The Ontario Securities Commission

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October 8, 2010

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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 8, 2010

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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20 Queen Street West
Toronto, Ontario
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Patrick J. LeSage	—	PJL
Carol S. Perry	—	CSP
Charles Wesley Moore (Wes) Scott	—	CWMS

SCHEDULED OSC HEARINGS

October 12, 2010 3:30 p.m.	**Brilliante Brasilcan Resources Corp., York Rio Resources Inc., Brian W. Aidelman, Jason Georgiadis, Richard Taylor and Victor York** s. 127 H. Craig in attendance for Staff Panel: MGC
October 13-15 and December 6, 8-10, 2010 10:00 a.m.	**Sextant Capital Management Inc., Sextant Capital GP Inc., Otto Spork, Robert Levack and Natalie Spork** s. 127 T. Center in attendance for Staff Panel: JDC/CSP
October 13-15, 18-19, 25 and 27-29, 2010 November 1-3, 2010 December 1-3 and 8-17, 2010 10:00 a.m.	**Coventree Inc., Geoffrey Cornish and Dean Tai** s. 127 J. Waechter in attendance for Staff Panel: JEAT/MGC/PLK
October 13, 2010 9:30 a.m.	**Ameron Oil and Gas Ltd. and MX-IV, Ltd.** s. 127 M. Boswell in attendance for Staff Panel: TBA
October 13, 2010 10:30 a.m.	**QuantFX Asset Management Inc., Vadim Tsatskin, Lucien Shtromvaser and Rostislav Zemlinsky** s. 127 H. Craig in attendance for Staff Panel: TBA

October 18, 2010 10:00 a.m.	**Howard Jeffrey Miller and Man Kin Cheng (a.k.a. Francis Cheng)** s. 127 T. Center in attendance for Staff Panel: JDC
October 21, 2010 10:00 a.m.	**Ciccone Group, Medra Corporation, 990509 Ontario Inc., Tadd Financial Inc., Cachet Wealth Management Inc., Vince Ciccone, Darryl Brubacher, Andrew J. Martin., Steve Haney, Klaudiusz Malinowski and Ben Giangrosso** s. 127 P. Foy in attendance for Staff Panel: JDC
October 21, 2010 12:00 p.m.	**Lehman Brothers & Associates Corp., Greg Marks, Michael Lehman (a.k.a. Mike Laymen), Kent Emerson Lounds and Gregory William Higgins** s. 127 H. Craig in attendance for Staff Panel: JDC
October 22, 2010 10:00 a.m.	**Chartcandle Investments Corporation, CCI Financial, LLC, Chartcandle Inc., PSST Global Corporation, Stephen Michael Chesnowitz and Charles Pauly** s. 127 and 127.1 S. Horgan in attendance for Staff Panel: JDC/PJL
October 25, 2010 10:00 a.m.	**Axcess Automation LLC, Axcess Fund Management, LLC, Axcess Fund, L.P., Gordon Alan Driver, David Rutledge, 6845941 Canada Inc. carrying on business as Anesis Investments, Steven M. Taylor, Berkshire Management Services Inc. carrying on business as International Communication Strategies, 1303066 Ontario Ltd. carrying on business as ACG Graphic Communications, Montecassino Management Corporation, Reynold Mainse, World Class Communications Inc. and Ronald Mainse** s. 127 Y. Chisholm in attendance for Staff Panel: CSP
October 25-29, 2010 10:00 a.m.	**IBK Capital Corp. and William F. White** s. 127 M. Vaillancourt in attendance for Staff Panel: JDC/CWMS
October 27, 2010 1:00 p.m.	**Shaun Gerard McErlean, Securus Capital Inc., and Acquiesce Investments** s. 127 M. Britton in attendance for Staff Panel: MGC
November 4, 2010 11:00 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: JEAT/CSP/SA

November 8, 2010
10:00 a.m.

Christina Harper, Howard Rash, Michael Schaumer, Elliot Feder, Vadim Tsatskin, Oded Pasternak, Alan Silverstein, Herbert Groberman, Allan Walker, Peter Robinson, Vyacheslav Brikman, Nikola Bajovski, Bruce Cohen and Andrew Shiff

s. 127

H. Craig in attendance for Staff

Panel: TBA

November 8, 2010
10:00 a.m.

Global Energy Group, Ltd. and New Gold Limited Partnerships

s. 127

H. Craig in attendance for Staff

Panel: TBA

November 8, November 10-19, 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

M. Britton in attendance for Staff

Panel: TBA

November 12, 2010
10:00 a.m.

Imagin Diagnostic Centres Inc., Patrick J. Rooney, Cynthia Jordan, Allan McCaffrey, Michael Shumacher, Christopher Smith, Melvyn Harris and Michael Zelyony

s. 127 and 127.1

J. Feasby in attendance for Staff

Panel: MGC/MCH

November 15-17, November 24 – December 2, 2010
10:00 a.m.

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

November 22, 2010
10:00 a.m.

Georges Benarroch, Linda Kent, Marjorie Ann Glover and Credifinance Securities Limited

s. 21.7

A. Heydon in attendance for Staff

Panel: JDC/CSP

November 29, 2010
9:30 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

November 29, 2010
10:00 a.m.

Paladin Capital Markets Inc., John David Culp and Claudio Fernando Maya

s. 127

C. Price in attendance for Staff

Panel: JEAT

November 30, 2010
2:30 p.m.

Locate Technologies Inc., Tubtron Controls Corp., Bradley Corporate Services Ltd., 706166 Alberta Ltd., Lorne Drever, Harry Niles, Michael Cody and Donald Nason

s. 127

A. Heydon in attendance for Staff

Panel: JDC

December 2, 2010 9:30 a.m.	**Richvale Resource Corp., Marvin Winick, Howard Blumenfeld, Pasquale Schiavone, and Shafi Khan** s. 127(7) and 127(8) H. Craig in attendance for Staff Panel: TBA
December 7, 2010 2:00 p.m.	**Mega–C Power Corporation, Rene Pardo, Gary Usling, Lewis Taylor Sr., Lewis Taylor Jr., Jared Taylor, Colin Taylor and 1248136 Ontario Limited** s. 127 M. Britton/J.Feasby in attendance for Staff Panel: JDC/KJK
December 15-16, 2010 10:00 a.m.	**Questrade Inc.** s. 21.7 A. Heydon in attendance for Staff Panel: JDC/CSP
January 10, 12-21 and 24, 2011 10:00 a.m.	**Carlton Ivanhoe Lewis, Mark Anthony Scott, Sedwick Hill, Leverage Pro Inc., Prosporex Investment Club Inc., Prosporex Investments Inc., Prosporex Ltd., Prosporex Inc., Prosporex Forex SPV Trust, Networth Financial Group Inc., and Networth Marketing Solutions** s. 127 and 127.1 H. Daley in attendance for Staff Panel: TBA
January 10, 12-21, January 26 – February 1, 2011 10:00 a.m.	**Maple Leaf Investment Fund Corp., Joe Henry Chau (aka: Henry Joe Chau, Shung Kai Chow and Henry Shung Kai Chow), Tulsiani Investments Inc., Sunil Tulsiani and Ravinder Tulsiani** s. 127 A. Perschy/C. Rossi in attendance for Staff Panel: TBA
January 17-21, 2011 10:00 a.m.	**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
January 26, 2011 10:00 a.m.	**Rezwealth Financial Services Inc., Pamela Ramoutar, Chris Ramoutar, Justin Ramoutar, Tiffin Financial Corporation, Daniel Tiffin, 2150129 Ontario Inc. and Sylvan Blackett** s. 127(1) and (5) A. Heydon in attendance for Staff Panel: CSP
January 31- February 7, February 9-18, February 23, 2011 10:00 a.m.	**Anthony Ianno and Saverio Manzo** s. 127 and 127.1 A. Clark in attendance for Staff Panel: TBA
January 31, February 1-7 and 9-11, 2011 10:00 a.m.	**Nest Acquisitions and Mergers, IMG International Inc., Caroline Myriam Frayssignes, David Pelcowitz, Michael Smith, and Robert Patrick Zuk** s. 37, 127 and 127.1 C. Price in attendance for Staff Panel: TBA
February 11, 2011 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

February 14-18, February 23-28, March 7, March 9-11, March 28-31, 2011 10:00 a.m.	**Agoracom Investor Relations Corp., Agora International Enterprises Corp., George Tsiolis and Apostolis Kondakos (a.k.a. Paul Kondakos)** s. 127 T. Center in attendance for Staff Panel: TBA
February 14-18, February 23-March 1, 2011	**Nelson Financial Group Ltd., Nelson Investment Group Ltd., Marc D. Boutet, Stephanie Lockman Sobol, Paul Manuel Torres, H.W. Peter Knoll** s. 127 P. Foy in attendance for Staff Panel: TBA
February 25, 2011 10:00 a.m.	**Hillcorp International Services, Hillcorp Wealth Management, Suncorp Holdings, 1621852 Ontario Limited, Steven John Hill, and Danny De Melo** s. 127 A. Clark in attendance for Staff Panel: TBA
March 1-7, 9-11, 21 and 23-31, 2011 10:00 a.m.	**Paul Donald** s. 127 C. Price in attendance for Staff Panel: TBA
March 7, 2011 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
March 30, 2011 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: TBA
TBA	**Yama Abdullah Yaqeen** s. 8(2) J. Superina in attendance for Staff Panel: TBA
TBA	**Microsourceonline Inc., Michael Peter Anzelmo, Vito Curalli, Jaime S. Lobo, Sumit Majumdar and Jeffrey David Mandell** s. 127 J. Waechter in attendance for Staff Panel: TBA
TBA	**Frank Dunn, Douglas Beatty, Michael Gollogly** s. 127 K. Daniels in attendance for Staff Panel: TBA
TBA	**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

C. Price 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

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

s. 127(1) and 127(5)

M. Boswell in attendance for Staff

Panel: TBA

TBA

Goldbridge Financial Inc., Wesley Wayne Weber and Shawn C. Lesperance

s. 127

C. Johnson in attendance for Staff

Panel: TBA

TBA

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

TBA

Uranium308 Resources Inc., Michael Friedman, George Schwartz, Peter Robinson, and Shafi Khan

s. 127

M. Boswell in attendance for Staff

Panel: TBA

TBA

Innovative Gifting Inc., Terence Lushington, Z2A Corp., and Christine Hewitt

s. 127

M. Boswell 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

TBA

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

s. 127(1) and (5)

J. Feasby in attendance for Staff

Panel: TBA

TBA **M P Global Financial Ltd., and Joe Feng Deng**

s. 127 (1)

M. Britton in attendance for Staff

Panel: TBA

TBA **Peter Robinson and Platinum International Investments Inc.**

s. 127

M. Boswell in attendance for Staff

Panel: TBA

TBA **Sunil Tulsiani, Tulsiani Investments Inc., Private Investment Club Inc., and Gulfland Holdings LLC**

s. 127

J. Feasby in attendance for Staff

Panel: TBA

TBA **Shane Suman and Monie Rahman**

s. 127 and 127(1)

C. Price in attendance for Staff

Panel: JEAT/PLK

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

s. 127

H. Craig in attendance for Staff

Panel: JEAT/CSP/SA

TBA **Global Energy Group, Ltd., New Gold Limited Partnerships, Christina Harper, Vadim Tsatskin, Michael Schaumer, Elliot Feder, Oded Pasternak, Alan Silverstein, Herbert Groberman, Allan Walker, Peter Robinson, Vyacheslav Brikman, Nikola Bajovski, Bruce Cohen and Andrew Shiff**

s. 37, 127 and 127.1

H. Craig in attendance for Staff

Panel: TBA

TBA **York Rio Resources Inc., Brilliante Brasilcan Resources Corp., Victor York, Robert Runic, George Schwartz, Peter Robinson, Adam Sherman, Ryan Demchuk, Matthew Oliver, Gordon Valde and Scott Bassingdale**

s. 127

H. Craig in attendance for Staff

Panel: TBA

TBA **TBS New Media Ltd., TBS New Media PLC, CNF Food Corp., CNF Candy Corp., Ari Jonathan Firestone and Mark Green**

s. 127

H. Craig in attendance for Staff

Panel: TBA

TBA **Sulja Bros. Building Supplies, Ltd., Petar Vucicevich, Kore International Management Inc., Andrew Devries, Steven Sulja, Pranab Shah, Tracey Banumas and Sam Sulja**

s. 127 and 127.1

J. Feasby in attendance for Staff

Panel: PJL/SA

TBA **Abel Da Silva**

s. 127

M. Boswell in attendance for Staff

Panel: TBA

ADJOURNED SINE DIE

Global Privacy Management Trust and Robert Cranston

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

ADJOURNED SINE DIE

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

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

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

1.1.2 CSA Staff Notice 81-320 – Update on International Financial Reporting Standards for Investment Funds

CSA STAFF NOTICE 81-320
UPDATE ON INTERNATIONAL FINANCIAL REPORTING STANDARDS FOR INVESTMENT FUNDS

Purpose

This notice updates investment funds and their advisers on the adoption of International Financial Reporting Standards (IFRS) by investment funds in Canada.

Current Canadian generally accepted accounting principles (Canadian GAAP) refer to "investment companies", the majority of which are "investment funds" for the purposes of securities legislation. This notice applies only to those investment companies that are investment funds as defined in securities legislation and are subject to National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106).[1]

The Canadian Securities Administrators (CSA) previously published proposals relating to the adoption of IFRS by investment funds on October 16, 2009.[2] These proposals were based on the Canadian Accounting Standards Board (AcSB) decision to transition financial reporting for Canadian publicly accountable enterprises to IFRS as issued by the International Accounting Standards Board (IASB) for financial years beginning on or after January 1, 2011. However, the AcSB published amendments to the Handbook of the Canadian Institute of Chartered Accountants (Handbook) on October 1, 2010 that provide a one-year deferral of the transition to IFRS for investment companies.[3]

Background

Under International Accounting Standard 27 *Consolidated and Separate Financial Statements* (IAS 27), an entity is required to consolidate investments that it controls. As part of a project on consolidation, the IASB announced that it will propose that investment companies be exempt from consolidation and instead account for controlling interests in other entities at fair value.[4] Based on the IASB's proposed work plan (as published on July 2, 2010), it appears that the IASB will finalize this exemption in 2011.

Following this IASB announcement, the AcSB amended Part I of the Handbook to require investment companies, as defined in and applying Accounting Guideline 18 *Investment Companies*, to adopt IFRS as issued by the IASB for annual periods beginning on or after January 1, 2012, with earlier adoption permitted. The deferral of the mandatory changeover from January 1, 2011 to January 1, 2012 is intended to allow the IASB's proposed exemption from consolidation for investment companies to be in place prior to the adoption of IFRS by investment companies in Canada.

Move to IFRS by investment funds

CSA staff are also of the view that it would be preferable for the IASB's proposed consolidation exemption to be in place when IFRS is adopted by investment funds in Canada. Accordingly, we will be reviewing and revising the proposed amendments to NI 81-106, and related consequential amendments, previously published for comment in light of the recent developments at both the IASB and AcSB.

The CSA comment period for the proposed amendments ended on January 14, 2010, and the majority of the comments related to the implications of IAS 27 to Canadian investment funds. Given the proposed exemption that the IASB is now considering, the issues raised by commenters relating to consolidation may no longer exist for the majority of investment funds. As a result, CSA staff anticipate that the proposed amendments to NI 81-106 related to the consolidation requirement may no longer be required.

In order to have more certainty about the scope and impact of the anticipated exemption from consolidation for investment companies that the IASB is considering, CSA staff will take additional time before seeking approval in each CSA jurisdiction to either republish or finalize IFRS-related amendments to NI 81-106 and other instruments related to investment funds. We now expect this to be during the second half of 2011, with the goal of having the necessary IFRS-related amendments for investment funds in force by January 1, 2012.

---

1 The CSA published final IFRS-related amendments for issuers that are not investment funds on October 1, 2010.

2 These proposals were published in French on March 12, 2010 by the Autorité des marchés financiers and the New Brunswick Securities Commission.

3 The AcSB Decision Summary regarding the deferral is at www.acsbcanada.org/decision-summaries/2010/item42260.aspx.

4 The IASB work plan and projected timetable for this project can be found in the Standards Development section of the IASB/IFRS website (www.ifrs.org/Current+Projects/IASB+Projects/Consolidation/IE/Investment+entities).

Prior to the mandatory changeover to IFRS set out in the Handbook, CSA staff consider the standards in Part V of the Handbook to be Canadian GAAP as applicable to public enterprises for securities legislation purposes. CSA staff recognize that some investment funds may want to prepare their financial statements in accordance with IFRS as issued by the IASB for annual periods beginning prior to January 1, 2012. Therefore, an investment fund that wants to use IFRS for interim and annual financial statements relating to annual periods beginning prior to January 1, 2012 must apply for exemptive relief from the current requirement to prepare its financial statements in accordance with Canadian GAAP as applicable to public enterprises.[5] Investment funds filing applications for exemptive relief from NI 81-106 should also identify any issues that early adoption may create with respect to their financial disclosure.

Questions

Please refer your questions to any of:

Stacey Barker
Senior Accountant, Investment Funds
Ontario Securities Commission
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October 8, 2010

[5] This requirement is found in section 2.6 of NI 81-106.

1.1.3 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, 2010 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
	None	

New Instruments

Instrument	Title	Status
11-739	Policy Reforumulation Table of Concordance and List of New Instruments (Revised)	***Published July 2, 2010***
51-332	Continuous Disclosure Review Program Activities for the fiscal year ended March 31, 2010	***Published July 9, 2010***
25-101	Designated Rating Organizations	***Published for comment July 16, 2010***
41-101	General Propsectus Requirements – **Amendments** (tied to 25-101)	***Published for comment July 16, 2010***
44-101	Short Form Prospectus Requirements – **Amendments** (tied to 25-101)	***Published for comment July 16, 2010***
51-102	Continuous Disclosure Obligations – **Amendments** (tied to 25-101)	***Published for comment July 16, 2010***
11-205	Process for Designation as a Designated Rating Organization in Multiple Jurisdictions (tied to 25-101)	***Published for comment July 16, 2010***
52-326	IFRS Transition Disclosure Review	***Published July 23, 2010***
21-703	Transparency of the Operations of Stock Exchanges and Alternative Trading Systems (Revised)	***Published July 23, 2010***
31-317	Reporting Obligations Related to Terrorist Financing (Revised)	***Published July 30, 2010***
31-318	Omnibus/blanket order exempting mortgage investment entities from the requirement to register as investment fund managers and advisers	***Published August 20, 2010***

Instrument	Title	Status
31-319	Further Omnibus/Blanket Orders Exempting Registrants from Certain Provisions of National Instrument 31-103 Registration Requirements and Exemptions	***Published September 10, 2010***
41-305	Share Structure Issues – Initial Public Offerings	***Published September 24, 2010***
11-737	Securities Advisory Committee – Vacancies (Revised)	***Published September 24, 2010***

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

October 8, 2010

1.2 Notices of Hearing

1.2.1 Wilton J. Neale et al. – ss. 127(1), 127.1

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

AND

WILTON J. NEALE,
MULTIPLE STREAMS OF INCOME (MSI) INC.
and 360 DEGREE FINANCIAL SERVICES INC.

NOTICE OF HEARING
(Subsections 127(1) and 127.1)

TAKE NOTICE that the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to section 127(1) and 127.1 of the *Securities Act*, R.S.O., 1990 c. S.5, as amended (the "Act") at its offices at 20 Queen Street West, 17th Floor, Toronto, Ontario, on October 1, 2010 at 9:00 a.m. or as soon thereafter as the hearing can be held;

AND TAKE NOTICE that the purpose of the hearing is for the Commission to consider whether it is in the public interest to approve the Settlement Agreement dated September 29, 2010 between Staff of the Commission and Wilton J. Neale, Multiple Streams of Income (MSI) Inc. and 360 Degree Financial Services Inc. (the "Respondents");

BY REASON OF the allegations set out in the Statement of Allegations dated March 12, 2010 and such additional allegations as counsel may advise and the Commission may permit;

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

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

DATED at Toronto this 29th day of September, 2010.

"Daisy Aranha"
Per: John Stevenson
Secretary to the Commission

1.2.2 IBK Capital Corp. and William F. White – ss. 127(1), 127.1

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

AND

IN THE MATTER OF
IBK CAPITAL CORP. AND WILLIAM F. WHITE

NOTICE OF HEARING
(Subsections 127(1) and 127.1)

TAKE NOTICE that the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to section 127(1) and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") at its offices at 20 Queen Street West, 17th Floor, Toronto, Ontario, commencing on October 7, 2010 at 9:00 a.m. or as soon thereafter as the hearing can be held;

AND TAKE NOTICE that the purpose of the hearing is for the Commission to consider whether it is in the public interest to approve the settlement agreement dated October 5, 2010 between Staff of the Commission and IBK Capital Corp. and William F. White (the "Respondents");

BY REASON OF the allegations set out in the Statement of Allegations dated November 12, 2009 and such additional allegations as counsel may advise and the Commission may permit;

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

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

DATED at Toronto this 5th day of October, 2010.

"Daisy Aranha"
Per: John Stevenson
Secretary to the Commission

1.3 News Releases

1.3.1 Canadian Securities Regulators Approve IFRS-related Materials

FOR IMMEDIATE RELEASE
October 1, 2010

CANADIAN SECURITIES REGULATORS APPROVE IFRS-RELATED MATERIALS

Toronto – The Canadian Securities Administrators (CSA) today published IFRS-related materials about Canada's upcoming transition in 2011 to International Financial Reporting Standards (IFRS), a single set of globally accepted, high quality accounting standards set by the International Accounting Standards Board.

National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* and amendments to other national instruments and policies including continuous disclosure, prospectus, certification, and registration requirements, reflect the new requirements for reporting issuers and registrants when preparing filings in compliance with IFRS for Canadian securities regulators.

"The transition to IFRS is fast approaching for domestic reporting issuers and registrants whose financial years begin on or after January 1, 2011," said Jean St-Gelais, Chair of the CSA and President and Chief Executive Officer of the Autorité des marchés financiers (Québec). "The switch to globally accepted accounting standards will enhance the comparability of financial reporting for investors and other stakeholders in global capital markets."

Converting to IFRS from Canadian Generally Accepted Accounting Principles (GAAP) represents a significant change to Canada's financial reporting framework. The planned transition was first announced in 2006 by the Canadian Accounting Standards Board in its five-year strategic plan. The CSA previously published proposed versions of today's materials for public comment.

In anticipation of IFRS coming into force in Canada, the CSA provided guidance to reporting issuers on communicating the effects of their transition to IFRS to investors and market participants, including the impact that adoption may have on their business activities and financial reporting. Based on this guidance, CSA members conducted targeted reviews of transition disclosure. In July 2010, the CSA published Staff Notice 52-326 IFRS Transition Disclosure Review, which showed an improvement in the quality of IFRS transition disclosure provided by reporting issuers.

Copies of the IFRS-related materials are available on the websites of CSA members. The CSA, the council of the securities regulators of Canada's provinces and territories, co-ordinates and harmonizes regulation for the Canadian capital markets.

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1.3.2 Canadian Securities Regulators Implement Improved Disclosure for Mutual Fund Investors

FOR IMMEDIATE RELEASE
October 6, 2010

CANADIAN SECURITIES REGULATORS IMPLEMENT
IMPROVED DISCLOSURE FOR MUTUAL FUND INVESTORS

Toronto – The Canadian Securities Administrators (CSA) today published amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, its Forms and Companion Policy, as well as related rule amendments, that are aimed at providing investors with more meaningful and effective mutual fund disclosure.

Effective January 1, 2011, mutual fund companies will be required to produce a new document, called "Fund Facts", for each class or series for each of their mutual funds. Mutual fund companies must make the Fund Facts available to investors on their website and upon request by the investor no later than July 8, 2011.

Fund Facts highlights key information for investors, including a description of the fund, and the performance, risks and costs of buying and owning the fund, in a short, easy-to-read document.

"The new Fund Facts document is designed to help investors better understand the basic features of a fund and compare different funds they may be considering," said Jean St-Gelais, Chair of the CSA and President and Chief Executive Officer of the Autorité des marchés financiers (Québec). "This important investor initiative will provide investors with the opportunity to make more informed investment decisions."

The Fund Facts document completes the first stage of the CSA's implementation of the point of sale disclosure project for mutual funds. Next, the CSA expects to publish for comment a proposal to allow delivery of the Fund Facts instead of the simplified prospectus to satisfy existing delivery requirements under securities legislation. Currently, investors must receive a simplified prospectus within two days of buying a fund.

In the final stage, the CSA intends to publish for further comment requirements for point of sale delivery of the Fund Facts for mutual funds. The CSA will also consider point of sale disclosure for other types of publicly offered investment funds.

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 Wilton J. Neale et al.

FOR IMMEDIATE RELEASE
September 29, 2010

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

AND

IN THE MATTER OF
WILTON J. NEALE,
MULTIPLE STREAMS OF INCOME (MSI) INC.
AND 360 DEGREE FINANCIAL SERVICES INC.

TORONTO – The Office of the Secretary issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve a settlement agreement entered into by Staff of the Commission and Wilton J. Neale, Multiple Streams of Income (MSI) Inc. and 360 Degree Financial Services Inc.. The hearing will be held on October 1, 2010 at 9:00 a.m. in Hearing Room B on the 17th floor of the Commission's offices located at 20 Queen Street West, Toronto.

A copy of the Notice of Hearing dated September 29, 2010 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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1.4.2 Franklin Danny White et al.

FOR IMMEDIATE RELEASE
September 30, 2010

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

AND

IN THE MATTER OF
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

TORONTO – The Commission issued its Reasons and Decision on Sanctions and Costs and an Order following a hearing held on June 4, 2010 in the above noted matter.

A copy of the Reasons and Decision on Sanctions and Costs and the Order dated September 29, 2010 are available at **www.osc.gov.on.ca**.

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1.4.3 Wilton J. Neale et al.

FOR IMMEDIATE RELEASE
October 1, 2010

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

AND

IN THE MATTER OF
WILTON J. NEALE,
MULTIPLE STREAMS OF INCOME (MSI) INC.
AND 360 DEGREE FINANCIAL SERVICES INC.

TORONTO – Following a hearing held today, the Commission issued an Order approving the Settlement Agreement reached between Staff of the Commission and Wilton J. Neale, Multiple Streams of Income (MSI) Inc. and 360 Degree Financial Services Inc.

A copy of the Order dated October 1, 2010 and Settlement Agreement dated September 29, 2010 are available at **www.osc.gov.on.ca**.

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1.4.4 Biovail Corporation et al.

FOR IMMEDIATE RELEASE
October 1, 2010

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

AND

IN THE MATTER OF
BIOVAIL CORPORATION, EUGENE N. MELNYK,
BRIAN H. CROMBIE, JOHN R. MISZUK AND
KENNETH G. HOWLING

TORONTO – Following the hearing on the merits in the above noted matter, the Panel released its Reasons and Decision.

A copy of the Reasons and Decision dated September 30, 2010 is available at **www.osc.gov.on.ca**.

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1.4.5 IBK Capital Corp. and William F. White

FOR IMMEDIATE RELEASE
October 6, 2010

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

AND

IN THE MATTER OF
IBK CAPITAL CORP. AND WILLIAM F. WHITE

TORONTO – The Office of the Secretary issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve a settlement agreement entered into by Staff of the Commission and IBK Capital Corp. and William F. White.

The hearing will be held on October 7, 2010 at 9:00 a.m. in Hearing Room C on the 17th floor of the Commission's offices located at 20 Queen Street West, Toronto.

A copy of the Notice of Hearing dated October 5, 2010 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Ryland Oil ULC

Headnote

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

Applicable Legislative Provisions

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

Citation: Ryland Oil ULC, Re, 2010 ABASC 453

September 28, 2010

IN THE MATTER OF
THE SECURITIES LEGISLATION OF

BRITISH COLUMBIA, ALBERTA, ONTARIO
AND NOVA SCOTIA (the Jurisdictions)

AND

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

AND

IN THE MATTER OF
RYLAND OIL ULC (the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for an order deeming the Filer to have ceased to be a reporting issuer in the Jurisdictions.

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

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

(b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* 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 was created by way of amalgamation under the laws of Alberta and has a head office in Calgary, Alberta.

2. An annual and special meeting of the common shareholders of Ryland Oil Corporation (**Ryland**) was held on August 19, 2010, at which over 99% of the shareholders approved a plan of arrangement as hereinafter described (**Plan of Arrangement**).

3. The Plan of Arrangement was approved by the Court of Queen's Bench of Alberta on August 20, 2010.

4. On August 20, 2010, pursuant to the Plan of Arrangement, among other things: (i) Crescent Point Energy Corp. (**Crescent Point**) acquired all of the issued and outstanding common shares of Ryland (the **Ryland Shares**) not already owned by Crescent Point, with each Ryland shareholder receiving 0.0117 of a common share of Crescent Point for each Ryland Share held; and (ii) Ryland, Crescent Point ULC and Pebble Petroleum Inc. amalgamated under the name Ryland Oil ULC.

5. The Ryland Shares were delisted from the TSX Venture Exchange at the close of business on August 23, 2010.

6. The Filer's share capital consists of common shares that are entirely owned by Crescent Point. There are no other issued and outstanding securities of the Filer.

7. No securities of the Filer are traded on a marketplace as defined in National Instrument 21-101 *Market Operation*.

8. The outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by less than 15 security holders in each of the jurisdictions in Canada and less than 51 security holders in total in Canada.

9. The Filer is not in default of any requirements of the Legislation except for the requirement to file its interim financial statements, MD&A, and related certifications for the June 30, 2010 interim period due August 30, 2010.

10. The Filer has no current intention to seek public financing by way of an offering of securities.

11. The Filer did not surrender its status as a reporting issuer in British Columbia pursuant to BC Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status* (the **BC Instrument**) in order to avoid the 10-day waiting period under the BC Instrument.

12. As the filer is a reporting issuer in British Columbia, and as described in paragraph 9 above is in default of certain filing obligations under the Legislation, the Filer is not eligible to use the simplified procedure under CSA Staff Notice 12-307 *Application for a Decision that an Issuer in not a Reporting Issuer* in order to apply for the decision sought.

13. Upon the grant of the relief requested, the Filer will not be a reporting issuer or the equivalent in any jurisdiction of Canada.

14. The Filer seeks an order deeming the Filer to have ceased to be a reporting issuer in the Jurisdictions.

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 Filer is deemed to have ceased to be a reporting issuer.

"Blaine Young"
Associate Director, Corporate Finance

2.1.2 Clearly Canadian Beverage Corporation

Headnote

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

Ontario Statutes

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

September 24, 2010

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

AND

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

AND

IN THE MATTER OF
CLEARLY CANADIAN BEVERAGE CORPORATION
(the Filer)

DECISION

Background

1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application (the Application) from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the Filer be deemed to have ceased to be a reporting issuer under the Legislation (the Exemptive Relief Sought).

