3. For supervisory purposes, "non-client" accounts, RRSP accounts, managed accounts, discretionary accounts and restricted accounts must be readily identifiable.

III. ~~Branch Office~~ Account Supervision Generally

Introduction

~~Each branch manager must undertake certain activities within the branch for purposes of assessing compliance with regulatory requirements and the Dealer Member's policies. These activities should be designed to identify failures to adhere to required policy and procedure and provide a means of revealing and addressing undesirable account activity.~~

~~A. Daily Reviews~~

~~1. The branch manager (or designate) must review the previous day's trading using any convenient means. This review is undertaken to attempt to detect the following:~~

Rule 38.1 requires a Dealer Member to implement systems of supervision and control to ensure that is reasonably designed to achieve compliance with the Rules and Rulings of the Corporation and all other laws, regulations and policies applicable to the Dealer Member's securities and commodity futures business. This section provides guidance on the means used by Dealer Members to meet that requirement with respect to retail customer accounts.

A. Supervisory Structure

1. In maintaining a supervisory structure and appointing Supervisors, a Dealer Member must take into consideration all factors necessary to ensure the adequacy of the supervision, including the products traded, type of trading, location of business and other functions of Supervisors.

2. Where the Dealer Member conducts retail business in business locations outside its Head Office, it should consider the following:

   - A resident Supervisor is in the best position to know the Registered Representatives in the office, know or meet many of the clients, understand local conditions and needs, facilitate business through the timely approval of new accounts and respond immediately to questions or problems. However, a Dealer Member may determine to what extent a resident Supervisor is necessary, considering factors such as:
     - The number of Registered Representatives in the location
     - The experience of Registered Representatives in the location
     - The nature of the business conducted in the location
     - The availability of a Supervisor or Supervisors in nearby locations
     - Other systems and controls mitigating the risk of remote supervision
   - Where a business location does not have a Supervisor working in the office, it must have an outside Supervisor assigned to it. A Dealer Member's policies and procedures and the instructions to the outside Supervisor must include provision for periodic visits to the location by the Supervisor as necessary to ensure that business is being conducted properly at the location.

3. While it is not always possible in a very small firm, a Dealer Member should ensure independent supervision of all retail accounts. A Supervisor's advice and trades for his or her own clients should be supervised by another Supervisor.

4. A Dealer Member must ensure that a Supervisor who advises and trades for his or her own clients devotes sufficient time and attention to his or her supervisory role.

5. A Dealer Member must ensure that Supervisors are qualified to supervise trading activity in all products traded by those under his or her supervision and any other services that they provide to Retail Customers. Where the Supervisor is not so qualified, the Dealer Member may divide the supervision between two or more Supervisors, but must ensure that there are appropriate mechanisms for them to communicate with one another, that the system ensures that the Dealer Member maintains an overall view of the client's situation and activity and that the assignment of responsibilities is clear and complete. One acceptable mechanism for doing so is the appointment of a primary Supervisor to whom the other Supervisor(s) provide advice with regard to the activity in the products or services the primary Supervisor is not qualified to supervise.

6. A Dealer Member's supervisory system must provide Supervisors with the information necessary to properly conduct their supervision. For account reviews this includes readily accessible client information and full information about account activity including relevant non-trade activity such as receipts, deliveries, deposits, withdrawals and journal entries.

7. A Dealer Member's supervisory system must provide for back-up during the absence of responsible Supervisors. For any prolonged absence of a Supervisor, the back-up Supervisor should be advised as necessary of any ongoing issues or concerns as necessary to provide proper supervision.

8. A Dealer Member must have systems of supervision and review to ensure that Supervisors are properly fulfilling their supervisory functions. This requirement can be met by a two-tiered system of first and second level reviews as described in this policy.

9. A Supervisor must have sufficient authority to take effective and timely remedial action where account activity or any other matter under his or her supervision falls or appears to fall outside the bounds of proper conduct, just and equitable principles of trade or good business practice. Escalation for a decision by a more senior Supervisor or Executive will be considered an acceptable form of action.

B. Supervision of Account Activity

A Dealer Member must have systems and procedures to supervise trading activity in retail accounts. The supervision must provide reasonable assurance that the Dealer Member is meeting its regulatory obligations, including those to clients such as suitability and gatekeeper obligations such as preventing market abuses. The following principles should be taken into consideration:

1. Reviews may be conducted on a pre-trade or post-trade basis. A properly crafted pre-trade review process may obviate or lessen the need for post-trade reviews.

2. Review procedures must cover all accounts. Where a Dealer Member offers both commission and fee-based accounts, it cannot select accounts for review solely on the basis of commission levels; it must also have a procedure for selecting fee-based accounts for review.

3. Reviews procedures must be able to identify patterns of activity that are not apparent by reviewing trades singly. For example, a review of trading over a longer period may raise questions about the overall level of activity even though each trade, looked at singly, appears to be suitable for the client.

4. Reviews must encompass non-trade issues such as late payment, margin problems, trade cancellations or transfers and flows of funds or securities that might be suspicious of money laundering.

5. The selection of activity for post-trade review may be done using a risk-based approach reasonably designed to detect improper activity. A risk-based approach can be used to determine the period of activity to be reviewed. For example, in some cases it may be appropriate to conduct longer-term reviews of monthly activity; in others they may consider shorter or longer periods.

6. Reviews must take into consideration, and reviewers must have access to, information about customers that may reasonably be assessed as presenting a higher risk of improper market activity such as those known by the Dealer Member to have access to material non-public information about issuers, holders of control blocks of public issuers and market professionals.

7. All account activity of employees and agents should be subject to review.

8. Reviews must be done on a timely basis, as established in the Dealer Member's policies and procedures. The timing should be reasonably designed to identify as early as possible matters requiring supervisory attention.

9. It is acceptable to use computer analysis to assist in selecting activity to be reviewed.

IV. Two-Tier Reviews

In a Dealer Member with multiple business locations conducting Retail Customer account activity, a two-tier system of post-trade activity reviews as described in this section is an acceptable structure.

The first level review will normally be conducted by a Supervisor at each business location having a resident Supervisor. Such reviews may also be carried out on a regional basis or at a Dealer Member's head office provided that the systems and resources to conduct the review are available at the regional or head office and that the Dealer Member has adequate systems and procedures for dealing with any issues identified.

The second-tier review will normally be conducted at the Dealer Member's Head Office, but may also be done regionally. The second level of supervision is generally not at the same depth as first level supervision. It should and be reasonably designed to identify serious account problems, including all those listed regarding first level reviews, that may have been missed by the first level supervision and ensure that first level supervision is being adequately conducted.

Where second level reviews are conducted by personnel or a department responsible only for monitoring activity, the Dealer Member should have procedures for referring issues that cannot be resolved with first level Supervisors to a higher level Supervisor who has the authority to resolve them.

A. First-Tier Daily Reviews

A first-tier review examines the previous day's trading using means described in the Dealer Member's procedures to attempt to detect the following:

- ~~lack of suitability;~~ unsuitable trading;
- undue concentration of securities in a single account or across accounts;
- excessive trade activity;
- trading in restricted securities;
- conflict of interest between ~~registered representative~~Registered Representative and client trading activity;
- excessive trade transfers, trade cancellations etc. indicating possible unauthorized trading;
- inappropriate / high risk trading strategies;
- quality downgrading of client holdings;
- excessive / improper crosses of securities between clients;
- improper employee trading;
- front running;
- account number changes;
- late payment;
- outstanding margin calls;
- violation of any internal trading restrictions~~.~~ ;

~~2. In addition to transactional activity, branch managers must also keep themselves informed as to other client related matters such as:~~

- ~~client complaints;~~
- ~~cash account violations;~~
- undisclosed short sales;
- ~~transfers of funds and securities between unrelated accounts or between pro and client accounts or deposits from pro to client accounts~~
- manipulative or deceptive trading ~~under margin.~~;
- insider trading.

B. First-Tier Monthly Reviews

1. ~~Client and branch personnel~~A first-tier monthly ~~statements must be reviewed on a monthly basis and~~review should encompass the areas of concern as ~~discussed in the~~described in subsection IV.A for daily activity ~~review~~reviews.

2. It ~~is recognized that it~~ may not be possible to review each statement produced. ~~However, branch managers must review all monthly statements which produce~~A first-tier monthly review starts with the selection, on a basis reasonably designed to detect improper account activity, of Retail Customer accounts to be reviewed. A Dealer Member can meet this obligation by reviewing the activity of all customers charged gross commissions of $1,500 or more for the month.

~~3. All non-client accounts generating a statement must be reviewed on a monthly basis.~~

3. A first-tier monthly review should include all non-client accounts showing any activity other than receipt of dividends or interest or payment of interest.

4. This review should be completed within 21 days of the period covered ~~by the statement~~ unless precluded by unusual circumstances.

~~**IV. Head Office Account Supervision**~~

~~**Introduction**~~

~~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 all the same elements.~~

~~**A. Daily Reviews**~~

C. Second-Tier Daily Reviews

1. ~~The criteria to be used to conduct daily head office~~Daily reviews ~~are~~should cover the following:

- trades meeting criteria established in the Dealer Member's policies and procedures. For this purpose, the following meet the requirement:
  - stock trades with a value over $5,000 and a price under $5.00 per share;
  - stock trades with value over $20,000 and a price at or over $5.00 per share;
  - bond trades over $100,000 value per trade;
- non-client trading;
-
- client accounts of producing ~~branch managers~~Supervisor;

- all client accounts not reviewed by a ~~branch manager~~Supervisor;
- trade cancellations;
- trading in restricted accounts;
- trading in suspense accounts;
- account number changes;
- late payment;
- outstanding margin calls.

2. Daily reviews should be completed ~~within a day~~no later than the business day following the activity unless precluded by unusual circumstances.

~~B~~D. Second-Tier Monthly Reviews

1. ~~The criteria to be used to conduct monthly head office reviews are, among other things,~~A Dealer Member must select accounts for second-tier review based on criteria established in its policies and procedures. This requirement can be met using the following criteria:
   - ~~clients' statements which generated~~accounts of customers charged more than $3,000 in commission during the month;
   - ~~where a branch manager is unable to conduct a review, all client and non-client accounts not reviewed by such branch manager which generated~~accounts of, all customers and non-clients charged more than $1,500 in commission during the month~~. This includes the~~ that were not subject to a first level review by the normal first level Supervisor, including the customer accounts of producing ~~branch managers~~first-tier Supervisors.
2. ~~Concentration of securities must be reviewed.~~
3. ~~For all reviews evidence should be kept of inquiries, responses and actions.~~4. Monthly reviews should be completed within 21 business days of the period covered ~~by the statement~~ unless precluded by unusual circumstances.

E. Other Activity

In addition to transactional activity, a Dealer Member must have systems and procedures designed to identify, deal with and keep first level Supervisors informed about other client related matters such as:

- client complaints;
- cash account violations;
- transfers of funds and securities between unrelated accounts or between non-client and client accounts or deposits from non-client to client accounts;
- trading while under margined.

V. Option Account Supervision

Introduction

~~Each~~A Dealer Member dealing in options or Exchange traded commodity or index warrants must ~~have an approved designated registered options principal (DROP) with~~appoint a Supervisor (the "Designated Options Supervisor") qualified to supervise options trading to have overall responsibility for the opening of new option accounts and the supervision of account activity. The Designated Options Supervisor must ensure that the Dealer Member implements policies and procedures reasonably designed to ensure that all recommendations made for any account are and continue to be appropriate for the ~~client~~customer and in keeping with his~~/~~ or her investment objectives. In addition, ~~there should be an alternate registered options principal (AROP)~~a Dealer Member should, where the level of options

trading activity warrants it, have a qualified Supervisor to assist in supervisory activities and to carry out the functions of the ~~DROP~~Designated Options Supervisor in his~~/~~ or her absence. All supervisory ~~reviews~~procedures regarding options must be conducted by options qualified ~~personnel. Any branch trading in options must have a branch manager who is options qualified~~Supervisors.

A. Account Opening and Approval

1. The option trading agreement and option account ~~approval form~~application must be completed~~, signed and on hand prior to~~ and the client's agreement recorded before the first trade. This applies to new accounts or existing accounts approved for other products.

2. The option trading agreement contents must meet or exceed Corporation requirements.

~~3. All accounts must be approved in writing by the option qualified branch manager or the DROP or the AROP.~~

3. The Designated Options Supervisor or another options qualified Supervisor must approve all accounts to trade in options and their approval and the date of approval must be recorded.

4. The approving Supervisor must determine whether the risk characteristics of the strategies the customer intends to use are appropriate for the customer and in keeping with his or her investment objectives and risk tolerance. If they are not, the approving Supervisor should restrict the account from using inappropriate strategies and note with the option account approval ~~form must indicate~~ any trading restrictions imposed. The Supervisor must ensure that the Registered Representative handling the account is aware of any restrictions.

B. ~~Daily~~Activity Reviews

1. ~~Branch offices must review all~~A Dealer Member's supervisory procedures must include reviews of option ~~daily~~ trading activity for suitability, exceeding position or exercise limits, concentration, commission activity, and exposure of uncovered positions.

2. A two-tier post-trade review system using the following criteria is not mandatory but will be deemed to meet the review requirement:

   - Daily first-tier review of all option trading activity;

   - ~~2. Head office must~~Daily second-tier review ~~on a daily basis all~~of opening option trading activity in excess of ten contracts in any one account~~. In all options accounts, Head Office must monitor all trading to ensure that positions or exercise limits are not exceeded~~.

C. Monthly Reviews

~~1. Branch offices must review on a monthly basis all option activity based on the same criteria as for regular equity trading activity.~~

~~2. Head office must review on a monthly basis all option activity based on the same criteria as for regular equity trading activity.~~

~~D. DROP Responsibilities~~

~~1. All discretionary and managed accounts must be reviewed by the DROP on a daily and monthly basis.~~

Accounts must be selected for monthly first- and second-tier reviews of account using criteria reasonably designed to detect improper activity. For accounts that trade in equities and fixed income products as well as options, it may be appropriate to use the criteria described in Section IV.D. For accounts in which the trading is more concentrated in options, the criteria should take into account the risks related to the type of strategies being used.