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

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

(b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

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

Representations

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

1. the Filer is a British Columbia company under the *Business Corporations Act* (British Columbia) and was incorporated on March 18, 1981;

2. the head office of the Filer is located at Unit 11/12, 220 Viceroy Road, Vaughan, Ontario; prior to March 2008 the Filer's head office was located at 2267 West 10th Avenue, Vancouver, British Columbia;

3. the Filer is a reporting issuer in Ontario and British Columbia;

4. the Filer is in the business of selling sparkling flavoured water, packaged dried fruits and nuts, and organic baby food;

5. the Filer's shares have been publicly traded on various exchanges in North America since the 1980's; most recently, the Filer's limited voting common shares (the Limited Voting Shares) were quoted for trading in the United States on the Pink Sheets under the trading symbol "CCBEF.PK";

6. the securities of the Filer are currently subject to a cease trade order dated May 25, 2009 (the OSC Cease Trade Order) made under paragraph 2 and paragraph 2.1 of subsection 127(1) of the *Securities Act*, R.S.O. 1990, c.S.5, as amended (the Ontario Act) by the Director of the Ontario Securities Commission (the OSC) directing that all trading in and acquisitions of the securities of the Filer, whether direct or indirect, shall cease until further order by the Director of the OSC;

7. the OSC Cease Trade Order was made because the Filer failed to file its audited annual financial statements for the year ended December 31, 2008 and its management's discussion and analysis relating to the audited annual financial statements for the year ended December 31, 2008;

8. the securities of the Filer are also currently subject to a cease trade order dated May 11, 2009 (the BC Cease Trade Order) made under subsection 164(1) of the *Securities Act*, R.S.B.C., 1996, c. 418 (the BC Act) by the Executive Director of the British Columbia Securities Commission (the BCSC) directing that all trading in the securities of the Filer cease until it files the required records and the Executive Director of the BCSC revokes the BC Cease Trade Order;

9. the BC Cease Trade Order was issued because the Filer had not filed a comparative financial statement for its financial year ended December 31, 2008, as required under Part 4 of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102), and had not filed Form 51-102F1 *Management's Discussion and Analysis* for the period ended December 31, 2008, as required under Part 5 of NI 51-102;

10. on March 17, 2010, while experiencing severe cash flow problems, and with its debts being significantly greater than its assets, the Filer filed a proposal under the *Bankruptcy and Insolvency Act* (Canada) with its creditors (the Proposal);

11. the Filer issued a press release on March 18, 2010, and filed a material change report in Canada and a Form 6-K in the United States on March 19, 2010, announcing the filing of the Proposal;

12. on April 1, 2010, the Proposal was accepted by the creditors of the Filer;

13. the Proposal contemplated, amongst other things:

    (a) the reorganization of the share capital of the Filer by the Filer:

        (i) creating an unlimited number of new common shares (the New Common Shares);

        (ii) issuing the New Common Shares to the Filer's creditors who, under the Proposal, elected to accept the issuance of the New Common Shares in full payment of the amount outstanding on their claims against the Filer;

        (iii) cancelling all issued common shares (being the Limited Voting Shares and the variable multiple voting shares) and preferred shares of the Filer;

        (iv) cancelling all warrants, options, rights to purchase shares, share subscription rights and conversion rights of the Filer; and

        (v) issuing a cash payment, expected to equate to $0.25 on the dollar, to the Filer's creditors who, under the Proposal, elected to accept such cash payment in full payment of the amount outstanding on their claims against the Filer;

    (b) the approval of the Supreme Court of British Columbia (the Court); and

    (c) the Filer applying to cease to be a reporting issuer in British Columbia and Ontario;

14. the Proposal was approved by the Court on April 26, 2010 (the Court Order);

15. the Filer was granted on May 3, 2010 a partial revocation of the BC Cease Trade Order under section 171 of the BC Act to effect the transactions contemplated by the Proposal;

16. the Filer was granted on May 4, 2010 a partial revocation of the OSC Cease Trade Order under section 144 of the Ontario Act to effect the transactions contemplated by the Proposal;

17. all of the former non-trade creditors of the Filer elected to receive New Common Shares in full payment of the amount outstanding on their claims against the Filer;

18. the closing of the transactions contemplated by the Proposal has taken place in accordance with the Court Order and, effective May 26, 2010, the outstanding securities of the Filer are now held by 12 persons;

19. the Filer issued a press release on July 6, 2010, and filed a material change report in Canada and a Form 6-K in the United States on July 6, 2010, announcing that its Limited Voting Shares issued and outstanding as of May 26, 2010, are cancelled and the common shareholders of record of the Company as of May 26, 2010 are no longer shareholders of the Company;

20. the outstanding securities of the Filer are beneficially owned, directly or indirectly, by fewer than 15 security holders in each of the jurisdictions in Canada and less than 51 security holders in total in Canada;

21. the Filer's only outstanding securities are the New Common Shares;

22. the quotation of the Filer's Limited Voting Shares on the Pink Sheets ceased on August 13, 2010;

23. the Filer filed BC Form 51-509F1 on August 17, 2010 to give notice that it is no longer an OTC reporting issuer under BC Instrument 51-509 *Issuers Quoted in the U.S. Over-the-Counter Markets*;

24. no securities of the Filer are listed, traded or quoted for trading on any "marketplace" in Canada or elsewhere (as defined in National Instrument 21-101 *Marketplace Operation*), and the Filer does not currently intend to have any of its securities listed, traded or quoted on such a marketplace in Canada or any other jurisdiction;

25. the defaults in failing to file the required continuous disclosure that led to the issuance of the Ontario Cease Trade Order and the BC Cease Trade Order remain;

26. the Filer is also in default of the requirements to file all other continuous disclosure, including any financial statements and management's discussion and analysis as required by NI 51-102, and any related certifications, since the issuance of the Ontario Cease Trade Order and the BC Cease Trade Order;

27. except for the defaults described in representations 25 and 26, the Filer has complied with applicable securities legislation, regulations and instruments;

28. the Filer has no current intention to seek public financing by way of offering of securities;

29. the Filer did not voluntarily surrender its status as a reporting issuer in British Columbia pursuant to BC Instrument 11-102 *Voluntary Surrender of Reporting Issuer Status* (the BC Instrument) in order to avoid the 10-day waiting period under the BC Instrument;

30. the Filer is not be eligible to use the simplified procedure under CSA Staff Notice 12-307 *Applications for a decision that an Issuer is not a Reporting Issuer* because it is a reporting issuer in British Columbia and because it is in default of certain filing obligations under the Legislation as described in representations 25 and 26 above;

31. if the Exemptive Relief Sought is granted, the Filer will no longer be a reporting issuer or equivalent in any jurisdiction in Canada; and

32. the Filer has been advised by staff of the OSC that the Ontario Cease Trade will be revoked concurrently upon the grant of the Exemptive Relief Sought, and the Filer has been advised by staff of the BCSC that the BC Cease Trade Order will be revoked concurrently upon the grant of the Exemptive Relief Sought.

Decision

4 The Decision Maker is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make this decision.

The decision of the Decision Maker under the Legislation is that the Exemptive Relief Sought is granted.

"Noreen Bent"
Acting Director, Corporate Finance
British Columbia Securities Commission

2.1.3 AXA S.A.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application for relief from the prospectus and registration requirements for certain trades made in connection with an employee share offering by a French issuer – The issuer cannot rely on the employee exemption in section 2.24 of Regulation 45-106 respecting prospectus and registration exemptions as the securities are not being offered to Canadian employees directly by the issuer but rather through special purpose entities – Canadian participants will receive disclosure documents – The special purpose entities are subject to the supervision of the local securities regulator – Canadian participants will not be induced to participate in the offering by expectation of employment or continued employment – There is no market for the securities of the issuer in Canada – The number of Canadian participants and their share ownership are de minimis – Relief granted, subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 74(1), ss. 53, 25.
Regulation 45-106 Respecting Prospectus and Registration Exemptions, s. 2.24.
Regulation 31-103 Respecting Registration Requirements and Exemptions.

Translation

September 3, 2010

IN THE MATTER OF
THE SECURITIES LEGISLATION OF

QUÉBEC AND ONTARIO
(the "Filing Jurisdictions")

AND

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

AND

IN THE MATTER OF
AXA S.A.
(the "Filer")

DECISION

Background

The securities regulatory authority or regulator in each of the Filing Jurisdictions (the **"Decision Maker"**) has received an application from the Filer for a decision under the securities legislation of the Filing Jurisdictions (the **"Legislation"**) for:

1. an exemption from the prospectus requirements of the Legislation (the **"Prospectus Relief"**) so that such requirements do not apply to

   (a) trades in

      (i) units (the **"Principal Classic Units"**) of AXA Shareplan Direct Global (the **"Principal Classic Compartment"**), a compartment of a permanent FCPE named Shareplan AXA Direct Global which is a *fonds commun de placement d'entreprise* or "FCPE," a form of collective shareholding vehicle of a type commonly used in France for the conservation and custodianship of shares held by employee-investors;

      (ii) units (the **"Temporary Classic Units,"** and together with the Principal Classic Units, the **"Classic Units"**) of a temporary FCPE named AXA Actions Relais Global 2010 (the **"Temporary Classic Fund,** which will merge with the Principal Classic Compartment following the completion of the Employee Share Offering (as defined below), such transaction being described as the "Merger" in

paragraph 9(b) of the Representations (the term **"Classic Compartment"** used herein means, prior to the Merger, the Temporary Classic Fund, and following the Merger, the Principal Classic Compartment); and

(iii) units (the **"Leveraged Units,"** and together with Classic Units, the **"Units"**) a compartment named AXA Plan 2010 Global (the **"Leveraged Compartment"** and, together with the Principal Classic Compartment and the Temporary Classic Fund, the **"Compartments"**) of a permanent FCPE named Shareplan AXA Direct Global

made pursuant to the Employee Share Offering to or with Qualifying Employees (as defined below) of Canadian Affiliates (as defined below) resident in the Filing Jurisdictions and in British Columbia, Alberta, Manitoba, New Brunswick, Nova Scotia and Newfoundland and Labrador who elect to participate in the Employee Share Offering (collectively, the **"Canadian Participants"**);

(b) trades in ordinary shares of the Filer (the **"Shares"**) by the Compartments to or with Canadian Participants upon the redemption of Units as requested by Canadian Participants;

(c) the issuance of Principal Classic Units to holders of Leveraged Units upon a transfer of Canadian Participants' assets in the Leveraged Compartment to the Principal Classic Compartment at the end of the Lock-Up Period (as defined below);

2. an exemption from the dealer registration requirements of the Legislation (the **"Registration Relief"**) so that such requirements do not apply to the AXA Group (as defined below), the Compartments and their respective FCPEs, as applicable, and the Management Company in respect of the following:

(a) trades in Classic Units made pursuant to the Employee Share Offering to or with Canadian Participants;

(b) trades in Leveraged Units made pursuant to the Employee Share Offering to or with Canadian Participants not resident in Ontario or Manitoba;

(c) trades in Shares by the Compartments to or with Canadian Participants upon the redemption of Units as requested by Canadian Participants; and

(d) the issuance of Principal Classic Units to holders of Leveraged Units upon a transfer of Canadian Participants' assets in the Leveraged Compartment to the Principal Classic Compartment at the end of the Lock-Up Period;

(the Prospectus Relief and the Registration Relief, collectively, the **"Offering Relief"**).

3. 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,

(b) the Filer has provided notice that section 4.7(1) of *Regulation 11-102 respecting Passport System* (**"Regulation 11-102"**) is intended to be relied upon in British Columbia, Alberta, Manitoba, New Brunswick, Nova Scotia and Newfoundland and Labrador (the **"Other Offering Jurisdictions,"** and together with the Filing Jurisdictions, the **"Jurisdictions"**), and

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

Interpretation

Terms defined in *Regulation 14-101 respecting Definitions, Regulation 45-102 respecting resale of securities, Regulation 45-106 respecting Prospectus and Registration Exemptions* and *Regulation 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 formed under the laws of France. It is not and has no current intention of becoming a reporting issuer under the Legislation or under the securities legislation of the Other Offering Jurisdictions. The head office of the Filer is located in France.

2. The Filer carries on business in Canada through the following affiliated companies: AXA Assurances Inc., AXA Canada Inc., AXA Insurance (Canada) Ltd., AXA Pacific Insurance Company, AXA Assistance Canada Inc., AXA General Insurance and Anthony Insurance Inc. (collectively, the **"Canadian Affiliates"** and, together with the Filer and other affiliates of the Filer, the **"AXA Group"**). Each of the Canadian Affiliates is a direct or indirect controlled subsidiary of the Filer and is not, and has no current intention of becoming, a reporting issuer under the Legislation or under the securities legislation of the Other Offering Jurisdictions. The head office of the AXA Group in Canada is located in Québec and the greatest number of employees of Canadian Affiliates is employed in Québec.

3. As of the date hereof and after giving effect to the Employee Share Offering, Canadian residents do not and will not beneficially own (which term, for the purposes of this paragraph, is deemed to include all Shares held by the Compartments on behalf of Canadian Participants) more than 10% of the Shares and do not and will not represent in number more than 10% of the total number of holders of Shares as shown on the books of the Filer.

4. The Filer has established a global employee share offering for employees of the AXA Group (the **"Employee Share Offering"**). The Employee Share Offering is comprised of two subscription options:

   (a) an offering of Shares to be subscribed through the Temporary Classic Fund, which Temporary Classic Fund will be merged with the Principal Classic Compartment following completion of the Employee Share Offering (the **"Classic Plan"**); and

   (b) an offering of Shares to be subscribed through the Leveraged Compartment (the **"Leveraged Plan"**).

5. Only persons who are employees of a member of the AXA Group during the reservation period for the Employee Share Offering and who meet other employment criteria (the **"Employees"**), as well as persons who have retired from Canadian Affiliates of the AXA Group and who continue to hold units in collective shareholding vehicles in connection with previous employee share offerings of the Filer (the **"Retired Employees"** and, together with the Employees, the **"Qualifying Employees"**) will be allowed to participate in the Employee Share Offering.

6. The Compartments have been established for the purpose of implementing the Employee Share Offering. There is no current intention for any of the Compartments to become a reporting issuer under the Legislation or under the securities legislation of the Other Offering Jurisdictions.

7. The Temporary Classic Fund is, and the Principal Classic Compartment and the Leveraged Compartment are compartments of, an FCPE, which is a shareholding vehicle of a type commonly used in France for the conservation and custodianship of shares held by employee investors. The Compartments will be registered with, and approved by, the Autorité des marchés financiers in France (the **"French AMF"**) prior to the commencement of the reservation in respect of the Employee Offering period.

8. All Units acquired under the Classic Plan or the Leveraged Plan by Canadian Participants will be subject to a hold period of approximately five years (the **"Lock-Up Period"**), subject to certain exceptions prescribed by French law (such as a release on death, disability or termination of employment).

9. Under the Classic Plan:

   (a) Canadian Participants will subscribe for Temporary Classic Units, and the Temporary Classic Fund will subscribe for Shares using the Canadian Participant's contributions at a subscription price that is equal to the price calculated as the arithmetical average of the Share price (expressed in Euros) on Euronext Paris on the 20 trading days preceding the date of fixing of the subscription price by the Board of Directors of the Filer (the **"Reference Price"**), less a 20% discount.

   (b) Following the completion of the Employee Share Offering, the Temporary Classic Fund will be merged with the Principal Classic Compartment (subject to the French AMF's approval). Temporary Classic Units held by Canadian Participants will be replaced with Principal Classic Units on a *pro rata* basis and the Shares subscribed for under the Employee Share Offering will be held in the Principal Classic Compartment (such transaction, the **"Merger"**).

   (c) Dividends paid on the Shares held in the Classic Compartment will be contributed to the Classic Compartment and used to purchase additional Shares. To reflect this reinvestment, new Classic Units (or fractions thereof) will be issued to participants.

   (d) At the end of the Lock-Up Period or in the event of an early redemption resulting from the Canadian Participant relying on one of the exceptions to the Lock-Up Period prescribed by French law, a Canadian Participant may

(i) request to have his or her Classic Units redeemed in consideration for the underlying Shares or a cash payment equal to the then market value of the underlying Shares; or

(ii) continue to hold Classic Units in the Classic Compartment and request to have those Classic Units redeemed at a later date.

10. Under the Leveraged Plan:

(a) Canadian Participants will subscribe for Leveraged Units, and the Leveraged Compartment will then subscribe for Shares using the Employee Contribution (as described below) and certain financing made available by Société Générale (the **"Bank"**), which bank is governed by the laws of France.

(b) Canadian Participants will subscribe for Shares at a 16.71% discount from the Reference Price. Such Canadian Participant effectively receives a share appreciation potential entitlement in the increase in value, if any, of the Shares subscribed on behalf of such Canadian Participant, including with respect to the Shares financed by the Bank Contribution (described below).

(c) Participation in the Leveraged Plan represents a potential opportunity for Qualifying Employees to obtain significantly higher gains than would be available through participation in the Classic Plan by virtue of the Qualifying Employee's indirect participation in a financing arrangement involving a swap agreement (the **"Swap Agreement"**) between the Leveraged Compartment and the Bank. In economic terms, the Swap Agreement effectively involves the following exchange of payments: for each Share which may be subscribed for by a Qualifying Employee's contribution (expressed in Euros) (the **"Employee Contribution"**) under the Leveraged Plan at the Reference Price less the 16.71% discount, the Bank will lend to the Leveraged Compartment (on behalf of the Canadian Participant) an amount sufficient to enable the Leveraged Compartment (on behalf of the Canadian Participant) to subscribe for an additional nine Shares (the **"Bank Contribution"**) at the Reference Price less the 16.71% discount.

(d) Under the terms of the Swap Agreement, at the end of the Lock-Up Period, the Leveraged Compartment will owe to the Bank an amount equal to A – [B+C], where:

(1) "A" is the market value of all the Shares at the end of the Lock-Up Period that are held in the Leveraged Compartment (as determined pursuant to the terms of the Swap Agreement),

(2) "B" is the aggregate amount of all Employee Contributions;

(3) "C" is an amount (the **"Appreciation Amount"**) equal to

(A) 70% of the positive difference, if any, between

(I) the average price of the Shares based on 52 weekly readings taken in the 12-month period beginning on or about June 18, 2014, (in the event the Share price taken in a reading is lower than the Reference Price, the Share Price taken will be used in the average and not the Reference Price), and

(II) the Reference Price,

multiplied by:

(B) the number of Shares held in the Leveraged Compartment.

(e) In addition to the above, if, at the end of the Lock-Up Period, the market value of the Shares held in the Leveraged Compartment is less than 100% of the Employee Contributions, the Bank will, pursuant to the terms and conditions of a guarantee contained in the Swap Agreement, make a contribution to the Leveraged Compartment to make up any shortfall.

(f) At the end of the Lock-Up Period, a Canadian Participant may elect to have his or her Leveraged Units redeemed in consideration for cash or Shares equivalent to

(i) the Canadian Participant's Employee Contribution, and

(ii) the Canadian Participant's portion of the Appreciation Amount, if any

(the **"Redemption Formula"**).

(g) If a Canadian Participant does not request the redemption of his or her Leveraged Units at the end of the Lock-Up Period, his or her investment in the Leveraged Compartment will be transferred to the Principal Classic Compartment upon the decision of the supervisory board of the Leveraged Compartment and Classic Compartment (subject to the approval of the French AMF). New Principal Classic Units will be issued to such Canadian Participants in recognition of the assets transferred to the Principal Classic Compartment. Such Canadian Participants will be entitled to request the redemption of the new Principal Classic Units whenever they wish. However, following a transfer to the Principal Classic Compartment, the Employee Contribution and the Appreciation Amount will not be covered by the Swap Agreement (nor the Bank's guarantee contained therein).

(h) In the event of an early unwind resulting from the Canadian Participant satisfying one of the exceptions to the Lock-Up Period prescribed by French law and meeting the applicable criteria, a Canadian Participant may request the redemption of Leveraged Units using the Redemption Formula. The measurement of the increase, if any, from the Reference Price will be carried out in accordance with similar rules to those applied to redemption at the end of the Lock-up Period, but it will be measured using values of the Shares on or about the time of the unwind instead.

(i) At the end of the Lock-Up Period or in the event of an early unwind resulting from the Canadian Participant exercising one of the exceptions to the Lock-Up Period, a Canadian Participant in the Leveraged Plan will, pursuant to the terms and conditions guarantee contained in the Swap Agreement, be entitled to receive at least 100% of his or her Employee Contribution.

(j) Under no circumstances will a Canadian Participant in the Leveraged Plan be liable to any of the Leveraged Compartment, the Bank or the Filer for any amounts in excess of his or her Employee Contribution under the Leveraged Plan.

(k) During the term of the Swap Agreement, an amount equal to the net amounts of any dividends paid on the Shares held in the Leveraged Compartment will be remitted by the Leveraged Compartment to the Bank as partial consideration for the obligations assumed by the Bank under the Swap Agreement.

(l) For Canadian federal income tax purposes, a Canadian Participant in the Leveraged Plan should be deemed to receive all dividends paid on the Shares financed by either the Employee Contribution or the Bank Contribution at the time such dividends are paid to the Leveraged Compartment, notwithstanding the actual non-receipt of the dividends by the Canadian Participants.

(m) The declaration of dividends on the Shares (in the ordinary course or otherwise) is strictly determined by the board of directors of the Filer and approved by the shareholders of the Filer. The Filer has not made any commitment to the Bank as to any minimum payment of dividends during the term of the Lock-Up Period.

(n) To respond to the fact that, at the time of the initial investment decision relating to participation in the Leveraged Plan, Canadian Participants will be unable to quantify their potential income tax liability resulting from such participation, the Filer or the Canadian Affiliates will indemnify each Canadian Participant in the Leveraged Plan for the following costs: all tax costs to the Canadian Participants associated with the payment of dividends in excess of a specified amount of Euros per calendar year per Share during the Lock-Up Period; such that, in all cases, a Canadian Participant will, at the time of the original investment decision, be able to determine his or her maximum tax liability in connection with dividends received by the Leveraged Compartment on his or her behalf under the Leveraged Plan.

(o) At the time the Leveraged Compartment's obligations under the Swap Agreement are settled, the Canadian Participant will realize a capital gain (or capital loss) by virtue of having participated in the Swap Agreement to the extent that amounts received by the Leveraged Compartment, on behalf of the Canadian Participant, from the Bank exceed (or are less than) amounts paid by the Leveraged Compartment, on behalf of the Canadian Participant to the Bank. Any dividend amounts paid to the Bank under the Swap Agreement will serve to reduce the amount of any capital gain (or increase the amount of any capital loss) that the Canadian Participant would have realized. Capital losses (gains) realized by a Canadian Participant may generally be offset against (reduced by) any capital gains (losses) realized by the Canadian Participant on a disposition of the Shares, in accordance with the rules and conditions under the *Income Tax Act* (Canada) or comparable provincial legislation (as applicable).

11. Under French law, the Temporary Classic Fund is an FCPE and the Principal Classic Compartment and the Leveraged Compartment are compartments of an FCPE, which is a limited liability entity. Each Compartment's portfolio will almost exclusively consist of Shares of the Filer, although the Leveraged Compartment's portfolio will also include rights and

associated obligations under the Swap Agreement. The Compartments may also hold cash or cash equivalents pending investments in Shares and for the purposes of facilitating Unit redemptions.

12. The manager of the Compartments, AXA Investment Managers Paris (the **"Management Company"**), is a portfolio management company governed by the laws of France. The Management Company is registered with the French AMF to manage French investment funds and complies with the rules of the French AMF. The Management Company is not, and has no current intention of becoming, a reporting issuer under the Legislation or the securities legislation of any of the Other Offering Jurisdictions.

13. The Management Company's portfolio management activities in connection with the Employee Share Offering and the Compartments are limited to subscribing for Shares from the Filer, selling such Shares as necessary in order to fund redemption requests, and such activities as may be necessary to give effect to the Swap Agreement.

14. The Management Company is also responsible for preparing accounting documents and publishing periodic informational documents. The Management Company's activities will not affect the underlying value of the Shares.

15. None of the Filer, the Management Company, the Canadian Affiliates or any of their employees, agents or representatives will provide investment advice to the Canadian Participants with respect to investments in the Shares or the Units.

16. Shares issued in the Employee Share Offering will be deposited in the respective Compartment's accounts with BNP Paribas Securities Services (the **"Depositary"**), a large French commercial bank subject to French banking legislation.

17. Under French law, the Depositary must be selected by the Management Company from among a limited number of companies identified on a list maintained by the French Minister of the Economy, Finance and Industry and its appointment must be approved by the French AMF. The Depositary carries out orders to purchase, trade and sell Shares and takes all necessary action to allow the Compartments to exercise the rights relating to the Shares held in their respective portfolios.

18. Participation in the Employee Share Offering is voluntary, and the Canadian resident Qualifying Employees will not be induced to participate in the Employee Share Offering by expectation of employment or continued employment.

19. The total amount that may be invested by a Canadian Participant in the Employee Share Offering cannot exceed 25% of his or her estimated gross annual compensation for the 2010 calendar year. A Retired Employee may contribute up to a maximum of 25% of his or her gross annual compensation in the year before he or she retired. For the purposes of calculating these limits, a Canadian Participant's maximum "investment" in the Leveraged Compartment will include the additional Bank Contribution, if applicable. Therefore, the total amount invested by a Canadian Participant in the Leveraged Plan cannot exceed 2.5% of his or her estimated gross annual compensation for 2010, or, in the case of a Retired Employee, 2.5% of his or her gross annual compensation in the year before he or she retired.

20. The Shares are principally traded through Euronext Paris. The Shares are not currently listed for trading on any stock exchange in Canada and there is no intention to have the Shares so listed. As there is no market for the Shares in Canada, and as none is expected to develop, any first trades of Shares by Canadian Participants will be effected through the facilities of, and in accordance with, the rules and regulations of Euronext Paris.

21. The Filer will retain a securities dealer registered as a broker/investment dealer under the securities legislation of Ontario and Manitoba to provide advisory services to Canadian Participants resident in Ontario or Manitoba who express interest in the Leveraged Plan and to make a determination, in accordance with industry practices, as to whether an investment in the Leveraged Plan is suitable for each such Canadian Participant based on his or her particular financial circumstances.

22. Leveraged Units will be evidenced by account statements issued by the Leveraged Compartment.

23. Canadian Participants will receive an information package in the French or English language (according to their preference) which will include a summary of the terms of the Employee Share Offering, a tax notice containing a description of Canadian income tax considerations relating to the subscription to and holding of Units and the redemption thereof at the end of the Lock-Up Period, an information notice approved by the French AMF for each Compartment describing its main characteristics and a reservation and revocation form. The information package for Canadian Participants in the Leveraged Plan will include all the necessary information for general inquiry and support with respect to the Leveraged Plan and will also include a risk statement which will describe certain risks associated with an investment in Leveraged Units pursuant to the Leveraged Plan, and a tax calculation document or electronic file which Canadian Participants may use that will illustrate the general Canadian federal income tax considerations relating to the participation in the Leveraged Plan.

24. Canadian Participants may consult the Filer's annual report on Form 20-F filed with the SEC and/or the French *Document de référence* filed with the French AMF in respect of the Shares as well as a copy of the relevant Compartment's rules (which are analogous to company by-laws). Canadian Participants will also have access to copies of the continuous disclosure materials relating to the Filer that are furnished to its shareholders generally.

25. There are approximately 2200 Employees resident in Canada, with the largest number residing in Québec (approximately 1315) and the second largest number residing in Ontario (approximately 450). There are approximately 55 eligible Retired Employees resident in Canada, with approximately 30 resident in Québec and 15 resident in Ontario. Qualifying Employees are also located in British Columbia, Alberta, Manitoba, New Brunswick, Nova Scotia and Newfoundland and Labrador. In total, there are approximately 2255 Qualifying Employees resident in Canada represent in the aggregate less than 3% of the number of Qualifying Employees of the AXA Group.

26. The Filer is not, and none of the Canadian Affiliates are, in default of the securities legislation of the Jurisdictions. To the best of the Filer's knowledge, the Management Company is not in default of the Legislation or the securities legislation of any Other Offering Jurisdiction.

Decision

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

The decision of the Decision Makers under the Legislation is that the Offering Relief is granted provided that

1. the prospectus requirements of the Legislation will apply to the first trade in any Shares acquired by Canadian Participants pursuant to this Decision unless the following conditions are met:

    (a) the issuer of the security

        (i) was not a reporting issuer in any jurisdiction of Canada at the distribution date, or

        (ii) is not a reporting issuer in any jurisdiction of Canada at the date of the trade;

    (b) at the distribution date, after giving effect to the issue of the security and any other securities of the same class or series that were issued at the same time as or as part of the same distribution as the security, residents of Canada

        (i) did not own, directly or indirectly, more than 10% of the outstanding securities of the class or series, and

        (ii) did not represent in number more than 10% of the total number of owners, directly or indirectly, of securities of the class or series; and

    (c) the first trade is made

        (i) through the facilities of an exchange, or a market, outside of Canada, or

        (ii) to a person or company outside of Canada;

2. in Québec, the required fees are paid in accordance with Section 271.6(1.1) of the *Securities Regulation* (Québec).

"Josée Deslauriers"
Director, Investment Funds and Continuous Disclosure

2.1.4 Synchronica Plc

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Filer making securities exchange take-over bid – First trade of securities of the filer issued as consideration under the bid exempted from the prospectus requirement, subject to condition that the trade is not a control distribution – Filer is a reporting issuer in one jurisdiction as a result of filing take-over bid circular and first trades of Filer's securities that take place in that jurisdiction are not subject to prospectus requirement – Relief enables all securityholders who receive Filer's securities as consideration in the bid to also receive freely tradable securities.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 53, 74.

August 31, 2010

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

AND

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

AND

IN THE MATTER OF
SYNCHRONICA PLC (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 of the principal regulator (the "Legislation") that the first trade of ordinary shares (each, a "Synchronica Share") and warrants to purchase Synchronica Shares (each, a "Synchronica Warrant") of the Filer, to be distributed pursuant to the Filer's take-over bid (the "Offer") to acquire all of the issued and outstanding iseemedia Share and iseemedia Warrants (the terms "iseemedia Shares" and "iseemedia Warrants" as defined in the Representations below) in accordance with the terms of the take-over bid circular dated July 22, 2010 (the "Circular") prepared in connection with the Offer, be exempt from the prospectus requirement (the "Exemption Sought").

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 Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Nunavut, the Northwest Territories, and Yukon (together with Ontario, the "First Trade 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 was incorporated in England and Wales under the name "Synchronica plc" on December 12, 2005.

2. The share capital of the Filer consists of ordinary shares without restrictions on transfer. As of July 19, 2010, 839,619,249 ordinary shares were issued and outstanding, along with 38,850,000 issued and outstanding warrants exercisable for the ordinary shares of Synchronica, and 59,244,443 issued and outstanding options exercisable for the ordinary shares of Synchronica.

3. The Filer is a public limited company traded on AIM, a market operated by the London Stock Exchange, under the symbol SYNC.L.

4. The Filer has applied to list the Synchronica Shares distributed in connection with the Offer on the TSX Venture Exchange (the "TSXV"). Although the Filer's receipt, prior to the date on which the Filer first allots and issues Synchronica Shares in exchange for iseemedia Shares deposited under the Offer, of conditional approval from the TSXV for the listing of the Synchronica Shares on the TSXV is a condition to the completion of the Offer, the Filer does not expect to receive such conditional approval from the TSXV by the expiry date of the Offer, and will likely waive this condition to the completion of the Offer (with the agreement of iseemedia as provided in the Circular).

5. By virtue of the definitions of "reporting issuer" contained in the securities legislation of Québec, the Filer became a reporting issuer in Québec when the securities offered as consideration in the Offer were described in a circular filed with the *Autorité des marches financiers* (the "non-First Trade Jurisdiction"). However, the Filer will not become a reporting issuer in the First Trade Jurisdictions as a result of filing the Circular and/or taking up the securities tendered to the Offer.

6. iseemedia is a corporation incorporated under the *Canada Business Corporations Act*, with its registered office and principal place of business located in Toronto, Ontario. iseemedia is a reporting issuer in Alberta, British Columbia, Ontario and Québec, and its common shares (the "iseemedia Shares") are listed on the TSXV under the trading symbol "IEE".

7. On July 20, 2010, the Filer and iseemedia jointly announced that they had entered into a definitive support agreement, pursuant to which the Filer would make the Offer.

8. On July 19, 2010, the Filer entered into lock-up agreements with all of the directors and senior management of iseemedia and certain other iseemedia shareholders with respect to an aggregate of 17,140,535 iseemedia Shares, representing approximately 23.4% of the issued and outstanding iseemedia Shares on a fully-diluted basis as at July 22, 2010, and with respect to the exercise of any warrants to purchase iseemedia Shares (the "iseemedia Warrants") or options to purchase iseemedia Shares (the "iseemedia Options") held by the locked-up shareholders. The Filer does not presently beneficially own, directly or indirectly, any iseemedia Shares.

9. As publicly disclosed by iseemedia, there are outstanding 73,102,363 iseemedia Shares as at July 22, 2010. In addition, there are outstanding 8,498,750 iseemedia Warrants and 5,682,000 iseemedia Options.

10. The Filer has not offered to purchase any options or other securities of iseemedia other than the iseemedia Shares and iseemedia Warrants.

11. The Filer made the Offer by mailing the Circular, together with all related documents, to holders of iseemedia Shares (the "iseemedia Shareholders") and holders of iseemedia Warrants (the "iseemedia Warrantholders"), which Circular described, among other things, the Offer. The Circular has been filed under the iseemedia issuer profile on the System for Electronic Document Analysis and Retrieval ("SEDAR").

12. Pursuant to National Policy 11-203, section 3.6(5), the principal regulator is the Ontario Securities Commission (the "Commission"), for the following reasons:

a. The Filer's request for the Exemption Sought relates to the exemption specified in Section 2.11 of NI 45-102, which is an exemption from the prospectus requirements with respect to a trade in a security acquired in a take-over bid or issuer bid; and

b. The head office of the target company, iseemedia, is located in Ontario and iseemedia is traded on the TSXV.

13. Neither the Filer nor iseemedia is on the list of defaulting reporting issuers maintained by the non-First Trade Jurisdiction, or the First Trade Jurisdictions.

14. The distribution of the Synchronica Shares and Synchronica Warrants pursuant to the Offer will be exempt from the prospectus requirements in each of the provinces and territories in Canada pursuant to Section 2.16 of National Instrument 45-106 – *Prospectus and Registration Exemptions*.

15. Pursuant to Section 2.6 of NI 45-102, the first trade in securities acquired pursuant to a securities exchange take-over bid is deemed to be a distribution, unless certain conditions are met. In the current circumstances, Synchronica will not be a "reporting issuer" in the First Trade Jurisdictions on the date that the iseemedia Shares or iseemedia Warrants are first taken up under the Offer, and the Synchronica securities so issued under the Offer would be subject to a four-month seasoning period.

16. While Section 2.11 of NI 45-102 provides first trade relief in respect of a security acquired in a securities exchange take-over bid, such relief is subject to the condition that the offeror was a reporting issuer in the local jurisdiction on the date the securities of the offeree issuer are first taken up pursuant to the take-over bid. As the Filer will not have become a reporting issuer in the First Trade Jurisdictions at such time, the relief to the seasoning period requirement that is provided by Section 2.11 NI 45-102 is unavailable in the First Trade Jurisdictions.

17. If the decision requested herein is not granted, iseemedia Shareholders or iseemedia Warrantholders in the non-First Trade Jurisdiction who acquire Synchronica Shares or Synchronica Warrants pursuant to the Offer will, pursuant to NI 45-102, be free to trade such securities immediately after the Offer is completed, whereas iseemedia Shareholders or iseemedia Warrantholders who acquire Synchronica Shares or Synchronica Warrants pursuant to the Offer in the First Trade Jurisdictions will be subject to a four month seasoning period. The Exemption Sought is intended to result in all of the iseemedia Shareholders and iseemedia Warrantholders resident in Canada being treated in the same manner.

19. It is a condition to the completion of the Offer that the Synchronica Shares and Synchronica Warrants can be freely re-sold in Canada.

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 any first trade of Synchronica Shares or Synchronica Warrants is not a control distribution.

“Paulette Kennedy”
Commissioner

“James D. Carnwath”
Commissioner

2.1.5 Etrion Corporation

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – An issuer wants relief from the requirements to reconcile certain acquisition statements to Canadian GAAP and to prepare pro forma financial statements in accordance with Canadian GAAP in a BAR – The filer has obtained relief to adopt IFRS early; the target company is using IFRS; the filer will provide an opening balance sheet as at the transition date to IFRS with its first financial statement filing using IFRS. In the BAR, the filer will disclose the adjustments resulting from conversion to IFRS separately from the adjustments resulting from the acquisition

Applicable Legislative Provisions

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

September 7, 2010

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

AND

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

AND

IN THE MATTER OF
ETRION CORPORATION
(the Filer)

DECISION

Background

1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Makers) have received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) exempting the Filer from the requirement in section 6.1 of National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (NI 52-107) to reconcile acquisition statements to be included in certain business acquisition reports (the BARs) to Canadian GAAP and the requirement in section 7.1 of NI 52-107 to prepare pro forma income statements to be included in the BARs in accordance with Canadian GAAP (the Exemption Sought).

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta (the Passport Jurisdiction); and

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

Interpretation

2 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

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

1. the Filer is a corporation continued under the laws of British Columbia;

2. the Filer's registered office is located in Vancouver, British Columbia and its head office is located in Geneva, Switzerland;

3. the Filer's common shares are listed on the Toronto Stock Exchange;

4. the Filer is a reporting issuer in each of the Jurisdictions and the Passport Jurisdiction; the Filer is not in default of securities legislation of any jurisdiction;

5. the Filer is a renewable energy company focused on developing, financing, building, owning and operating global power plants based on renewable sources of energy, including solar photovoltaic, solar thermal and wind; in addition, the Filer owns oil and gas investments in Venezuela through its wholly-owned subsidiary, PFC Oil and Gas, C.A.;

6. prior to the interim period ended June 30, 2010 the Filer prepared its financial statements in accordance with Canadian GAAP;

7. on June 22, 2010 the British Columbia Securities Commission and the Ontario Securities Commission issued a decision document (the Original Decision) that allows Etrion to prepare its financial statements for annual and interim periods beginning on or after January 1, 2010 in accordance with International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IFRS-IASB); in its application for the Original Decision, the Filer provided notice that it intended to rely on section 4.7(1) of MI 11-102 for purposes of the equivalent provision (as defined in MI 11-102) in the Passport Jurisdiction;

8. as a result of the Original Decision, the Filer prepared and filed on SEDAR on August 16, 2010:

   (a) restated interim consolidated financial statements for the three months ended March 31, 2010 prepared in accordance with IFRS-IASB, together with related management's discussion and analysis; and

   (b) interim consolidated financial statements for the three and six months ended June 30, 2010 prepared in accordance with IFRS-IASB, together with related management's discussion and analysis;

9. on June 24, 2010 the Filer completed the acquisition of Helios ITA, Srl (Helios ITA), which constituted a significant acquisition under National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102); accordingly, the Filer will be required to file, on or before September 7, 2010, a business acquisition report (the Helios BAR) with respect to such acquisition;

10. Helios ITA was incorporated on January 14, 2008 and the fiscal year end of Helios ITA is December 31; accordingly, the Helios BAR will be required to include:

    (a) audited annual financial statements of Helios ITA as at and for the years ended December 31, 2009 and 2008;

    (b) unaudited interim financial statements as at and for the three months ended March 31, 2010 and 2009; and

    (c) pro forma income statements of the Filer for the year ended December 31, 2009 and the three months ended March 31, 2010 that give effect to the acquisition of Helios ITA as if it had taken place on January 1, 2009;

11. the Filer is not required to include a pro forma balance sheet in the Helios BAR because the acquisition of Helios ITA will be reflected in Etrion's balance sheet as at June 30, 2010;

12. on August 5, 2010 the Filer completed the acquisition of SunRay Italy Holding, Srl (SunRay Italy), which also constituted a significant acquisition under NI 51-102; accordingly the Filer will be required to file, on or before October 19, 2010, a business acquisition report (the SunRay BAR and, together with the Helios BAR, the BARs) with respect to such acquisition;

13. SunRay Italy was incorporated on August 8, 2008 and the fiscal year end of SunRay Italy is June 30; accordingly, the SunRay BAR will be required to include:

(a) annual audited financial statements of SunRay Italy as at and for the years ended June 30, 2010 and 2009;

(b) a pro forma balance sheet of the Filer as at June 30, 2010 that gives effect to the acquisition of SunRay Italy as if it had taken place on June 30, 2010; and

(c) pro forma income statements of the Filer for the year ended December 31, 2009 and the six months ended June 30, 2010 that give effect to the acquisition of Helios ITA and SunRay Italy as if they had taken place on January 1, 2009;

14. Helios ITA and SunRay Italy are both based in Italy and prepare their financial statements in accordance with IFRS-IASB;

15. under Part 6 of NI 52-107, if acquisition statements of an acquired business are prepared under accounting principles different from the accounting principles used to prepare the issuer's financial statements (the issuer's GAAP), the acquisition statements must be reconciled to the issuer's GAAP;

16. Part 7 of NI 52-107 provides that pro forma financial statements must be prepared in accordance with the issuer's GAAP;

17. the audited financial statements of the Filer for the year ended December 31, 2009 were prepared in accordance with Canadian GAAP; under the Original Decision, the Filer intends to prepare its interim financial statements for interim periods beginning on or after January 1, 2010 in accordance with IFRS-IASB;

18. without the Exemption Sought:

(a) the historical financial statements of Helios ITA for the year ended December 31, 2009 to be included in the Helios BAR would have to be reconciled to Canadian GAAP, whereas the historical financial statements of Helios ITA for the three months ended March 31, 2010 to be included in the Helios BAR would not have to be so reconciled;

(b) the pro forma income statement of the Filer for the year ended December 31, 2009 to be included in the Helios BAR would have to be prepared in accordance with Canadian GAAP, whereas the pro forma income statement of the Filer for the three months ended March 31, 2010 to be included in the Helios BAR would have to be prepared in accordance with IFRS-IASB;

(c) the historical financial statements of SunRay Italy for the year ended June 30, 2010 to be included in the SunRay BAR would have to be reconciled to Canadian GAAP; and

(d) the pro forma income statement of the Filer for the year ended December 31, 2009 to be included in the SunRay BAR would have to be prepared in accordance with Canadian GAAP, whereas the pro forma balance sheet of the Filer as at June 30, 2010 and the pro forma income statement of the Filer for the six months ended June 30, 2010 to be included in the SunRay BAR would have to be prepared in accordance with IFRS-IASB;

19. the Filer's first IFRS-IASB financial statements for the three months ended March 31, 2010 will include the reconciliations and other information specified in paragraphs 6 and 23 through 28 of IFRS 1 *First-time Adoption of International Financial Reporting Standards*, including but not limited to:

(a) an opening IFRS statement of financial position as at the transition date of January 1, 2009;

(b) a reconciliation of equity as previously reported in accordance with Canadian GAAP to equity in accordance with IFRS as at the transition date of January 1, 2009 and as at each year end since that date;

(c) a reconciliation of total comprehensive income as previously reported in accordance with Canadian GAAP to total comprehensive income in accordance with IFRS for the year ended December 31, 2009;

(d) sufficient information to enable users to understand the material adjustments to the statement of financial position and statement of comprehensive income for the year ended December 31, 2009; and

(e) material differences between the statements of cash flows as previously reported in accordance with Canadian GAAP and restated IFRS amounts for the year ended December 31, 2009.

Decision

4 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 the pro forma income statements of the Filer for the year ended December 31, 2009 to be included in the BARs include:

(a) the applicable amounts reported in the audited financial statements of the Filer for the year ended December 31, 2009;

(b) adjustments to the amounts referred to in paragraph (a) required to restate them in accordance with IFRS-IASB;

(c) the applicable amounts reported in the audited annual financial statements of Helios ITA for the year ended December 31, 2009;

(d) in the SunRay BAR, the applicable amounts for SunRay Italy for a twelve month period ending no more than 93 days before or after December 31, 2009 prepared in compliance with the requirements in section 8.4(7)(c) and (d) of NI 51-102; and

(e) separately from the adjustments referred to in paragraph (b), other adjustments relating to the significant acquisitions presented in such pro forma income statements.

“Andrew S. Richardson, CA”
Acting Director, Corporate Finance
British Columbia Securities Commission

2.1.6 North Growth Management Ltd.

Headnote

Multilateral Instrument 11-102 Passport System – National Instrument 31-103 Registration Requirements and Exemptions s. 15.1 Exemption from National Instrument 31-103 Registration Requirements and Exemptions s. 13.2(2)(b) requirement to take reasonable steps to establish whether the client is an insider of a reporting issuer or any other issuer whose securities are publicly traded – An exempt market dealer seeks relief to continue to offer units of its private mutual funds in reliance on prospectus exemptions – The person does not distribute any securities other than private mutual funds they manage; the funds are subject to concentration restrictions; only in very rare circumstances would a trade raise regulatory obligations relating to insider trading issues

Applicable Legislative Provisions

National Instrument 31-103 Registration Requirements and Exemptions, ss. 13.2(2)(b), 15.1.

September 24, 2010

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

AND

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

AND

IN THE MATTER OF
NORTH GROWTH MANAGEMENT LTD.
(the Filer)

DECISION

1 Background

The securities regulatory authority or regulator in each the Jurisdictions (the Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the Filer is exempt from the provisions of subsection 13.2(2)(b) of National Instrument 31-103 (NI 31-103) in connection with the Filer's registration in the category of exempt market dealer under NI 31-103 with respect to the distribution of the Funds (as defined below) (the Exemption Sought).

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

(a) the British Columbia Securities Commission is the principal regulator for this application,

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta and Quebec, and

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

2 Interpretation

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

3 Representations

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

1. The Filer is a company incorporated under the laws of British Columbia, has its head office located in British Columbia, and is registered as a portfolio manager under NI 31-103 in each of the Jurisdictions.

2. The Filer is not in default of the securities legislation in any jurisdiction.

3. The Filer is seeking registration as an exempt market dealer under NI 31-103 to enable the Applicant to continue to offer units of the North Growth US Equity Fund, the North Growth Canadian Equity Fund and the North Growth Money Market Fund (collectively, the Funds) in reliance on exemptions from the prospectus requirements of applicable securities legislation.

4. Each of the Funds are private mutual funds and are managed by the Filer.

5. The Filer does not distribute any securities other than their own Funds in its capacity as an exempt market dealer.

4 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 the Filer will not cause any of the Funds to purchase a security of an issuer if, immediately after the transaction, more than 10 percent of the net assets of a Fund, taken at market value at the time of the transaction, would be invested in securities of any issuer.

"Sandra Jakab"
Director, Capital Markets Regulation
British Columbia Securities Commission

2.1.7 Research In Motion Limited

Editor's Note: A draft version of this decision was inadvertently published in (2010), 33 OSCB 6687. The final version of the decision is published here and replaces the draft version.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Section 104(2)(c) – Issuer bid – relief from issuer bid requirements in sections 93 to 99.1 of the Act – issuer conducting a normal course issuer bid through the facilities of the TSX and NASDAQ – relief granted, provided that the bid is subject to a maximum aggregate limit mirroring the TSX NCIB rules.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 93 to 99.1, 101.2, 104(2)(c).

July 13, 2010

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
RESEARCH IN MOTION LIMITED
(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 of the principal regulator (the **Legislation**) that the requirements contained in the Legislation relating to issuer bids (the **Issuer Bid Requirements**) shall not apply to purchases of the common shares of the Filer (the **Common Shares**) made by the Filer through the facilities of the Nasdaq Stock Market (the **Nasdaq**) pursuant to the Share Repurchase Program (as defined below) (the **Exemption Sought**).

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

(a) the Ontario Securities Commission is the principal regulator for this application (the **OSC**), 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, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland & Labrador, Yukon, Northwest Territories and Nunavut (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 Filer:

(a) The Filer is a corporation amalgamated under the *Business Corporations Act* (Ontario).

(b) The Filer's head office is in Waterloo, Ontario.

(c) The Filer is a reporting issuer in each of the provinces of Canada and the Filer is not in default of any requirement of the securities legislation in the jurisdictions in which it is a reporting issuer.

(d) The Filer is also a registrant with the Securities and Exchange Commission (the **SEC**) in the United States and is subject to the requirements of the United States *Securities Exchange Act of 1934* (the **1934 Act**).

(e) As at June 24, 2010, the Filer had approximately 552,511,264 Common Shares issued and outstanding.

(f) The Common Shares are listed for trading on the Toronto Stock Exchange (**TSX**) and the Nasdaq.

(g) Pursuant to a press release dated November 5, 2009, the Filer commenced a share repurchase program (the **Previous Share Repurchase Program**) under which it was authorized to purchase for cancellation through the facilities of the Nasdaq Common Shares having an aggregate purchase price of up to US$1.2 billion. The Previous Share Repurchase Program was authorized to commence on November 9, 2009.

(h) Between November 9, 2009 and April 13, 2010, the Filer purchased 16,235,800 Common Shares through the facilities of the Nasdaq.

(i) On April 13, 2010, the Filer obtained an issuer bid exemption order from the OSC to purchase for cancellation 2,000,000 Common Shares pursuant to private agreements between the Filer and a non-related third-party financial institution. The Common Shares repurchased through the private agreements, together with 16,235,800 Common Shares that the Filer had repurchased through the facilities of the Nasdaq since November 9, 2009, represented approximately 3.2% of the Filer's outstanding Common Shares and substantially completed the Previous Share Repurchase Program.

(j) On June 24, 2010, the Filer announced that its Board of Directors has authorized a normal course issuer bid to purchase for cancellation up to approximately 31 million Common Shares (the **Share Repurchase Program**).

(k) Under the Normal Course Issuer Bid Exemption (as defined below), the Filer is permitted to purchase up to an additional approximately 9.3 million Common Shares, or approximately 1.8% of its outstanding Common Shares, through the facilities of the Nasdaq. Any additional purchases of Common Shares must be made through the facilities of the TSX, with the approval of the TSX, or through the facilities of the Nasdaq, pursuant to an exemptive relief order from the principal regulator.

(l) Between July 8, 2010 and July 12, 2010, the Filer purchased 8,805,000 Common Shares through the facilities of the Nasdaq.

(m) On July 12, 2010, the Filer filed a Notice of Intention to Make a Normal Course Issuer Bid (the **Notice of Intention**) with the TSX in order to permit it to make normal course issuer bid purchases of its Common Shares through the facilities of the TSX.

(n) The Notice of Intention contemplates the purchase by the Filer of up to approximately 22.46 million Common Shares through the facilities of the TSX and Nasdaq during the 12 months ending July 14, 2011. The purchases of up to approximately 22.46 million Common Shares authorized pursuant to the Share Repurchase Program, together with the 18,235,800 Common Shares purchased

under the Previous Share Repurchase Program and the 8,805,000 Common Shares purchased since June 24, 2010 under the Share Repurchase Program, represent approximately 10% of the Filer's outstanding public float (as defined in Section 628(a)(xi) of the TSX Company Manual) as at June 24, 2010. Additional purchases under the Share Repurchase Program exceeding approximately 584,763 Common Shares in the aggregate are limited to the facilities of the TSX and exempt from the Issuer Bid Requirements under the Designated Exchange Exemption (as defined below).

(o) The Filer wishes to be able to make normal course issuer bid purchases through the facilities of both the TSX and the Nasdaq.

(p) Issuer bid purchases made through the facilities of the TSX in compliance with the by-laws, regulations and policies of the TSX relating to normal course issuer bids (the **TSX NCIB Rules**) are exempt from the Issuer Bid Requirements pursuant to the designated exchange exemption contained in Section 101.2(1) of the Act, as amended or replaced from time to time (the **Designated Exchange Exemption**). The TSX NCIB Rules allow normal course issuer bid purchases of up to 10% of the public float to be made through the facilities of the TSX over the course of a 12-month period.

(q) Issuer bid purchases made through the facilities of the Nasdaq are normally made in reliance on the exemption contained in Section 101.2(2) of the Act, as amended or replaced from time to time (the **Normal Course Issuer Bid Exemption**). The Normal Course Issuer Bid Exemption limits the purchases that may be made by the Filer in a 12-month period to 5% of the securities of the particular class outstanding at the commencement of the period.

(r) Purchases made pursuant to the Notice of Intention through the facilities of the TSX are exempt from the Issuer Bid Requirements under the Designated Exchange Exemption while such purchases through the facilities of the Nasdaq are not exempt under the Designated Exchange Exemption, as the Act does not recognize the Nasdaq as a "designated exchange" for the purpose of the Designated Exchange Exemption.

(s) No other exemptions exist under the Act that would otherwise permit the Filer to make purchases through the Nasdaq on an exempt basis where the purchases exceed the 5% limitation under the Normal Course Issuer Bid Exemption.

(t) The Share Repurchase Program will be effected in accordance with the 1934 Act, and the rules of the SEC made pursuant thereto, including the safe harbour provided by Rule 10b-18 under the 1934 Act (collectively, **Applicable U.S. Securities Laws**), which contains, among other things, restrictions on the number of shares that may be purchased on a single day, subject to certain exceptions for block purchases, based on the average daily trading volumes of the Common Shares on Nasdaq.

(u) Purchases of Common Shares by the Filer of up to 10% of the public float through the facilities of the Nasdaq would be permitted under the rules of the Nasdaq and under Applicable U.S. Securities Laws.

(v) The Filer requires relief from the Issuer Bid Requirements in order to make purchases of its Shares through the facilities of the Nasdaq up to the number permitted to be purchased under the Notice of Intention as permitted by the TSX and under the Designated Exchange Exemption.

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 the purchases of Common Shares made through the facilities of Nasdaq are part of a normal course issuer bid that complies with the TSX NCIB Rules.

"James Turner"
Commissioner
Ontario Securities Commission

"Paulette Kennedy"
Commissioner
Ontario Securities Commission

2.1.8 Mongolian Mining Corporation

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 43-101 – Applicant granted relief from the requirements of NI 43-101 in respect of disclosure made in and in connection with an offering memorandum for a private placement – Relief subject to conditions that offering memorandum contains specified opinions of experts, Canadian resident holdings are *de minimis*, and all Canadian investors are "accredited investors".

Applicable Legislative Provisions

National Instrument 43-101 Standards of Disclosure for Mineral Projects, s. 9.1.

September 30, 2010

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
MONGOLIAN MINING 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 of the principal regulator (the "**Legislation**") pursuant to subsection 9.1(1) of National Instrument 43-101 *Standards of Disclosure for Mineral Projects* ("**NI 43-101**") that the Filer be exempt from the requirements of NI 43-101 with respect to the disclosure made (i) in connection with the Canadian Offering (as defined below); and (ii) in the Preliminary Offering Memorandum (as defined below) and the Offering Memorandum (as defined below) prepared by the Filer for the Canadian Offering (the "**Exemption Sought**");

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

(a) the Ontario Securities Commission is the principal regulator for this application; 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 each of British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland, Northwest Territories, Yukon and Nunavut.

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 private limited liability company incorporated pursuant to the laws of The Cayman Islands with its head office in Ulaanbaatar, Mongolia.

2. The Filer is currently engaged in the development of mining deposits in Mongolia. The Filer, together with its subsidiaries, focuses on the exploration for, and the mining, processing, marketing and sale of coal.

3. The Filer is not a reporting issuer in Ontario or any other Canadian jurisdiction, nor are any of its securities listed or posted for trading on any stock exchange in Canada. The Filer has no present intention of becoming a reporting issuer in Ontario or any other Canadian jurisdiction or of becoming listed on an exchange in Canada.

4. The authorized share capital of the Filer consists of 6,000,000,000 ordinary shares with nominal value of US$0.01 each (the "**Ordinary Shares**"). No securities of the Filer are currently listed on any stock exchange, although admission to listing of the Ordinary Shares on the main board of the Stock Exchange of Hong Kong Limited ("**HKSE**") and unconditional dealings in the Ordinary Shares are currently expected to commence on the HKSE in October 2010 concurrently with the closing of the Global Offering (as defined below).

5. The Filer intends to offer new Ordinary Shares of the Filer in an underwritten initial public offering of Ordinary Shares in Hong Kong (the "**HK Public Offering**") pursuant to a prospectus (the "**HK Prospectus**") and on a private placement basis to purchasers in certain other jurisdictions including the United States and Canada (the "**International Placing** and together with the HK Public Offering, the "**Global Offering**").

6. As part of the Global Offering, the Company will be offering its Ordinary Shares to accredited investors in Canada on a private placement basis (the "**Canadian Offering**"). The Canadian Offering will be made only to accredited investors in reliance on the exemption in section 2.3 of National Instrument 45-106 *Prospectus and Registration Exemptions* ("**NI 45-106**").

7. Citigroup Global Markets Asia Limited and J.P. Morgan Securities (Asia Pacific) Limited are acting as underwriters for the HK Public Offering and Citigroup Global Markets Ltd. and J.P. Morgan Securities Ltd. are acting as underwriters for the International Placing.

8. The HK Prospectus will be prepared in accordance with Hong Kong law and the rules and regulations of the HKSE and is required to be approved by the HKSE and the Securities and Futures Commission of Hong Kong.

9. The HK Prospectus and relevant supporting materials and information will be submitted to a listing hearing committee of the HKSE which will review the listing application as well as the HK Prospectus and other accompanying documents, provide comments and, if applicable, grant committee approval for the listing of the Ordinary Shares on the HKSE.

10. An independent technical report (the "**ITR**") on the coal resources and reserves at the Filer's Ukhaa Khudag (UHG) Mine has been prepared by Norwest Corporation of Calgary, Alberta ("**Norwest"**) and will be included in its entirety in the HK Prospectus.

11. The ITR was prepared by Alister D. Horn, a Qualified Professional Member of the Society of Mining & Metallurgical Society of America, of Norwest, who is a "qualified person" and is independent of the Filer for the purposes of NI 43-101.

12. Norwest has prepared the ITR (including the estimates of mineral resources and ore reserves set out therein) in accordance with, among other things, the Australasian Code for Reporting of Mineral Resources and Ore Reserves (the "**JORC Code**") published by the Joint Ore Reserves Committee ("**JORC**") of the Australasian Institute of Mining & Metallurgy, Australian Institute of Geoscientists, and Minerals Council of Australia.

13. In connection with the Canadian Offering, the Filer intends to distribute to accredited investors in Canada a preliminary offering memorandum (the "**Preliminary Offering Memorandum**") and a final offering memorandum (the "**Offering Memorandum**") containing the HK Prospectus and any additional disclosure required pursuant to the laws of the provinces and territories of Canada, including disclosure relating to resale restrictions and statutory rights of action.

14. The Preliminary Offering Memorandum contains the following cautionary statement:

> The scientific and technical information on the Ukhaa Khudag coal deposit, which is contained in this offering memorandum, was prepared in compliance with the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves (the "JORC Code") published by the Joint Ore Reserves Committee of the Australasian Institute of Mining & Metallurgy, Australian Institute of Geoscientists, and Minerals Council of Australia. In the opinion of Norwest Corporation ("Norwest"), in the context of the Ukhaa Khudag coal deposit (i) the definitions and standards of the JORC Code are substantively similar to the definitions and standards of the Canadian Institute of Mining, Metallurgy and Petroleum (the "CIM Standards") which are recognised by the Canadian regulatory authorities and contained in National Instrument 43-101 – Standards for Disclosure of

> Mineral Projects ("NI 43-101"); and (ii) a reconciliation of mineral resources and mineral reserves prepared in compliance with the JORC Code would not result in a materially different mineral resources and mineral reserves as prepared in compliance with the CIM Standards.
>
> The issuer has applied to the Canadian regulatory authorities for a decision exempting the offering from the requirements of NI 43-101. The offer being made in Canada is conditional upon receipt of a decision from the Canadian regulatory authorities exempting the offering from the provisions of NI 43-101. While the issuer does not anticipate any difficulty in obtaining such a decision, if this decision is not received from the applicable regulator in an investor's province of residence prior to the closing of the private placement, investors in that province will be advised and subscriptions will not be accepted from such investors.

15. Immediately after the Global Offering, less than 10% of the Ordinary Shares will be held by residents of Canada.

16. The Filer expects that the majority of its Canadian security holders will be resident in Ontario on the completion of the Canadian Offering.

17. The Filer will file the Offering Memorandum in each jurisdiction and within the time limit specified in NI 45-106.

18. The Filer is not in default of securities legislation in any of the jurisdictions of Canada.

Decision

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

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

(a) Norwest will provide an opinion, to be set out in the Offering Memorandum, that, in the context of the Ukhaa Khudag coal deposit (i) the definitions and standards of the JORC Code are substantively similar to the definitions and standards of the Canadian Institute of Mining, Metallurgy and Petroleum which are recognised by the Canadian regulatory authorities and contained in NI 43-101; and (ii) in the specific case of Ukhaa Khudag, a reconciliation of mineral resources and mineral reserves prepared in compliance with the JORC Code would not result in a materially different mineral resources and mineral reserves as prepared in compliance with the CIM Standards.

(b) less than 10% of the Ordinary Shares will be held by residents of Canada after the Global Offering;

(c) all purchasers under the Canadian Offering will be "accredited investors" as defined in NI 45-106; and

(d) the Offering Memorandum includes the following statement:

> The Canadian regulatory authorities have exempted the issuer from the requirements of NI 43-101 with respect to the disclosure made in connection with this offering and in this Offering Memorandum.
>
> The scientific and technical information on the Ukhaa Khudag coal deposit, which is contained in this offering memorandum, was prepared in compliance with the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves (the "JORC Code") published by the Joint Ore Reserves Committee of the Australasian Institute of Mining & Metallurgy, Australian Institute of Geoscientists, and Minerals Council of Australia. In the opinion of Norwest Corporation ("Norwest") in the context of the Ukhaa Khudag coal deposit: (i) the definitions and standards of the JORC Code are substantively similar to the definitions and standards of the Canadian Institute of Mining, Metallurgy and Petroleum (the "CIM Standards") which are recognised by the Canadian regulatory authorities and contained in National Instrument 43-101 – Standards for Disclosure of Mineral Projects ("NI 43-101"); and (ii) a reconciliation of mineral resources and mineral reserves prepared in compliance with the JORC Code would not result in a materially different mineral resources and mineral reserves as prepared in compliance with the CIM Standards.