D. Other Options Policies and Procedures

A Dealer Member's policies and procedures must include, where applicable:

1. The Designated Options Supervisor's involvement in the approval and daily and monthly reviews of any discretionary managed accounts trading in options. The Designated Options Supervisor need not conduct

such reviews but should be aware of the use of options in discretionary or managed accounts and exercise heightened care to ensure that it is conducted and supervised properly.

2. ~~The DROP must establish procedures~~Procedures to ensure clients are notified of impending expiry dates.

3. ~~The DROP must establish procedures ensuring~~Procedures to ensure the dissemination of information on new developments in the trading and regulation of options ~~contracts~~ in a prudent and appropriate manner; and the dissemination to all clients of any changes in a firm's business policy.

~~4. The DROP must ensure that only registered individuals engage in trading or advising in respect of options.~~

~~5. All advertising and market letters to more than 10 clients relating to options, must be approved by the DROP.~~

~~6. Solicitation of clients to use option programmes must have DROP approval.~~

4. Procedures for notifying clients of significant changes in options contracts in which they have open positions resulting from changes to the underlying security.

5. Procedures to ensure that only qualified Registered Representatives or Investment Representatives engage in trading in or advising on options and that they do so only after the Corporation has been notified as required in Rule 18.

6. Procedures to review and approve advertising and sales literature relating to options. The Designated Options Supervisor need not conduct such reviews but should be aware of the use of advertising or sales literature and exercise heightened care to ensure that it is prepared and supervised properly.

7. Procedures requiring the review and approval of the use of and solicitation of clients to use option programmes.

VI. Future~~/~~ and Futures Options Account Supervision

Introduction

~~Each~~A Dealer Member dealing in futures ~~must have an approved designated registered futures principal (DRFP) with~~contracts and futures contract options must designate a Supervisor qualified to supervise futures contract and futures contract options trading (the "Designated Futures Supervisor") to have overall responsibility for the opening of new futures and futures options accounts and the supervision of account activity. ~~In addition, there should be an alternate registered futures principal (ARFP)~~The Designated Futures Supervisor must ensure that the Dealer Member implements policies and procedures reasonably designed to ensure that all recommendations made for any account are and continue to be appropriate for the client and in keeping with his or her investment objectives. In addition, a Dealer Member should, where the level of futures and futures options trading activity warrants it, have a qualified Supervisor to assist in supervisory activities and to carry out the functions of the ~~DRFP in his/her absence. The DRFP must ensure that only registered individuals engage in trading or advising in respect to futures and that all recommendations made for any account are and continue to be appropriate for the client and in keeping with his/her investment objectives. These minimum standards also apply to futures contract options and the designated registered futures options principal (DRFOP)~~Designated Futures Supervisor in his or her absence. All supervisory procedures regarding futures and futures options must be conducted by futures and futures options qualified Supervisors.

A. Account Opening and Approval

~~1. All accounts must be approved by a branch manager qualified as a futures contract supervisor, DRFP or ARFP prior to trading.~~

~~2. All clients must acknowledge in writing receipt of the information statement and summary disclosure statement prior to trading.~~

1. The futures trading agreement or letter of undertaking under Rule 1800.2(b) and futures account application must be completed, and the client's agreement recorded, before the first trade. This applies to new accounts or existing accounts approved for other products.

2. The Designated Futures Supervisor or another futures qualified Supervisor must approve all accounts and their approval and the date of approval must be recorded before any trading.

3. ~~All clients must sign a futures contract trading agreement or letter of undertaking prior to trading.4. Before granting approval to a client as a hedger procedures must be present for~~The Supervisor approving the opening of a hedging account must ensure that the Dealer Member has reliable evidence establishing acceptability of a client as a hedger ~~including use of~~. Such evidence can take the form of a hedge letter or statement ~~and~~supported by verification procedures.

4. The approving Supervisor must determine whether the risk characteristics of the futures contracts or futures contract options and strategies the customer intends to use are appropriate for the customer and in keeping with his or her investment objectives and risk tolerance. If they are not, the approving Supervisor should restrict the account from using inappropriate contracts or strategies and record with the futures account approval any trading restrictions imposed. The approving Supervisor must ensure that the Registered Representative handling the account is aware of any restrictions.

~~5. Any trading restrictions which apply to the account must be written on the new client account form.~~

5. A Dealer Member's futures account application or futures account agreement must include, other than for a hedging account, a risk limit for futures trading indicating the maximum amount of cumulative loss the client can afford to sustain. The maximum loss can be stated on a lifetime basis or on an annual basis. If the loss limit is stated on an annual basis, the Dealer Member must have a procedure to update it annually and the Designated Futures Supervisor or a Supervisor qualified to supervise futures must review and approve the updated loss limit and ensure that it takes into account any previously accumulated losses.

B. Supervision

~~1. Daily Reviews~~

~~• Dealer Members must conduct daily reviews of all futures and futures options trading activity. This review is undertaken to attempt to detect~~A Dealer Member's supervisory procedures must be reasonably designed to detect improper activity such as the following:

- excessive day trading resulting in trading large numbers of contracts;
- trading while under margin;
- trading ~~futures options~~ without approval of the account;
- trading beyond margin or credit limits;
- cumulative losses exceeding ~~stated risk capital (the aggregate of cumulative profits and cumulative losses)~~risk limits;
- ~~suitability;~~ unsuitable trading;
- inappropriate trading strategies;
- position and exercise limits;
- front running;
- conflicts of interest;
- excessive commission activity;

~~• all guaranteed accounts.~~

~~2. Monthly Reviews~~

~~• Dealer Members must conduct monthly reviews for futures and futures options trading activity. For example, a Dealer Member must review for:~~

- speculative trading in hedge accounts;

- ~~cumulative losses exceeding stated risk capital (the aggregate of cumulative profits and cumulative losses);~~
- ~~trading beyond approved limits;~~
- ~~continual awareness of pending delivery months;~~

- ~~acceptability of a client as hedger;~~ exposure to delivery through holding contracts into delivery month;
- ~~all guaranteed accounts.~~ excessive risk or loss to account guarantors.

~~C. Discretionary Accounts~~

C. Other Futures Policies and Procedures

A Dealer Member's policies and procedures must include where applicable:

1. ~~Futures discretionary accounts must meet all the requirements for equity discretionary accounts. In addition to the requirements for equity discretionary accounts a DRFP must conduct the following additional activities for futures and~~The Designated Futures Supervisor's involvement in the approval and daily and monthly reviews of discretionary or managed futures or futures options accounts. The Designated Futures Supervisor should approve any use of discretionary authority in a futures account.

~~2. Discretionary authority must be accepted in writing by DRFP.~~

~~3. DRFP must review monthly financial performance of each account.~~

2. A monthly review of the financial performance of each discretionary account by the Designated Futures Supervisor or a Supervisor qualified in futures contracts acting under the Designated Futures Supervisor's supervision.

3. Procedures to ensure that positions with pending delivery months are handled properly.

4. Procedures to ensure the dissemination of information on new developments in the trading and regulation of futures contracts, such as changes in minimum margin requirements, in a prudent and appropriate manner; and the dissemination to all clients of any changes in a firm's business policy.

5. Procedures to ensure that only qualified Registered Representatives engage in trading in or advising on futures contracts or futures contracts options and that they do so only after the Corporation has been notified as required in Rule 18.

6. Procedures to review and approve sales literature or advertising relating to futures The Designated Futures Supervisor need not conduct such reviews but should be aware of the use of futures advertising or sales literature and exercise heightened care to ensure that it is prepared and supervised properly.

7. Procedures requiring the review and approval of the use and solicitation of clients to use futures programmes.

VII. Discretionary ~~and Managed~~ Account Supervision

Introduction

Simple discretionary accounts are accounts where the discretionary authority has not been solicited.~~Managed accounts are investment portfolios solicited for discretionary management on a continuing basis where the Dealer Member has held itself out as having special skills or abilities in the management of investment portfolios.~~ and which are designed to accommodate customers who are frequently or temporarily unavailable to authorize trades.

~~The~~A Dealer Member must consent to accepting discretionary accounts and have the proper documentation and supervisory procedures in place to handle such accounts~~. A policy under which discretionary accounts are handled must be developed by the Dealer Member and distributed to all approved persons~~.

~~A. Simple Discretionary Accounts~~

~~1. Request for discretion must be approved in writing by a partner, director or officer (note: officer approval allowed only for Corporation and CDNX Members) appointed as the designated person.~~

A. Account Approval

1. The Designated Supervisor under Rule 1300.4(a) must approve any request for discretion.

2. A~~The Dealer Member and customer must enter into a~~ discretionary account agreement ~~must be signed by the client and the Dealer Member and must include~~that includes any restrictions to the trading ~~authorizations which must be agreed to by the partner, director or officer~~authorization. The Supervisor designated under Rule 1300.4(a) must approve the agreement.

~~3. No approved person may exercise discretionary authority over a client unless the account is maintained with the employer of the approved person.~~

3. The Dealer Member must identify discretionary accounts in its books and records in a manner that ensures that the Dealer Member can properly supervise them.

B. Entry of Orders

1. ~~All orders for discretionary accounts handled by registered representatives must be approved by a partner, director, branch manager or officer (if the officer is a designated person)~~A Supervisor must approve any discretionary order for a discretionary account handled by a Registered Representative prior to the order being entered unless:

   - the Registered Representative is qualified to provide discretionary management services and the Dealer Member has notified the Corporation that he or she provides those services, or

   - the Registered Representative is also an approved Executive.

2. ~~If~~A discretionary account may not hold any publicly traded securities of the Dealer Member~~,~~ or ~~that of~~ its affiliates~~, are publicly traded no discretionary account may hold those securities~~.

C. Account Supervision

1. ~~Discretionary client account reviews must include all discretionary accounts handled by registered representatives, branch managers, partners, directors and officers.~~The Supervisor designated under Rule 1300.4(a) must review discretionary orders entered by an Executive no later than next day unless the Executive is also a Registered Representative qualified to provide discretionary management services and the Dealer Member has notified the Corporation that he or she provides those services.

~~2. Persons conducting reviews must have adequate "Know-Your-Client" information readily available for each discretionary account.~~

~~3. The Dealer Member must identify in its books and records discretionary accounts to ensure that proper supervision can occur.~~

~~4. Orders initiated for client accounts by producing branch managers and partners, directors and officers must be reviewed no later than next day by head office.~~

~~**D. Termination of Agreement**~~

~~Either the client or the Dealer Member may cancel the authorization for discretion provided that it is in writing, giving an effective date which allows the client to make other arrangements. The Dealer Member must give the client 30 days notice.~~

~~**E. Managed Accounts**~~

~~1. The Dealer Member must be approved by the Corporation to handle managed accounts and comply with all the requirements which are specifically detailed in the Rules. Only qualified portfolio managers may handle managed accounts.~~

~~2. The client must sign a managed account agreement.~~

~~3. Dealer Member must accept managed accounts in writing signed by a designated partner, director, officer or branch manager. The authorization must indicate the client's investment objectives.~~

~~4. In a managed account the Dealer Member cannot without the written consent of the client:~~

- ~~Invest in an issuer in which the responsible person is an officer or director. No such investment may be made unless such office or directorship has been disclosed to the client;~~
- ~~Invest in a security which is being bought or sold from a responsible person's account to a managed account;~~
- ~~Make a loan to a responsible person or to an associate.~~

~~5. The Dealer Member must receive and acknowledge in writing cancellation by the client. The Dealer Member may terminate the arrangement in writing provided that it is not earlier than 30 days from the time of mailing.~~

VIII. Client Complaints

1. Each Dealer Member must establish procedures to deal effectively with client complaints.

   (a) The Dealer Member must acknowledge all written client complaints.

   (b) The Dealer Member must convey the results of its investigation of a client complaint to the client in due course.

   (c) Client complaints involving the sales practices of a Dealer Member, its partners, ~~directors, officers~~Directors, Officers or employees must be in writing and signed by the client and then handled by sales supervisors or compliance staff. Copies of all such written submissions must be filed with the compliance department of the Dealer Member.

   (d) Each Dealer Member must ensure that ~~registered representatives~~Registered Representatives and their supervisors are made aware of all complaints filed by their clients.

2. All pending legal actions must be made known to head office.

3. Each Dealer Member must put procedures in place so that senior management is made aware of complaints of serious misconduct and of all legal actions.

4. Each Dealer Member must maintain an orderly record of complaints together with follow-up documentation for regular internal/external compliance reviews. This record must cover the past two years at least.

5. Each Dealer Member must establish procedures to ensure that breaches of the by-laws, regulations, rules and policies of the SROs as well as applicable securities legislation are subjected to appropriate internal disciplinary procedures.

6. When a Dealer Member finds complaints to be a significant factor, internal procedures and practices should be reviewed, with recommendations for changes to be submitted to the appropriate management level.

RULE 2700

MINIMUM STANDARDS FOR INSTITUTIONAL CUSTOMER ACCOUNT OPENING, OPERATION AND SUPERVISION

Introduction

This Rule covers the opening, operation and supervision of ~~institutional~~Institutional Customer accounts, which are accounts for investors that are not individuals who meet the requirements of the definition herein.

This document sets out minimum standards governing the opening, operation and supervision of ~~institutional~~Institutional Customer accounts.

Pursuant to ~~Rules 29.27 and~~Rule 38, the Dealer Member must provide adequate resources and qualified ~~supervisors~~Supervisors to achieve compliance with these standards.