"Jo-Anne Matear"
Assistant Manager, Corporate Finance
Ontario Securities Commission

2.1.9 Sprott Asset Management L.P.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from s. 13.5(2)(a) of NI 31-103 to purchase securities of related entities on secondary market – Relief also granted from s. 13.5(2)(b) of NI 31-103 to permit inter-fund trades between public mutual funds, pooled funds and managed accounts and to permit inter-fund trades at last sale price – Relief subject to conditions including IRC approval or client consent – relief also subject to pricing and transparency conditions – inter-fund trades will comply with conditions in s. 6.1(2) of NI 81-107 – Relief also granted from s. 13.5(2)(a) of NI 31-103 to allow pooled funds to invest in underlying funds that are corporations under common management – relief granted subject to certain conditions including no duplication of management fees.

Applicable Legislative Provisions

National Instrument 31-103 Registration Requirements and Exemptions, ss. 13.5, 15.1.
National Instrument 81-102 Mutual Funds, ss. 2.5(2), 2.5(7).
National Instrument 81-107 Independent Review Committee for Investment Funds, ss. 6.1, 6.2.

September 30, 2010

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
SPROTT ASSET MANAGEMENT L.P.
(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 of the principal regulator (the **Legislation**) for an exemption (the **Exemption Sought**) from the following:

Transactions in Securities of Related Issuers

(a) the prohibition in section 13.5(2)(a) of NI 31-103 against a registered adviser knowingly causing an investment portfolio managed by it, including an investment fund for which it acts as an adviser, from purchasing a security of an issuer (a **Related Issuer**) in which a responsible person or an associate of a responsible person (referred to as **Access Persons**) is a partner, officer or director unless this fact is disclosed to the client and the written consent of the client is obtained before the purchase, in order to permit a Pooled Fund to purchase exchange-traded securities of a Related Issuer in the secondary market

(the **Related Issuer Relief**);

Fund on Funds Transactions

(b) the prohibition contained in section 13.5(2)(a) of NI 31-103 to permit a Pooled Fund to invest in related Pooled Funds or NI 81-102 Funds

(the **Fund on Fund Relief**);

Transactions with Related Parties

(c) the prohibition in section 13.5(2)(b) of NI 31-103 against a registered adviser knowingly causing an investment portfolio managed by it, including an investment fund for which it acts as an adviser, from purchasing or selling a security from or to the investment portfolio of an associate of a responsible person or any investment fund for which a responsible person acts as an adviser, such that the following purchases and sales (each purchase or sale, an **Inter-fund Trade**) are permitted and, for Inter-fund Trades of exchange-traded securities, are permitted to be executed at the Last Sale Price:

(i) an Inter-fund Trade between an NI 81-102 Fund and another NI 81-102 Fund, Closed-end Fund, or a Pooled Fund;

(ii) an Inter-fund Trade between a Pooled Fund and another Pooled Fund, an NI 81-102 Fund, or a Closed-end Fund;

(iii) an Inter-fund Trade between a Closed-end Fund and another Closed-end Fund, NI 81-102 Fund, or a Pooled Fund; and

(iv) an Inter-fund Trade between a Managed Account and an NI 81-102 Fund, a Pooled Fund, or a Closed-end Fund;

(the **Inter-fund Trade Relief**).

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 11-10**2) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, Yukon, Northwest Territories and Nunavut with respect to the relief sought.

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. The following additional terms shall have the following meanings:

Clients means clients of the Managed Accounts who are not responsible persons.

Closed-end Funds means the existing or future non-redeemable investment funds that are reporting issuers and managed by the Filer.

Funds means the Closed-end Funds, the NI 81-102 Funds, and the Pooled Funds, and any one of them may be referred to as a **Fund**.

Last Sale Price means the last sale price, as defined in the Market Integrity Rules of the Investment Industry Regulatory Organization of Canada, prior to the execution of the trade on that trading day where the securities involved in the Inter-fund Trade are exchange-traded securities (which term shall include Canadian and foreign exchange-traded securities).

Managed Accounts means fully managed accounts of Clients managed by the Filer.

NI 31-103 means National Instrument 31-103 *Registration Requirements and Exemptions*.

NI 81-102 means National Instrument 81-102 *Mutual Funds*.

NI 81-107 means National Instrument 81-107 *Independent Review Committee for Investment Funds*.

NI 81-102 Funds means the existing mutual funds or any future mutual funds managed by the Filer to which NI 81-102 applies.

Pooled Funds means the existing mutual funds or any future mutual funds managed by the Filer to which NI 81-102 does not apply.

Representations

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

The Filer

1. The Filer is a limited partnership established under the laws of the Province of Ontario and is registered as an adviser in the category of portfolio manager in Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia and Newfoundland and Labrador and as an exempt market dealer in Ontario. The Filer is not in default of securities legislation in any province or territory of Canada.

2. The Filer is, or will be, the manager and/or portfolio adviser for the Funds. The Filer also carries on certain investment management activities on a discretionary basis and is the portfolio adviser for the Managed Accounts.

Relationships among the Sprott Entities

3. The general partner of the Filer, Sprott Asset Management GP Inc., is an indirect wholly-owned subsidiary of Sprott Inc., which is the sole limited partner of the Filer.

4. Sprott Inc., a corporation established under the laws of the Province of Ontario and the common shares of which are listed on the Toronto Stock Exchange (the **TSX**) under the symbol "SII", owns 99.99% of the voting securities of the Filer.

5. Sprott Resource Corporation (**SRC**) is a corporation established under the laws of Canada and the common shares of which are listed on the TSX under the symbol "SCP".

6. Eric Sprott, the Chief Executive Officer and a director of the general partner of the Filer, is the Chief Executive Officer and a director of Sprott Inc. Several other executive officers of the general partner of the Filer are also executive officers of Sprott Inc. In addition, Eric Sprott is a director of SRC. It is anticipated that in the future, an officer or director of the general partner of the Filer who is an Access Person may also be an officer or director of Sprott Inc. and/or of SRC.

7. Eric Sprott, being a substantial securityholder of Sprott Inc., is deemed to be a substantial securityholder of the Filer. In addition, Eric Sprott has a significant interest in Sprott Inc.

The NI 81-102 Funds, the Pooled Funds, and the Closed-end Funds

8. Each of the NI 81-102 Funds is, or will be, an open-ended mutual fund trust established under the laws of the Province of Ontario, or a mutual fund corporation established under the laws of the Province of Ontario or of Canada. Each of the NI 81-102 Funds is, or will be, a reporting issuer in Ontario and/or at least one of the other provinces and territories of Canada.

9. Each of the Pooled Funds is, or will be, a limited partnership or a trust and will not be a reporting issuer.

10. Each of the Closed-end Funds will be a trust established under the laws of the Province of Ontario, or a corporation established under the laws of the Province of Ontario or of Canada, or a limited partnership established under the laws of the Province of Ontario, and will be a reporting issuer in Ontario and/or at least one of the other provinces and territories of Canada. The Filer anticipates that certain Closed-end Funds may be related persons of the Pooled Funds in that one or more of the directors, officers or employees of the Filer (or the general partner of the Filer) who is an Access Person will also be directors, officers or employees of the Closed-end Funds (or the general partner of the Closed-end Fund or of the manager or portfolio adviser of the Closed-end Funds).

The Managed Accounts

11. The Filer offers discretionary portfolio management services to high net worth individuals and institutional investors and enters into an investment management agreement (the **Investment Management Agreement**) with each such Client.

Transactions in Securities of Related Issuers

12. Securities of Sprott Inc., SRC, the Closed-end Funds or other Related Issuers may be appropriate securities for the Pooled Funds to purchase, sell or hold.

13. Each Pooled Fund's investment in securities of Sprott Inc., SRC, the Closed-end Funds or other Related Issuers will be consistent with the investment objectives of such Pooled Fund, and will represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Pooled Fund.

14. Each purchase of securities of Sprott Inc., SRC, the Closed-end Funds or other Related Issuers by a Pooled Fund will occur in the secondary market and not under primary distributions or treasury offerings of such issuers. Furthermore, the Pooled Funds will only purchase exchange-traded securities of such issuers.

15. The Filer cannot rely upon the exemption codified under section 6.2(2) of NI 81-107 because the Pooled Funds are not subject to NI 81-107.

Fund on Funds Transactions

16. In connection with the investments of a Pooled Fund in another Fund, there will be no duplication of management or incentive fees.

17. When a Pooled Fund invests in another Fund, the Filer will not charge or receive any sales fees or redemption fees in relation to the purchase of securities of the underlying funds by the top fund. As a result, no duplication of any sales fees or redemption fees can occur where a Pooled Fund invests in another Fund.

18. A Pooled Fund that invests in another Fund will not vote on any of the securities it holds in the underlying funds, but the Filer may, if it chooses, arrange for all of the securities of the underlying funds held by the Pooled Fund be voted by the beneficial owners of securities of the Pooled Fund.

19. The Filer cannot rely upon the exemption codified under section 2.5(7) of NI 81-102 because the Pooled Funds are not subject to NI 81-102.

Transactions with Related Parties

20. In respect of Inter-fund Trades that involve a Pooled Fund or a Managed Account, the Filer cannot rely on the exemption under section 6.1(4) of NI 81-107, because neither a Pooled Fund nor a Managed Account is subject to NI 81-107.

21. The Investment Management Agreement with each Client for each Managed Account will contain the authorization of the Client for the Filer to purchase securities from or sell securities to a Fund.

22. The Filer will provide to each Client specific disclosure on the relationships between the Filer and the Funds.

23. The Filer determines that it would be in the best interests of the Funds and the Managed Accounts if an Inter-fund Trade of exchange-traded securities could be made at Last Sale Price instead of at the current market price, as required under paragraph 6.1(2)(e) of NI 81-107. This will result in the Inter-fund Trade being done at the price which is closest to the market price at the time the decision to make the Inter-fund Trade is made.

24. An Inter-fund Trade to be effected at the Last Sale Price will be implemented by the Filer as follows:

    (a) the Filer, as the portfolio manager, will deliver the trade instruction in respect in respect of a purchase or sale of a security by a Fund or a Managed Account, as applicable (**Fund A**), to a trader on the Filer's trading desk;

    (b) the Filer, as the portfolio manager, will deliver the trade instruction in respect of a purchase or sale of a security by another Fund or Managed Account, as applicable (**Fund B**), to a trader on the Filer's trading desk;

    (c) the trader on the Filer's trading desk will have the discretion to execute the trade as an Inter-fund Trade between Fund A and Fund B at the Last Sale Price of the security, prior to the execution of the trade;

    (d) the policies applicable to the Filer's trading desk will require that all orders are to be executed on a timely basis and will remain open only for 30 days unless the Filer, as portfolio manager, cancels the order sooner; and

    (e) the trader on the Filer's trading desk will advise of the Last Sale Price.

Fund Governance for the NI 81-102 Funds, the Pooled Funds, and the Closed-end Funds

25. The Filer has established an independent review committee (**IRC**) in respect of the existing NI 81-102 Funds and the existing Closed-end Fund in accordance with the requirements of NI 81-107, and will establish an IRC for each future NI 81-102 Fund and Closed-end Fund in accordance with the requirements of NI 81-107.

26. Inter-fund Trades involving the NI 81-102 Funds and the Closed-end Funds will be referred to the IRC of such Funds for approval and the IRC will not approve the Inter-fund Trades unless it has made the determinations set out in section 5.2(2) of NI 81-107.

27. The Filer will establish an IRC in respect of the Pooled Funds. The IRC of the Pooled Funds will be composed in accordance with section 3.7 of NI 81-107 and will be expected to comply with the standard of care set out in section 3.9 of NI 81-107.

28. The mandate of the IRC of the Pooled Funds will include approving purchases and sales of securities of Related Issuers. The IRC of the Pooled Funds will not approve purchases or sales of securities of Related Issuers unless the IRC has made the determination set out in section 5.2(2) of NI 81-107. In connection with these purchases and sales, the conditions under section 6.2(1) of NI 81-107 will be complied with.

29. The mandate of the IRC of the Pooled Funds will also include approving Inter-fund Trades. The IRC of the Pooled Funds will not approve Inter-fund Trades unless the IRC has made the determination set out in section 5.2(2) of NI 81-107.

30. Section 6.1(4) of NI 81-107 provides an exemption from section 13.5(2)(b) of NI 31-103 in respect of Inter-fund Trades, so long as such trades comply with the conditions in section 6.1(2) of NI 81-107. The Inter-fund Trades will comply with all of the conditions in section 6.1(2) except paragraph 6.1(2)(a) and, for Inter-fund Trades of exchange-traded securities, paragraphs 6.1(2)(a) and 6.1(2)(e), as provided under the Exemption Sought in this Decision.

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 as follows.

Related Issuer Relief

1. The Related Issuer Relief is granted so long as:

    (a) the transaction is consistent with, or is necessary to meet, the investment objective of the Pooled Fund;

    (b) the IRC of the Pooled Fund has approved the transaction in respect of the Pooled Fund in accordance with section 5.2 of NI 81-107;

    (c) in respect of the purchase of securities of a Related Issuer, such purchase is made on an exchange on which the securities are listed and traded and no later than the 90th day after the end of each financial year, the Filer files with the securities regulatory authority or regulator the particulars of any such investments;

Fund on Funds Relief

2. The Fund on Fund Relief is granted so long as:

    (a) the transaction is consistent with, or is necessary to meet, the investment objective of the Pooled Fund;

    (b) in respect of the purchase of securities of another Fund:

        (i) no management or incentive fees are payable by the Pooled Fund that, to a reasonable person, would duplicate a fee payable by the underlying fund for the same service;

        (ii) no sales or redemption fees are payable by the Pooled Fund in relation to its purchases or redemptions of the securities of the underlying funds;

(iii) the Pooled Fund does not vote on any of the securities it holds in the underlying funds, but the Filer may, if it chooses, arrange for all of the securities of the underlying funds held by the Pooled Fund be voted by the beneficial owners of units of the Pooled Fund; and

(iv) investors in the Pooled Funds receive disclosure:

(1) that the Pooled Fund may purchase securities of other Funds;

(2) that the Pooled Fund and the underlying funds in which it invests are managed by the Filer; and

(3) of the approximate or maximum percentage of net assets of the Pooled Fund that is dedicated to investing in securities of other Funds.

Inter-fund Trade Relief

3. The Inter-fund Trade Relief is granted so long as:

(a) the Inter-fund Trade is consistent with the investment objective of the Fund or the Managed Account;

(b) the Filer refers the Inter-fund Trade to the IRC in the manner contemplated by section 5.1 of NI 81-107 and the Filer complies with any standing instructions an IRC provides in connection with the Inter-fund Trade;

(c) in the case of an Inter-fund Trade between Funds:

(i) the IRC of each Fund has approved the Inter-fund Trade in respect of the Fund in accordance with the terms of section 5.2(2) of NI 81-107;

(ii) the Inter-fund Trade complies with subsection 6.1(2) of NI 81-107 except for paragraph 6.1(2)(a) and, for Inter-fund Trades of exchange-traded securities, paragraphs 6.1(2)(a) and 6.1(2)(e); and

(iii) for Inter-fund Trades of exchange-traded securities, the Inter-fund Trade is executed at Last Sale Price;

(d) in the case of an Inter-fund Trade between a Managed Account and a Fund:

(i) the IRC of the Fund has approved the Inter-fund Trade in respect of such Fund in accordance with the terms of section 5.2(2) of NI 81-107;

(ii) the investment management agreement or other documentation in respect of the Managed Account authorizes the transaction;

(iii) the Inter-fund Trade complies with subsection 6.1(2) of NI 81-107 except for paragraph 6.1(2)(a) and, for Inter-fund Trades of exchange-traded securities, paragraphs 6.1(2)(a) and 6.1(2)(e); and

(iv) for Inter-fund Trades of exchange-traded securities, the Inter-fund Trade is executed at Last Sale Price.

“Darren McKall”
Assistant Manager, Investment Funds Branch

2.1.10 Mackenzie Financial Corporation

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from restrictions and requirements in subsection 2.1(1) and paragraphs 2.2(1)(a), 2.5(2)(a) and 2.5(2)(c) of National Instrument 81-102 – Mutual Funds. Exemption will permit certain mutual funds to continue their investment in securities of certain related underlying funds after these underlying funds cease to offer their securities under a simplified prospectus – Underlying funds are not available for purchase by retail investors – Underlying funds will remain reporting issuers in the same jurisdictions as the top mutual funds after their prospectuses lapse and will continue to be subject to the requirements of NI 81-102, NI 81-106 and NI 81-107.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 2.1(1), 2.2(1)(a), 2.5(2)(a), 2.5(2)(c), 19.1.

October 4, 2010

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(THE JURISDICTION)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF
APPLICATION IN MULTIPLE JURISDICTION

AND

IN THE MATTER OF
MACKENZIE FINANCIAL CORPORATION
(MACKENZIE or FILER)

AND

IN THE MATTER OF
THE FUNDS AND THE UNDERLYING FUNDS
(as each is defined below)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from Mackenzie on behalf of:

a) each of the mutual funds (other than the Underlying Funds) of which the Filer, or an affiliate of the Filer, is or in the future becomes, the manager and to which National Instrument 81-102 – *Mutual Funds* (**NI 81-102**) applies (the **Funds**); and

b) Mackenzie Sentinel Canadian Short-Term Yield Corporate Class, Mackenzie Sentinel Canadian Money Market Fund, Mackenzie Sentinel U.S. Short-Term Yield Corporate Class, Mackenzie Sentinel U.S. Money Market Fund, Mackenzie Universal Canadian Resource Class, Symmetry Equity Corporate Class, and Symmetry Fixed Income Corporate Class (the **Underlying Funds**),

for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) exempting the Funds from the requirements of subsection 2.1(1), and paragraphs 2.2(1)(a), 2.5(2)(a) and 2.5(2)(c) of NI 81-102 to permit each Fund to invest in securities of the Underlying Funds (the **Requested Relief**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

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

(b) Mackenzie 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 respect of the Requested relief in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, Northwest Territories, Nunavut and Yukon.

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. Mackenzie is a corporation amalgamated under the laws of Ontario and is registered as an advisor in the category of Investment Counsel and Portfolio Manager in Ontario and Alberta and in the category of Portfolio Manager in Manitoba. Mackenzie is also registered in Ontario as a dealer in the category of Limited Market Dealer, and is registered under the *Commodity Futures Act* (Ontario) in the category of Commodity Trading Manager.

2. Mackenzie is the manager of the Underlying Funds. Mackenzie or an affiliate of Mackenzie is also manager of the Funds.

3. Each of the Funds and the Underlying Funds is a mutual fund to which National Instrument 81-101 – *Mutual Fund Distributions* (**NI 81-101**), NI 81-102, National Instrument 81-106 – *Investment Fund Continuous Disclosure* (**NI 81-106**) and National

Instrument 81-107 – *Independent Review Committee for Investment Funds* (**NI 81-107** and, together with NI 81-102 and NI 81-106, the **Mutual Fund Instruments**) currently applies, except to the extent that it may be granted discretionary relief from any such requirements.

4. The securities of each Fund and Underlying Fund are qualified for distribution in each of the provinces and territories of Canada pursuant to simplified prospectuses and annual information forms that have been prepared and filed in accordance with the securities legislation of Ontario. Each Fund and Underlying Fund is, accordingly, a reporting issuer in each of the provinces and territories of Canada.

5. The Ontario Securities Commission is the principal regulator to review and grant the Requested Relief as the head office of the Filer is in the Province of Ontario.

6. Mackenzie, the Funds and the Underlying Funds are not in default of securities legislation in any province or territory of Canada.

7. Each Fund's investment objective permits the Fund to invest, directly or indirectly in securities. The Funds' investment objectives permit the Funds to make such investments either: (a) directly, by purchasing and holding such securities; or (b) indirectly through investments in other mutual funds such as the Underlying Funds.

8. The Underlying Funds offer series R units or shares (**Series R securities**) which, although currently prospectus qualified, are not offered for purchase by retail investors in Canada. Series R securities of the Underlying Funds are only available for purchase by the Funds and certain other institutional investors, all of whom are "accredited investors" (as defined in National Instrument 45-106 – *Prospectus Exempt Distributions*).

9. The Underlying Funds do not intend to renew their prospectus after their prospectus lapse date in June 2011 (the **Lapse Date**). After the Lapse Date, the Underlying Funds intend to continue distributing their Series R securities only on a basis which is exempt from the prospectus requirements in Canadian securities legislation (principally by distributing their Series R securities only to accredited investors).

10. After the Lapse Date, the Underlying Funds will remain reporting issuers in each jurisdiction in which the Funds are also reporting issuers, and will accordingly remain subject to all of the requirements of the Mutual Fund Instruments.

11. A Fund will not purchase or hold securities of an Underlying Fund if the Underlying Fund ceases to be a reporting issuer in any jurisdiction in which that Fund is a reporting issuer.

12. A Fund will invest in securities of an Underlying Fund only if such investment is permitted by, and consistent with, the investment objective of the Fund.

13. The Filer believes that it would be economically advantageous to each Fund and its securityholders to continue to investing in Series R securities of the Underlying Funds and to maintain its exposure to the portfolio of securities owned by the Underlying Funds as the Funds do not pay any management fees or operating expenses to invest in the Underlying 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 Requested Relief is granted to a Fund provided that the Underlying Fund remains a reporting issuer that is subject to the Mutual Fund Instruments in all jurisdictions in which the Fund is a reporting issuer.

"Darren McKall"
Assistant Manager, Investment Funds Branch
Ontario Securities Commission

2.1.11 Manulife Asset Management Limited et al.

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Approval of proposed current mutual fund mergers under the approval requirements in NI 81-102 – Proposed current merger approval required because mergers do not meet the criteria for pre-approved reorganizations and transfers in National Instrument 81-102 – certain mergers not a "qualifying exchange" or a tax-deferred transaction under the Income Tax Act – securityholders of terminating funds provided with timely and adequate disclosure. Future fund mergers comply with pre-approved merger requirements in NI 81-102 except that the Manager will provide adequate and timely alternate prospectus level disclosure instead of the prospectus and financial statements to securityholders of terminating funds.

Applicable Legislative Provisions

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

October 5, 2010

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

AND

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

AND

IN THE MATTER OF
MANULIFE ASSET MANAGEMENT LIMITED
(the "Filer")

AND

IN THE MATTER OF
MANULIFE GLOBAL WEALTH MANAGEMENT FUND
(formerly AIC Global Wealth Management Fund)
MANULIFE AMERICAN SMALL TO MID CAP FUND
(formerly AIC American Small to Mid Cap Fund)
MANULIFE GLOBAL DIVIDEND FUND
MANULIFE U.S. VALUE FUND
(each a "Terminating Fund" and, collectively,
the "Terminating Funds")

DECISION

Background

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

(a) approval of the mergers (the "Current Mergers") of the Terminating Funds into the applicable Continuing Funds (as defined below) under subsection 5.5(1)(b) of National Instrument 81-102 *Mutual Funds* ("NI 81-102"); and

(b) approval under paragraph 5.5(1)(b) of NI 81-102 of any merger, after the date of this decision, of mutual funds managed by the Filer or an affiliate that meet all of the criteria for pre-approval of mergers under section 5.6 of NI 81-102 except for the financial statement delivery requirement and the simplified prospectus delivery requirement of sub-paragraph 5.6(1)(f)(ii) of NI 81-102 (the "Future Mergers").

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

(a) the Ontario Securities Commission (the "OSC") 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, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut.

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 governed under the *Business Corporations Act* (Ontario) with its head office located in Toronto, Ontario.

2. The Filer is registered in the categories of commodity trading manager, exempt market dealer, mutual fund dealer and portfolio manager and has made an application to be registered in the category of investment fund manager.

3. The Filer is the manager and trustee of the Funds (as defined below).

4. The Funds are open-end mutual fund trusts established under the laws of Ontario by declarations of trust and are governed by the provisions of the NI 81-102.

5. The Filer is proposing to merge each Terminating Fund listed in the chart below into the fund (each a "Continuing Fund" and, collectively, the "Continuing Funds" and, together with the Terminating Funds, the "Funds") shown opposite its name:

TERMINATING FUND	CONTINUING FUND
Manulife Global Wealth Management Fund (formerly AIC Global Wealth Management Fund)	Manulife Global Advantage Fund (formerly AIC Global Advantage Fund)
Manulife American Small to Mid Cap Fund (formerly AIC American Small to Mid Cap Fund)	Manulife U.S. Mid Cap Fund
Manulife Global Dividend Fund	Manulife Global Dividend Income Fund (formerly AIC Global Premium Dividend Income Fund)
Manulife U.S. Value Fund	Manulife U.S. Opportunities Fund (formerly AIC American Focused Fund)

6. Securities of the Funds are currently qualified for sale in each of the provinces and territories of Canada pursuant to simplified prospectuses and annual information forms filed with and receipted by the securities regulators in the applicable jurisdiction(s).

7. The Terminating Funds and the Continuing Funds are reporting issuers as defined under the applicable securities legislation of each province and territory of Canada and are not in default of any of the requirements of the securities legislation of any of the provinces and territories of Canada.

8. Other than circumstances in which the securities regulatory authority of a province or territory of Canada has expressly exempted a Fund therefrom, each of the Funds follows the standard investment restrictions and practices established by NI 81-102.

9. The net asset value for each of the Funds is calculated on a daily basis on each day the Toronto Stock Exchange is open for business.

10. Each Current Merger will be structured as follows:

(i) the Terminating Fund will transfer all of its assets and liabilities to its corresponding Continuing Fund for an amount equal to the net value of the assets transferred, which amount will be satisfied as described in (iv) below;

(ii) the Continuing Fund will issue securities of the Continuing Fund (as described in (iv) below) to its corresponding Terminating Fund having a net asset value equal to the net value of the assets transferred by the Terminating Fund;

(iii) the Terminating Fund will redeem its outstanding securities and pay the redemption price for these securities by distributing securities of its corresponding Continuing Fund to the Terminating Fund's securityholders;

(iv) securityholders of the Terminating Fund will receive securities of the Continuing Fund as follows:

Terminating Fund	Continuing Fund
Manulife Global Wealth Management Fund (formerly AIC Global Wealth Management Fund)	*Manulife Global Advantage Fund (formerly AIC Global Advantage Fund)*
Advisor Series securities	Series H securities*
Series F securities	Series F securities
Series O securities	Series O securities
Series T5 securities	Series T5 securities
Series T8 securities	Series T5 securities
Manulife American Small to Mid Cap Fund (formerly AIC American Small to Mid Cap Fund)	*Manulife U.S. Mid-Cap Fund*
Advisor Series securities	Advisor Series securities
Series F securities	Series F securities
Series X securities	Series X securities
Series O securities	Series O securities
Manulife U.S. Value Fund	*Manulife U.S. Opportunities Fund (formerly AIC American Focused Fund)*
Advisor Series securities	Advisor Series securities
Series F securities	Series F securities
Series G securities	Series G securities
Series I securities	Series I securities
Series O securities	Series O securities
Series X securities	Series X securities

Terminating Fund	Continuing Fund
Manulife Global Dividend Fund	*Manulife Global Dividend Income Fund (formerly AIC Global Premium Dividend Income Fund)*
Advisor Series securities	Advisor Series securities
Series F securities	Series F securities
Series G securities	Series G securities
Series I securities	Series I securities
Series IT securities	Series IT securities
Series O securities	Series O securities
Series T6 securities	Series T6 securities
Series X securities	Series X securities

* A new series of securities of the Manulife Global Advantage Fund, to be called Series H securities, will be created to grandfather the management fee of the Advisor Series securities of the Terminating Fund. Upon completion of the merger, Series H securities will be closed to all new purchases, including pre-authorized contributions. Series H securityholders will maintain the same sales charge option and/or DSC schedule within the Continuing Fund.

(v) securities of the Continuing Fund received by the securityholders of its corresponding Terminating Fund will have an aggregate net asset value equal to the aggregate net asset value of the securities of the Terminating Fund which are being redeemed;

(vi) as soon as reasonably practicable after the distribution of securities of the Continuing Fund by the Terminating Fund, the Terminating Fund will be wound-up.

11. No sales charges, if any, will be payable in connection with the acquisition by each Continuing Fund of the investment portfolio of its corresponding Terminating Fund.

12. Securityholders of each Terminating Fund will continue to have the right to redeem securities of the Terminating Fund for cash at any time up to the close of business on the effective date of the Current Mergers, which is expected to be on or about November 19, 2010.

13. A press release was issued and filed on SEDAR on August 23, 2010 and a material change report was filed on SEDAR on August 25, 2010 with respect to the proposed Current Mergers. The simplified prospectus and annual information form for the Manulife Mutual Funds included disclosure relating to the proposed Current Mergers and was filed on August 19, 2010. Amendments to the simplified prospectus and annual information form for the AIC Funds disclosing the proposed Current Mergers were filed on August 19, 2010.

14. Securityholders of the Terminating Funds will be asked to approve the Current Mergers at special meetings to be held on or about October 13, 2010.

15. A notice of meeting, a management information circular (the “Circular”) and a form of proxy in connection with the special meetings of securityholders will be mailed to securityholders of the Terminating Funds and filed on SEDAR on or about September 17, 2010.

16. Pursuant to National Instrument 81-107 *Independent Review Committee for Investment Funds*, the independent review committee of the Funds has reviewed the proposed Current Merger of each Terminating Fund with its corresponding Continuing Fund and the process to be followed in connection with each Current Merger, and has advised the Filer that, in the opinion of the independent review committee, having reviewed each Current Merger as a potential “conflict of interest matter”, each Current Merger achieves a fair and reasonable result for the Terminating Funds and the Continuing Funds. This information will be disclosed in the Circular.

17. The Filer will pay for the costs of the Current Mergers. These costs consist mainly of legal, proxy solicitation, printing, mailing, brokerage costs and regulatory fees.

18. Approval for the Current Mergers is required because the Current Mergers do not meet all of the criteria for pre-approved reorganizations and transfers set out in section 5.6 of the NI 81-102 because

(i) each such Current Merger will be completed on a taxable basis and not as a "qualifying exchange" or as a tax-deferred transaction under the Tax Act as required under subsection 5.6(1)(b); and

(ii) the materials sent to securityholders of the Terminating Funds in connection with the special meetings of such securityholders to be held to seek approval of the Current Mergers will not include a copy of the current simplified prospectus of the Continuing Funds or a copy of the financial statements of the Continuing Funds as required under subsection 5.6(1)(f)(ii).

19. Except as noted above, the Current Mergers will comply with all of the other criteria for pre-approved reorganizations and transfers set out in section 5.6 of NI 81-102.

20. The Filer believes that the Current Mergers will benefit securityholders of the Funds because:

a. Securityholders of the Funds may have the potential to enjoy increased economies of scale with respect to administrative expenses, as well as greater profile in the marketplace as part of larger Continuing Funds. As a result of the Current Mergers, existing securityholders of each Terminating Fund will not be subject to any increase in management fees and, in some cases, will potentially benefit from a decrease in management fees.

b. Each Current Merger will eliminate the administrative and regulatory costs of operating the Terminating Fund as a separate mutual fund.

c. Each Continuing Fund will have an asset base of greater size, potentially allowing for increased portfolio diversification opportunities and a smaller proportion of assets set aside to fund redemptions. Each Continuing Fund is also expected to benefit from an increased profile in the marketplace. The ability to improve diversification may lead to increased returns and a reduction of risk, while at the same time creating a higher profile that will attract more investors.

d. Each of the Continuing Funds are expected to attract more assets as marketing efforts will be concentrated on fewer funds, rather than multiple funds with similar investment mandates. The ability to attract assets in the Continuing Funds will benefit investors by ensuring that the Continuing Funds remain viable, long-term, attractive investment vehicles for existing and potential investors.

21. The foregoing reasons for the Current Mergers will be set out in the Circular. In addition, the Circular will include prospectus-like disclosure concerning the Continuing Funds, including information regarding fees, expenses, investment objective, investment strategy, valuation procedures, the manager, the portfolio advisor, income tax considerations and net asset value. The Circular will also disclose that securityholders can obtain the simplified prospectus and annual information form and the most recent financial statements of the Continuing Funds that have been made public, from the Filer upon request, on the Filer's website or on SEDAR at www.sedar.com.

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 Current Mergers and the Future Mergers (collectively, the "Mergers") are approved provided that:

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

(ii) the management information circular sent to securityholders in connection with a Merger prominently discloses that securityholders can obtain the most recent interim and annual financial statements of the applicable Continuing Fund by contacting their dealer, by calling Manulife's 1-800 number, by accessing it on Manulife's website at www.manulifemutualfunds.ca or by accessing the SEDAR website at www.sedar.com;

(iii) upon request by a securityholder for financial statements, Manulife makes best efforts to provide the securityholder with financial statements of the applicable continuing fund in a timely manner so that the securityholder can make an informed decision regarding a Merger;

(iv) each applicable terminating fund and the applicable continuing fund with respect to a Merger has an unqualified audit report in respect of its last completed financial period; and

(v) the material sent to securityholders in respect of a Merger includes the simplified prospectus of the applicable continuing fund or a tailored simplified prospectus consisting of:

(a) the current Part A of the simplified prospectus of the applicable continuing fund; and

(b) the current Part B of the simplified prospectus of the applicable continuing fund.

"Darren McKall"
Assistant Manager, Investment Funds Branch
Ontario Securities Commission

2.1.12 Legg Mason Canada Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from the mutual fund conflict of interest investment restrictions in the Securities Act (Ontario) and from the self-dealing prohibition in National Instrument 31-103 – Registration Requirements and Exemptions to allow pooled funds to invest in underlying pooled funds under common management – relief granted subject to certain conditions.

Applicable Legislative Provisions

Securities Act (Ontario), R.S.O. 1990, c. S.5, as am., ss. 111(2)(b), 111(2)(c), 111(3), 113.
National Instrument 31-103 Registration Requirements and Exemptions, ss. 13.5(2)(a), 15.1.

October 1, 2010

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
LEGG MASON CANADA INC.
(the Filer)

AND

LEGG MASON WESTERN ASSET CANADIAN
CORE PLUS BOND FUND, LEGG MASON
WESTERN ASSET CANADIAN CORE PLUS
LONG BOND FUND

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on the Filer's behalf and on behalf of the Legg Mason Western Asset Canadian Core Plus Bond Fund and Legg Mason Western Asset Canadian Core Plus Long Bond Fund (collectively, the **Pooled Funds** and individually, a **Pooled Fund**), for a decision:

(i) under the securities legislation of Ontario and Alberta for an exemption from the restriction prohibiting a mutual fund in Ontario or a mutual fund, as the case may be, from knowingly making or holding an investment in any person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial security holder, or in any issuer in which any officer or director of the mutual fund, its management company or distribution company or an associate of any of them, or any person or company who is a substantial security holder of the mutual fund, its management company or its distribution company, has a significant interest (the **Investment Restriction**); and

(ii) under the securities legislation of the Passport Jurisdictions (defined below) for an exemption from the restriction prohibiting a registered adviser from knowingly causing an investment portfolio managed by it, including an investment fund for which it acts as adviser, to invest in the securities of any issuer in which a responsible person or an associate of a responsible person is a partner, officer or director, unless the fact is disclosed to the client and the written consent of the client to the investment is obtained before the purchase (the **Consent Requirement**);

(collectively, the **Requested Relief**).

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

(a) the Ontario Securities Commission (the **OSC**) 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, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut.

Interpretation

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

The following additional terms shall have the following meanings:

ASA means the *Securities Act* (Alberta);

OSA means the *Securities Act* (Ontario);

Passport Jurisdictions means each of the provinces and territories of Canada;

SEC means the U.S. Securities and Exchange Commission;

UCITS means Undertakings for Collective Investment in Transferable Securities and refers to the investment funds authorized by the European Union as investment funds suitable to be distributed in more than one country of Europe;

Underlying Funds means, collectively, the sub-funds of Legg Mason Global Funds PLC, and Western Asset Mortgage Backed Securities Portfolio, Ltd., Western Asset Mortgage Backed Securities Portfolio, LLC and Western Asset Opportunistic Structured Securities Portfolio, LLC.

Representations

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

The Filer

1. The Filer is a company incorporated under the laws of Canada. The head office of the Filer is located in Toronto, Ontario.

2. The Filer is registered as a portfolio manager in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland and Labrador, as a commodity futures manager under the *Commodity Futures Act* (Ontario), and an exempt market dealer in Ontario and Newfoundland and Labrador. In accordance with National Instrument 31-103 – *Registration Requirements and Exemptions* (**NI 31-103**), the Filer will be registering as an Investment Fund Manager in Ontario prior to September 28, 2010 and as an exempt market dealer in British Columbia, Alberta, Manitoba, Saskatchewan, Quebec, Nova Scotia, New Brunswick and Prince Edward Island prior to September 28, 2010.

3. The Filer is not in default of securities legislation in any of the provinces and territories of Canada.

4. The Filer typically enters into fully discretionary investment management agreements with clients and pursuant to such agreements, it is allowed to carry out its mandate by investing the clients in pooled funds. In addition, investors may subscribe for the pooled funds from time to time. In all cases, the pooled funds managed by the Filer are distributed only on a private placement basis pursuant to available prospectus exemptions in each of the provinces and territories of Canada.

The Pooled Funds

5. The Filer is currently taking the necessary steps to establish the two new Pooled Funds, and will be the trustee, manager and portfolio manager of the Pooled Funds. Like other pooled funds managed by the Filer, the Filer will retain an affiliate of the Filer to be the sub-advisor of each of the Pooled Funds, namely Western Asset Management Company (**Western**).

6. Each of the Pooled Funds will be an open-end mutual fund trust established under the laws of Ontario by declaration of trust.

7. The Pooled Funds will be mutual funds in Ontario (in the case of the OSA) or mutual funds (in the case of the ASA), but are not reporting issuers.

8. Like all other pooled funds managed by the Filer, units of the Pooled Funds will be available to investment management clients of the Filer and may also be invested in by other investors, which are typically institutional investors who do not require an investment management relationship.

Western Asset Management Company

9. Western, a California corporation and an affiliate of the Filer, will be the sub-advisor of the Pooled Funds. Western is registered in the United States with the SEC as an investment adviser pursuant to the Investment Advisers Act. It is also registered as a commodity trading advisor and a commodity pool operator under the U.S. Commodity Exchange Act.

10. Western is registered as a portfolio manager after transitioning from international adviser (Investment Counsel & Portfolio Manager) with the OSC. This registration will be revoked effective September 28, 2010 and Western intends to rely on the exemption for international advisers available in Section 8.26 of NI 31-103 prior to the revocation date. Western is also registered as a commodity trading manager under the *Commodity Futures Act* (Ontario).

11. Western currently serves as investment adviser to institutional accounts, such as corporate pension plans, mutual funds and endowment funds, as well as to individual investors. Those clients include pooled funds managed by the Filer (which will include the Pooled Funds), and funds managed by an affiliate of the Filer, including the Underlying Funds.

Underlying Funds

The Sub-Funds of the Irish Company

12. Legg Mason Global Funds PLC (the **Irish Company**) is an umbrella fund with segregated liability between funds (the **Sub-Funds**), established as an open-ended, variable capital investment company incorporated with limited liability under the laws of Ireland. The Articles of Association provide for separate funds, each representing interests in a defined portfolio of assets and liabilities, which may be established from time to time.

13. The Sub-Funds may only be established with the prior approval of the Irish Financial Services Regulatory Authority (the **Irish Financial Regulator**). The Irish Company has been authorised by the Irish Financial Regulator as a UCITS.

14. The Irish Company and the Sub-Funds are subject to the UCITS Regulations, and any notices issued by the Irish Financial Regulator (collectively, the **Irish Regulations**). The Irish Regulations include, amongst other requirements, investment and borrowing restrictions that are similar in many respects to those contained in National Instrument 81-102 – *Mutual Funds*.

15. The Sub-Funds have filed, with the Irish Financial Regulator, a prospectus which contains disclosure regarding the Sub-Funds.

16. Affiliates of the Filer, including Legg Mason Capital Management Inc. and Legg Mason Investments (Europe) Ltd. are the portfolio advisors to the Sub-Funds.

17. At least one of the directors of the Irish Company is an officer of an affiliate of the Filer and is a responsible person in respect of a Pooled Fund.

Cayman Company

18. Western Asset Mortgage Backed Securities Portfolio, Ltd. (the **Cayman Company**) is an exempted company formed under the laws of the Cayman Islands providing limited liability in accordance with the laws of the Cayman Islands for all holders of shares of the Cayman Company.

19. The Cayman Company is a “feeder” fund in a “master/feeder” structure that invests all or substantially all of its assets (the other asset being a cash float only in relation to subscriptions and redemptions) in another fund, which has an investment objective that is consistent with that of the Cayman Company.

20. The underlying “master” fund in which the Cayman Company invests, is Western Asset Mortgage Backed Securities Portfolio, LLC (the **U.S. Master Fund**).

21. At least one of the directors of the Cayman Company is employed by an affiliate of the Filer and is a responsible person in respect of a Pooled Fund.

22. Western is the portfolio manager of the Cayman Company and of the U.S. Master Fund. The Cayman Company and the U.S. Master Fund share the same accounting principles (**U.S. GAAP**), use the same administrator, the same U.S. external counsel and the same group of auditors (**PwC**).

23. The Cayman Company is a "mutual fund" in terms of the Mutual Funds Law (as amended) of the Cayman Islands (the **Mutual Funds Law**) and is regulated in terms of the Mutual Funds Law. However, the Cayman Company is not required to be licensed or to employ a licensed mutual fund administrator since the minimum aggregate investment purchasable by a prospective investor in the Cayman Company exceeds the relevant threshold.

24. As a regulated mutual fund, the Cayman Company is subject to the supervision of the Cayman Islands Monetary Authority (the **Monetary Authority**). The Monetary Authority does not impose any investment or borrowing restrictions on the Cayman Company. The Cayman Company is only available to accredited investors as defined in the relevant laws, including Canada and the U.S.

U.S. Funds

25. Western Asset Opportunistic Structured Securities Portfolio, LLC, and the U.S. Master Fund (the **U.S. Funds**) are organized as limited liability companies under the laws of the State of Delaware.

26. The U.S. Funds are exempt from the requirements to register as an investment company under the U.S. Investment Company Act of 1940. They are offered to accredited investors on a private placement basis in accordance with the U.S. securities law requirements.

27. Western is the portfolio manager of the U.S. Funds. Since the Cayman Company and the U.S. Funds are advised by Western, a registered U.S. adviser, there are many U.S. securities provisions which apply in respect of the management of both the Cayman Company and the U.S. Funds.

Fund-on-Fund Structure

28. In order for the Pooled Funds to achieve its investment objective on a diversified basis and obtain broad exposure to the asset classes it proposes to invest in, it is important that it be permitted to invest in an Underlying Fund.

29. The Filer believes it is in the best interests of the Pooled Funds for investments to be made in the Underlying Funds. Investing directly in separate securities instead of allowing direct exposure to the securities invested in by the Underlying Fund is a less desirable option owing to the increased costs and inefficiencies that are associated with such direct investing.

30. Investment by the Pooled Funds in the Underlying Funds will increase the asset base of the Underlying Funds, enabling the Underlying Funds to further diversify their portfolios to the benefit of all their investors. The larger asset base will also benefit investors in the Underlying Funds through achieving favourable pricing and transaction costs on portfolio trades, increased access to investments where there is a minimum subscription or purchase amount and economies of scale through greater administrative efficiency.

31. Each Pooled Fund will manage its investments in an Underlying Fund with discretion to buy and sell units of the Underlying Fund, selected in accordance with the Pooled Fund's investment objective, as well as to alter its holdings in any Underlying Fund in which it invests.

32. Relief from the Investment Restriction is necessary because the amounts invested from time to time in an Underlying fund by a Pooled Fund may exceed 20% of the outstanding voting securities of any single Underlying Fund. Accordingly, each Pooled Fund could, either alone or together with the other Pooled Fund, become a substantial securityholder of an Underlying Fund.

33. The Filer, an officer or director of the Filer, or a substantial securityholder of the Filer may have a significant interest in an Underlying Fund that the Filer or an affiliate of the Filer establishes and manages in the future, at the time of the establishment of the Underlying Fund as a result of investing seed capital in such Underlying Fund. Accordingly, each Pooled Fund will be prohibited by the Act from investing in such Underlying Fund, unless the relief from the Investment Restriction is granted.

34. In the absence of relief from the Consent Requirement, the portfolio manager of the Pooled Funds would be prohibited from knowingly causing the Pooled Funds to invest in Underlying Funds in which a responsible person or an associate of a responsible person is an officer or director unless the specific fact is disclosed to the securityholders of the Pooled Funds and the written consent of the securityholders of the Pooled Funds to the investment is obtained before the purchase.

35. The investments by the Pooled Funds in the shares of the Underlying Funds will represent the business judgment of 'responsible persons' uninfluenced by considerations other than the best interests of the Pooled Funds.

36. Investors in each Pooled Fund are entitled to receive from the Filer, on request and free of charge, a copy of the offering memorandum or other disclosure documents (if any) or, once available, the annual or semi-annual financial statements, relating to all Underlying Funds in which the Pooled Fund may invest its assets.

37. Investors in each Pooled Fund will also be provided with annual financial statements of the Pooled Funds in accordance with securities legislation, including an auditors report.

Decision

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

The decision of the principal regulator under the Legislation is that the Requested Relief is granted as follows:

(a) in Ontario and Alberta under the OSA and the ASA, respectively, the Investment Restriction shall not apply to the Pooled Funds in respect of each Pooled Fund's investment in securities of the Underlying Funds; and

(b) in the Passport Jurisdictions under the legislation of the Passport Jurisdictions, the Consent Requirement shall not apply to the Filer or an affiliate of the Filer,

provided that, in each case:

(i) securities of each Pooled Fund are distributed only on a private placement basis pursuant to available prospectus exemptions;

(ii) the investment by each Pooled Fund in an Underlying Fund is compatible with the fundamental investment objectives of the Pooled Fund;

(iii) each Pooled Fund does not vote any of the securities it holds of an Underlying Fund except that the Pooled Fund may, if the Filer so chooses, arrange for all the securities it holds of an Underlying Fund to be voted by the beneficial holders of securities of the Pooled Fund;

(iv) no management fees or incentive fees are payable by a Pooled Fund that, to a reasonable person, would duplicate a fee payable by an Underlying Fund for the same service;

(v) no sales or redemption fees are payable by the Pooled Fund in relation to its purchases or redemptions of securities of an Underlying Fund; and

(vi) investors in each Pooled Fund receive written disclosure that discloses:

(1) the intent of the Pooled Fund to invest its assets directly or indirectly in securities of the Underlying Funds;

(2) that the Underlying Funds are managed by the Filer or an affiliate of the Filer;

(3) the percentage of net assets of the Pooled Fund dedicated to the investment in securities of the Underlying Funds; and

(4) the process or criteria used to select the Underlying Funds.

"Darren McKall"
Assistant Manager, Investment Funds Branch

"Wes M. Scott"
Commissioner

"Margot Howard"
Commissioner

2.1.13 TD Asset Management Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from sections 2.5(2)(a) and (c) of National Instrument 81-102 Mutual Funds to permit mutual funds to invest up to 10% of net assets in leveraged ETFs, inverse ETFs, gold ETFs and leveraged gold ETFs traded on Canadian or US stock exchanges, subject to certain conditions.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 2.5(2)(a), 2.5(2)(c), 19.1.

October 5, 2010

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
TD ASSET MANAGEMENT INC.
(the Manager)

AND

IN THE MATTER OF
THE MUTUAL FUNDS NOW (the Existing Funds) OR IN THE FUTURE (the Future Funds, together with the Existing Funds, the Funds) MANAGED BY THE MANAGER OR AN AFFILIATE OF THE MANAGER THAT ARE SUBJECT TO NATIONAL INSTRUMENT 81-102 MUTUAL FUNDS (NI 81-102), OTHER THAN "MONEY MARKET FUNDS" AS DEFINED IN NI 81-102

DECISION

BACKGROUND

The principal regulator in the Jurisdiction has received an application from the Manager for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) granting an exemption (the **ETF Exemption**) relieving the Funds from the prohibitions contained in paragraphs 2.5(2)(a) and (c) of NI 81-102, to permit each Fund to purchase and hold securities of:

(i) exchange-traded funds (**ETFs**) that seek to provide daily results that replicate the daily performance of a specified widely-quoted market index (the ETF's **Underlying Index**) by a multiple of 200% (**Leveraged Bull ETFs**) or an inverse multiple of 200% (**Leveraged Bear ETFs**, which together with Leveraged Bull ETFs are referred to collectively in this decision as **Leveraged ETFs**);

(ii) ETFs that seek to provide daily results that replicate the daily performance of their Underlying Index by an inverse multiple of 100% (**Inverse ETFs**);

(iii) ETFs that seek to replicate the performance of gold or the value of a specified derivative the underlying interest of which is gold on an unlevered basis (**Gold ETFs**); and

(iv) ETFs that seek to provide daily results that replicate the daily performance of gold or the value of a specified derivative the underlying interest of which is gold on an unlevered basis (the ETF's **Underlying Gold Interest**) by a multiple of 200% (**Leveraged Gold ETFs**).

Leveraged ETFs, Inverse ETFs, Gold ETFs, and Leveraged Gold ETFs are referred to collectively in this decision as the **Underlying ETFs**.

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

1. the Ontario Securities Commission is the principal regulator for this application; and

2. the Manager 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, Newfoundland and Labrador, Northwest Territories, Yukon Territory and Nunavut.

INTERPRETATION

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

REPRESENTATIONS

This decision is based on the following facts represented by the Manager on its own behalf and on behalf of the Funds:

The Manager and the Funds

1. The Manager is a corporation organized under the laws of the province of Ontario and is registered as an adviser in the appropriate categories to provide discretionary advisory services in all provinces and territories of Canada.

2. The head office of the Manager is located in Ontario.

3. The Manager or an affiliate of the Manager is the manager of each of the Existing Funds, and will be the manager of each of the Future Funds. The Manager or an affiliate of the Manager is the portfolio manager of, or has appointed a portfolio manager for, each of the Existing Funds, and will be the portfolio manager of, or will appoint a portfolio manager for, each of the Future Funds.

4. Each Existing Fund is, and each Future Fund will be: (a) an open-ended mutual fund established under the laws of a jurisdiction of Canada, (b) a reporting issuer under the laws of some or all of the provinces and territories of Canada, and (c) governed by the provisions of NI 81-102.

5. Securities of each Existing Fund are, and securities of each Future Fund will be, qualified for distribution in some or all of the provinces and territories of Canada under a simplified prospectus and annual information form prepared in accordance with National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**) and filed with and receipted by the securities regulators in the applicable jurisdiction(s).

6. Neither the Manager nor any of the Existing Funds is in default of securities legislation in any of the provinces and territories of Canada.

The Underlying ETFs

7. Each Leveraged ETF will be rebalanced daily to ensure that its performance and exposure to its Underlying Index will not exceed +/-200% of the corresponding daily performance of its Underlying Index.

8. Each Inverse ETF will be rebalanced daily to ensure that its performance and exposure to its Underlying Index will not exceed -100% of the corresponding daily performance of its Underlying Index.

9. Each Leveraged Gold ETF will be rebalanced daily to ensure that its performance and exposure to its Underlying Gold Interest will not exceed +200% of the corresponding daily performance of its Underlying Gold Interest.

10. The securities of the Underlying ETFs are traded on a stock exchange in Canada or the United States.

Investment in IPUs and the Underlying ETFs

11. Each Existing Fund is, and each Future Fund will be, permitted, in accordance with its investment objectives and investment strategies, to invest in ETFs.

12. In addition to investing in securities of ETFs that are "index participation units" as defined in NI 81-102 (**IPUs**), the Funds propose to have the ability to invest in the Underlying ETFs, whose securities are not IPUs.

13. The amount of the loss that can result from an investment by a Fund in an Underlying ETF will be limited to the amount invested by the Fund in securities of the Underlying ETF.

14. Each Fund will only purchase gold, permitted gold certificates, or enter into specified derivatives which have such underlying interests, including Gold ETFs and Leveraged Gold ETFs, if immediately after the transaction, the exposure to gold will not exceed 10% of the net assets of the Fund.

15. The Underlying ETFs are attractive investments for the Funds, as they provide an efficient and cost effective means of achieving diversification and exposure.

16. But for the ETF Exemption, paragraph 2.5(2)(a) would prohibit a Fund from purchasing or holding a security of an Underlying ETF, because the Underlying ETFs are not subject to both NI 81-102 and NI 81-101.

17. But for the ETF Exemption, paragraph 2.5(2)(c) would prohibit a Fund from purchasing or holding securities of some Underlying ETFs, because some Underlying ETFs will not be qualified for distribution in the local jurisdiction.

18. An investment by a Fund in securities of an Underlying ETF will represent the business judgment of responsible persons uninfluenced by considerations other than the best interest of the Fund.

DECISION

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

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

(a) the investment by a Fund in securities of an Underlying ETF is in accordance with the fundamental investment objectives of the Fund;

(b) a Fund does not short sell securities of an Underlying ETF;

(c) the securities of the Underlying ETFs are traded on a stock exchange in Canada or the United States;

(d) the securities of the Underlying ETFs are treated as specified derivatives for the purposes of Part 2 of NI 81-102;

(e) a Fund does not purchase securities of an Underlying ETF if, immediately after the purchase, more than 10% of the net assets of the Fund in aggregate, taken at market value at the time of the purchase, would consist of securities of the Underlying ETFs;

(f) a Fund does not enter into any transaction if, immediately after the transaction, more than 20% of the net assets of the Fund, taken at market value at the time of the transaction, would consist of, in aggregate, securities of Underlying ETFs and all securities sold short by the Fund; and

(g) the prospectus of each Fund discloses, or will disclose the next time it is renewed after the date of this decision, (i) in the Investment Strategy section of the prospectus, the fact that the Fund has obtained relief to invest in the Underlying ETFs together with an explanation of what each Underlying ETF is, and (ii) the risks associated with investments in the Underlying ETFs.

"Darren McKall"
Assistant Manager, Investment Funds Branch
Ontario Securities Commission

2.2 Orders

2.2.1 Franklin Danny White et al. – ss. 127, 127.1

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

AND

IN THE MATTER OF
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

ORDER
(Sections 127 and 127.1 of the Securities Act)

WHEREAS on February 7, 2008, a Statement of Allegations and a Notice of Hearing were issued pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), in respect of Franklin Danny White ("White"), Naveed Ahmad Qureshi ("Qureshi"), WNBC The World Network Business Club Ltd. ("WNBC"), MMCL Mind Management Consulting ("MMCL"), Capital Reserve Financial Group ("Capital Reserve"), and Capital Investments of America ("Capital Investments") (collectively, the "Respondents");

AND WHEREAS the Commission conducted the hearing on the merits in this matter on March 23, 24, 25 and 27, 2009;

AND WHEREAS the Commission issued its Reasons and Decision on the merits in this matter on February 10, 2010 (the "Merits Decision");

AND WHEREAS the Commission is satisfied that the Respondents have not complied with Ontario securities law and have not acted in the public interest, as outlined in the Merits Decision;

AND WHEREAS in the Merits Decision the Commission found that the amount of funds outstanding to investors is US$ 340,164 and CDN$ 431,085, for a combined total of just more than CDN$ 800,000;

AND WHEREAS one investor commenced a civil proceeding against White and WNBC, and the Statement of Claim dated April 17, 2007 states, among other things, that this investor advanced CDN$ 300,000 to White, WNBC and MMCL;

AND WHEREAS this investor has obtained a judgment, dated October 4, 2007, from the Ontario Superior Court of Justice in the amount of CDN$ 356,219.18 against White and WNBC (the "Superior Court Judgment") and CDN$ 300,000 of this amount represents the return of funds to the investor;

AND WHEREAS the Commission conducted a hearing with respect to sanctions and costs on June 4, 2010 (the "Sanctions and Costs Hearing");

AND WHEREAS the Commission has taken into account the amount of total funds outstanding to investors (CDN$ 800,000) and the Superior Court Judgment (which compensates one investor who advanced CDN$ 300,000 to White, WNBC and MMCL), and the Commission has determined that the sum of CDN$ 500,000 should be disgorged;

AND WHEREAS but for the Superior Court Judgment the Commission would have ordered the full amount of CDN$ 800,000 to be disgorged;

AND WHEREAS the Commission has taken into account the timing of the coming into force of the administrative penalty provision (clause 9 of subsection 127(1) of the Act, which came into force on April 7, 2003) and the Commission has determined that each of White and Qureshi shall pay an administrative penalty of $50,000 and each of WNBC, MMCL, Capital Reserve and Capital Investments shall pay an administrative penalty of $40,000;

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

IT IS HEREBY ORDERED:

(a) pursuant to clause 2 of subsection 127(1) of the Act, all of the Respondents shall cease trading permanently, with the exception that each of White and Qureshi are permitted to trade securities for the account of their respective registered retirement savings plans (as defined in the *Income Tax Act* (Canada)) in which they and/or their respective spouses have sole legal and beneficial ownership, provided that:

  (i) the securities traded are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges) or are issued by a mutual fund that is a reporting issuer;

  (ii) they do not own legally or beneficially (in the aggregate, together with their respective spouses) more than one percent of the outstanding securities of the class or series of the class in question; and

  (iii) they carry out any permitted trading through a registered dealer and through trading accounts opened in their respective names only (and they must close any trading accounts that are not in their respective names only);

(b) pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by all of the Respondents is prohibited permanently, except in the case of White and Qureshi, to allow the trading in securities permitted by and in accordance with paragraph (a) of this Order;

(c) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions in Ontario securities law do not apply permanently to all of the Respondents;

(d) pursuant to clause 6 of subsection 127(1) of the Act, White and Qureshi are reprimanded;

(e) pursuant to clause 7 of subsection 127(1) of the Act, White and Qureshi shall immediately resign all positions they may hold as a director or officer of any issuer;

(f) pursuant to clause 8 of subsection 127(1) of the Act, White and Qureshi are prohibited permanently from becoming or acting as a director or officer of any issuer;

(g) pursuant to clause 8.1 of subsection 127(1) of the Act, White and Qureshi are prohibited permanently from becoming or acting as a director or officer of any registrant;

(h) pursuant to clause 9 of subsection 127(1) of the Act, each of WNBC, MMCL, Capital Reserve and Capital Investments shall pay an administrative penalty of $40,000, to be allocated by the Commission in accordance with paragraph (k) of this Order;

(i) pursuant to clause 9 of subsection 127(1) of the Act, each of White and Qureshi shall pay an administrative penalty of $50,000, to be allocated by the Commission in accordance with paragraph (k) of this Order;

(j) pursuant to clause 10 of subsection 127(1) of the Act, the Respondents shall disgorge to the Commission, on a joint and several basis, $500,000.00, to be allocated by the Commission in accordance with paragraph (k) of this Order;

(k) the amounts referred to in each of paragraphs (h) to (j) inclusive of this Order shall be allocated by the Commission to or for the benefit of third parties, including investors who lost money as a result of investing in the investment scheme that was the subject matter of this proceeding, in accordance with subsection 3.4(2)(b) of the Act; and

(l) pursuant to section 127.1 of the Act, the Respondents shall pay, on a joint and several basis, $169,651.25 in costs to the Commission.

Dated at Toronto, Ontario this 29th day of September 2010.

"Patrick J. LeSage"

"Carol S. Perry"

2.2.2 Clearly Canadian Beverage Corporation – s. 144

Headnote

Section 144 – Application for revocation of cease trade order – issuer subject to cease trader as a result of failure to file financial statements – issuer has made a separate application to not be a reporting issuer in all of the jurisdictions in which it is currently a reporting issuer – full revocation granted effective as of the date the issuer is determined to not be a reporting issuer.

Applicable Legislative Provisions

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

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

AND

IN THE MATTER OF
CLEARLY CANADIAN BEVERAGE CORPORATION
(THE "APPLICANT")

ORDER

WHEREAS the securities of the Applicant are currently subject to a cease trade order made by the Director dated May 25, 2009, made under paragraph 2 and paragraph 2.1 of subsection 127(1) of the Act directing that all trading in and acquisitions of the securities of the Applicant, whether direct or indirect, shall cease until further order by the Director (the "**Ontario CTO**");

AND WHEREAS pursuant to section 144 of the Act, the Ontario CTO was partially revoked on May 4, 2010 solely to permit trades in securities of the Applicant in connection with certain transactions contemplated by reorganization of the share capital of the Applicant by the Applicant (the "**Reorganization**") under a proposal to its creditors under the *Bankruptcy and Insolvency Act* (Canada) (the "**Proposal**").

AND WHEREAS the Applicant has applied to the Ontario Securities Commission (the "**OSC**") pursuant to section 144 of the Act (the "**Application**") for a full revocation of the Ontario CTO;

AND WHEREAS the Applicant has represented to the OSC that:

1. The Applicant is a British Columbia company under the *Business Corporations Act* (British Columbia) and was incorporated on March 18, 1981.

2. The Applicant's head office is located at Unit 11/12, 220 Viceroy Road, Vaughn, Ontario. Prior to March 2008, the Applicant's head office was located at 2267 West 10th Avenue, Vancouver, British Columbia.

3. The Applicant is a reporting issuer in Ontario and British Columbia.

4. The Applicant is in the business of selling sparkling flavoured water, packaged dried fruits and nuts, and organic baby food.

5. The Applicant's share have been publicly traded on various exchanges in North America since the 1980's. Most recently, the Applicant's limited voting common shares (the "**Limited Voting Shares**") were quoted for trading in the United States on the Pink Sheets under the trading symbol "CCBEF.PK".

6. The Ontario CTO was issued due to the default of the Applicant to file its audited financial statements and management's discussion and analysis, as prescribed by National Instrument *Continuous Disclosure Obligations*, for the year ended December 31, 2008 (together, the "**2008 Financials**") within the prescribed deadline. No further financial statements or management's discussion and analysis have been filed by the Applicant since that time.

7. In addition to the Ontario CTO, the Applicant is subject to a cease trade order issued by the British Columbia Securities Commission on May 11, 2009 (the "**BC CTO**") for failure of the Applicant to file its 2008 Financials.

8. On March 17, 2010, while experiencing severe cash flow problems, and with its debts being significantly greater than its assets, the Applicant filed the Proposal with its creditors.