Adherence to the minimum standards requires that a Dealer Member have in place procedures to properly open and operate ~~institutional~~Institutional Customer accounts and monitor their activity. Following these minimum standards, however, does not:

(a) relieve a Dealer Member from complying with specific SRO by-laws, rules, regulations and policies and securities or other legislation applicable to particular trades or accounts; (e.g. best execution obligation, restrictions on short selling, order designations and identifiers, exposure of customer orders, trade disclosures);

(b) relieve a Dealer Member from the obligation to impose higher standards where circumstances clearly dictate the necessity to do so to ensure proper supervision; or

(c) preclude a Dealer Member from establishing higher standards.

Any account ~~which is not an institutional~~other than an Institutional Customer account governed by these standards will be governed by the Minimum Standards for Retail Customer Account Supervision (Rule 2500).

A Dealer Member may, with the written approval of the Corporation, establish policies and procedures that differ from this Rule, provided that, in the opinion of the Corporation, the Dealer Member's policies and procedures are appropriate to supervise trading of its ~~institutional customers~~Institutional Customers.

I. ~~Account Opening~~

~~A. Definition of an Institutional Customer~~

~~For the purposes of this Rule, the following are defined as institutional customers:~~

~~1. Acceptable Counterparties (as defined in Form 1);~~

~~2. Acceptable Institutions (as defined in Form 1);~~

~~3. Regulated entities (as defined in Form 1);~~

~~4. Registrants (other than individual registrants) under securities legislation;~~

~~5. A non-individual with total securities under administration or management exceeding $10 million.~~**B. Customer Suitability**

1. When dealing with an ~~institutional customer~~Institutional Customer, a Dealer Member must make a determination whether the customer is sufficiently sophisticated and capable of making its own investment decisions in order to determine the level of suitability owed to that ~~institutional customer.~~Institutional Customer. Where a Dealer Member has reasonable grounds for concluding that the ~~institutional customer~~Institutional Customer is capable of making an independent investment decision and independently evaluating the investment risk, then a Dealer Member's suitability obligation is fulfilled for that transaction. If no such reasonable grounds exist, then the Dealer Member must take steps to ensure that the ~~institutional customer~~Institutional Customer fully understands the investment product, including the potential risks.

2. In making a determination whether a customer is capable of independently evaluating investment risk and is exercising independent judgment, relevant considerations could include:

(a) any written or oral understanding that exists between a Dealer Member and its customer regarding the customer's reliance on the Dealer Member;

(b) the presence or absence of a pattern of acceptance of the Dealer Member's recommendations;

(c) the use by a customer of ideas, suggestions, market views and information obtained from other Dealer Members, market professionals or issuers particularly those relating to the same type of securities;

(d) the use of one or more investment dealers, portfolio managers, investment counsel or other third party advisors;

(e) the general level of experience of the customer in financial markets;

(f) the specific experience of the customer with the type of instrument(s) under consideration, including the customer's ability to independently evaluate how market developments would affect the security and ancillary risks such as currency rate risk; and

(g) the complexity of the securities involved.

3. ~~No~~A Dealer Member has no suitability obligation ~~shall exist pursuant to~~under Section ~~B(~~I.1~~) nor~~ and is not required to make a determination required under Section ~~B(2) where a~~I.2 when the Dealer Member executes a trade on the instructions of another Dealer Member, a portfolio manager, investment counsel, ~~limited~~exempt market dealer, bank, trust company or insurer.

4. A Dealer Member has no suitability obligation under Section I.1and is not required to make a determination required under Section I.2 when the Dealer Member executes a trade on the instructions of an Institutional Customer that:

(a) is also a "permitted client", as defined in National Instrument 31-103;

(b) is not a customer described in Section I.3; and

(c) has waived, in writing, the protections offered to them under Sections I.1 and I.2.

~~C~~II. New Account Documentation and Approval

~~The following documentation is required for each institutional account opening:~~

1. ~~New~~A Dealer Member must complete a new customer account form for each Institutional Customer~~; and~~

2. ~~All documentation as required by the self-regulatory organization governing the Dealer Member.The~~A Dealer Member may establish a 'master' new account documentation file, containing full documentation and, when opening sub-accounts, it should refer to the principal or 'master' account with which it is associated.

3. Each new account must be approved by ~~the~~a Supervisor who is Department Head or his~~/~~ or her designate ~~who is a partner, director or officer,~~ prior to the initial trade or promptly thereafter. Such approval must be ~~documented~~recorded in writing or auditable electronic form.

4. The Dealer Member must exercise due diligence to ensure that the new customer account form is updated whenever the Dealer Member becomes aware that there is a material change in customer information.

~~II~~III. Establishing and Maintaining Procedures, Delegation and Education

Introduction

Effective self-regulation begins with the Dealer Member establishing and maintaining a supervisory environment which fosters both the business objectives of the Dealer Member and maintains the self-regulatory process. To that end, a Dealer Member must establish and maintain procedures which are supervised by qualified individuals.

A. Establishing Procedures

1. A Dealer ~~Members~~Member must appoint a ~~designated supervisor, who is a partner, director or officer and~~Designated Supervisor, who has the necessary knowledge of industry regulations and Dealer Member policy to properly establish procedures reasonably designed to ensure adherence to regulatory requirements and to supervise Institutional Customer Accounts.

2. Written policies must be established to document and communicate supervisory requirements.

3. All ~~supervisory alternates~~alternate Supervisors must be advised of and adequately trained for their supervisory roles.

4. All policies established or amended should have senior management approval.

B. Maintaining Procedures

1. Evidence of supervisory reviews must be maintained for seven years and on-site for one year.

2. A periodic review of supervisory policies and procedures should be carried out by the Dealer Member to ensure they continue to be effective and reflect any material changes to the businesses involved.

C. Delegation of Procedures

1. Tasks and procedures may be delegated but not responsibility.

2. The ~~supervisor~~Supervisor delegating the task must take steps designed to ensure that these tasks are being performed adequately and that exceptions are brought to his/her attention.

3. Those to whom tasks are delegated must have the qualifications to perform them and should be advised in writing what is expected.

D. Education

1. The Dealer Member's current sales practices and policies must be made available to all sales and supervisory personnel. Dealer Members should obtain and record acknowledgements from all sales and supervisory personnel that they have received, read and understood the policies and procedures relevant to their responsibilities.

2. A major aspect of self-regulation is the ongoing education of staff. The Dealer Member is responsible for appropriate training of institutional sales and trading staff, as well as ensuring that Continuing Education requirements are being met.

E. Compliance Monitoring Procedures

Dealer Members must establish compliance procedures for monitoring and reporting adherence to rules, regulations, requirements, policies and procedures. A compliance monitoring system should be reasonably designed to prevent and detect violations. The compliance monitoring system will ordinarily include a procedure for reporting results of its monitoring efforts to management and, where appropriate, the board of directors or its equivalent.

~~III~~IV. Supervision of Accounts

A. Policies and Procedures

1. Dealer Members must implement policies and procedures for the supervision and review of activity in the accounts of ~~institutional customers.~~Institutional Customers. Such procedures may include periodic reviews of account activity, exception reports or other means of analysis.

2. The policies and procedures may vary depending on factors including, but not limited to, the type of product, type of customer, type of activity or level of activity.

3. The policies and procedures should outline the action to be taken to deal with problems or issues identified from supervisory reviews.

B. Account Activity Detection

The supervisory procedures and the compliance monitoring procedures should be reasonably designed to detect account activity that is or may be a violation of applicable securities legislation, requirements of any self-regulatory organization applicable to the account activity and the rules and policies of any marketplace on which the account activity takes place, and would include the following:

1. Manipulative or deceptive methods of trading;

2. Trading in restricted list securities;

3. Employee or proprietary account ~~frontrunning~~front running;

4. Exceeding position or exercise limits on derivative products; and

5. Transactions raising a suspicion of money laundering or terrorist financing activity.

~~I~~V. Client Complaints

1. Each Dealer Member must establish procedures to deal effectively with client complaints.

   (a) The Dealer Member must acknowledge all written client complaints.

   (b) The Dealer Member must convey the results of its investigation of a client complaint to the client in due course.

   (c) Client complaints involving the sales practices of a Dealer Member, its partners, ~~directors, officers~~Directors, Officers or employees must be in writing and signed by the client and then handled by sales supervisors or compliance staff. Copies of all such written submissions must be filed with the compliance department of the Dealer Member.

   (d) Each Dealer Member must ensure that ~~registered representatives~~Registered Representatives and their ~~supervisors~~Supervisors are made aware of all complaints filed by their clients.

2. All pending legal actions must be made known to head office.

3. Each Dealer Member must put procedures in place so that senior management is made aware of complaints of serious misconduct and of all legal actions.

4. Each Dealer Member must maintain an orderly record of complaints together with follow-up documentation for regular internal/external compliance reviews. This record must cover the past two years at least.

5. Each Dealer Member must establish procedures to ensure that breaches of the by-laws, regulations, rules and policies of the SROs as well as applicable securities legislation are subjected to appropriate internal disciplinary procedures.

6. When a Dealer Member finds complaints to be a significant factor, internal procedures and practices should be reviewed, with recommendations for changes to be submitted to the appropriate management level.

RULE 2900

PROFICIENCY AND EDUCATION:

PART I – PROFICIENCY REQUIREMENTS

INTRODUCTION

This Part I outlines the proficiency requirements for ~~registered persons~~Approved Persons. These proficiency requirements consist of both entrance thresholds and on-going requirements.

DEFINITIONS

For the purpose of this Part I:

"Recognized Foreign Self-regulatory Organization" means a foreign self-regulatory organization which offers a reciprocal treatment to Canadian applicants and which has been approved as such by Corporation.

All courses and examinations, unless otherwise specified, are administered by ~~the Canadian Securities Institute~~CSI Global Education Inc.

A. Proficiency Requirements for ~~Registered~~Approved Persons

~~**1. Branch Managers and Sales Managers**~~

1. Supervisors

(a) The proficiency requirements for ~~a sales manager, branch manager, assistant or co-branch manager under Rule 4.9~~Supervisors of Approved Persons dealing with retail customers are:

(i) Two years of relevant experience ~~as a securities dealer or working in the office of a broker or dealer in securities in various positions~~working for a Dealer Member or such equivalent experience as may be acceptable to the applicable District Council;

(ii) ~~Approval as a registered representative; and~~(iii) ~~Successful~~If supervising Registered Representatives dealing with retail customers, successful completion of

A. The ~~Branch Managers~~Canadian Securities Course,

~~B. The Options Supervisors Course if the Dealer Member trades options with the public and~~

B. The Conduct and Practices Handbook Course

C. The Branch Managers Course, and

D. The Effective Management Seminar within 18 months ~~of approval.~~after beginning to supervise Registered Representatives dealing with retail customers.

(iii) If supervising Investment Representatives only, successful completion of The Canadian Securities Course, The Conduct and Practices Handbook Course, and the Branch Managers Course

(iv) If supervising options trading, successful completion of The Derivatives Fundamentals Course, The Options Licensing Course and The Options Supervisor Course.

(v) If supervising futures contract and futures contract options, successful completion of:

A. 1. The Derivatives Fundamentals Course and the Futures Licensing Course ("FLC"), or

2. The FLC and the National Commodity Futures Examination administered by the National Association of Securities Dealers;

and

B. the Canadian Commodity Supervisors Examination.

(b) The proficiency requirements for ~~a branch manager (non-retail), assistant branch manager (non-retail) or co-branch manager (non-retail) under Rule 4.9~~Supervisors of Approved Persons dealing with Institutional Customer accounts only are:

(i) Successful completion of:

A. The Branch Managers Course, or

B. the Partners, Directors and Senior Officers ~~Qualifying Examination~~Course, and

(ii) The proficiency requirements necessary to conduct or supervise any trading activity carried on by Approved Persons ~~in the branch~~he or she supervises.

(c) A Chief Compliance Officer who is also a Supervisor of a producing Supervisor is exempt from the proficiency requirements in 1(a)(ii) provided he/she complies with the proficiency requirements of Dealer Member Rule 2900 Part I A.2B.

(d) If an individual is approved as a Supervisor as of September 28, 2009, the requirement to complete The Derivatives Fundamentals Course and The Options Licensing Course in subsection 1(a)(iv) does not apply to the individual so long as the individual remains approved in the Supervisor category.

(e) An individual who supervises a Registered Representative under Rule 1300.15(c) must satisfy the applicable proficiency requirements of Rule 2900 Part I A.6 or section 3.11 (Portfolio manager – advising representative) of National Instrument 31-103 *Registration Requirements and Exemptions* and is, for greater certainty, exempt from the requirements in Rule 2900 Part I A.1(a)(i), (ii) and (v).

(f) A partner, Director, or Officer who is a Designated Supervisor under Rule 1300.2 or 1300.4 and who undertook such a supervisory role immediately prior to September 28, 2009 is exempt from the applicable requirements in subsection 1(a)(ii) and (iii) provided:

(i) the individual successfully completed the Partners, Directors and Senior Officers Course;

(ii) the individual seeks approval as a Supervisor within 6 months of September 28, 2009; and

(iii) the individual remains approved in the Supervisor category.

2. ~~Partners,~~ Directors and ~~Officers~~Executives

The proficiency requirements for a ~~partner, director or officer~~Director or Executive of a Dealer Member under Rule 7.3 or 7.4 are:

(a) Successful completion of the Partners, Directors and Senior Officers ~~Qualifying Examination;~~ Course;

(b) If also approved in a trading category, ~~retail or non-retail~~successful completion of the applicable proficiency requirements; and

(c) If supervising the handling of customer accounts, successful completion of the applicable proficiency requirements for ~~Investment Representative, Registered Representative, or Registered Representative – Options/Futures; and(c) If supervising a branch or sub-branch of a Dealer Member that is approved to trade options with the public, successful completion of the Options Supervisors Course.~~a Supervisor.