9. The Applicant issued a press release on March 18, 2010, and filed a material change report in Canada and a Form 6-K in the United States on March 19, 2010, announcing the filing of the Proposal.

10. The Proposal contemplated, amongst other things:

    (a) the Reorganization by:

    (i) creating an unlimited number of new common shares (the "**New Common Shares**"),

    (ii) issuing the New Common Shares to the Applicant's creditors who, under the Proposal, elected to accept the issuance of such New Common Shares in full payment of the amount outstanding on their claims against the Applicant,

(iii) cancelling all issued common shares (being the Limited Voting Shares and the variable multiple voting shares) and preferred shares of the Applicant,

(iv) cancelling all warrants, options, rights to purchase shares, share subscription rights and conversion rights of the Applicant, and

(v) issuing a cash payment, expected to equate to $0.25 on the dollar, to the Applicant's creditors who, under the Proposal, elected to accept such cash payment in full payment of the amount outstanding on their claims against the Applicant;

(b) the approval of the Supreme Court of British Columbia (the "**Court**"); and

(c) the Applicant applying to cease to be a reporting issuer in British Columbia and Ontario.

11. On April 1, 2010, the Applicant's creditors voted in favour of the Proposal, which was approved by the Court on April 26, 2010 (the "**Court Order**").

12. The Applicant applied to the British Columbia Securities Commission (the "**BCSC**"), and was granted on May 3, 2010, a partial revocation of the BC CTO in connection with the Reorganization under the Proposal.

13. The Applicant was granted on May 4, 2010, a partial revocation of the Ontario CTO under section 144 of the Act to effect the transactions contemplated by the Proposal.

14. All of the former non-trade creditors of the Applicant elected to receive New Common Shares in full payment of the amount outstanding on their claims against the Applicant.

15. The closing of the transactions contemplated by the Proposal has taken place in accordance with the Court Order and, effective May 26, 2010, the outstanding securities of the Applicant, are held by 12 security holders.

16. The outstanding securities of the Applicant are beneficially owned, directly or indirectly, by fewer than 15 security holders in each of the jurisdictions in Canada and less than 51 security holders in total in Canada.

17. The Applicant issued a press release on July 6, 2010, and filed a material change report in Canada and a Form 6-K in the United States on July 6, 2010, announcing that its Limited Voting Shares issued and outstanding as of May 26, 2010 are cancelled and the common shareholders of record of the Applicant as of May 26, 2010 are no longer shareholders of the Applicant.

18. The Applicant's only outstanding securities are the New Common Shares.

19. The quotation of the Filer's Limited Voting Shares on the Pink Sheets ceased on August 13, 2010.

20. No securities of the Applicant are currently listed, traded or quoted for trading on any "marketplace" in Canada (as defined in National Instrument 21-101 *Marketplace Operation*), and the Applicant does not currently intend to have any of its securities listed, traded or quoted on such a marketplace in Canada.

21. The Applicant has currently no intention to seek financing by way of private or public placement in a jurisdiction of Canada.

22. Except for the defaults that led to the issuance of the Ontario CTO and the BC CTO, and other continuous disclosure defaults since the issuance of the Ontario CTO and the BC CTO, the Applicant has complied with applicable securities legislation, regulations and instruments.

23. The Applicant is not in a financial position to make any public filings, in accordance with the Act, of any financial statements, management's discussion and analysis or certificates relating thereto, either on an annual or quarterly basis.

24. The Applicant has applied to the securities regulatory authority or regulator in each of Ontario and British Columbia for a decision under the securities legislation of such jurisdictions that the Applicant is not a reporting issuer under such securities legislation (the "**Reporting Issuer Exemptive Relief Sought**"). The Filer has been advised by staff of the BCSC, the principal regulator for such application, that the Reporting Issuer Exemptive Relief Sought will be granted concurrently upon the grant of the Ontario CTO and BC CTO.

25. If the Reporting Issuer Exemptive Relief Sought is granted, the Applicant will no longer be a reporting issuer in any jurisdiction in Canada.

26. The Applicant has also filed an application with the BCSC for a full revocation of the BC CTO.

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

AND UPON the Director being satisfied that to do so would not be prejudicial to the public interest;

IT IS ORDERED, pursuant to section 144 of the Act, that the Ontario CTO is fully revoked as of the date on

which the Applicant ceases to be a reporting issuer under the Act.

DATED September 24, 2010.

"Michael Brown"
Assistant Manager
Corporate Finance Branch

2.2.3 Wilton J. Neale et al.

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

AND

WILTON J. NEALE, MULTIPLE STREAMS OF INCOME (MSI) INC. AND 360 DEGREE FINANCIAL SERVICES INC.

ORDER

WHEREAS on March 12, 2010, the Commission issued a Notice of Hearing pursuant to section 127 of the *Securities Act* (the "Act") in respect of a breach of an Order of the Ontario Securities Commission (the "Commission") by Wilton J. Neale, Multiple Streams of Income (MSI) Inc. and 360 Degree Financial Services Inc. (the "Respondents");

AND WHEREAS on March 12, 2010, Staff of the Commission filed a Statement of Allegations;

AND WHEREAS the Respondents entered into a Settlement Agreement September 29, 2010, (the "Settlement Agreement") in relation to the matters set out in the Statement of Allegations;

UPON reviewing the Settlement Agreement, the Notice of Hearing, the Statement of Allegations, and upon considering submissions from the respondents and from Staff of the Commission;

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) The Settlement Agreement dated September 29, 2010, between Staff of the Commission and the Respondents is approved;

(2) Pursuant to s. 127(1)2, Wilton J. Neale ("Neale") is prohibited for 15 years from trading in securities;

(3) Pursuant to s. 127(1)8, Neale is prohibited for 15 years from becoming or acting as a director or officer of any market participant;

(4) Upon approval of this Settlement Agreement, Neale will pay costs of the investigation of this matter to the Commission in the amount of $10,000;

(5) Neale will disgorge the sum of $265,179 to the Commission for the benefit of third parties pursuant to s. 3.4(2)(b) of the Act;

(6) The Respondents will pay an administrative penalty of $500,000 pursuant to s. 3.4(2)(b) of the Act; and

(7) Neale will attend the hearing in person and be reprimanded.

Dated at Toronto, Ontario this 1st day of October, 2010.

“Patrick J. LeSage”

2.2.4 Liquidnet Canada Inc. – s. 15.1 of NI 21-101 Marketplace Operation and s.6.1 of Rule 13-502 Fees

Headnote

Section 15.1 of National Instrument 21-101 Marketplace Operation (NI 21-101) and section 6.1 of OSC Rule 13-502 Fees (13-502) -- exemption granted from the requirement in paragraph 6.4(2) of NI 21-101 to file an amendment to Form 21-101F2 45 days prior to implementation of a temporary fee change and from the requirements in Appendix C (item E(1) and item E(2)(a)) of 13-502 to pay fees related to Liquidnet Canada's exemption application.

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

AND

IN THE MATTER OF
LIQUIDNET CANADA INC.

ORDER
(Section 15.1 of National Instrument 21-101 Marketplace Operation
(NI 21-101) and section 6.1 of Rule 13-502 Fees)

UPON the application (the "Application") of Liquidnet Canada Inc. (the "Applicant") to the Director for an order pursuant to section 15.1 of NI 21-101 exempting the Applicant from the requirement in paragraph 6.4(2) to file an amendment to the information previously provided in Form 21-101F2 (the "Form F2") regarding Exhibit G(4) (fees) 45 days before implementation of the fee change (the "45 day filing requirement");

AND UPON the Applicant filing an updated Form F2 on September 14, 2010, describing a fee change (the "Fee Promotion") to be implemented in October, 2010 and expiring on December 31, 2010;

AND UPON the application by the Applicant (the "Fee Exemption Application") to the Director for an order pursuant to section 6.1 of Rule 13-502 exempting the Applicant from the requirement to pay an activity fee of (a) up to $5,250 in connection with the Application in accordance with section 4.1 and item E(1) of Appendix C of Rule 13-502, and (b) $1,500 in connection with the Fee Exemption Application (Appendix C, item E(2)(a));

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

AND UPON the Applicant having represented to the Director as follows:

1. The Applicant is carrying on business as an alternative trading system in Ontario with its head office in New York;

2. The Applicant would like to implement the temporary fee promotion for a limited period of time;

3. The current multi-market trading environment requires frequent changes to the fees and fee model to remain competitive and it has become unduly burdensome to delay 45 days before responding to participants' needs and/or competitors' initiatives; and

4. Given that the notice period was created prior to multi-markets becoming a reality, and in light of the current competitive environment and the limited and highly technical nature of the exemption being sought, it would be unduly onerous to pay fees in these circumstances;

AND UPON the Director being satisfied to do so would not be prejudicial to the public interest;

IT IS ORDERED by the Director:

(a) pursuant to section 6.1 of Rule 13-502 that the Applicant is exempted from:

(i) paying an activity fee of up to $5,250 in connection with the Application, and

(ii) paying an activity fee of $1,500 in connection with the Fee Exemption Application, and

(b) pursuant to section 15.1 of NI 21-101 that the Applicant is exempted from the 45 day filing requirement for the Fee Promotion, provided that the Applicant will provide reasonable prior notice to its participants of the implementation of the Fee Promotion.

DATED this 5th day of October, 2010

"Susan Greenglass"
Director, Market Regulation Branch
Ontario Securities Commission

2.3 Rulings

2.3.1 Jones Collombin Balanced Fund – s. 74(1)

Headnote

Relief from the prospectus requirement of the Act to permit the distribution of pooled fund securities to managed accounts held by non-accredited investors on an exempt basis – NI 45-106 containing carve-out for managed accounts in Ontario prohibiting portfolio manager from making exempt distributions of securities of its proprietary pooled funds to its managed account clients in Ontario unless managed account client qualifies as accredited investor or invests $150,000 – Portfolio manager providing *bona fide* portfolio management services to high net worth clients – Not all managed account clients are accredited investors – Portfolio manager permitted to make exempt distributions of proprietary pooled funds to its managed accounts provided written notice is sent to new clients advising them of the relief granted – Portfolio manager is restricted from distributing proprietary pooled fund securities to parties other than its managed account clients.

Applicable Legislative Provisions

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

Rules Cited

National Instrument 45-106 Prospectus and Registration Exemptions.
National Instrument 31-103 Registration Requirements and Exemptions.

September 28, 2010

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

AND

IN THE MATTER OF
JONES COLLOMBIN INVESTMENT COUNSEL INC.
(the Filer)

RULING
(Subsection 74(1) of the Act)

Background

The Ontario Securities Commission (the **Commission**) has received an application from the Filer, on behalf of itself, the Jones Collombin Balanced Fund (the **Balanced Fund**) and any other open-ended investment fund that is not a reporting issuer and that is established and managed by the Filer from time to time (a **Future Fund**) for a ruling, pursuant to subsection 74(1) of the Act, that distributions of securities of the Balanced Fund and any Future Funds to Managed Accounts of Clients, as these terms are defined below, to which the Filer provides discretionary investment management services will not be subject to the prospectus requirement under section 53 of the Act (the **Prospectus Requirement**).

Interpretation

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

Representations

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

(a) The Filer is a corporation incorporated under the *Business Corporations Act* (Ontario). Its head office is located in Toronto, Ontario.

(b) The Filer conducts active portfolio management operations (the **Portfolio Management Operations**) offering services to a large and diversified client base in accordance with adviser registrations that it maintains with each of the securities regulatory authorities in Ontario, British Columbia, Alberta and Quebec. In Ontario, the Filer is currently registered under the Act as a portfolio manager and an exempt market dealer and is in the process of becoming registered as an investment fund manager.

(c) The Filer's Portfolio Management Operations are designed to provide services to the following distinct business segments:

  (i) Private clients – high net worth individuals who access the Filer's portfolio management services by establishing and maintaining segregated individually managed accounts.

  (ii) Institutional clients – corporations, institutions, endowments and foundations which have their assets managed in segregated individually managed accounts.

(d) The Filer's Portfolio Management Operations are devoted to providing discretionary portfolio management services to private clients and institutional clients (the **Clients**) who have entered into a written agreement with the Filer (the **Managed Account Agreement**) that authorizes the Filer to exercise its discretion to invest and reinvest the assets that are held in the Client's account with the Filer (the **Managed Account**) from time to time without having to obtain the prior consent of the Client for each trade made by the Filer on behalf of the Client.

(e) The Filer currently has three portfolio managers that manage Client accounts on a team basis. Prior to entering into a Managed Account

Agreement, one or more or the Filer's portfolio managers meets with each Client to establish the Client's general investment goals and objectives which form part of the Managed Account Agreement. An Investment Management Philosophy and Processes statement (the **IMPP**) is provided to each Client setting out the strategies that the Filer will employ to meet the Client's investment goals and objectives. The Statement is incorporated by reference into the Managed Account Agreement.

(f) After the initial meeting, the Filer offers to meet at least once per year with each Client (or more frequently as required) to review the performance of their Managed Account and their investment goals and objectives.

(g) The Filer is currently the manager and sole distributor of the Balanced Fund, the securities of which are distributed to Managed Accounts pursuant to the Current Ruling, as that term is defined below. The Filer may, in the future, be the manager and sole distributor of Future Funds.

(h) The Balanced Fund is, and any Future Fund will be, an open-end investment fund that is not a reporting issuer.

(i) The Filer's minimum aggregate account size, which it may waive in appropriate circumstances, is within the range of $750,000 to $1,000,000. The Filer will accept Clients who do not meet this minimum threshold if there are exceptional factors that have persuaded the Filer for business reasons to accept such persons as Clients and waive the minimum aggregate account size. This would include the following circumstances:

  (i) the investor is a member of an existing Client's family;

  (ii) an existing Client requests the Applicant to manage the investor's assets;

  (iii) the investor has significant future earning and/or inheritance potential; and the investor has assets in excess of the minimum threshold that the investor is managing or are under management elsewhere that the Applicant may be asked to manage at a future date.

(j) The Filer may determine that to best fulfill its fiduciary duty to its Clients, all or a portion of the asset mix in a Client's portfolios should be invested in the Balanced Fund or a Future Fund.

(k) The Balanced Fund has been, and any Future Funds will be, established and maintained primarily for the purpose of affording Managed Account access to individuals and individual accounts that would not generally be considered to have sufficient assets to warrant the establishment of a Managed Account due to asset diversification and cost considerations.

(l) Investments in individual securities may not be appropriate for Clients with smaller Managed Accounts because they may be unable to obtain the asset diversification that can be obtained through an investment in the Balanced Fund and/or any Future Fund.

(m) Investments in individual securities may also be inappropriate for Client's with smaller Managed Accounts because minimum commission charges can result in smaller Managed Accounts paying disproportionately higher brokerage commissions relative to Clients with larger Managed Accounts.

(n) The only costs that are, or will be, incurred by the Balanced Fund or any Future Fund (collectively, the **JCIC Funds**) are expenses associated with its ongoing administration. JCIC Funds do not, and will not, pay any management fee or any fee or commission in relation to the distribution of their securities.

(o) The only management fee that is, or will be, paid by a Managed Account that holds the securities of a JCIC Fund is, or will be, paid directly to the Filer pursuant to the terms and conditions of the Managed Account Agreement that is entered into between the Filer and the relevant Client.

(p) The Filer does not, and will not, distribute the securities of the JCIC Funds through any third parties. Accordingly, neither the Filer nor any JCIC Fund pays, or will pay, any fees or commissions for the sale of the securities of a JCIC Fund.

(q) The Filer addresses its know-your-client and suitability obligations at the time that it opens a Managed Account for a Client and on an ongoing basis. The Filer will only invest a Client's Managed Account in a JCIC Fund if the client has previously provided the Filer with the Client's express written consent to allow the Applicant to exercise its discretion to acquire securities of the JCIC Fund. If an investment in one or more JCIC Funds is both suitable and appropriate for a prospective Client, this express consent is obtained by the Filer at the time that it opens the Client's Managed Account.

(r) The Filer has prepared an offering memorandum for the Balanced Fund, and it will prepare an offering memorandum for any Future Funds, and it delivers, or will deliver, a copy of the offering memorandum to each prospective Client or Client for whom the JCIC Funds may be a suitable and appropriate investment before acquiring any securities of a JCIC Fund on behalf of the Client to assist the Client in deciding whether to provide the

Filer with the Client's written consent to allow the Filer to exercise its investment discretion to purchase the securities of one or more JCIC Funds on behalf of the Client.

(s) The Filer provides each Client whose Managed Account is invested in securities other than JCIC with a monthly asset and transaction statement and a quarterly Managed Account performance report.

(t) Each Client whose Managed Account is invested in a JCIC Fund receives a quarterly JCIC Fund performance report and a quarterly report of unit transactions that includes a quarter end unit balance and unit net asset value.

(u) While a Managed Account qualifies as an "accredited investor" in each province and territory other than Ontario, Section 1.1 of National Instrument 45-106 Prospectus and Registration Exemptions contains a carve-out for Managed Accounts in Ontario when the securities being purchased by the Managed Account are those of an investment fund.

(v) Although it may be possible to make the Balanced Fund, or any Future Fund, available only to Clients in Ontario who are "accredited investors" or to those Clients in Ontario who are able to invest a minimum of $150,000 in a JCIC Fund, these constraints would act as a barrier to investments in the JCIC Funds on behalf of smaller Managed Accounts.

(w) The Filer has previously obtained two exemption decisions to accommodate the exempt distribution of the Balanced Fund and any Future Funds to its Managed Accounts. That part of the current ruling and order of the Commission dated October 6, 2005 (the **Current Ruling**) that grants the Filer a prospectus exemption for distributions of securities of a JCIC Fund to a Managed Account stipulates that it "shall terminate one year after the coming into force subsequent to the date of this Ruling, of a rule or other regulation under the Act that relates, in whole or in part, to trading by persons or companies that are registered under the Act as portfolio managers, in securities of a mutual fund to an account of a client, in respect of which the person or company has full discretionary authority to trade securities to the account, without obtaining the specific consent of the client to the trades but does not include any rule or regulation that is specifically identified by the Commission as not applicable for these purposes."

(x) The implementation of National Instrument 31-103 *Registration Requirements and Exemptions* has triggered the one year termination period for the Current Ruling.

(y) Neither the Filer nor the Balanced Fund are in default of the securities legislation of any Jurisdiction.

Ruling

The Commission being satisfied that the relevant test contained in subsection 74(1) of the Act has been met, the Commission rules pursuant to subsection 74(1) of the Act that relief from the Prospectus Requirement is granted in connection with the distribution of securities of the Balanced Fund and any Future Funds to Clients provided that:

(a) securities of the Balanced Fund, or any Future Funds, distributed pursuant to relief from the Prospectus Requirement contained in this ruling shall only be distributed to Managed Accounts;

(b) for each Client that becomes a Client of the Filer after the date of this ruling that will invest in securities of the Balanced Fund or any Future Fund through a Managed Account pursuant to this ruling, the Filer shall deliver to such Client prior to effecting a trade in securities of a the Balanced Fund or any Future Fund in reliance on this ruling, written disclosure advising of:

(i) the nature of the relief granted under this ruling, and

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

(c) this ruling will terminate upon the coming into force of any legislation or rule of the Commission exempting a trade by a fully managed account in Ontario in securities of investment funds from the Prospectus Requirement.

"C. Wesley M. Scott"
Commissioner
Ontario Securities Commission

"James D. Carnwath"
Commissioner
Ontario Securities Commission

2.3.2 CIBC Private Investment Counsel Inc. – s. 74(1)

Headnote

Relief from the prospectus requirement of the Securities Act (Ontario) to permit the distribution of investment fund securities to certain fully managed accounts on an exempt basis.

Applicable Legislative Provisions

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

Rules Cited

National Instrument 81-102 Mutual Funds.
National Instrument 45-106 Prospectus and Registration Exemptions.

September 28, 2010

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

AND

IN THE MATTER OF
CIBC PRIVATE INVESTMENT COUNSEL INC.
(THE FILER)

AND

THE IMPERIAL POOLS LISTED IN SCHEDULE A

AND

THE RENAISSANCE FUNDS LISTED IN SCHEDULE B

AND

THE CIBC POOLED FUNDS LISTED IN SCHEDULE C

RULING
(Subsection 74(1) of the Act)

Background

The Ontario Securities Commission (the **Commission)** has received an application from the Filer, on behalf of itself and of the mutual funds set out in Schedule A hereto (the **Existing Imperial Pools**) and any mutual funds established in the future as part of the group of Imperial Pools (the **Future Imperial Pools** and together with the Existing Imperial Pools, the **Imperial Pools**), the mutual funds set out in Schedule B hereto (the **Existing Renaissance Funds**) and any mutual funds established in the future as part of the group of Renaissance Funds (the **Future Renaissance Funds** and together with the Existing Renaissance Funds, the **Renaissance Funds**), the mutual funds set out in Schedule C hereto (the **Existing CIBC Pooled Funds**) and any mutual funds established in the future as part of the group of CIBC Pooled Funds (the **Future CIBC Pooled Funds** and together with the Existing CIBC Pooled Funds, the **CIBC Pooled Funds**) (the Imperial Pools, the CIBC Pooled Funds and the Renaissance Funds are together, the **Funds**) for a ruling pursuant to subsection 74(1) of the Act, that distributions of units of the Funds to Secondary Managed Accounts (as defined below) of Clients (as defined below) for which the Filer provides discretionary investment management services will not be subject to the prospectus requirement (the **Prospectus Requirement**) under section 53 of the Act (the **Requested Relief**).

Interpretation

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

Representations

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

The Filer

1. The Filer is a corporation incorporated under the laws of Canada and has its head office in Toronto, Ontario. The Filer is a wholly-owned subsidiary of Canadian Imperial Bank of Commerce (**CIBC**).

2. The Filer is registered as an adviser and is a portfolio manager under National Instrument 31-103 *Registration Requirements and Exemptions* (**NI 31-103**) in each of the provinces and the territories. It was also registered as a limited market dealer in Ontario and Newfoundland and Labrador and automatically became an exempt market dealer when NI 31-103 came into effect. In the provinces and territories, other than Ontario and Newfoundland and Labrador, it has relied on an exemption from the dealer registration requirement until the date of the decision referred to in paragraph 3 below. In addition, the Filer has relied on an exemption from the prospectus requirement in all provinces and territories except Ontario.

3. The Filer has also applied for an exemption from the Canadian Securities Administrators to exempt it from the dealer registration requirement in the Legislation of each of the provinces and territories of Canada. The Filer intends to drop its exempt market dealer registration in Ontario and Newfoundland and Labrador when the exemption is obtained.

4. The Filer offers discretionary portfolio management services to individuals, corporations and other entities (each a **Client**) seeking wealth management or related services through a fully managed account (**Managed Account**). The

managed account agreement (**Managed Account Agreement**) authorizes the use of the Funds by the Filer to carry out the IPS (as defined below) of a Client without obtaining the specific consent of the Client prior to the purchase or sale of a Fund.

5. The discretionary investment management services for each Managed Account are provided by portfolio managers of the Filer (**Portfolio Managers**) who meet the proficiency requirements of an advising officer or advising representative (or associate advising representative) under Ontario securities law.

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

7. After the initial meeting, the Portfolio Managers offer to meet at least twice per year with their Clients to review the performance of their Managed Account and their investment goals. In most cases, the larger the Managed Account, the more frequent the meetings.

8. Clients are provided with a quarterly portfolio statement showing all transactions carried out in their account during the quarter. The Portfolio Manager for the Managed Account is available to review and discuss with a Client any quarterly portfolio statement that is prepared for that Client.

9. The Filer typically uses the Funds as tools to carry out its investment management duties. Each of the Funds is or will be an open-ended mutual fund trust established under the laws of the Province of Ontario.

10. As a best practice, the prospectus of the Imperial Pools and Renaissance Funds may be provided to Clients when they enter into a Managed Account Agreement as part of the client welcome package. While the Clients receive the Imperial Pools and Renaissance Funds prospectuses, they are not asked to participate in the selection of the Imperial Pools and Renaissance Funds. Instead, the Filer selects the Funds for each Client's Managed Account as part of the discretionary investment mandate given to the Filer.

11. Investing in the Funds provides Clients with the benefit of asset diversification, access to investment products with very high minimum investment thresholds and economies of scale on minimum brokerage commission charges in contrast to individual trades of securities in each Managed Account.

12. None of the Funds (Class O units in the case of the Renaissance Funds) pays investment management fees. Clients pay the Filer a negotiated investment management fee under the Managed Account Agreements. There is no duplication of fees between a Managed Account and the Funds.

13. None of the Funds (Class O units in the case of the Renaissance Funds) charges, nor do the Clients pay, a sales commission or other fees in respect of the trades in units of the Funds.

The Clients

14. The Filer's Clients resident in Ontario currently consist of persons who qualify as accredited investors with respect to a trade under National Instrument 45-106 *Prospectus and Registration Exemptions* (**NI 45-106**). Managed Accounts held by such Clients are referred to as "**Primary Managed Accounts**". The minimum aggregate account balance for opening a Primary Managed Account is $1,000,000.

15. From time to time, the Filer is requested by Clients who hold Primary Managed Accounts to provide discretionary investment management services to persons who are not accredited investors under NI 45-106 and who do not meet the Filer's minimum account balance of $1,000,000. Such Clients consist of family members of holders of Primary Managed Accounts, including spouses, direct relatives, close business associates and others close to a Client with a Primary Managed Account (**Secondary Managed Accounts**).

16. The Filer would service the Clients who hold Secondary Managed Accounts as a courtesy to its Clients who hold Primary Managed Accounts. Assets managed by the Filer for Clients who hold Secondary Managed Accounts will be incidental to the assets it manages for Clients who hold Primary Managed Accounts.

Imperial Pools

17. The Imperial Pools are reporting issuers in each of the provinces and the territories.

18. The Imperial Pools are generally purchased on behalf of Clients under Managed Account Agreements with the Filer or under managed account agreements with CIBC Global Asset Management Inc. (**CGAM**) or CIBC Trust Corporation (**CIBC Trust**). CGAM and CIBC Trust Corporation are affiliates of CIBC and the Filer. Clients with accounts that are managed in other affiliates of CIBC may also purchase units of the Imperial Pools at the discretion of CIBC.

19. CIBC is the investment fund manager of the Imperial Pools and in that capacity provides, or

arranges to provide for, the administration of each Imperial Pool. CIBC Asset Management Inc. (**CAMI**), an affiliate of CIBC and of the Filer, is the portfolio manager of the Imperial Pools. CAMI may retain portfolio sub-advisers, including CGAM, to provide portfolio management services to the Imperial Pools. CIBC Trust is the trustee and CIBC Mellon Trust Company is the custodian.

20. The Filer is responsible for paying the fees to CAMI for its services in respect of the Filer's Clients, and CAMI in turn is responsible for the fees of any sub-adviser.

21. Each Imperial Pool may pay CIBC an annual management fee of up to 0.25% of the net asset value of the Fund.

22. Each of the Imperial Pools pays all administration fees and expenses relating to its operation.

Renaissance Funds

23. The Renaissance Funds are reporting issuers in each of the provinces and the territories. The Renaissance Funds offer various classes of securities pursuant to a simplified prospectus filed in the provinces and territories of Canada.

24. When the Filer purchases the Renaissance Funds on behalf of its Clients, the Filer purchases Class O units of the Renaissance Funds, rather than the classes available to all investors under the simplified prospectus of the Renaissance Funds. In addition to the Filer's Clients, Class O units of the Renaissance Funds are available only to certain classes of investors either because such other investors are (a) institutional investors with similar pricing needs, or (b) investors that wish to avoid duplication of fees, including institutional investors or segregated funds, fund of funds and investors where dealers or discretionary managers such as the Filer offer separately managed accounts or similar programs. Some of these investors may not qualify for any applicable private placement exemptions. It is for this reason that the Class O units of the Renaissance Funds are included in the simplified prospectus of the Renaissance Funds.

25. Although currently there are more than 40 Renaissance Funds which may offer Class O units, not all of these Funds are used for the Managed Accounts of the Filer's Clients.

26. CAMI is the manager of the Renaissance Funds and in that capacity provides, or arranges to provide for, the administration of each Renaissance Fund. CAMI is also the portfolio adviser of the Renaissance Funds. CAMI may retain portfolio sub-advisers, including CGAM, to provide portfolio management services to the Renaissance Funds. CAMI is the trustee and CIBC is the custodian.

27. No management fees or operating expenses are charged in respect of the Class O units of the Renaissance Funds; instead a negotiated management fee is charged by CAMI.

28. The Filer is responsible for paying the negotiated management fees to CAMI for its services in respect of the Filer's Clients and CAMI in turn is responsible for the fees of any sub-adviser.

CIBC Pooled Funds

29. The CIBC Pooled Funds are not reporting issuers in the Jurisdictions.

30. The CIBC Pooled Funds are purchased on behalf of Clients with a Managed Account Agreement with the Filer or on behalf of CGAM clients.

31. CGAM is both the investment fund manager and portfolio manager of each CIBC Pooled Fund and in that capacity is responsible for the administration of each CIBC Pooled Fund and the investment decisions made on behalf of each CIBC Pooled Fund. CIBC Mellon Trust Company is the trustee and custodian of each CIBC Pooled Fund.

32. Each of the CIBC Pooled Funds either pays all administration fees and expenses relating to its operation or CGAM waives and/or absorbs such fees and expenses.

Secondary Managed Accounts

33. The Filer wishes to provide discretionary investment management services to the Clients with Secondary Managed Accounts on the same basis as for Primary Managed Accounts. The Filer will manage the Secondary Managed Accounts in the same way it manages the Primary Managed Accounts. The Filer may carry out the investment management services for the Secondary Managed Accounts through investing in the Imperial Pools, the Class O units of the Renaissance Funds and the CIBC Pooled Funds on a prospectus-exempt basis.

34. Similar to Clients with a Primary Managed Account, a Client with a Secondary Managed Account will enter into a Managed Account Agreement pursuant to which they will pay investment management fees. As with the Primary Managed Accounts, no investment management fees nor sales commissions will be charged by or on behalf of the Funds in which they invest.

35. Investments in individual securities may not be appropriate for the Clients with Secondary Managed Accounts, since they may not receive

the same asset diversification benefits and may, as a result of minimum commission charges, incur disproportionately higher brokerage commissions relative to Clients with Primary Managed Accounts.

36. The Filer may pay referral fees to a person or company in connection with the referral of a Primary Managed Account. Payments made to any person or company as a referral fee in respect of the Primary Managed Account may reflect the assets under management of, or related to, the Primary Managed Account, including assets in any related Secondary Managed Accounts.

37. Absent the Requested Relief, the Funds are prohibited in Ontario from permitting Clients with Secondary Managed Accounts to invest in, and the Filer is effectively prohibited from investing the Secondary Managed Accounts in, securities of the Funds on an exempt basis, unless the individual Client who is the beneficial owner of the Secondary Managed Account is otherwise qualified as an "accredited investor" or invests a minimum of $150,000 in a Fund. Reliance upon the $150,000 minimum investment exemption available under NI 45-106 may not be appropriate for smaller Secondary Managed Accounts as this might require a disproportionately high percentage of the account to be invested in a single Fund than the percentage that the Portfolio Manager of the Secondary Managed Account may prefer to allocate.