2A. Chief Financial Officers

1. The proficiency requirements for a chief financial officer pursuant to Rule ~~7.5~~38.6 are:

(a) A financial accounting designation, university degree or diploma, or equivalent work experience; and

(b) Successful completion of the Partners, Directors and Senior Officers ~~Qualifying Examination~~Course, and

(c) Successful completion of the Chief Financial Officers Qualifying Examination.

~~(d) Notwithstanding subsection (c) above, any person approved as Chief Financial Officer with a Dealer Member as of January 5, 2004, shall have until July 5, 2005 to successfully complete the Chief Financial Officer Examination in order to maintain approval as Chief Financial Officer. A person approved as acting~~2. A person approved as Acting Chief Financial Officer pursuant to Rule 7.5(b) shall have 90 days from the date of termination of the Chief Financial Officer to successfully complete of the Chief Financial ~~Officer~~Officers Qualifying Examination.

~~(e)~~3. Any Dealer Member that fails to provide to the Corporation proof of successful completion of the Chief Financial Officers Qualifying Examination within 10 days of the dates specified for successful completion in ~~paragraph (d)~~section 2 above, or such other dates as the Corporation may specify, shall be liable for and pay to the Corporation such fees as the Board ~~of Directors~~ may from time to time prescribe.

2B. Chief Compliance Officers

1. The proficiency requirements for a chief compliance officer pursuant to Rule ~~38.6~~38.7 are:

(a) Successful completion of the Partners, Directors and Senior Officers Qualifying Examination; and

~~And~~

(b) Successful completion of the Chief Compliance Officers Qualifying Examination.

~~(c) Notwithstanding subsection (b) above, any person approved as Chief Compliance Officer with a Dealer Member as of October 1, 2007 shall have until April 1, 2009 to successfully complete the Chief Compliance Officers Examination in order to maintain approval as Chief Compliance Officer.~~

~~(d)~~2. A person approved as acting Chief Compliance Officer pursuant to Rule 38.7 shall have 90 days from the date of termination of the Chief Compliance Officer to successfully complete of the Chief Compliance Officers Qualifying Examination.

~~(e)~~3. Any Dealer Member that fails to provide to the Corporation proof of successful completion of the Chief Compliance Officers Qualifying Examination within 10 days of the dates specified for successful completion in ~~paragraphs (c) or (d)~~section 2 above, or such other dates as the Corporation may specify, shall be liable for and pay to the Corporation such fees as the Board ~~of Directors~~ may from time to time prescribe.

3. Registered Representatives and Investment Representatives

The proficiency requirements for a ~~registered representative or investment representative~~Registered Representative or Investment Representative under Rule 18.3 are:

(a) (i) Successful completion of

(~~i~~A) The Canadian Securities Course prior to commencing the training programme described in subsection (~~iii~~C),

(~~ii~~B) The Conduct and Practices Handbook Course, and

(~~iii~~C) Either

A. ~~For a registered representative, except for a registered representative (non-retail), a three-month~~1. For a Registered Representative dealing with retail customers a 90-day training programme during which time he or she has been employed with a Dealer Member firm on a full-time basis, or

~~B.~~2. For an ~~investment representative~~Investment Representative, a 30-day training programme during which time he or she has been employed with a Dealer Member firm on a full-time basis;

or

(~~b~~ii) Successful completion of the New Entrants Course, where the person was registered or licensed with a recognized foreign self-regulatory organization within three years prior to application with the Corporation;

and

(c) ~~For a registered representative other than a registered representative (mutual funds) or a registered representative (non-retail)~~b) For a Registered Representative dealing with retail customers other than a Registered Representative dealing in mutual funds only, successful completion of the Wealth Management Essentials course within 30 months ~~of~~after his or her approval as a ~~registered representative~~Registered Representative.

4. Registered Representatives ~~(Mutual Funds)~~ and Investment Representatives ~~(~~Dealing only in Mutual Funds~~)~~

The proficiency requirement for a ~~registered representative (~~Registered Representative or Investment Representative dealing only in mutual funds~~) or investment representative (mutual funds)~~ under Rule 18.7 is successful completion of:

(a) The Canadian Securities Course;

(b) The Canadian Investment Funds Course administered by IFIC,

(c) The Investment Funds in Canada Course administered by ~~the~~CSI Global Education Inc. and previously The Institute of Canadian Bankers, or

(d) The Principles of Mutual Funds Investment Course administered by ~~the Canadian Trust~~CSI Global Education Inc. and previously The Institute of Canadian Bankers.

5. Traders

~~5.1~~ The proficiency requirement for a Trader under Rule 500.2 is:

(a) for a Trader on the Toronto Stock Exchange or TSX Venture Exchange, the Trader Training Course, unless an exemption is granted by either exchange or its market regulation services provider.

(b) for a Trader on the Bourse de Montreal, the proficiency requirements determined to be acceptable by Bourse de Montreal.

6. Portfolio ~~Managers~~Management

6.1 The proficiency requirements for a ~~portfolio manager under Rule 1300.9~~Registered Representative providing discretionary portfolio management for managed accounts that do not trade in futures contracts are:

(a) Successful completion of

(i) The ~~Portfolio Management Techniques~~Conduct and Practices Handbook Course, and

~~A. The Professional Financial Planning Course prior to August 31, 2002, or~~

(ii) either

A. The courses necessary to attain the Canadian Investment Manager Designation, or

B. The ~~Investment Management Techniques Course, or~~(ii) ~~The~~ three levels of the Chartered Financial Analyst programme administered by the CFA Institute;

and

(b) Experience

(i) Of at least three years as ~~an associate portfolio manager~~a Registered Representative or a research analyst for a Dealer Member,

(ii) Of at least two years ending not more than three years ~~as a registered representative and two years of experience as an associate portfolio manager,~~ prior to the date of application as a registered advisor under Canadian securities legislation managing on a discretionary basis at least $5,000,000 in aggregate assets; or

(iii) Of at least five years ending not more than three years ~~as a research analyst for a Dealer Member firm of a self-regulatory organization and two years as an associate portfolio manager, or~~(iv) ~~Of at least five years~~prior to the date of application, managing a portfolio of $5,000,000 or more, on a discretionary basis, while employed by a government-regulated institution~~; and~~.

~~(c) For a period of not less than one year ending within the three years prior to the date of application, having had assets with an aggregate value of not less than $5,000,000 under his or her direct administration on a discretionary basis.~~

6.2 The proficiency requirements for a Registered Representative exercising discretionary authority over managed accounts trading in futures contracts ~~portfolio manager under Rule 1300.12~~or futures contracts options are:

(a) Successful completion of

(i) The Canadian Commodity Supervisors Exam, the Futures Licensing Course ~~(FLC)~~ and the courses necessary to attain the Derivatives Market Specialist Designation; or

(ii) The Chartered Financial Analyst program administered by the CFA Institute; and

(b) Experience ending no earlier than three years prior to the date of ~~application of:(i)~~ commencing to exercise discretionary authority over managed accounts of at least 5 years as an Approved Person ~~in one of the categories of futures contracts approval under Rule 1800.3, or~~

~~(ii) of at least 3 years as an Approved Person in one of the categories of futures contracts approval under Rule 1800.3 and two years as an associate futures contracts portfolio managerduring which periods the applicant shall have been~~ actively engaged in advising on ~~trades in or managing futures contracts~~

~~accounts.~~and trading in futures contracts or futures contracts options for customer accounts.

~~6.3 The proficiency requirements for an associate portfolio manager under Rule1300.10 are:~~

~~(a) Successful completion of~~

~~(i) The Portfolio Management Techniques Course and~~

~~A. The Professional Financial Planning Course prior to August 31, 2002, or~~

~~B. The Investment Management Techniques Course, or~~

~~(ii) The three levels of the Chartered Financial Analyst programme administered by the CFA Institute; and~~

~~(b) Experience~~

~~(i) Of at least two years as a registered and practising registered representative, or~~

~~(ii) Of at least two years as a research analyst for a member firm of a self-regulatory organization.~~

~~6.4 The proficiency requirements for an associate futures contracts portfolio manager under Rule 1300.13 are:~~

~~(a) Successful completion of~~

~~(i) The Futures Licensing Course and the courses necessary to attain the Derivatives Market Specialist Designation; or~~

~~(ii) The Chartered Financial Analyst program administered by the CFA Institute; and~~

~~(b) Experience ending no earlier than three years prior to the date of application of at least 3 years as an Approved Person in one of the categories of futures contracts approval under Rule 1800.3, during which period the applicant shall have been actively engaged in advising on trades in futures contracts.~~

7. Commodity Futures Contracts and Options

7.1 The proficiency requirements for a ~~person~~Registered Representative or Investment Representative who deals with customers ~~with respect to~~in futures contracts or futures contract options ~~under Rule 1800.3~~ are successful completion of:

(a) The Derivatives Fundamentals Course and the Futures Licensing Course ~~(the "FLC")~~, or

(b) The ~~FLC~~Futures Licensing Course and the National Commodity Futures Examination ~~(the "NCFE")~~ administered by the Financial Industry Regulatory Authority~~; and~~

~~7.2 The proficiency requirements for a futures contract principal or alternate, futures contract options principal or alternate or branch manager authorized to supervise accounts trading in futures contracts or futures contract options are:~~

~~(a) Successful completion of the requirements of section 7.1, and(b) Successful completion of the Canadian Commodity Supervisors Examination~~.

8. Options

The proficiency requirement for ~~options under Rule 1900.3 and Rule 18.9 are~~a Registered Representative or Investment Representative who deals with customers in options is successful completion of:

(a) The Derivatives Fundamentals Course and the Options Licensing Course, ~~and~~ or

~~(b) The Options Supervisors Course, in the case of a registered options principal or alternate.~~

(b) The Series 7 administered by the Financial Industry Regulatory Authority and the New Entrants Course.

B. General Exemption

~~(a) Notwithstanding this Part I, the~~1. The applicable District Council~~, pursuant to~~ may, under Rule 20.24, ~~may~~ exempt any person or class of persons from the proficiency requirements on such terms and conditions, if any, as the applicable District Council may see fit.

~~(b)~~2. The Board ~~of Directors~~ may prescribe a fee to be paid for any exemption application under paragraph ~~(a).~~1.

RULE 2900

PROFICIENCY AND EDUCATION:

PART II – EXAMINATION REWRITE REQUIREMENTS AND COURSE AND EXAMINATION EXEMPTIONS

INTRODUCTION

This Part II outlines the exemptions that exist from the Corporation's course and examination requirements for persons seeking to be approved in certain categories of registration. This Part II exempts applicants from the requirement to rewrite courses or examinations that they have successfully completed if they are re-entering the industry, re-registering in a category of registration or seeking initial registration within certain time periods. This Part II also provides exemptions to applicants from the requirements to initially write a course or examination if the applicant satisfies one of the specifically enumerated exemptions based on grandfathering provisions or the successful completion of other courses and examinations. In addition, this Part II sets out the basis upon which the applicable District Council may grant a discretionary exemption.

~~**DEFINITIONS**~~

~~For the purposes of this Part II:~~

~~"Approved Person" means an applicant that is approved by and registered with a self-regulatory organization in a category of registration;~~

~~"Recognized Foreign Self-regulatory Organization" means a foreign self-regulatory organization which offers a reciprocal treatment to Canadian applicants and which has been approved as such by Corporation.~~

All courses and examinations, unless otherwise specified, are administered by ~~the Canadian Securities Institute~~CSI Global Education Inc.

~~**A. Exemptions from Rewriting**~~

A. Requirement to Rewrite Courses and Examinations

1. Current and Former Approved Persons

(a) An applicant for approval who was previously approved in a category must complete a proficiency requirement if he or she has not been approved in the category to which the requirement applies within the three years prior to the date of application.

(b) An Applicant or Approved Person who has previously conducted a particular type of business must complete a proficiency required to conduct the type of business if he or she has not conducted the type of business within the past three years.

(c) Sections (a) and (b) do not apply to new or amended course requirements not required when the Approved Person or applicant for approval was initially approved or began to conduct the type of business, provided that the applicant was not under a requirement to complete the course or examination when the applicant's approval lapsed.

2. Approval after Completion of Course

Subject to Rule 2900 Part II A.3(a), an applicant for approval who has never been approved or conducted a type of business must rewrite a required examination or course if it was completed more than two years before the date of application.

3. The Canadian Securities Course

~~An applicant shall be exempt from rewriting~~(a) An applicant for approval who has not previously been approved in a category or conducted a type of business requiring the Canadian Securities Course who would otherwise be required to rewrite the course is exempt if the applicant has:

~~(a) Was an approved person, currently seeking to re-enter the industry within the same category of approval within three years of their approval lapsing;~~

~~(b) Is an approved person, currently seeking re-approval within the same category of approval within three years of that category of approval lapsing; (c) Is currently seeking approval within three years of successfully completing the Canadian Securities Course or within two years of successfully completing~~ i) within two years prior to the date of application, successfully completed any one of the Professional Financial Planning Course, Wealth Management Techniques Course, Wealth Management Essentials Course, Investment Management Techniques Course, Portfolio Management Techniques Course, or the three levels of the Chartered Financial Analyst programme administered by the CFA Institute, or;

~~(d) Is seeking re-approval within three years of successfully completing~~ii) within three years prior to the date of application completed the New Entrants Course or the Canadian Securities Course

(b) An applicant for approval in a category or to conduct business requiring the Canadian Securities Course who was approved in a category or conducted a type of business requiring the course and who would otherwise be required to rewrite the course is exempt if the applicant has within three years prior to the date of application successfully completed any one of the Professional Financial Planning Course, Wealth Management Techniques Course, Wealth Management Essentials Course, Investment Management Techniques Course, Portfolio Management Techniques Course, or the three levels of the Chartered Financial Analyst programme administered by the CFA Institute~~; or~~.

~~(e) Is seeking approval or re-approval within three years of successfully completing the New Entrants Course.~~

~~2. The Conduct and Practices Handbook Course~~

~~An applicant shall be exempt from rewriting the Conduct and Practices Handbook Course if the applicant~~

~~(a) Was an approved person, currently seeking to re-enter the industry within the same category of approval within three years of their approval lapsing;~~

~~(b) Is an approved person, currently seeking re-approval within the same category of approval within three years of that category of approval lapsing; or~~

~~(c) Is currently seeking approval within two years of successfully completing the Conduct and Practices Handbook Course.~~

~~3. The Partners, Directors and Senior~~

4. The Chief Financial Officers Qualifying Examination

~~An applicant shall be exempt from rewriting the Partners, Directors and Senior Officers Qualifying Examination if the applicant~~

~~(a) Was an approved person, currently seeking to re-enter the industry within the same category of approval within three years of their approval lapsing;~~

~~(b) Is an approved person, currently seeking re-approval within the same category of approval within three years of that category of approval lapsing; or~~

~~(c) Is currently seeking approval within two years of successfully completing the Partners, Directors and Senior Officers Qualifying Examination.~~

~~3A. Chief Financial Officers Examination~~

~~An applicant shall be exempt from rewriting the Chief Financial Officers Examination if the applicant:~~

~~(a) is currently approved in any category other than chief financial officer and~~An applicant who would otherwise be required to rewrite the Chief Financial Officers Qualifying Examination is exempt if the applicant has, since completing the ~~chief financial officers examination, has~~Chief Financial Officers Qualifying Examination, been working closely with and providing assistance to ~~the chief financial officer;~~ a Chief Financial Officer.

~~(b) was approved as chief financial officer with a member and is currently seeking re-approval as such within three years of the end of the last approval date;~~

~~(c) is currently seeking approval as chief financial officer within two years of successfully completing the chief financial officers examination.~~

~~4.~~ 5. The Derivatives Fundamentals Course

(a) An applicant ~~shall be exempt from rewriting~~for approval or an Approved Person who will be dealing with customers in futures contracts or futures contracts options and who would otherwise be required to rewrite the Derivatives Fundamentals Course is exempt if the applicant

~~(a) Was an approved person currently seeking to re-enter the industry within the same category of approval within three years of their approval lapsing;(b) Is an approved person, currently seeking re-approval within the same category of approval within three years of that category of approval lapsing; or(c) Is currently seeking approval within two years of successfully completing the Derivatives Fundamentals Course,~~ or Approved Person has within the past two years completed the Futures Licensing Course~~, Options Licensing course,~~ or the Canadian Commodity Supervisors Examination~~;~~.

~~5. The Options Licensing Course~~

(b) An applicant ~~shall be exempt from rewriting the Options Licensing Course~~for approval or an Approved Person who will be dealing with customers in options and who would otherwise be required to rewrite the Derivatives Fundamentals Course is exempt if the applicant

~~(a) Was an approved person, currently seeking to re-enter the industry within the same category of approval within three years of their approval lapsing; (b) Is an approved person, currently seeking re-approval within the same category of approval within three years of that category of approval lapsing; or(c) Is currently seeking approval within two years of successfully completing~~ or Approved Person has within the past two years completed the Options Licensing Course.

6. ~~The Options Supervisors Course~~

~~An applicant shall be exempt from rewriting the Options Supervisors Course if the applicant~~

~~(a) Was an approved person, currently seeking to re-enter the industry within the same category of approval within three years of their approval lapsing;~~

~~(b) Is an approved person, currently seeking re-approval within the same category of approval within three years of that category of approval lapsing; or~~

~~(c) Is currently seeking approval within two years of successfully completing the Options Supervisors Course.~~**~~7.~~ The Futures Licensing Course**

~~An applicant shall be exempt from rewriting the Futures Licensing Course if the applicant~~

~~(a) Was an approved person, currently seeking to re-enter the industry within the same category of approval within three years of their approval lapsing;~~

~~(b) Is an approved person, currently seeking re-approval within the same category of approval within three years of that category of approval lapsing; or~~

~~(c) Is currently seeking approval within two years of successfully completing the Futures Licensing Course or Canadian Commodity Supervisors Examination; or~~

~~(d) Is seeking re-approval within three years of successfully completing the Canadian Commodity Supervisors Examination.~~

~~8. The Canadian Commodity Supervisors Examination~~

~~An applicant shall be exempt from rewriting the Canadian Commodity Supervisors Examination if the applicant~~

(a) Was an approved person, currently seeking to re-enter the industry within the same category of approval within three years of their approval lapsing;

(b) Is an approved person, currently seeking re-approval within the same category of approval within three years of that category of approval lapsing; or

(c) Is currently seeking approval within two years of successfully completing the Canadian Commodity Supervisors Examination.

9. The Branch Managers Course

An applicant shall be exempt from rewriting the Branch Managers Course if the applicant

(a) Was an approved person, currently seeking to re-enter the industry within the same category of approval within three years of their approval lapsing;

(b) Is an approved person, currently seeking re-approval within the same category of approval within three years of that category of approval lapsing; or

(c) Is currently seeking approval within two years of successfully completing the Branch Managers Course.

10. The wealth management essentials course

An applicant for approval or an Approved Person who will be dealing with customers in futures contracts or futures contracts options and who would otherwise be required to rewrite the Futures Licensing Course is exempt if the applicant or Approved Person has within the past two years completed the Canadian Commodity Supervisors Examination.

7. The Wealth Management Essentials course

An applicant shall be exempt from rewritingwho would otherwise be required to rewrite the Wealth Management Essentials Course if the applicant

(a) Was registered or approved in any trading capacity, including registration or approval restricted to mutual funds but excluding approval as a Trader (Bourse de Montreal), Trader (TSX), or Trade (TSX VN) and is currently seeking to re-enter the industry within three years of the registration or approval lapsing;

(b) Is currently registered or approved in any trading capacity, including registration or approval restricted to mutual funds but excluding approval as a Trader (Bourse de Montreal), Trader (TSX), or Trader (TSX VN) and is seeking registration in another category;(c) Isis exempt if the applicant is currently seeking approval within two years of successfully completing the Investment Management Techniques Course, Portfolio Management Techniques Course, 3 levels of the Certified Financial Analyst programme administered by the CFA Institute, Professional Financial Planning Course, or the Wealth Management Techniques Course; or.

(d) Is seeking re-approval within three years of successfully completing the Investment Management Techniques Course, Portfolio Management Techniques Course, 3 levels of the Certified Financial Analyst programme administered by the CFA Institute, Professional Financial Planning Course or the Wealth Management Techniques Course.

11. Repealed.

12. The Canadian Investment Funds Course

An applicantm shall be exempt from rewriting the Canadian Investment Funds Course administered by IFIC if the applicant

(a) Was an approved person, currently seeking to re-enter the industry within the same category of approval within three years of their approval lapsing;

~~(b) Is an approved person, currently seeking re-approval within the same category of approval within three years of that category of approval lapsing; or~~

~~(c) Is currently seeking approval within two years of successfully completing the Canadian Investment Funds Course.~~

~~**13. The Investment Funds in Canada Course**~~

~~An applicant shall be exempt from rewriting the Investment Funds in Canada Course administered by the Institute of Canadian Bankers if the applicant~~

~~(a) Was an approved person, currently seeking to re-enter the industry within the same category of approval within three years of their approval lapsing;~~

~~(b) Is an approved person, currently seeking re-approval within the same category of approval within three years of that category of approval lapsing; or~~

~~(c) Is currently seeking approval within two years of successfully completing the Investment Funds in Canada Course.~~

~~**14. The Principles of Mutual Funds Investment Course**~~

~~An applicant shall be exempt from rewriting the Principles of Mutual Funds Investment Course administered by the Canadian Trust Institute if the applicant~~

~~(a) Was an approved person, currently seeking to re-enter the industry within the same category of approval within three years of their approval lapsing;~~

~~(b) an approved person, currently seeking re-approval within the same category of approval within three years of that category of approval lapsing; or~~

~~(c) Is currently seeking approval within two years of successfully completing the Principles of Mutual Funds Investment Course.~~

8. 30-Day Training Program

An applicant is exempt from re-doing the 30-day training program required under Rule 2900 Part I 3(a)(i)(C)2 if, within three years prior to application, the applicant was approved for trading for Retail Customers in securities with a Dealer Member or by a recognized foreign regulatory authority or self regulatory organization or a Canadian securities regulatory authority.

9. 90-Day Training Program

An applicant is exempt from re-doing the 90-day training program required under Rule 2900 Part I 3(a)(i)(C)1 if, within three years prior to application, the applicant was approved for trading and advising Retail Customers in securities with a Dealer Member or by a recognized foreign regulatory authority or self regulatory organization or a Canadian securities regulatory authority.

B. Exemptions from Writing

1. Current and Former Approved Persons

(a) An Approved Person is exempt from completing a new or amended proficiency requirement not in place at the time he or she was approved in a category unless the rule setting the requirement specifically provides otherwise.

(b) An applicant for approval who was an Approved Person is exempt from completing a new or amended proficiency requirement not in place at the time of the applicant's previous approval in the same category for three years after the applicant's previous approval lapsed unless the rule setting the requirement specifically provides otherwise.

2. The Canadian Securities Course

An applicant ~~shall be~~is exempt from writing the Canadian Securities Course if the applicant

~~(a) Has been approved continuously as a registered representative since November, 1962;~~

~~(b) Has successfully completed the previously existing Corporation Course I and II, or the previously existing Corporation Course I and has acquired five consecutive years of industry experience and~~

~~(i) Is currently approved as an investment representative or registered representative,~~

~~(ii) Was an approved person, currently seeking to re-enter the industry within the same category of approval within three years of their approval lapsing, or~~

~~(iii) Is an approved person, currently seeking re-approval within the same category of approval within three years of the approval of that category lapsing;~~

~~(c) Has successfully completed the Canadian Investment Management program, Parts I and II and~~

~~(i) Is currently approved as an investment representative or a registered representative,~~

~~(ii) Was an approved person, currently seeking to re-enter the industry within the same category of approval within three years of the approval lapsing,~~

~~(iii) Is an approved person, currently seeking re-approval within the same category of approval within three years of that category of approval lapsing, or(d) Has~~ has previously been registered or licensed with a recognized foreign regulatory authority or self-regulatory organization and has successfully completed the New Entrants Course within two years of the application~~.~~

~~**2. The Conduct and Practices Handbook Course**~~

~~An applicant shall be exempt from writing the Conduct and Practices Handbook Course if the applicant~~

~~(a) Has been approved continuously as a registered representative since December, 1971; or~~

~~(b) Has successfully completed the Partners, Directors and Senior Officers Qualifying Examination and~~

~~(i) Is currently approved as a partner, director, senior officer, investment representative or registered representative,~~

~~(ii) Was an approved person, currently seeking to re-enter the industry within the same category of approval within three years of their approval lapsing,~~

~~(iii) Is an approved person, currently seeking re-approval within the same category of approval within three years of that category of approval lapsing, or(iv) Is currently seeking approval within two years of successfully completing the Partners, Directors and Senior Officers Qualifying Examination~~.

~~**3. The Partners, Directors and Senior Officers Qualifying Examination**~~

~~An applicant shall be exempt from writing the Partners, Directors and Senior Officers Qualifying Examination if the applicant has been approved continuously as a partner, director or senior officer since March 1973.~~**4. The Derivatives Fundamentals Course**

An applicant ~~shall be~~is exempt from writing the Derivatives Fundamentals Course if the applicant ~~has successfully completed the Canadian Options Course, the National Commodity Futures Examination, the Canadian Futures Examinations, Futures Licensing Course, or Canadian Commodity Supervisors Examination, and~~

~~(a) Is currently approved as a registered representative options,~~

~~(b) Was an approved person, currently seeking to re-enter the industry within the same category of approval within three years of their approval lapsing,~~

~~(c) Is an approved person, currently seeking re-approval within the same category of approval within three years of that category of approval lapsing, or~~(d) ~~Is currently~~is seeking approval within two years of successfully completing the Options Course Licensing Course, the Options Supervisors Course, the Futures Licensing Course, or the Canadian Commodity Supervisors Examination.

~~5.~~4. The ~~Options Licensing~~Wealth Management Essentials Course

~~An applicant shall be exempt from writing the Options Licensing Course if the applicant has successfully completed the Canadian Options Course and~~

~~(a) Is currently approved as a registered representative options,~~

~~(b) Was an approved person, currently seeking to re-enter the industry within the same category of approval within three years of their approval lapsing, or~~

~~(c) Is an approved person, currently seeking re-approval within the same category of approval within three years of that category of approval lapsing.~~

~~6. The Options Supervisors Course~~

~~An applicant shall be exempt from writing the Options Supervisors Course if the applicant~~

~~(a) Has been approved continuously as a registered options principal since January, 1978; or~~

~~(b) Has successfully completed the Registered Options Principals Qualifying Examination and~~

~~(i) Is currently approved as a registered options principal,~~

~~(ii) Was an approved person, currently seeking to re-enter the industry within the same category of approval within three years of their approval lapsing, or~~

~~(iii) Is an approved person, currently seeking re-approval within the same category of approval within three years of that category of approval lapsing.~~

~~7. The Futures Licensing Course~~

~~An applicant shall be exempt from writing the Futures Licensing Course if the applicant has successfully completed the National Commodity Futures Examination and the Canadian Commodity Futures Examination, or the Canadian Futures Examination, Parts I and II, or the National Commodity Futures Examination and the Canadian Futures Examination, Part II, or the Canadian Commodity Futures Examination and the Canadian Futures Examination, Part I and~~

~~(a) Is currently approved as a registered futures contract representative options,~~

~~(b) Was an approved person, currently seeking to re-enter the industry within the same category of approval within three years of their approval lapsing, or~~

~~(c) Is an approved person, currently seeking re-approval within the same category of approval within three years of that category of approval lapsing.~~

~~8. The Canadian Commodity Supervisors Examination~~

~~An applicant shall be exempt from writing the Canadian Commodity Supervisors Examination if the applicant has been approved continuously as a commodity supervisor since January, 1980.~~

9. The Branch Managers Course

An applicant shall be exempt from writing the Branch Managers Course if the applicant

(a) Has been approved continuously as a branch manager since August 1, 1987;

(b) Has successfully completed the Canadian Branch Managers Qualifying Examination and

(i) Is currently approved as a branch manager,

(ii) Was an approved person, currently seeking to re-enter the industry within the same category of approval within three years of their approval lapsing, or

(iii) Is an approved person, currently seeking re-approval within the same category of approval within three years of that category of approval lapsing.