Ruling

The Commission being satisfied that the relevant test contained in subsection 74(1) of the Act has been met, the Commission rules that the Requested Relief is granted in connection with the distributions of securities of the Funds to Secondary Managed Accounts, provided that:

A. this ruling will only apply where the holder of the Secondary Managed Account is, and in the case of clauses (iii) to (vi) remains,

(i) an individual (of the opposite sex or same sex) who is or has been married to the holder of a Primary Managed Account, or is living or has lived with the holder of a Primary Managed Account in a conjugal relationship outside of marriage;

(ii) a parent, grandparent, child or sibling of either the holder of a Primary Managed Account or the individual referred to in clause (i) above;

(iii) a personal holding company controlled by an individual referred to in clause (i) or (ii) above;

(iv) a trust, other than a commercial trust, of which an individual referred to in clause (i) or (ii) above is a beneficiary;

(v) a private foundation controlled by an individual referred to in clause (i) or (ii) above; or

(vi) a close business associate, employee or professional adviser to a holder of a Primary Managed Account provided that:

(a) in each instance, there are exceptional factors that have persuaded the Filer for business reasons to accept such close business associate, employee or professional adviser as a Secondary Managed Account Client, and a record is kept and maintained of the exceptional factors considered; and

(b) the Secondary Managed Account Clients acquired through such relationships to a holder of a Primary Managed Account shall not at any time represent more than five percent of the Filer's total Managed Account assets under management;

B. the Filer and each of its affiliates that acts as the investment fund manager of the Funds do not receive any compensation in respect of a sale or redemption of securities of the Funds;

C. the Filer and each of its affiliates that acts as the investment fund manager of the Funds do not pay referral fees to any person or company in connection with the referral of a Secondary Managed Account that invests in securities of the Funds unless the payment of such referral fees is proportionate to, or less than, and incidental to, the payment of referral fees on the Primary Managed Account related to such Secondary Managed Account; and

D. this Ruling will terminate upon the coming into force of any legislation or rule of the Commission exempting a trade by a fully managed account in securities of investment funds from the Prospectus Requirement.

"Wes M. Scott"
Commissioner
Ontario Securities Commission

"James D. Carnwath"
Commissioner
Ontario Securities Commission

SCHEDULE A

IMPERIAL POOLS

Imperial Money Market Pool
Imperial Short-Term Bond Pool
Imperial Canadian Bond Pool
Imperial Canadian Dividend Pool
Imperial International Bond Pool
Imperial Canadian Income Trust Pool
Imperial Canadian Dividend Income Pool
Imperial Global Equity Income Pool
Imperial Canadian Equity Pool
Imperial Registered U.S. Equity Index Pool
Imperial U.S. Equity Pool
Imperial Registered International Equity Index Pool
Imperial International Equity Pool
Imperial Overseas Equity Pool
Imperial Emerging Economies Pool

SCHEDULE B

RENAISSANCE FUNDS

Class O Units

Renaissance Asian Fund
Renaissance Canadian Asset Allocation Fund
Renaissance Canadian Balanced Fund
Renaissance Canadian Balanced Value Fund
Renaissance Canadian Bond Fund
Renaissance Canadian Core Value Fund
Renaissance Canadian Dividend Income Fund
Renaissance Canadian Growth Fund
Renaissance Canadian Monthly Income Fund
Renaissance Canadian Small-Cap Fund
Renaissance Canadian T-Bill Fund
Renaissance China Plus Fund
Renaissance Corporate Bond Capital Yield Fund
Renaissance Diversified Income Fund
Renaissance Dividend Fund
Renaissance Emerging Markets Fund
Renaissance European Fund
Renaissance Global Bond Fund
Renaissance Global Focus Fund
Renaissance Global Growth Fund
Renaissance Global Health Care Fund
Renaissance Global Infrastructure Fund
Renaissance Global Markets Fund
Renaissance Global Resource Fund
Renaissance Global Science & Technology Fund
Renaissance Global Small-Cap Fund
Renaissance Global Value Fund
Renaissance High-Yield Bond Fund
Renaissance International Dividend Fund
Renaissance International Equity Fund
Renaissance Millennium High Income Fund
Renaissance Millennium Next Generation Fund
Renaissance Money Market Fund
Renaissance Optimal Global Equity Portfolio
Renaissance Optimal Income Portfolio
Renaissance Real Return Bond Fund
Renaissance Short-Term Income Fund
Renaissance U.S. Equity Fund
Renaissance U.S. Equity Growth Fund
Renaissance U.S. Equity Value Fund
Renaissance U.S. Money Market Fund

SCHEDULE C

CIBC POOLED FUNDS

CIBC Pooled Balanced Fund
CIBC Pooled Global Balanced Fund
CIBC Pooled Canadian Equity Fund
CIBC Pooled Canadian Equity S&P/TSX Indexed Fund
CIBC Pooled Canadian Value Fund
CIBC Pooled Fixed Income Fund
CIBC Pooled Canadian Bond Index Fund
CIBC Pooled Canadian Bond Overlay Fund
CIBC Pooled Long Term Bond Index Fund
CIBC Pooled Canadian Bond Index Plus Fund
CIBC Pooled U.S. Equity S&P500 Enhanced Index Fund
CIBC Pooled U.S. Equity S&P500 Index Fund
CIBC Pooled Canadian Money Market Fund
CIBC Pooled International Equity Index Fund
CIBC Pooled EAFE Equity Fund
CIBC Pooled Smaller Companies Fund
CIBC Pooled Commodity Fund

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Franklin Danny White et al.

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

AND

IN THE MATTER OF
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

REASONS AND DECISION ON SANCTIONS AND COSTS

Hearing:	June 4, 2010		
Decision:	September 29, 2010		
Panel:	Patrick J. LeSage	–	Commissioner and Chair of the Panel
	Carol S. Perry	–	Commissioner
Counsel:	Cullen Price	–	For the Ontario Securities Commission
			No one appeared for any of the Respondents.

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REASONS AND DECISION ON SANCTIONS AND COSTS

I. Overview

1. History of the Proceeding

[1] This was a bifurcated hearing before the Ontario Securities Commission (the "Commission") pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), to consider whether it is in the public interest to

make an order with respect to sanctions and costs against Franklin Danny White ("White"), Naveed Ahmad Qureshi ("Qureshi"), WNBC The World Network Business Club Ltd. ("WNBC"), MMCL Mind Management Consulting ("MMCL"), Capital Reserve Financial Group ("Capital Reserve"), and Capital Investments of America ("Capital Investments") (collectively, the "Respondents").

[2] The hearing on the merits in this matter commenced on March 23, 2009, and evidence was heard on March 23, 24, and 25, 2009. Following the close of evidence, submissions on the merits were heard on March 27, 2009. None of the Respondents were present or represented by legal counsel for the merits hearing. The decision on the merits was rendered on February 10, 2010 (*Re WNBC et al.* (2010), 33 O.S.C.B. 1569 (the "Merits Decision")).

[3] Following the release of the Merits Decision, we held a separate hearing on June 4, 2010, to consider sanctions and costs (the "Sanctions and Costs Hearing"). Only Staff of the Commission ("Staff") appeared at the Sanctions and Costs Hearing. In addition to their oral submissions, Staff provided written submissions dated April 9, 2010 along with a book of Authorities, a Bill of Costs and a letter providing further submissions dated June 7, 2010.

[4] Following the Sanctions and Costs hearing, we requested by letter dated July 23, 2010, that all of the parties provide us with further submissions in writing regarding the issue of retrospective application of sanctions. On August 20, 2010, we received written submissions on this issue from Staff and White.

[5] These are our Reasons and Decision as to the appropriate sanctions and costs to order against the Respondents.

2. The Non-attendance of the Respondents at the Sanctions and Costs Hearing

[6] None of the Respondents were present or represented by legal counsel at the Sanctions and Costs Hearing.

[7] The date for the Sanctions and Costs Hearing was set on consent by all of the parties. Qureshi (on his own behalf and on behalf of Capital Reserve and Capital Investments) agreed to the June 4, 2010 hearing date during a telephone conference call with Staff and the Chair of the Panel held on March 11, 2010. White did not participate in this conference call, but he sent an email (on his own behalf and on behalf of WNBC and MMCL) to Staff dated March 10, 2010, which stated: "As I don't have any plans that would not be able to be changed…I will accept any date as fine" (Exhibit 1). Following the March 11, 2010 conference call, the Chair of the Panel issued an Order scheduling the Sanctions and Costs Hearing for June 4, 2010 (*Re WNBC et al.* (2010), 33 O.S.C.B. 2379). Staff also provided in evidence an email dated March 12, 2010, notifying all the Respondents of the June 4, 2010 hearing date and the Commission's Order dated March 11, 2010 (Exhibit 2).

[8] We find that the Respondents were all aware of the June 4, 2010 hearing date and that they chose not to attend. Subsection 7(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended (the "SPPA") provides that a tribunal may proceed in the absence of a party when that party has been given adequate notice. We are satisfied that Staff gave adequate notice of this proceeding to the Respondents and that we are entitled to proceed in their absence in accordance with subsection 7(1) of the SPPA.

[9] While none of the Respondents appeared at the Sanctions and Costs Hearing, prior to the hearing, Qureshi did email Staff on March 3, 2010 to inform Staff that "he planned to reopen the case in the future because of the osc [*sic*] staff's one sided inaccurate and exaggerated presentation of the fact and figures" (Exhibit 3A). According to Qureshi, Staff "completely ignored" his previous communications. Attached to the March 3, 2010 email, Qureshi provided Staff a letter in PDF format dated March 22, 2009, which provided information regarding the return of funds to investors. Staff submitted to us that the letter dated March 22, 2009 was never provided to them prior to the hearing on the merits in this matter. In support of this, Staff provided evidence that the letter in PDF format dated March 22, 2009 was only created on February 12, 2010, two days after the Merits Decision was issued (Exhibit 3B). Staff also provided us with copies of a chain of emails between Staff and Qureshi, which included an email dated March 20, 2009, from Qureshi to Staff arguing that there were "serious accounting errors and miscalculations" with respect to the amounts of funds outstanding to investors, however, there were no attachments appended to Qureshi's email to support his argument (Exhibit 3C).

[10] We are satisfied that the letter in PDF format dated March 22, 2009 was not provided to Staff or to the tribunal prior to the hearing on the merits and we accept the evidence set out in Exhibit 3B that the letter was created after the Merits Decision was issued. We reviewed the content of the letter and it appears to argue the correctness of the Merits Decision. If Qureshi takes issue with the correctness of the Merits Decision, the proper manner to deal with this is by way of an appeal pursuant to section 9 of the Act.

II. Reasons and Decision Dated February 10, 2010

[11] The Merits Decision addressed the following issues:

(a) Did the Respondents trade in securities in breach of subsection 25(1)(a) of the Act?

(b) Did the Respondents advise in connection with trading in securities in breach of subsection 25(1)(c) of the Act?

(c) Did the Respondents engage in a distribution of securities without a prospectus in breach of subsection 53(1) of the Act?

(d) Were there any exemptions available to the Respondents?

(e) Did the Respondents act in a manner that was contrary to the public interest and harmful to the integrity of Ontario capital markets?

(Merits Decision, *supra* at para. 26)

[12] Upon reviewing all the evidence, the applicable law and the submissions made, the Panel concluded in the Merits Decision that:

(a) all of the Respondents breached subsection 25(1)(a) of the Act;

(b) White, Qureshi and WNBC breached subsection 25(1)(c) of the Act;

(c) all of the Respondents breached subsection 53(1) of the Act;

(d) there were no exemptions available to the Respondents; and

(e) all of the Respondents acted contrary to the public interest.

(Merits Decision, *supra* at para. 182)

[13] The Panel found that from 2002 until 2004, significantly more than CDN$ 1 million was raised from investors (Merits Decision, *supra* at para. 41). The Respondents received the following amounts as a result of their misconduct: US$ 560,366 and CDN$ 577,785 (Merits Decision, *supra* at para. 42).

[14] Investors provided significant sums to White, Qureshi and WNBC. Some investors were repaid all or part of their investment, while others received none of their investment back. The Panel found that the Respondents repaid investors the following amounts: US$ 220,202 and CDN$ 146,700 (Merits Decision, *supra* at para. 46).

[15] The amount outstanding to investors is US$ 340,164 and CDN $431,085 (approximately a total of CDN$ 800,000) (Merits Decision, supra at para. 46).

[16] It is this conduct that we must consider when determining the appropriate sanctions to impose in this matter.

III. Sanctions and Costs Requested by Staff

[17] In their written and oral submissions, Staff requested that the following order be made against the Respondents:

Corporate Respondents

(a) an order that each of WNBC, MMCL, Capital Reserve and Capital Investments, (collectively, the "Corporate Respondents") cease trading in securities permanently pursuant to clause 2 of subsection 127(1) of the Act;

(b) an order that the acquisition of any securities by each of the Corporate Respondents is prohibited permanently pursuant to clause 2.1 of subsection 127(1) of the Act;

(c) an order that any exemptions contained in Ontario securities law do not apply to each of the Corporate Respondents permanently pursuant to clause 3 of subsection 127(1) of the Act;

(d) an order reprimanding each of the Corporate Respondents pursuant to clause 6 of subsection 127(1) of the Act;

(e) an order requiring WNBC to pay an administrative penalty of $150,000.00 (representing $50,000 for each breach of the Act) pursuant to clause 9 of subsection 127(1) to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act;

(f) an order requiring each of MMCL, Capital Reserve and Capital Investments to pay an administrative penalty of $100,000.00 (representing $50,000 for each breach of the Act) pursuant to clause 9 of subsection 127(1) to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act; and

(g) an order making the Corporate Respondents jointly and severally liable together with White and Qureshi to disgorge to the Commission, pursuant to clause 10 of subsection 127(1), $800,000.00 obtained as a result of their non-compliance with Ontario securities law to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act.

White and Qureshi

(a) an order that White and Qureshi cease trading in securities permanently pursuant to clause 2 of subsection 127(1) of the Act;

(b) an order that the acquisition of any securities by White and Qureshi is prohibited permanently pursuant to clause 2.1 of subsection 127(1) of the Act;

(c) an order that any exemptions contained in Ontario securities law do not apply to White and Qureshi permanently pursuant to clause 3 of subsection 127(1) of the Act;

(d) an order reprimanding White and Qureshi pursuant to clause 6 of subsection 127(1) of the Act;

(e) an order that White and Qureshi resign all positions that they may hold as a director or officer of an issuer pursuant to clause 7 of subsection 127(1) of the Act;

(f) an order that White and Qureshi be prohibited permanently from becoming or acting as a director or officer of any issuer pursuant to clause 8 of subsection 127(1) of the Act;

(g) an order that White and Qureshi be prohibited permanently from becoming or acting as a director or officer of any registrant pursuant to clause 8.1 of subsection 127(1) of the Act;

(h) an order requiring each of White and Qureshi to pay an administrative penalty of $150,000.00 (representing $50,000 for each breach of the Act) pursuant to clause 9 of subsection 127(1) of the Act, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act; and

(i) an order requiring disgorgement to the Commission pursuant to clause 10 of subsection 127(1) by White and Qureshi of $800,000, jointly and severally with the Corporate Respondents, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) pursuant to clause 10 of subsection 127(1) of the Act.

All Respondents

(a) an order requiring payment by the Respondents, on a joint and several basis, of $169,651.25 representing a portion of the costs incurred in this matter pursuant to section 127.1 of the Act.

[18] In Staff's submission, the sanctions and costs requested are appropriate in light of the Respondents' serious breaches of the Act and conduct contrary to the public interest.

IV. The Law on Sanctions

[19] Pursuant to section 1.1 of the Act, the Commission has the mandate to: (i) provide protection to investors from unfair, improper or fraudulent practices; and (ii) foster fair and efficient capital markets and confidence in capital markets. As stated by the Supreme Court of Canada in *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario Securities Commission*, [2001] 2 S.C.R. 132, the Commission's public interest mandate is neither remedial nor punitive; instead, it is protective and preventative, and it is intended to prevent future harm to Ontario's capital markets (at para. 42). Specifically:

> … pursuant to s. 127(1), the OSC has the jurisdiction and a broad discretion to intervene in Ontario capital markets if it is in the public interest to do so. … In exercising its discretion, the OSC should consider the protection of investors and the efficiency of, and public confidence in, capital markets generally. In addition, s. 127(1) is a regulatory provision. The sanctions under the section are preventative in nature and prospective in orientation.
>
> (*Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario Securities Commission*, *supra* at para. 45)

[20] In determining the appropriate sanctions to order in this matter, we must keep in mind the Commission's preventative and protective mandate set out in section 1.1 of the Act, and we must also consider the specific circumstances in this case and ensure that the sanctions are proportionate (*Re M.C.J.C. Holdings*, (2002), 25 O.S.C.B. 1133 at 1134).

[21] The case law sets out the following list of non-exhaustive factors that are important to consider when imposing sanctions:

(a) the seriousness of the allegations;

(b) the respondent's experience in the marketplace;

(c) the level of a respondent's activity in the marketplace;

(d) whether or not there has been a recognition of the seriousness of the improprieties;

(e) the need to deter a respondent, and other like-minded individuals from engaging in similar abuses of the capital markets in the future;

(f) whether the violations are isolated or recurrent;

(g) the size of any profit or loss avoided from the illegal conduct;

(h) any mitigating factors, including the remorse of the respondent;

(i) the effect any sanction might have on the livelihood of the respondent;

(j) the effect any sanction might have on the ability of a respondent to participate without check in the capital markets;

(k) the reputation and prestige of the respondent;

(l) the size of any financial sanctions or voluntary payment when considering other factors; and

(m) the shame or financial pain that any sanction would reasonably cause to the respondent and the remorse of that respondent.

(*Re M.C.J.C. Holdings*, (2002), 25 O.S.C.B. 1133 at 1136 and *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at 7746)

[22] The applicability and importance of each factor will vary according to the facts and circumstances of each case.

[23] General deterrence is another important factor that the Commission should consider when determining appropriate sanctions. In *Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672, the Supreme Court of Canada established that "[…] it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative" (at para. 60).

[24] As stated above, the sanctions imposed must be protective and preventative. The role of the Commission is to impose sanctions that will protect investors and the capital markets from exposure to similar conduct in the future. As articulated by the Commission in *Re Mithras Management Inc.* (1990), 13 O.S.C.B. 1600:

> […] the role of this Commission is to protect the public interest by removing from the capital markets -- wholly or partially, permanently or temporarily, as the circumstances may warrant -- those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 [now 122] of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In so doing we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient, after all.
>
> (*Mithras*, *supra* at 1610 and 1611)

V. Appropriate Sanctions in this Case

1. Specific Sanctioning Factors Applicable in this Matter

[25] Overall, the sanctions we impose must protect investors and Ontario capital markets by barring or restricting the Respondents from participating in those markets in the future and by sending a clear message to the Respondents and to others participating in our capital markets that the type of misconduct identified in this matter will not be tolerated.

[26] In considering the sanctioning factors set out above in the case law, we find the following specific factors and circumstances to be relevant in this matter, based on our findings in the Merits Decision:

(a) The proven allegations in this matter are very serious. As stated in paragraphs 171 and 172 of the Merits Decision, the Respondents violated the registration and distribution requirements in the Act, which serve to protect investors. They failed to maintain high standards of fairness and business conduct. They also made false promises and misleading statements about the returns of the Eggvestment Program.

(b) Qureshi was formerly a registrant in New York State (Merits Decision, *supra* at para. 8). Although he was never registered in Ontario, Qureshi had experience in the capital markets and investors were "solicited with assurances of the security of their investment and pronouncements of Qureshi's expertise in currency trading" (Merits Decision, *supra* at para. 40).

(c) The conduct of the Respondents took place over a prolonged period of time and affected many investors. From 2002 until 2004, over CDN$ 1 million was raised from at least 58 investors (Merits Decision, *supra* at para. 41).

(d) Investors lost money and were not repaid. The Commission found that the Respondents received the following amounts as a result of their misconduct: US$ 560,366 and CDN$ 577,785 (Merits Decision, *supra* at para. 42) and that while some investors were repaid, the amounts outstanding to investors are: US$ 340,164 and CDN 431,085 (Merits Decision, *supra* at para. 46).

(e) White did not recognize the seriousness of his improprieties or accept responsibility for his actions. For example, White stated in his voluntary examination with Staff that:

> They [investors] came to the seminars. They met people. They knew. They made the decision.
>
> And so long as they blame me, they'll continue to have this come into their life, because they'll just trust the next guru to tell them what to do instead of making decisions for themselves.
>
> So those people, some of them I feel this is good lesson for you. …
>
> (Transcript, Voluntary Examination of White, dated July 31, 2008 at p. 39 lines 1 to 8)

2. Retrospective Application of Sanctions

[27] As mentioned above, following the Sanctions and Costs Hearing, we requested by letter dated July 23, 2010, that the parties provide further written submissions regarding the issue of retrospective application of sanctions.

[28] The conduct in this matter took place between May 2002 to August 2005 and the following sanctions requested by Staff came into effect on the following dates:

(a) clauses 2.1 (prohibition to acquire securities) and 8.1 (prohibition from becoming or acting as a director or officer of a registrant) of subsection 127(1) of the Act came into force on December 15, 2005 after the time period when the conduct in this matter took place; and

(b) clauses 9 (administrative penalty) and 10 (disgorgement) of subsection 127(1) of the Act came into force on April 7, 2003 during the time period when the conduct in this matter took place.

[29] Only Staff and White provided us with written submissions on this issue.

[30] Staff summarizes their position at paragraph 3 of their supplementary written submissions as follows:

> … the principle against the retrospective application of a statute does not apply to the application of clauses 2.1, 8.1, 9 and 10 of s. 127(1) of the *Act* in the present circumstances because each is for the purpose of protecting against future wrongdoing and is not meant to be punitive. While the imposition of a sanction under any of clauses 2.1, 8.1, 9 and 10 may have the effect of imposing a hardship on a respondent, the clear legislative purpose is to be protective and preventive.

[31] In his written submissions at pages 3 and 4, White takes the position that:

> … it is a common sense fact that if a sanction is imposed that could have serious financial punitive consequences on the offender, that by said actions it is made penal, (Punitive) in nature. As such the sanctions become an offense under the charter in taking the matter into the realm of penal, and therefore enacts Section 11(d)

[32] Further, at page 8 of his written submissions, White submits that:

> It should be noted that a stated goal of the commission is to have confidence in the markets, and if the commission makes a practice of retroactive punishments, it would serve to discourage professional activity in the market. Retrospective punishment sends a dangerous message to the market.
>
> I take the approach that in dealing with matters such as this case, it is best to see that the regulation of market behaviour only works effectively when securities commissions impose sanctions that deter forward-looking market participants from engaging in similar wrongdoing.

[33] In our view, the recent Commission case *Re Rowan et al.* (2010), 33 O.S.C.B. 91 ("*Re Rowan*") correctly sets out the applicable law to address retrospective sanctions. In *Re Rowan*, the Commission followed the British Columbia Court of Appeal in *Thow v. British Columbia (Securities Commission)*, [2009] B.C.J. No. 211 (B.C.C.A.) ("*Thow*") and explained that the British Columbia Court of Appeal "found that the new increased administrative penalty did not apply and the administrative penalty was reduced to the maximum permitted at the time the infractions occurred" (*Re Rowan*, *supra* at para. 93). As a result, in *Re Rowan*, the Commission concluded at paragraph 94 that:

> We agree with and prefer to follow the reasoning and rationale of the British Columbia Court of Appeal in *Thow*, although we would emphasize that the imposition of a fine is a penalty and would downplay the use of the word punitive even though it is used in a limited sense in that decision. The law as developed by the Supreme Court of Canada cases, and followed in *Thow*, is that ongoing constraints or prohibitions may be applied retrospectively but penalty provisions, particularly monetary penalties, should not to be applied retrospectively.

[34] Based on paragraph 94 of *Re Rowan*, we find that prospective sanctions which impose constraints or prohibitions such as clauses 2.1 (prohibition to acquire securities) and 8.1 (prohibition from becoming or acting as a director or officer of a registrant) of subsection 127(1) of the Act may be applied in the present case.

[35] With respect to an administrative penalty and consistent with our decision in *Re Rowan*, an administrative penalty cannot be imposed for misconduct that occurred prior to April 7, 2003 when the Act was amended to grant an adjudicative panel authority to impose such an order. The administrative penalty imposed in this case therefore may only relate to misconduct that occurred after April 7, 2003. Based on Staff's submission that approximately 33% of the total funds were obtained prior to April 7, 2003, we have applied this percentage to reduce the administrative penalties that we have found are appropriate to impose on the Respondents.

[36] The April 7, 2003 amendment to the Act also gave the Commission authority to order disgorgement of funds obtained by misconduct. Since the Commission did not have authority to order disgorgement for misconduct prior to that amendment, it is argued that disgorgement should not apply to monies obtained prior to that date. Disgorgement, however, does not have any of the characteristics of a penalty. Disgorgement is an order directing that any unlawfully obtained funds be removed from the transgressor. Notwithstanding some of the funds were invested in this scheme prior to the coming into force of the disgorgement provision, our order should not be reduced to reflect monies invested prior to April 7, 2003. The rationale of disgorgement is to reflect the principle that a person from whom funds were unlawfully obtained has a legal right to have those funds returned.

[37] The details of the amounts of the administrative penalty and disgorgement are discussed further below in the respective sections of our Reasons.

3. Trading and Other Prohibitions

Trading

[38] Staff submitted that in the circumstances of this case, it would be appropriate to order that all of the Respondents: cease trading permanently, be subject to a permanent prohibition from acquiring any securities and that exemptions contained in Ontario securities law not apply to any of the Respondents.

[39] In this case, we find that the public interest requires that the Respondents be restrained permanently from any future market participation. Participation in the capital market is a privilege, not a right (*Erikson v. Ontario (Securities Commission)*, [2003] O.J. No. 593 (Sup. Ct.) at para. 56). As stated in *Manning v. Ontario (Securities Commission)*, [1996] O.J. No. 3414 at para. 47:

> There is no right of any individual to participate in the capital markets in Ontario. … the Act provides certain exemptions which allows individuals to make certain trades without being registered, however, the OSC has explicit jurisdiction to remove the exemptions if an individual engages in conduct contrary to the letter or spirit of the Act, whether such conduct causes damage to investors or is detrimental to the integrity of the capital markets. The OSC found that such conduct existed on the facts of the present case.

[40] The gravity of the conduct in this matter warrants that all of the Respondents should be prevented from participating in the capital markets in any capacity. The Eggvestment scheme took place over a period of two years and affected at least 58 investors and raised over $1 million. The Respondents in this matter cannot be trusted to safely participate in the capital markets in the future. As explained in *Re St. John* (1998), 21 O.S.C.B. 3851 at page 3867:

> In our view [the respondent] is not a person whom we can safely trust to participate in the capital markets in any way. We have no confidence whatsoever that if she is permitted to participate as an investor for her own account, [the respondent] will not once again push the envelope by engaging in conduct which is detrimental to others and abusive to our capital markets. Accordingly we order that trading in any securities by [the respondent] cease permanently.

[41] We find it appropriate to order that: all of the Respondents shall cease trading permanently, the acquisition of any securities by all of the Respondents is prohibited permanently, and any exemptions in Ontario securities law do not apply permanently to all of the Respondents. However, in our view it is appropriate to provide a carve out to White and Qureshi and permit them to trade securities for the account of their respective registered retirement savings plans (as defined in the Income Tax Act (Canada)) in which they and/or their respective spouses have sole legal and beneficial ownership, subject to certain conditions as set out in our Order.

Director and Officer Bans

[42] Staff also requested that White and Qureshi resign all positions that they may hold as a director or officer of any issuer, and that they be prohibited permanently from becoming or acting as a director or officer of any issuer or registrant.

[43] In *Mithras*, the Commission explained that the removal of individuals from the capital markets is an effective mechanism for protecting the public. In addition to trading prohibitions, officer and director bans are another effective way to remove persons from participating in the capital markets.

[44] In our view, the use of director and officer bans will ensure that White and Qureshi will not be put in a position of control or trust with any issuer or registrant. This is important because the misconduct in this matter was facilitated by companies that White and Qureshi controlled. Specifically, White controlled WNBC and MMCL and Qureshi controlled Capital Reserve and Capital Investments (Merits Decision, *supra* at paras. 11 to 19). White and Qureshi's companies played an important role in the investment scheme because through WNBC, investors were solicited (Merits Decision, *supra* at paras. 91 to 98), MMCL accepted money from investors (Merits Decision, *supra* at para. 99), Capital Reserve had investor funds transferred to it and used these funds to trade foreign currency and Capital Investments also traded in foreign currency using investor funds (Merits Decision, *supra* at para. 108).

[45] Taking all of this into consideration, we find that it is appropriate for White and Qureshi to resign from all positions they may hold as a director or officer of any issuer and that they be prohibited permanently from acting as a director or officer of any issuer or registrant.

Reprimand

[46] As well we find that it is appropriate for White and Qureshi to be reprimanded. The reprimand will provide strong censure of their misconduct and will impress on the public the importance of complying with the registration and prospectus provisions of the Act.

[47] Together, the combined sanctions will provide general and specific deterrence to help ensure that similar conduct does not take place in the future.

4. Administrative Penalties

[48] Staff requested that the following administrative penalties be imposed against the Respondents:

(a) MMCL, Capital Reserve and Capital Investments each pay an administrative penalty of $100,000.00 (representing $50,000 for each breach of the Act); and

(b) White, Qureshi and WNBC each pay an administrative penalty of $150,000.00 (representing $50,000 for each breach of the Act).

[49] The misconduct in this matter involved numerous breaches of the Act over a period of two years. Under clause 9 of subsection 127(1) of the Act, we have the power to impose an administrative penalty of not more than $1 million in connection with each failure to comply with the Act.

[50] Staff has taken a mathematical approach to computing an administrative penalty and suggests that $50,000 per breach of the Act is appropriate. We disagree with this approach. In our view, the total amount imposed as an administrative penalty needs to also take into account the specific conduct of each respondent, the unique circumstances of the case, any aggravating or mitigating factors and the level of administrative penalties imposed in similar cases. As stated in *Re Sabourin* (2010), 33 O.S.C.B. 5299 at para. 75:

> In our view, as a matter of principle, a respondent who commits multiple breaches of the Act should know that continuing breaches of the Act will have consequences in terms of the sanctions ultimately imposed. At the same time, however, in imposing administrative penalties we must consider the specific conduct of each Respondent and the level of administrative penalties imposed in other similar cases.

[51] In our view, an administrative penalty of $75,000 is the aggregate amount that is appropriate to impose on each of White and Qureshi. However, as discussed above, since the administrative penalty provision, clause 9 of subsection 127(1) of the Act, only came into force on April 7, 2003, we have reduced the quantum of the administrative penalty payable to $50,000 for each of White and Qureshi.

[52] We find that it is in the public interest to impose a $50,000 administrative penalty, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act, on White because:

(a) He was directly involved in creating the Eggvestment investment scheme (Merits Decision, *supra* at paras. 30, 37, 70 to 72).

(b) White controlled WNBC, a company through which he ran an investment club and charged membership fees to investors (Merits Decision, *supra* at paras. 11, 13, 14 and 31).