(c) Has been approved continuously as a sales manager since January 24, 1994, unless the sales manager is currently seeking approval as a branch manager; or

(d) Has successfully completed both

(i) The Partners, Directors and Officers Qualifying Examination prior to February 1, 1990 and

A. Is currently approved as a partner, director or officer,

B. Was an approved person, currently seeking to re-enter the industry within the same category of approval within three years of their approval lapsing, or

C. Is an approved person, currently seeking re-approval within the same category of approval within three years of that category of approval lapsing, and

(ii) The Registered Options Principals Qualifying Examination and

A. Is currently approved as a designated registered options principal, an alternate registered options principal or a branch manager,

B. Was an approved person, currently seeking to re-enter the industry within the same category of approval within three years of their approval lapsing, or

C. Is an approved person, currently seeking re-approval within the same category of approval within three years of that category of approval lapsing.

10. The WEALTH MANAGEMENT ESSENTIALS COURSE

An applicant shall beis exempt from writing the Wealth Management Essentials Course if the applicant

(a) Was registered for a minimum of two years with a Canadian securities regulatory authority or recognized foreign self-regulatory organization prior to the coming into force of this Rule 2900, Part II, and has not been out of the industry for a period of greater than three years;

(b) Has successfully completed Part 1 or 2 of the Canadian Investment Management program, and

(i) Is currently approved as an investment representative or a registered representative,

(ii) Was an approved person, currently seeking to re-enter the industry within the same category of approval within three years of their approval lapsing,

(iii) Is an approved person, currently seeking re-approval within the same category of approval within three years of the approval of that category lapsing,

(iv) Is currently seeking approval within two years of successfully completing the Wealth Management Techniques Course or the Portfolio Management Techniques Course; or

(v) Is seeking re-approval within three years of successful completion of the Wealth Management Techniques Course or the Portfolio Management Techniques Course. (c) Hasi) has successfully completed the Investment Management Techniques Course or the Professional Financial Planning Course prior to July 4, 2008, having been enrolled prior to July 4, 2006,2006 and

(i) Is currently approved as an investment representative or a registered representative,

(ii) Was an approved person, currently seeking to re-enter the industry within the same category of approval within three years of their approval lapsing,

(iii) Is an approved person, currently seeking re-approval within the same category of approval within three years of the approval of that category lapsing,(iv) Is currentlyii) is seeking approval within two years of successfully completing the Wealth Management Techniques Course or the Portfolio Management Techniques Course; or

(v) Is seeking re-approval within three years of successful completion of the Wealth Management Techniques Course or the Portfolio Management Techniques Course.

11. Repealed.

12. The Canadian Investment Funds Course

An applicant shall be exempt from writing the Canadian Investment Funds Course administered by the Investment Funds Institute of Canada if the applicant has successfully completed the Canadian Securities Course and

(a) Is currently approved as a registered mutual fund representative,

(b) Was an approved person, currently seeking to re-enter the industry within the same category of approval within three years of their approval lapsing,

(c) Is an approved person, currently seeking re-approval within the same category of approval within three years of that category of approval lapsing, or

(d) Is currently seeking approval within three years of successfully completing the Canadian Securities Course.

13. The Investment Funds in Canada Course

An applicant shall be exempt from writing the Investment Funds in Canada Course administered by the Institute of Canadian Bankers if the applicant

(a) Has successfully completed the Canadian Securities Course and

(i) Is currently approved as a registered mutual fund representative,

(ii) Was an approved person, currently seeking to re-enter the industry within the same category of approval within three years of their approval lapsing,

~~(iii) Is an approved person, currently seeking re-approval within the same category of approval within three years of that category of approval lapsing, or~~

~~(iv) Is currently seeking approval within three years of successfully completing the Canadian Securities Course.~~

~~**14. The Principles of Mutual Funds Investment Course**~~

~~An applicant shall be exempt from writing the Principles of Mutual Funds Investment Course administered by the Canadian Trust Institute if the applicant~~

~~(a) has successfully completed the Canadian Securities Course and~~

~~(i) Is currently approved as a registered mutual fund representative,~~

~~(ii) Was an approved person, currently seeking to re-enter the industry within the same category of approval within three years of their approval lapsing,~~

~~(iii) Is an approved person, currently seeking re-approval within the same category of approval within three years of that category of approval lapsing, or~~

~~(iv) Is currently seeking approval within three years of successfully completing the Canadian Securities Course.~~

~~**15. 90-DAY AND 30-DAY TRAINING PROGRAMS**~~

(b) Is seeking re-approval within three years of successfully completing the Wealth Management Techniques Course or the Portfolio Management Techniques Course.

5. 90-Day Training Program

An applicant is exempt from completing the 90-day training program if, within three years prior to application, the applicant was approved or registered with a Dealer Member, securities dealer or investment dealer; or by a recognized foreign regulatory authority or self regulatory organization; or as an investment advisor by a Canadian securities regulatory authority in a capacity permitting trading and advising in securities to Retail Customers.

6. 30-Day Training Program

An applicant ~~shall be~~is exempt from completing the ~~90-day or~~ 30-day training program ~~required under Rule 2900 Part 1, section 3(a)(iii) A and B~~ if, within three years prior to application, the applicant was registered with a ~~member~~Dealer Member, securities dealer or investment dealer; or by a recognized foreign regulatory authority or self regulatory organization; or as an investment advisor by a Canadian securities regulatory authority in a capacity permitting trading in securities to Retail Customers.

C. Discretionary Exemptions

(a) The applicable District Council~~, pursuant to~~ may, under Rule 20.24, ~~may~~ grant an exemption from the requirement to rewrite or write any required course or examination, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption, if the applicant demonstrates adequate experience and/or successful completion of industry courses or examinations that the applicable District Council, in its opinion, determines is an acceptable alternative to the required proficiency.

(b) The Board ~~of Directors~~ may prescribe a fee to be paid for any exemption application under this Rule 2900 Part II.

RULE 2900

PROFICIENCY AND EDUCATION:

PART III – THE CONTINUING EDUCATION PROGRAM

INTRODUCTION

This Part III establishes a Continuing Education Program (the Program) for Participants for the duration of their career in the securities industry. The Program operates on three-year cycles, the first commencing in January 1, 2000. The start-to-end date of each cycle is the same for all participants.

A. DEFINITIONS

For the purposes of this Part III,

"Course" – means a single integrated course, or a series of pertinent courses, seminars, presentations or programs that in total meet the minimum time and content requirements of the course guidelines which form part of this Rule 2900, Part III.

"Participants" – means certain "~~approved persons~~Approved Persons" employed by Dealer Members of the Investment Industry Regulatory Organization of Canada (the Corporation), and approved by the Corporation in the registration categories listed in Schedule 1 of this Rule 2900, Part III (Schedule 1).

B. PARTICIPATION IN THE PROGRAM

Unless exempted under Rule 2900, Part III, Participants must complete continuing education courses based on their categories of approval, as specified in Schedule 1.

In general, individuals who are registered to do retail business and give advice must complete a 12-hour Compliance course and a 30-hour Professional Development course during each three-year cycle. Those who are not registered to do retail business (who deal with institutions only) and those not registered to give advice (such as ~~investment representatives~~Investment Representatives) must complete a 12-hour compliance course only, each cycle.

C. EXEMPTION FROM THE WHOLE OR PART OF THE PROGRAM

1. Partners, Directors and Officers approved in non-trading and non-supervisory categories of registration are exempt from the Program.

2. Participants approved as ~~registered representatives, branch managers, sales managers, and futures principals~~Registered Representatives and Supervisors, who have been continuously approved in a trading capacity for more than 10 years as of January 1, 2000 by a recognized Self Regulatory Organization (the Corporation, Toronto Stock Exchange, Montreal Exchange, Alberta Stock Exchange or Vancouver Stock Exchange), are exempt from the requirement to complete a professional development course. However, such persons shall complete a compliance course in each cycle throughout their career.

D. ENTRY OF RECENTLY APPROVED PERSONS

Recently ~~approved persons~~Approved Persons shall not participate in the Program during the first three years of registration but shall do so, depending on the year of registration, as follows:

1. If the three years since registration ends in year one of a cycle, then the ~~approved person~~Approved Person becomes a participant in that cycle.

2. If the three years since registration ends in year two or three of a cycle, then the ~~approved person~~Approved Person becomes a participant in next three-year cycle of the Program.

3. For greater clarification, refer to the Chart below.

An Approved Person first approved in the year:	Starts CE in this Cycle
1997	Cycle 1: 1/Jan/2000 to 31/Dec/2002
1998	Cycle 2: 1/Jan/2003 to 31/Dec/2005
1999	Cycle 2: 1/Jan/2003 to 31/Dec/2005
2000	le 2: 1/Jan/2003 to 31/Dec/2005
2001	Cycle 3: 1/Jan/2006 to 31/Dec/2008
2002	Cycle 3: 1/Jan/2006 to 31/Dec/2008
2003	Cycle 3: 1/Jan/2006 to 31/Dec/2008
2004	Cycle 4: 1/Jan/2009 to 31/Dec/2011
2005	Cycle 4: 1/Jan/2009 to 31/Dec/2011
2006	Cycle 4: 1/Jan/2009 to 31/Dec/2011
2007	Cycle 5: 1/Jan/2012 to 31/Dec/2014
2008	Cycle 5: 1/Jan/2012 to 31/Dec/2014
2009	Cycle 5: 1/Jan/2012 to 31/Dec/2014
2010	Cycle 6: 1/Jan/2015 to 31/Dec/2017
2011	Cycle 6: 1/Jan/2015 to 31/Dec/2017
2012	Cycle 6: 1/Jan/2015 to 31/Dec/2017

E. RE-ENTRY OF APPROVED PERSONS

1. Individuals who were registered more than three years ago and who are returning to the industry will be required to complete their CE requirements in the cycle in which they return.

2. Individuals who are required to re-write the Canadian Securities Course (CSC) and Conduct & Practices Handbook (CPH) in order to re-qualify for registration, may apply these two courses towards the CE requirements for the cycle in which they were re-written. In this circumstance, the CSC can not be carried forward to fulfill the Professional Development requirement in the following cycle.

3. Individuals who have previously been exempted from the Professional Development requirement under Rule 2900, Part III, C.2, who become re-registered after a gap of more than three years, will no longer qualify for the exemption from the Professional Development requirement. These individuals will be required to complete the CE requirement as per their registration category. An exception will be made for individuals who were previously exempted from the Professional Development requirement, who voluntarily participate in the Corporation's CE program during the gap in registration. These individuals will not be required to re-write the CSC and CPH, and will maintain the exemption from the Professional Development requirement when they become re-registered.

F. CHANGE IN CATEGORIES WITHIN A CYCLE

1. Any change, in year one of a cycle, from a registration category that requires a compliance course only, to a category requiring both a compliance course and a professional development course, will require completion of the courses for the new category. If the change occurs in year two or three of the cycle, the requirements are those of the previous category. The requirements for the new position will commence in the next cycle.

2. For changes from a category that requires both a compliance course and a professional development course to a category requiring a compliance course only, the requirements are those of the participant's registration category at the end of the cycle.

3. For changes from a Non-Trading officer category to a Supervisory category that requires a compliance course only, the requirements are the compliance course as per the new category. If the change occurs in year two or three of the cycle, the requirements are those of the previous category. The requirements for the new position will commence in the next cycle.

4. Any change back to a category requiring both a compliance course and a professional development course made after the change as described in subsection 1 will immediately return the participant to the requirement for completion of both the compliance and the professional development course. Should such a change occur too close to the end of the cycle to permit completion of the professional development course, the Dealer Member firm may apply for a hardship extension, pursuant to Section N.

5. An application for a change of category as described in subsection 3 in the first year of the cycle, following a change as described in subsection 2, must be accompanied by an explanation from the Dealer Member

sufficient to satisfy the Corporation that the category changes are not in an effort to avoid completion of the Program's requirements.

G. VOLUNTARY PARTICIPATION IN THE PROGRAM

1. Persons who terminate their approval after January 1, 1997, may maintain their standing in the Program on a voluntary basis by completing select courses recognized by the Corporation as meeting the requirements of the Program. The voluntary participation courses must comply with the guidelines that form part of this policy.

2. Persons maintaining voluntary standing in the Program as described in subsection 1 are exempt from the examination rewrite requirements outlined in Rule 2900, Part II – Course and Examination Exemptions for the Canadian Securities Course (CSC) and the Conduct and Practices Handbook Exam (CPH). The CSC and/or CPH must have been successfully passed within the three years prior to the start of either:

   (a) the current cycle, or

   (b) the earliest cycle in which the individual began continuous participation in the Program.

3. Graduates of the CSC and the CPH who have not been approved in any capacity, may join the Program on a voluntary basis by taking courses recognized by the Corporation as meeting the requirements for the Program. The CSC and/or CPH must have been successfully passed within the three years prior to the start of either:

   (a) the current cycle, or

   (b) the earliest cycle in which the individual began continuous participation in the Program.

4. Persons joining the Program as described in subsection 3 are exempt from the examination rewrite requirements outlined in Rule 2900, Part II – Course and Examination Exemptions.

5. Voluntary participants must complete a professional development course and a compliance course in each cycle to maintain voluntary participation standing and qualify for the exemptions in subsections 2 and 4. Both a Compliance course and Professional Development course must be completed irrespective of which position the individual intends to apply for.

6. The exemptions in subsections 2 and 4 are valid until the end of the first year of the next cycle. As a result, Voluntary participation in CE will keep the CSC and CPH valid until the end of the first year of the next cycle.

7. Both the Compliance and the Professional Development courses used for Voluntary Participation must be completed within the cycle to which they are applied and cannot be carried forward from a previous cycle.

8. Individuals may still be responsible for obtaining exemptions and paying any associated fee required by securities legislation for their province or territory.

H. RECORD KEEPING REQUIREMENTS

1. Evidence of Completion may be in the form of a certificate issued by the provider, attendance sheet or bulk notice of completion

2. CE credits earned through courses or seminars at a Participant's previous firm in the current cycle, that have not been reported to the Corporation, may still be considered valid for the Participant by the Participant's current member firm, at the member firm's discretion. The current member firm may accept a statement of verification issued by a former member firm.

3. Dealer Member firms must retain CE certification records and course materials until the end of the cycle following the cycle to which the records relate

I. REPORTING REQUIREMENTS

1. Dealer Members must update the Corporation in the manner prescribed by the Corporation within ten days after the end of the month in which the Dealer Member becomes aware of the names of its Participants that have satisfied all CE course requirements for the completed Cycle.

2. No later than 10 business days following the end of a Cycle, a member must identify via the manner prescribed by the Corporation, those individuals who have not completed the Compliance course and who have been placed under supervision as per the penalties delineated in Section M.

J. THE COMPLIANCE COURSE

1. The 12-hour compliance course is a mandatory component of the Program for all participants. Participants may choose a compliance course from an external course provider or a suitable training Program offered by their sponsoring Dealer Member.

2. Dealer Members may have an external course provider develop and deliver the compliance course or may develop and deliver their own internal course.

3. Courses may be accredited for Corporation CE credits through the Corporation's official accreditation process.

4. The use of a compliance course developed by a Dealer Member is subject to the following requirements:

   (a) The course developed must comply with the guidelines that form part of this policy.

   (b) Participants completing a course offered by a Dealer Member shall have the Dealer Member sign off on their successful completion of that course. The Dealer Member shall determine its own method of evaluating Participants' knowledge and understanding of the courses completed.

K. PROFESSIONAL DEVELOPMENT COURSE

1. Participants may choose a 30-hour Professional Development course from an external course provider or a suitable training Program offered by their sponsoring Dealer Member.

2. The course chosen by a Participant, whether from an external provider or one offered by the Dealer Member, must be approved by the Dealer Member's training supervisor or other responsible person as being relevant to that Participant's role in the investment industry.

3. Courses may be accredited for Corporation CE credits through the Corporation's official accreditation process.

4. Professional development courses developed and offered by the Dealer Member or an external course provider are subject to the following requirements:

   (a) The courses must comply with the guidelines that form part of this policy.

   (b) Participants completing courses offered by their sponsoring Dealer Member shall have the Dealer Member sign off on their successful completion of that course. The Dealer Member shall determine its own method of evaluating Participants' knowledge and understanding of the courses completed.

L. CARRY-FORWARD PROVISIONS

1. No carry forwards are permitted for the compliance course requirement.

2. A maximum of one approved course completed prior to the start of the current cycle that satisfies the minimum 30-hour requirement may be carried forward into the next cycle as a professional development credit. Starting with courses taken in Cycle 2, a course of less than 30 hours may not be carried forward into the next cycle.

3. Where a recently ~~approved person~~Approved Person completes a course that qualifies for the professional development requirement during that ~~approved person~~Approved Person's first three years of registration, that course can be carried forward to apply to that ~~approved person~~Approved Person's first cycle.

4. The Professional Financial Planning Course (PFPC), Investment Management Techniques Course (IMT) or Wealth Management Essentials Course (WME) may not be carried forward pursuant to subsection 2 if it was used as to satisfy the requirement of Rule 2900, Part 1, A, section 3(c).

5. A Multi-level program completed over a period of more than one year, such as a university degree program or the Chartered Financial Analyst (CFA) program, may satisfy the professional development course requirement for more than one cycle provided each program level meets the guidelines. A level can be carried forward to satisfy the requirement of the next cycle only.

M. PENALTIES

The following penalties shall be imposed for the failure of a Participant to complete the course requirements within a three-year cycle:

1. At the beginning of year one of the next three-year cycle, a monthly fee in the amount of $500 shall be imposed against the Participant's sponsoring Dealer Member for a maximum of six months, or until the Participant completes the courses required, whichever occurs first.

2. If, at the end of the six-month period referred to in subsection 1, the Participant fails to complete the Program requirements, then the Participant's approval will be suspended automatically until such time as the participant successfully completes the course requirements.

3. If, at the end of the three-year cycle, the Participant fails to complete the compliance portion of the program, then a mandatory condition of close supervision, with reports to be retained at the Dealer Member firm, will be imposed on the Participant's registration until such time as course is successfully completed.

4. Any late completion fees paid in error will be refunded provided that the refund is claimed within 120 days of the first day of the month for which the fee was paid.

N. HARDSHIP EXTENSION FROM COMPLETION OF COURSE REQUIREMENTS IN A THREE-YEAR CYCLE

1. A Participant may be granted a hardship extension from the requirement to complete the course requirements within a three-year cycle due to, but not limited to, an illness if

   (a) A partner, ~~director~~Director or ~~officer~~Officer of the participant's sponsoring Dealer Member

      (i) approves the delay of completion of the course requirements;

      (ii) advises the Corporation of the reasons for the delay and

      (iii) agrees to a new date for the completion of the course requirement; and,

   (b) The applicable District Council, or its designate, in its discretion determines that the delay is warranted.

2. Despite subsection 1, the granting of such an extension does not permit the Participant to delay the commencement of the next three-year cycle.

3. In the case of an indefinite leave of absence, a Participant unable to complete their requirements for more than one cycle may receive an exemption from the Program provided that

   (a) A partner, ~~director~~Director or ~~officer~~Officer of the participant's sponsoring Dealer Member

      (i) approves the exemption, and

      (ii) outlines, in a letter delivered to the Corporation, the reasons for the exemption and specifying the leave is for an indefinite period; and

   (b) The applicable District Council or its designate, in its discretion, determines that the exemption is warranted.

   (c) Upon return to the industry and before engaging in any activity requiring registration

      (i) after an absence of less than three years, the Participant's CE requirements will be determined by the applicable District Council

      (ii) after an absence of more than three years, the Participant shall successfully complete the required proficiency courses as outlined in Rule 2900, Part II.

SCHEDULE 1

CONTINUING EDUCATION / REGISTRATION CATEGORY CHART

	Registration Category	Continuing Education Requirement
Retail	Investment Representative Investment Futures Contract Representative Options Investment Representative Options	Compliance Program
	Registered Representative Registered Futures Contract Representative Options Registered Representative Options Registered Mutual Fund Representative Portfolio Manager (and Associate)	Compliance Program and Professional Development Program
Non-Retail	Investment Representative Investment Futures Contract Representative Options Investment Representative Options Registered Representative Registered Futures Contract Representative Options Registered Representative Options	Compliance Program Only
Supervisory Categories	Branch Manager (Retail) Sales Manager Assistant Branch Manager Co-Branch Manager	Compliance Program and Professional Development Program
Partners, Directors & Officers (PDO)	PDO – Trading (Registered Representative, Registered Futures Contract Representative, Registered Representative Options)	Compliance Program and Professional Development Program
	PDO – Trading (Registered Representative (Non-Retail), Registered Futures Contract Representative (Non-Retail), Registered Representative Options (Non-Retail))	Compliance Program Only
	PDO – Trading (Investment Representative, Investment Futures Contract Representative, Investment Representative Options)	Compliance Program Only
	PDO – Non-Trading Branch Manager (Non-retail)	No Requirement
Other	Ultimate Designated Person Alternate Designated Person Designated Registered Options Principal Alternate Registered Options Principal Designated Registered Futures Options Principal Alternate Registered Futures Options Principal Chief Compliance Officer	Compliance Program Only

~~Registered Representative – Restricted~~

~~Participants registered in more than one category, must meet the Continuing Education requirements of the more demanding category. For example, a Participant approved as an Ultimate Designated Person and as a PDO-Trading (Registered Representative) is required to complete the Compliance Program and the Professional Development Program.~~

GUIDELINES FOR THE CONTINUING EDUCATION PROGRAM

INTRODUCTION

This part of Rule 2900, Part III sets guidelines for continuing acceptable education course content, length and rigour which each Dealer Member must comply with if practicable. The guidelines also recommend a process to aid firms in identifying appropriate suppliers and courses.

Dealer Members are not authorized to determine courses eligible for Voluntary Participation, as set out in Part G of this Rule.

The parameters and guidelines should be considered in the context of what is appropriate to the individual, his or her position and responsibilities, and the needs of the firm. This can best be accomplished by each firm allocating responsibility to a single person for defining training needs and appropriate programs to address them. Depending on the firm, some responsibility for approval of an individual's program may be delegated to the appropriate supervisor.

As part of the audit process, the Corporation will review a firm's continuing education program to ensure that it is properly documented and satisfies the guidelines.

THE COMPLIANCE COURSE

A. BASIC PRINCIPLES

1. The Rule requires that certain ~~approved persons~~Approved Persons successfully complete the compliance course within each three-year CE cycle. To determine which ~~approved persons~~Approved Persons are required to take the course, please refer to the Rule itself.

2. A Dealer Member can choose to develop and deliver a compliance course, which reflects its own assessment of its current needs and priorities, or it may purchase a compliance course from an external provider. Alternatively, Dealer Members may offer a combination of both.

3. Compliance courses completed by branch managers, sales managers and others in a supervisory position should reflect their additional responsibilities.

4. The Dealer Member must maintain a record of successful completion of the compliance course.

5. As part of the audit process, the Corporation will review Dealer Member-developed compliance courses to ensure they satisfy the Guidelines.

6. If the compliance course program includes an examination, this examination must be successfully completed in order for the course to be applied towards the individual's Compliance requirement.

7. Seminars that support other courses, or preparatory courses that support a course or examination, do not qualify separately for CE credit. The course or examination they support must be successfully completed in order to complete the CE requirement and the support or preparatory course hours may then be included in determining the duration of the total course. The CE credits for the preparatory course must be counted towards the same requirement (Compliance or Professional Development) as the applicable course and must be counted in the same CE Cycle.

8. A Participant who sits on a committee or council of the Corporation, or who teaches a financial course may receive CE credits provided the member firm determines that the issues dealt with are relevant. The member firm may determine the amount of time applicable towards CE Compliance credits.

9. Foreign courses that have a compliance portion can satisfy up to 1/3 (4 hours) of the Corporation's CE Compliance requirement for a cycle. The remaining 2/3 (8 hours) must be satisfied through Canadian compliance courses.

10. The Compliance requirement for Voluntary Participation is restricted to selected courses. For further information, see Voluntary Participation Courses in this guideline.

B. DELIVERY GUIDELINES

1. The course or courses used to fulfill the compliance requirement must be a minimum of 12 hours in total duration.

2. The Guidelines have been developed to offer some flexibility to Dealer Members and their ~~approved persons~~Approved Persons. The manner in which the topics are reviewed is left to the Dealer Member's discretion, provided the minimum 12-hour requirement for every three-year cycle is satisfied.

3. The Dealer Member may choose to deliver the compliance course in a number of ways. The following are examples of possible modes of delivery, but is not exhaustive:

   (a) A Dealer Member may hold an 8-hour in-house compliance seminar, with 4 hours of preparatory reading and study. In the first part of the seminar, topic areas 1 - 4, below, could be reviewed. Then the information imparted could be used in the discussion of case studies during the remainder of the seminar, or

   (b) A Dealer Member could offer the compliance course over the three years, by requiring their ~~approved persons~~Approved Persons to participate in a minimum 4-hour seminar every year. However, the seminar must still cover at least one of the 4 topic areas set out below and must do so in sufficient depth.

4. It is up to the Dealer Member to determine what constitutes successful completion of the course by its ~~approved persons~~Approved Persons. For example, a Dealer Member may:

   (a) require its ~~approved persons~~Approved Persons to write and pass a firm-developed and delivered exam,

   (b) require its ~~approved persons~~Approved Persons to write and pass an external course provider developed and delivered exam, or

   (c) require a certificate of attendance and participation at a seminar.

   The preceding list of examples is not exhaustive.

C. COURSE CONTENT

1. The course content must fall within at least one of the following 4 major topic areas:

   (a) Review of critical regulations and application

   (b) Regulatory changes

   (c) Rules relating to new products, if offered by the firm

   (d) Ethics

2. Some examples of relevant issues for the 4 topic areas are provided below. Examples are given for both institutional and retail registrants. Certain of the examples will change over time to reflect emerging issues in the industry

   (a) How the Securities Administrators and Self Regulatory Organizations Regulate Securities Industry Participants

   (b) Regulatory Developments that Affect Firm Management

   (c) Disclosure of Information to Clients

   (d) Registration and Continuing Education

(e) Operations and Firm Capital

(f) Sales and Trading Conduct – General

(g) Sales and Trading – Institutional Markets

(h) Current Developments in Bond Market Regulation

(i) Suitability and New Products

(j) Corporate Finance – New Rules

(k) Corporate Finance – Proposed New Rules

(l) Ethical issues and Case Studies

(m) Anti-money laundering laws and regulations and their implementations at the Dealer Member.

(n) Privacy

(o) Screening for Suitable Clients

3. The importance of certain topics may vary by Dealer Member, depending on the Dealer Member's business and the participants' individual responsibilities.

4. Compliance courses may also be selected from courses accredited through the Corporation's official accreditation Program.

THE PROFESSIONAL DEVELOPMENT COURSE

A. BASIC PRINCIPLES

1. In general, the courses should be relevant to the securities industry and financial advisors, management-oriented, or designed to improve client service.

2. The subject matter of an individual's course or courses should reasonably reflect that person's skill requirements or be based on the firm's products and market strategies.

3. The program undertaken should reflect the industry's commitment to high quality client service, advice, and professionalism.

4. The subject matter should be educational and non-promotional in nature. For example, the following would not qualify: corporate events held exclusively to introduce or promote new product or service offerings, networking events, or motivational speakers.

5. Subject matter relating to issuer-specific/branded product qualifies if presented in the context of a larger education course or presentation. The general education portion of a course relating to a product category may be granted full credit for the number of hours it takes and the issuer-specific portion should be credited half credit.

6. The program's provider should be professional, having defined the program's learning outcomes in advance, and be able to certify a student's successful completion. Alternatively, the firm may certify a student's successful completion, and assume responsibility for this function.

7. If the course program includes an examination, this examination must be successfully completed in order for the course to be applied towards the individual's Professional Development requirement.

8. Seminars that support other courses, or preparatory courses that support a course or examination, do not qualify separately for CE credit. The course or examination they support must be successfully completed in order to complete the CE requirement and the support or preparatory course hours may then be included in determining the duration of the total course. The CE credits for the preparatory course must be counted towards the same requirement (Compliance or Professional Development) as the applicable course and must be counted in the same CE Cycle.

9. An individual who teaches a relevant course may receive CE credits provided the member firm determines that the issues dealt with are relevant to Professional Development. The member firm may determine the amount of time applicable towards CE Professional Development credits.

10. Foreign courses can be used to satisfy the entire Professional Development requirement provided the course relates to the business the participant is engaged in.

11. The Professional Development requirement for Voluntary Participation is restricted to selected courses. For further information, see Voluntary Participation Courses in this guideline.

B. DELIVERY GUIDELINES

1. The course, or combination of courses, used to fulfill the Professional Development course must be at least 30 hours.

2. The Guidelines have been developed to offer some flexibility to Dealer Members and their ~~approved persons~~Approved Persons. The manner in which the topics are reviewed is left to the Dealer Member's discretion, provided the minimum 30-hour requirement for every three-year cycle is satisfied.

3. The determination of delivery should consider both the most appropriate learning tools and the need to ensure that requirements have been met. In different situations, any of the following may prove to be appropriate

   (a) Self-study materials which may contain an evaluation

   (b) Material delivered electronically through computer-based technology

   (c) Seminars and discussions delivered through internal or external providers

4. Material should, where possible, use cases and other application-based learning to develop problem-solving and decision-making skills. Training strategies should focus on product knowledge, regulatory knowledge, business development skills, managerial skills and client communication skills.

5. In some firms, programs have been developed beyond the basic licensing requirements for investment advisors, branch managers, and others. These courses are designed to develop additional skills particular to the position. This type of course would generally meet the criteria for the continuing education program. However, these courses must be of a non-promotional nature, i.e. there must be no specific product incentives attached.

C. COURSE CONTENT

1. Generally, the courses ought to examine product groups, services and investment and financial strategies that the individual may offer to clients or managerial skill for individuals. More specifically, the courses and materials should deal with the following areas:

   (a) Product category features which should be fully communicated to a client in recommending a product

   (b) Approaches to valuation of a product category and the product's applicable risk factors

   (c) Strategies for investing in a product category including the particular client objectives in which it would provide the most suitable results

   (d) The suitability of the use of leverage for a particular product category and investment strategy

   (e) The features and applicable cost of a service which the firm offers

   (f) The regulatory, tax and other features of a product or service which might affect its suitability

   (g) Methods of evaluating competing products, services and investment strategies

   (h) The suitability of a product category, service or strategy for clients with different financial, risk and knowledge profiles

   (i) Managerial skills which would assist managers in meeting strategic and operational objectives

(j) Communication skills which would result in improved client service and determinations of client service

(k) Practice management skills which would provide tools to assist firm personnel in improving client service

(l) Technology used to enhance client service and the provision of advice.

(m) Screening for Suitable Clients – the quantitative and the qualitative

2. The following are some examples of external courses that would likely fit the criteria outlined in the framework for an individual's course of study:

(a) Additional licensing courses offered by the CSI Global Education Inc. such as derivatives courses may be used to satisfy the requirement; however, the Professional Financial Planning Course, Investment Management Techniques Course or Wealth Management Essentials course may be used only if it has not been used to satisfy the requirement of Rule 2900, Part I, Section A.3(c).

(b) Courses accredited through the Corporation's official accreditation Program.

(c) Relevant courses offered or endorsed by professional associations that have licensing and continuing education programs such as, CIMA, CFP, CFA, IQPF, CLU, insurance licensing and CSI designations

(d) Relevant courses delivered through established post secondary institutions.

D. SUGGESTED PROCESS TO ESTABLISH TRAINING SOLUTIONS FOR MEETING CONTINUOUS EDUCATION REQUIREMENTS

1. Identify Training Needs

(a) Identify knowledge and skills, which would impact positively on the firm and individuals.

(b) Identify the learning objectives expected from the program or course.

2. Identify the evaluation method(s) to be used.

3. Determine how successful completion is to be ascertained.

4. Identify the delivery mechanism

(a) Determine whether external or internal delivery is most appropriate approach.

(b) Determine external suppliers or internal experts who are professional and capable of providing delivery of material.

(c) Identify programs / courses that would deliver the skills and knowledge which would meet the firm and individual needs.

5. Cross-check outcomes desired against outcomes promised.

VOLUNTARY PARTICIPATION COURSE REQUIREMENTS

1. Courses used for Voluntary Participation are restricted to those identified by the Corporation.

2. Courses that qualify for Voluntary Participation have the following characteristics:

(a) They build upon or refresh the course materials of the CSC and CPH

(b) Each course used must be a minimum of 12 hours if Compliance-Related and a minimum of 30 hours if related to Professional Development

(c) They must include a learning evaluation process such as an exam or case study

(d) The course provider must provide proof of successful completion.

RULE 2900

PROFICIENCY AND EDUCATION:

PART III – THE CONTINUING EDUCATION PROGRAM

SCHEDULE 1

CONTINUING EDUCATION/APPROVAL CATEGORY CHART

Approval Category	Customer Type	Compliance course requirement	Professional development requirement
Registered Representative	Retail	Yes	Yes
Registered Representative	Institutional	Yes	No
Investment Representative	Institutional or Retail	Yes	No
Trader	Not Applicable	Yes	No
Supervisor of RRs dealing with retail customers	Retail	Yes	Yes
Supervisors supervising IRs only	Retail	Yes	No
Supervisors supervising options trading only	Institutional or Retail	Yes	No
Supervisors supervising futures contract and futures contract options only	Institutional or Retail	Yes	No
Ultimate Designated Person	Not Applicable	Yes	No
Chief Compliance Officer	Not Applicable	Yes	No

13.1.3 MFDA Confirms Next Appearance in the Matter of Donald J. Cunningham

NEWS RELEASE
For immediate release

MFDA CONFIRMS NEXT APPEARANCE IN THE MATTER OF DONALD J. CUNNINGHAM

October 1, 2009 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") commenced a disciplinary proceeding in respect of Donald James Cunningham by Notice of Hearing dated March 3, 2009.

An appearance by teleconference took place in this proceeding today before a three-member Hearing Panel of the MFDA's Central Regional Council.

Following submissions by the parties respecting scheduling and other procedural matters, the Hearing Panel advised that the next appearance in this matter will be an in-person pre-hearing motion on December 1, 2009 and confirmed that the hearing of this matter on its merits will take place on January 11-15, 2010.

All appearances before the Hearing Panel will be open to the public, except as may be required for the protection of confidential matters, will take place in the Hearing Room located at the offices of the MFDA at 121 King Street West, Suite 1000, Toronto, Ontario, and will commence at 10:00 a.m. (Eastern), or as soon thereafter as each appearance can be held.

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 145 Members and their approximately 75,000 Approved Persons with a mandate to protect investors and the public interest.

For further information, please contact:
Marco Wynnyckyj
Hearings Coordinator
416-945-5146 or mwynnyckyj@mfda.ca

13.1.4 MFDA Sets Date for Paul A. Henry Hearing in Toronto, Ontario

NEWS RELEASE
For immediate release

MFDA SETS DATE FOR PAUL A. HENRY HEARING IN TORONTO, ONTARIO

October 1, 2009 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") commenced a disciplinary proceeding against Paul Anthony Henry by Notice of Hearing dated June 25, 2009.

As specified in the Notice of Hearing, the first appearance in this matter took place today before a Hearing Panel of the MFDA's Central Regional Council.

The hearing of this matter on its merits has been scheduled to take place on January 22, 2010 commencing at 10:00 a.m. (Eastern), or as soon thereafter as the hearing can be held, in the Hearing Room located at the offices of the MFDA at 121 King Street West, Suite 1000, Toronto, Ontario. The hearing will be open to the public, except as may be required for the protection of confidential matters.

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

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For further information, please contact:
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13.1.5 MFDA Announces Location of Barry L. Adams Hearing

NEWS RELEASE
For immediate release

MFDA ANNOUNCES LOCATION OF BARRY L. ADAMS HEARING

October 1, 2009 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") commenced a disciplinary proceeding in respect of Barry L. Adams by Notice of Hearing dated April 6, 2009.

The hearing of this matter on its merits will take place before a Hearing Panel of the MFDA's Atlantic Regional Council on October 29, 2009 at 10:00 a.m. (Atlantic), or as soon thereafter as the hearing can be held, in the Hearing Room located at the Delta Brunswick Hotel, 39 King Street, Saint John, New Brunswick.

The hearing will be open to the public, except as may be required for the protection of confidential matters.

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

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416-945-5146 or mwynnyckyj@mfda.ca

13.1.6 MFDA Issues Notice of Settlement Hearing Regarding Professional Investment Services (Canada) Inc.

NEWS RELEASE
For immediate release

MFDA ISSUES NOTICE OF SETTLEMENT HEARING REGARDING PROFESSIONAL INVESTMENT SERVICES (CANADA) INC.

October 7, 2009 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") today announced that it has issued a Notice of Settlement Hearing regarding the presentation, review and consideration of a proposed settlement agreement by a Hearing Panel of the MFDA's Prairie Regional Council.

The settlement agreement will be between staff of the MFDA and Professional Investment Services (Canada) Inc. (the "Respondent") and involves matters for which the Respondent may be disciplined by a Hearing Panel pursuant to MFDA By-laws. The proposed settlement agreement concerns allegations that:

(a) the Respondent failed to fully carry out the terms of an Agreement and Undertaking with the MFDA; and

(b) the Respondent, between March 2007 and December 2008, failed to:

i. implement an adequate branch review program;

ii. adequately review and approve amendments to Know-Your-Client ("KYC") information;

iii. ensure that the KYC information on its back office system corresponded to the KYC information in client files;

iv. maintain or complete KYC information on client accounts;

v. implement an adequate two-tier compliance structure which ensured that branch managers were supervising trading activity at the branch office level and that sufficient evidence of the review of the suitability of client trading activity was maintained; and

vi. adequately review and approve the opening of new client accounts and then permitted trading in such accounts.

The settlement hearing is scheduled to commence at 11:00 a.m. (Mountain) on October 9, 2009 in the Hearing Room located at the Fairmont Palliser Hotel, 133 9th Avenue S.W., Calgary, Alberta. The hearing will be open to the public, except as may be required for the protection of confidential matters. A copy of the Notice of Settlement 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 145 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 MFDA Hearing Panel Makes Findings Against Bruce P. Schriver

NEWS RELEASE
For immediate release

MFDA HEARING PANEL MAKES FINDINGS AGAINST BRUCE P. SCHRIVER

October 7, 2009 (Toronto, Ontario) – A disciplinary hearing in the matter of Bruce Patrick Schriver (the "Respondent") was held yesterday in Halifax, Nova Scotia before a three-person Hearing Panel of the Atlantic Regional Council of the Mutual Fund Dealers Association of Canada ("MFDA").

The Respondent admitted that he had engaged in personal financial dealings with clients, thereby placing his personal interests above those of his clients and giving rise to a conflict of interest that he failed to properly address. He also admitted that he had failed to deal fairly, honestly and in good faith with clients and engaged in business conduct that was unbecoming and detrimental to the public interest by borrowing monies from clients, failing to repay or otherwise account for those monies and/or failing to pay interest on those monies.

The Hearing Panel determined that the following penalties were appropriate in the circumstances:

1. The Respondent shall be permanently prohibited from conducting securities related business in any capacity while in the employ of, or associated with, a Member of the MFDA;

2. The Respondent shall pay a fine in the amount of $200,000; and

3. The Respondent shall pay the costs of the proceeding in the amount of $10,000.

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

Copies of the Notices of Hearing in this matter are available on the MFDA website at www.mfda.ca.

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

13.1.8 MFDA Reschedules Hearing on the Merits in the Matter of IOCT Financial Inc. and Michelle Bolhuis

NEWS RELEASE
For immediate release

MFDA RESCHEDULES HEARING
ON THE MERITS IN THE MATTER OF
IOCT FINANCIAL INC. AND MICHELLE BOLHUIS

October 7, 2009 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") commenced a disciplinary proceeding in respect of IOCT Financial Inc. and Michelle Anne Bolhuis by Notice of Hearing dated March 5, 2009.

Following submissions by the parties today respecting scheduling and other procedural matters, the Hearing Panel rescheduled the hearing of this matter on its merits for November 25 and 27, 2009. The hearing will take place in the Hearing Room located at the offices of the MFDA at 121 King Street West, Suite 1000, Toronto, Ontario, and will commence at 10:00 a.m. (Eastern) or as soon thereafter as the hearing can be held.

The hearing will be open to the public, except as may be required for the protection of confidential matters.

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 145 Members and their approximately 75,000 Approved Persons with a mandate to protect investors and the public interest.

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