(c) He solicited investors at weekly WNBC meetings, satellite club meetings and at public speaking engagements (Merits Decision, *supra* at paras. 32, 33, 77 and 120).

(d) He promoted the Eggvestment investment scheme in videos and on the company website (Merits Decision, *supra* at para. 78).

(e) He advised investors about the Eggvestment program and described it as a low risk investment (Merits Decision, *supra* at para. 129).

(f) He forwarded investor funds to accounts controlled by Qureshi (Merits Decision, *supra* at para. 75).

(g) His conduct breached subsections 25(1)(a), 25(1)(c) and 53(1) of the Act and was contrary to the public interest.

[53] With respect to Qureshi, we also find that it is in the public interest to impose a $50,000 administrative penalty, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act, because:

(a) He was directly involved in creating the Eggvestment scheme (Merits Decision, *supra* at paras. 30 and 37).

(b) He gave presentations with White at WNBC meetings to solicit investors (Merits Decision, *supra* at para. 82).

(c) He took an active role in advising Investor 2 on her Eggvestment investment and he was one of the contact persons to field investor questions about the Eggvestment program (Merits Decision, *supra* at paras. 135 and 136).

(d) He was directly involved in the Eggvestment program's finances. He received investor funds from MMCL, White and WNBC (Merits Decision, *supra* at para. 88).

(e) He played the predominant role in the actual investment of the Eggvestment fund (Merits Decision, *supra* at para. 84). Qureshi pooled the funds he received and traded in foreign currency markets through trading accounts in his name and his companies, Capital Reserve and Capital Investments (Merits Decision, *supra* at para. 40).

(f) He admits he lost nearly US$ 500,000 in foreign currency trading activities (Merits Decision, *supra* at para. 44).

(g) He controlled Capital Investments, which managed WNBC's assets, participated in forex, commodities, futures and the capital markets (Merits Decision, *supra* at para. 86).

(h) His conduct breached subsections 25(1)(a), 25(1)(c) and 53(1) of the Act and was contrary to the public interest.

[54] In addition, we find that as a whole, an administrative penalty in the amount of $50,000 for each of White and Qureshi is appropriate when considered with the disgorgement order, discussed below, and White's representations as to his financial circumstances. In his written submissions at page 2, White submits that he is insolvent and specifically that:

> I [White] was forced into Bankruptcy.
>
> Dr. Qureshi let the country, and while I have not been in communication with him for well over a year, I doubt that he would be motivated to come back. I believe he lost all his Canadian assets and I have no knowledge of his offshore situation. If he does have some wealth offshore, I doubt that it would be enough to satisfy the needs of the hearing.

[55] With respect to the Corporate Respondents, in our view, an administrative penalty of $60,000 is the aggregate amount that is appropriate to impose on each of WNBC, MMCL, Capital Reserve and Capital Investments. However, as discussed above, since the administrative penalty provision, clause 9 of subsection 127(1) of the Act, only came into force on April 7, 2003, we have reduced the quantum of the administrative penalty payable to $40,000 for each of the Corporate Respondents.

[56] We find that it is in the public interest to impose a $40,000 administrative penalty, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act, on WNBC because:

(a) WNBC charged membership fees and provided services such as business consulting, tax consulting, private banking, financial literacy, offshore international business consulting and financial planning...etc (Merits Decision, *supra* at paras. 13 and 31). One of WNBC's roles was to coach and advise its members' investment decisions (Merits Decision, *supra* at paras. 140, 141 and 142). The Eggvestment program was one of the investment opportunities facilitated by WNBC (Merits Decision, *supra* at para. 14).

(b) WNBC held weekly meetings and produced promotional videos to solicit investors to participate in the Eggvestment program (Merits Decision, *supra* at paras. 32, 33, 34, 38, 94 and 95).

(c) At WNBC meetings, Investors were told that the Eggvestment program was a low risk high return investment and that their capital would be safe. Investors were also told there was a guaranteed rate of return of 15%, 18%, 19% or 20%. (Merits Decision, *supra* at para. 38).

(d) WNBC provided written investment contracts to investors and issued units of the Eggvestment program ("Eggs") to investors (Merits Decision, *supra* at paras. 92 and 93).

(e) The Eggvestment program which was facilitated through WNBC raised more than CDN$ 1 million from at least 58 investors (Merits Decision, *supra* at para. 41).

(f) WNBC's conduct breached subsections 25(1)(a), 25(1)(c) and 53(1) of the Act and was contrary to the public interest.

[57] We find that it is in the public interest to impose a $40,000 administrative penalty, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act, on MMCL because:

(a) MMCL accepted funds from investors for investments made through WNBC (Merits Decision, *supra* at para. 99).

(b) MMCL transferred investor funds to Qureshi for him to invest in foreign currency (Merits Decision, *supra* at para. 101).

(c) MMCL's conduct breached subsections 25(1)(a) and 53(1) of the Act and was contrary to the public interest.

[58] We find that it is in the public interest to impose a $40,000 administrative penalty, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act, on Capital Reserve because:

(a) Capital Reserve accepted funds from Eggvestment investors (Merits Decision, *supra* at paras. 40 and 106).

(b) Capital Reserve traded in foreign currencies using investor funds (Merits Decision, *supra* at para. 104).

(c) Capital Reserve's conduct breached subsections 25(1)(a) and 53(1) of the Act and was contrary to the public interest.

[59] We find that it is in the public interest to impose a $40,000 administrative penalty, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act, on Capital Investments because:

(a) Capital Investments entered into a private placement agreement with WNBC to set up a trading account to manage its assets, and also held an account for currency trading (Merits Decision, *supra* at para. 107).

(b) Capital Investments accepted funds from Eggvestment investors (Merits Decision, *supra* at paras. 40 and 111).

(c) Capital Investments traded in foreign currency using funds from Eggvestment investors (Merits Decision, *supra* at para. 108).

(d) Capital Investments' conduct breached subsections 25(1)(a) and 53(1) of the Act and was contrary to the public interest.

[60] In our view, the administrative penalties described above are proportionate to the misconduct of the Respondents, will deter the Respondents in this matter from engaging in similar conduct in the future, and the administrative penalty amounts ordered apply only to the conduct that in our view took place after April 7, 2003, the coming into force of the Act's administrative penalty provision.

5. Disgorgement

[61] Staff requested that the Respondents be ordered to disgorge to the Commission, on a joint and several basis, $800,000 to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act. The $800,000 represents the amount of funds the Respondents received that is still outstanding to investors (Merits Decision, *supra* at para. 181).

[62] As stated in *Re Sabourin*, *supra* at para. 65:

> Subsection 127(1)10 of the Act provides that a person or company that has not complied with Ontario securities law can be ordered to disgorge to the Commission "any amounts obtained" as a result of the non-compliance. The disgorgement remedy is intended to ensure that respondents do not retain any financial benefit from their breaches of the Act and to provide specific and general deterrence. It is not intended primarily as a means to compensate investors for their losses. However, subsection 3.4(2)(b) of the Act allows the Commission to order that amounts paid to the Commission in satisfaction of a disgorgement order or administrative penalty be allocated to or for the benefit of third parties.

[63] In *Re Limelight* (2008), 31 O.S.C.B. 12080 ("*Limelight*") at paragraph 52, the Commission set out the following factors (non-exhaustive) to consider when contemplating issuing a disgorgement order:

(a) whether an amount was obtained by a respondent as a result of non-compliance with the Act;

(b) whether the amount that a respondent obtained as a result of non-compliance with the Act is reasonably ascertainable;

(c) the seriousness of the misconduct and the breaches of the Act and whether investors were seriously harmed;

(d) whether the individuals who suffered losses are likely to be able to obtain redress by other means; and

(e) the deterrent effect of a disgorgement order on the respondents and other market participants.

[64] The burden is on Staff, to prove on a balance of probabilities, the amount obtained by a respondent as a result of that respondent's non-compliance with the Act. In *Limelight*, the Commission explained at paragraph 49 that:

> … paragraph 10 of subsection 127(1) of the Act provides that disgorgement can be ordered with respect to "any amounts obtained" as a result of non-compliance with the Act. Thus, the legal question is not whether a respondent "profited" from the illegal activity but whether the respondent "obtained amounts" as a result of that activity. In our view, this distinction is made in the Act to make clear that all money illegally obtained from investors can be ordered to be disgorged, not just the "profit" made as a result of the activity. This approach also avoids the Commission having to determine how "profit" should be calculated in any particular circumstance. Establishing how much a respondent obtained as a result of his or her misconduct is a much more straightforward test. In our view, where there is a breach of Ontario securities law that involves the widespread and illegal distribution of securities to members of the public, it is appropriate that a respondent disgorge all the funds that were obtained from investors as a result of that illegal activity. In our view, such a disgorgement order is authorized under paragraph 10 of subsection 127(1) of the Act.

[65] In our view, a disgorgement order is appropriate in this case because it ensures that none of the Respondents will benefit from their breaches of the Act and because such an order will deter them and others from similar misconduct.

[66] In the Merits Decision, we found at paragraph 181 that the amount of funds outstanding to investors was US$ 340,164 and CDN$ 431,085, for a combined total of approximately CDN$ 800,000.

[67] While Qureshi did not appear at the Sanctions and Costs Hearing, he did provide an email to Staff contesting the amount outstanding to investors. As described in paragraph 9 of our Reasons, he argues that Staff made accounting errors. As set out in paragraph 10 of our Reasons we find that the documentation in support of Qureshi's arguments was not provided to Staff or to the tribunal prior to the hearing on the merits and we accept Staff's evidence set out in Exhibit 3B that the letter Qureshi purports to rely on was created after the Merits Decision was issued. In our view, the combined total of funds outstanding to investors is approximately CDN$ 800,000.

[68] However, we note that one investor commenced a civil proceeding against White and WNBC, and the Statement of Claim dated April 17, 2007 states, among other things, that this investor advanced CDN$ 300,000 to White, WNBC and MMCL. This investor has obtained a judgment, dated October 4, 2007, from the Ontario Superior Court of Justice in the amount of CDN$ 356,219.18 against White and WNBC (the "Superior Court Judgment") and CDN$ 300,000 of this amount represents the return of funds to the investor.

[69] Since the Superior Court Judgment compensates one investor who advanced CDN$ 300,000 to White, WNBC and MMCL, as a result, we find that the disgorgement amount should be reduced by CDN$ 300,000 to CDN$ 500,000 to take into account the Superior Court Judgment.

[70] As discussed above at paragraph 36 of our Reasons, we considered the timing of the coming into force of the disgorgement provision (clause 10 of subsection 127(1) of the Act), which came into force on April 7, 2003. Since the purpose of disgorgement is for a respondent to return any ill gotten gains, and it is not a penalty, the disgorgement provision applies to the Respondents and all their conduct during May 2002 to August 2005.

[71] Therefore, the Commission has determined that the sum of CDN$ 500,000 should be disgorged. But for the Superior Court Judgment, we would have ordered the full amount of CDN$ 800,000 to be disgorged.

[72] We find that it is appropriate to order that the Respondents disgorge the amount of $500,000 on a joint and several basis because the Eggvestment investment scheme was created and run jointly by White and Qureshi (Merits Decision, *supra* at paras. 30, 37 and 65). White and Qureshi and their companies played different roles in the Eggvestment investment scheme

(for example, White and his companies were involved in investor solicitation and receiving investor funds while Qureshi and his companies accepted the investor funds and invested them in the foreign currency markets) but they were in the scheme together and their separate roles were integral to executing the investment scheme.

[73] Therefore, we order the Respondents to disgorge the sum of $500,000 on a joint and several basis to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act.

6. Allocation of Amounts for the Benefit of Third Parties

[74] As mentioned above, the administrative penalty and disgorgement amounts ordered in this matter are to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act. We find that it is in the public interest that third parties include investors.

[75] As stated in paragraph 45 of the Merits Decision:

> Investors have, on aggregate, been repaid only approximately one third of the money they invested. However, some investors received all their money back, while other investors received nothing back.

[76] Accordingly, we follow the Commission's approach in *Re Sabourin*, *supra* at paragraphs 88 and 89:

> Accordingly, any amounts paid to the Commission in compliance with our disgorgement and administrative penalty orders shall be allocated to or for the benefit of third parties, including investors who lost money as a result of investing in the investment schemes, in accordance with subsection 3.4(2)(b) of the Act. Such amounts are to be distributed to investors who lost money as a result of investing in the investment schemes on such basis, on such terms and to such investors as Staff in its discretion determines to be appropriate in the circumstances. A distribution to investors shall be made only if Staff is satisfied that doing so is reasonably practicable in the circumstances and only if Staff concludes that there are sufficient funds available to justify doing so. If for any reason, Staff decides at any time or from time to time not to distribute any such amounts to investors, such amounts may, by further Commission order, be allocated to or for the benefit of other third parties. Any panel of the Commission may, on the application of Staff, make any order it considers expedient with respect to the matters addressed by this paragraph.
>
> The terms of paragraph 88 shall not give rise to or confer upon any person, including any investor (i) any legal right or entitlement to receive, or any interest in, amounts received by the Commission under our orders for disgorgement and administrative penalties, or (ii) any right to receive notice of any application by Staff to the Commission made in connection with that paragraph or of any exercise by the Commission of any discretion granted to it under that paragraph.

VI. Costs

[77] Pursuant to section 127.1 of the Act, the Commission has the discretion to order a person or company to pay the costs of the investigation (127.1(1)) and hearing (127.1(2)) if the Commission is satisfied that the person or company has not complied with the Act or not acted in the public interest.

[78] Staff requested, pursuant to section 127.1 of the Act, that the Respondents be ordered to pay, jointly and severally, a total of $169,651.25 to cover the costs incurred during the litigation phase of the hearing. The costs are as follows:

(a) Lead Litigator – 414.25 hours at $205 per hour;

(b) Forensic Accountant – 139 hours at $185 per hour; and

(c) Assistant Investigator – 319 hours at $ 185 per hour.

[79] Staff explained that its costs were calculated in accordance with Staff's schedule of hourly rates for various members of Staff of the Enforcement Branch. In support of this request, Staff provided us with a bill of costs and copies of the timesheets supporting the hourly figures claimed. These timesheets provided dates, numbers of hours worked and details of the tasks performed by each of the individuals listed in the bill of costs.

[80] Staff is only requesting costs relating to the lead litigator, forensic accountant and an assistant investigator. In addition, Staff's bill of costs excludes any time spent by students-at-law, law clerks and assistants. The costs sought by Staff do not include the costs of the investigation stage of this matter and do not include the time spent preparing for and attending on the hearing regarding sanctions.

[81] We have reviewed the documentation provided by Staff relating to the costs of the investigation and hearing and in the circumstances we find that it is appropriate to order that the Respondents pay costs, jointly and severally, in the amount of $169,651.25. According to Staff's bill of costs, Staff's total costs for the hearing amounted to $356,280.00 and Staff only requested recovering $169,651.25 of that total. In our view, the amount of $169,651.25 is reasonable and conservative as this amount relates only to the work performed by the lead litigator, forensic accountant and an assistant investigator in the context of the litigation phase of this matter. We also find it appropriate to order that costs be paid by the Respondents on a joint and several basis because White and Qureshi and the companies that they controlled were all together responsible for the conduct in this matter.

VII. Decision on Sanctions and Costs

[82] We consider that it is important in this case to: (1) impose sanctions that reflect the seriousness of the securities law violations that occurred in this matter; and (2) impose sanctions that not only deter the Respondents but also like-minded people from engaging in future conduct that violates securities law.

[83] We will issue a separate order giving effect to our decision on sanctions and costs and we order that:

(a) pursuant to clause 2 of subsection 127(1) of the Act, all of the Respondents shall cease trading permanently, with the exception that each of White and Qureshi are permitted to trade securities for the account of their respective registered retirement savings plans (as defined in the *Income Tax Act* (Canada)) in which they and/or their respective spouses have sole legal and beneficial ownership, provided that:

  (i) the securities traded are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges) or are issued by a mutual fund that is a reporting issuer;

  (ii) they do not own legally or beneficially (in the aggregate, together with their respective spouses) more than one percent of the outstanding securities of the class or series of the class in question; and

  (iii) they carry out any permitted trading through a registered dealer and through trading accounts opened in their respective names only (and they must close any trading accounts that are not in their respective names only);

(b) pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by all of the Respondents is prohibited permanently, except in the case of White and Qureshi, to allow the trading in securities permitted by and in accordance with paragraph (a) of this Order;

(c) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions in Ontario securities law do not apply permanently to all of the Respondents;

(d) pursuant to clause 6 of subsection 127(1) of the Act, White and Qureshi are reprimanded;

(e) pursuant to clause 7 of subsection 127(1) of the Act, White and Qureshi shall immediately resign all positions they may hold as a director or officer of any issuer;

(f) pursuant to clause 8 of subsection 127(1) of the Act, White and Qureshi are prohibited permanently from becoming or acting as a director or officer of any issuer;

(g) pursuant to clause 8.1 of subsection 127(1) of the Act, White and Qureshi are prohibited permanently from becoming or acting as a director or officer of any registrant;

(h) pursuant to clause 9 of subsection 127(1) of the Act, each of WNBC, MMCL, Capital Reserve and Capital Investments shall pay an administrative penalty of $40,000, to be allocated by the Commission in accordance with paragraph (k) of this Order;

(i) pursuant to clause 9 of subsection 127(1) of the Act, each of White and Qureshi shall pay an administrative penalty of $50,000, to be allocated by the Commission in accordance with paragraph (k) of this Order;

(j) pursuant to clause 10 of subsection 127(1) of the Act, the Respondents shall disgorge to the Commission, on a joint and several basis, $500,000.00, to be allocated by the Commission in accordance with paragraph (k) of this Order;

(k) the amounts referred to in each of paragraphs (h) to (j) inclusive of this Order shall be allocated by the Commission to or for the benefit of third parties, including investors who lost money as a result of investing in the investment scheme that was the subject matter of this proceeding, in accordance with subsection 3.4(2)(b) of the Act; and

(l) pursuant to section 127.1 of the Act, the Respondents shall pay, on a joint and several basis, $169,651.25 in costs to the Commission.

Dated at Toronto this 29th day of September, 2010.

“Patrick J. LeSage”

“Carol S. Perry”

3.1.2 Wilton J. Neale et al.

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

AND

WILTON J. NEALE, MULTIPLE STREAMS OF INCOME (MSI) INC. AND 360 DEGREE FINANCIAL SERVICES INC.

SETTLEMENT AGREEMENT

1. By Notice Hearing dated March 12, 2010 (“the Notice of Hearing”) Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing to consider:

(i) whether, pursuant to s. 127(5) of the Act, that the temporary order made January 15, 2010 and subsequently continued on March 25, 2010 against the above noted Respondents be continued to the conclusion of the hearing on the merits.

(ii) whether, in the opinion of the Commission, it is in the public interest, pursuant to ss. 127 and 127.1 of the Act to order that:

(a) trading in any securities by the Respondents cease permanently or for such period as is specified by the Commission;

(b) the acquisition of any securities by the Respondents is prohibited permanently or for such other period as is specified by the Commission;

(c) any exemptions contained in Ontario securities law do not apply to the Respondents permanently or for such period as is specified by the Commission;

(d) the Respondents be reprimanded;

(e) Wilton J. Neale (the “Individual Respondent”) resign one or more positions that they hold as a director or officer of any issuer, registrant or investment fund manager;

(f) the Individual Respondent be prohibited from becoming or acting as a director or officer of any issuer, a registrant or investment fund manager;

(g) the Respondents be prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter;

(h) the Respondents each pay an administrative penalty of not more than $1 million for each failure by that Respondent to comply with Ontario securities law;

(i) each of the Respondents disgorge to the Commission any amounts obtained as a result of non-compliance by that Respondent with Ontario securities law;

(j) the Respondents be ordered to pay the costs of the Commission investigation and the hearing; and,

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

2. Staff of the Commission (“Staff”) has agreed to recommend settlement of the proceeding initiated in respect of the Respondent Wilton J. Neale (“Neale”), Multiple Streams of Income (MSI) Inc. (“MSI”) and 360 Degree Financial Services Inc. (“360°”) by the Notice of Hearing in accordance with the terms and conditions set out below. These Respondents consent to the making of an Order against them in the form attached as Schedule “A” on the basis of the facts set out below.

II. STATEMENT OF FACTS

Acknowledgement

3. For the purposes of this proceeding and any other proceeding commenced by a Securities Regulatory Agency, these Respondents agree with the facts set out in this Part II.

Facts

4. Wilton J. Neale ("Neale") was licensed as a sales person of Keybase Financial Group Inc., a dealer registered in the category of mutual funds dealer, from February 18, 2006 to January 18, 2007 when he was terminated for cause. Neale has not been registered by the Commission in any capacity since that date.

5. Neale was also licensed to sell life insurance and accident and sickness insurance by the Financial Services Commission of Ontario ("FSCO") at the material time. FSCO issued a permanent cease and desist order against Neale on March 4, 2009 prohibiting him from carrying on the business of insurance in the Province of Ontario.

6. 360 Degree Financial Services Inc. ("360°") was incorporated in Ontario by Neale on February 2, 2005. Neale at all material times was the sole officer, director and controlling mind of 360°, which was also licensed by FSCO to sell insurance products.

7. 360° was party to a Distribution Agreement with AGF Trust which enabled 360° to apply on behalf of its customers to AGF Trust for loans which were required to be invested in RSP eligible products (the "Distribution Agreement").

8. FSCO issued a permanent cease and desist order against 360° on March 4, 2009 prohibiting it from carrying on the business of insurance in Ontario.

9. Multiple Streams of Income (MSI) Inc., ("MSI") was incorporated under the *Canada Business Corporations Act* by Neale on July 7, 2006. Neale is the sole officer and director of MSI and is its controlling mind. MSI was never registered in any capacity with the Commission nor was it licensed by FSCO.

The Issuance of Debenture Securities By These Respondents

10. During the years 2007 and 2008, 360° was experiencing financial difficulty. In an effort to raise capital for 360° Neale through MSI solicited investors to purchase debentures issued by MSI.

11. Neale solicited investment capital totalling $584,500 from several individuals and caused MSI to issue debentures to them.

12. Although some of the MSI debenture investors were told that their money would be applied to special projects of benefit to their community, the funds raised were in fact commingled in the bank account of 360° and used by 360° in the ordinary course of its business.

13. None of the debentures were repaid at maturity or at any other time.

14. Neale and MSI were not registered to trade or advise in securities. MSI was at no time registered to issue securities. The MSI debenture securities were not offered pursuant to a prospectus nor was there any prospectus exemption available to MSI for the debenture financing described above.

The Dominion Investment Club Forex Scheme

15. Albert James ("James") and Ezra Douse ("Douse") both came into contact with Neale in 2008. James, Douse and others are the incorporators of Dominion Investments Club Inc. ("Dominion"), which they incorporated in Ontario on June 11, 2008. James, Douse and Dominion are all Respondents in related enforcement proceedings before the Commission.

16. Dominion investors were counseled by James and Douse to apply for RSP loans and to invest borrowed money in a forex investment club. To that end James and Douse obtained Neale's and 360°'s assistance in obtaining RSP loans by means of 360°'s Distribution Agreement.

17. 360° entered into the Distribution Agreement with AGF Trust on May 10, 2007. The purpose of that agreement was to allow 360°, as a managing general insurance agency, to avail itself of programs offered by AGF Trust, including the provision of loans for the purpose of making RSP-eligible investments.

18. The Distribution Agreement provided for a "Multi Fund Option" whereby AGF loan proceeds were paid to 360°, and 360° undertook to AGF Trust as follows:

> **"You (viz. 360°) agree to invest such loan proceeds in eligible investments in accordance with the Customer's Investment instructions upon receipt of Loan proceeds from AGF Trust."**

19. Neale was aware of the terms and conditions of the Distribution Agreement and the AGF Trust RSP loan application form.

20. In the early months of 2008 Neale was approached by James on behalf of Dominion who proposed that 360° would apply for AGF Trust RSP loans on behalf of the Dominion investors. Using the Multi Fund Option, 360° would receive the loan proceeds, and then transfer the loan proceeds to Dominion which in turn would invest the proceeds with foreign exchange brokers ostensibly on behalf of the Dominion investors.

21. Neale agreed with James' proposal and the two entered into an arrangement whereby Neale received fees and commissions for facilitating RSP loans from AGF Trust to 360° on behalf of Dominion. When the RSP loan proceeds were received by 360°, 360° unbeknownst to AGF Trust, transferred the loan proceeds to Dominion for the purpose of making forex investments, having first deducted commissions and fees from the loan proceeds.

22. Pursuant to this arrangement Neale on behalf of 360° facilitated approximately $1,363,414 in RSP loans from AGF Trust, the proceeds of which were not directed to RSP eligible products.

23. Of the approximately $1,363,414 borrowed from AGF Trust, 360° retained approximately $265,179 from the AGF Trust loan proceeds for its own use and did not transfer those funds to Dominion as it had agreed to do, thereby depriving the borrowers of those funds.

24. The majority of the Dominion investors lost all or substantially all of their invested capital. As that capital had been borrowed from AGF Trust, they remain indebted to AGF Trust for the amounts of their RSP loans. The value of their Dominion investments is presently nil. The investors have been financially harmed by virtue of their involvement with these Respondents.

25. Neale acknowledges that he and MSI engaged in the unauthorized distribution of securities contrary to Section 53(1) of the Act, and further that he, MSI and 360° engaged in misleading conduct contrary to Section 126.2 of the Act.

26. Further Neale acknowledges that he, 360° and MSI have acted contrary to the public interest.

III. TERMS OF SETTLEMENT

27. These respondents agree to the following terms of settlement and the Commission will make an order to the following effect:

(a) Neale will be reprimanded by the Commission;

(b) Neale will disgorge to the Commission the sum of $265,179;

(c) An administrative penalty in the amount of $500,000 will be imposed upon Neale, MSI and 360°;

(d) Neale will cease trading in all securities for a period of 15 years;

(e) Any exemptions contained in the Act will not apply to any of the Respondents;

(f) Neale will be prohibited from becoming, acting as or holding the title of director or officer of any market participant for a period of 15 years;

(g) Upon the approval of this settlement, Neale will make a payment of $10,000 to the Commission in respect of a portion of the Commissions' costs with respect to this matter; and

(h) Neale will attend the hearing in person.

IV. STAFF COMMITMENT

28. If the Commission approves this Settlement Agreement, Staff will not commence any proceeding under Ontario securities law in relation to the facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 29 below.

29. If the Commission approves this Settlement Agreement and the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against the Respondent. These proceedings may be based on, but are not limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of the Settlement Agreement.

V. PROCEDURE FOR APPROVAL OF SETTLEMENT

30. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled for October 1, 2010, or on another date agreed to by Staff and the Respondent, according to the procedures set out in this Settlement Agreement and the Commission's Rules of Practice.

31. Staff and the Respondent agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing on the Respondent's conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.

32. If the Commission approves this Settlement Agreement, the Respondent agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

33. If the Commission approves this Settlement Agreement, neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.

34. Whether or not the Commission approves this Settlement Agreement, the Respondent will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

VI. DISCLOSURE OF SETTLEMENT AGREEMENT

35. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule "A" to this Settlement Agreement:

(a) this Settlement Agreement and all discussions and negotiations between Staff and the Respondent before the settlement hearing takes place will be without prejudice to Staff and the Respondent; and,

(b) Staff and the Respondent will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this agreement.

36. Both parties will keep the terms of the Settlement Agreement confidential until the Commission approves the Settlement Agreement. At that time, the parties will no longer have to maintain confidentiality. If the Commission does not approve the Settlement Agreement, both parties must continue to keep the terms of the Settlement Agreement confidential, unless they agree in writing not to do so or if required by law.

VII. EXECUTION OF SETTLEMENT AGREEMENT

37. The parties may sign separate copies of this agreement. Together, these signed copies will form a binding agreement.

38. A faxed copy of any signature will be treated as an original signature.

Dated this 29th day of September, 2010.

ONTARIO SECURITIES COMMISSION

"Tom Atkinson
Director of Enforcement
Ontario Securities Commission

"Wilton J. Neale"
Wilton J. Neale

"Anne Paiement"
Witness

"Wilton J. Neale"
Multiple Streams of Income (MSI) Inc.
by its duty authorized officer in that behalf

"Wilton J. Neale"
360° Financial Services Inc.
by its duty authorized officer in that behalf

"SCHEDULE A"

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

AND

**WILTON J. NEALE, MULTIPLE STREAMS
OF INCOME (MSI) INC. AND 360 DEGREE
FINANCIAL SERVICES INC.**

ORDER

WHEREAS on March 12, 2010, the Commission issued a Notice of Hearing pursuant to section 127 of the *Securities Act* (the "Act") in respect of a breach of an Order of the Ontario Securities Commission (the "Commission") by the respondents;

AND WHEREAS on March 12, 2010, Staff of the Commission filed a Statement of Allegations;

AND WHEREAS the respondents entered into a Settlement Agreement dated ●, (the "Settlement Agreement") in relation to the matters set out in the Statement of Allegations;

UPON reviewing the Settlement Agreement, the Notice of Hearing, the Statement of Allegations, and upon considering submissions from the respondents and from Staff of the Commission;

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) The Settlement Agreement dated ●, between Staff of the Commission and the respondents is approved;

(2) Pursuant to s. 127(1)2, Wilton J. Neale ("Neale") is prohibited for 15 years from trading in securities;

(3) Pursuant to s. 127(1)8, Neale is prohibited for 15 years from becoming or acting as a director or officer of any market participant;

(4) Upon approval of this Settlement Agreement, Neale will pay costs of the investigation of this matter to the Commission in the amount of $10,000;

(5) Neale will disgorge the sum of $265,179 to the Commission;

(6) The respondents will pay an administrative penalty of $500,000; and

(7) Neale will attend the hearing in person and be reprimanded.

Dated at Toronto, Ontario this day of , 2010.

_____

3.1.3 Biovail Corporation et al.

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

AND

IN THE MATTER OF
BIOVAIL CORPORATION, EUGENE N. MELNYK,
BRIAN H. CROMBIE, JOHN R. MISZUK AND
KENNETH G. HOWLING

REASONS AND DECISION

Hearing: March 4, 5, 6, 9, 10, 11, 12, 30 and 31, 2009
April 1, 2, 3, 6, 7, 8, 9, 13, 14, 15, 22, 24, 25 and 26, 2009
June 22, 24, 25 and 26, 2009

Decision: September 30, 2010

Panel:	James E. A. Turner	–	Vice-Chair and Chair of the Panel
	David L. Knight, F.C.A.	–	Commissioner
	Paulette L. Kennedy	–	Commissioner
Counsel:	Kent E. Thomson James Doris Sean Campbell	–	For Eugene N. Melnyk
	Johanna Superina Alexandra Clark Caitlin Sainsbury	–	For Staff of the Ontario Securities Commission

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V. FINDINGS AGAINST MELNYK

REASONS AND DECISION

I. INTRODUCTION

[1] On March 24, 2008, the Ontario Securities Commission (the "**Commission**") issued a Notice of Hearing in this matter pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") in connection with a Statement of Allegations issued by Staff of the Commission ("**Staff**") on that day (the "**Statement of Allegations**").

[2] On October 1, 2003, a truck carrying Wellbutrin XL ("**WXL**"), an antidepressant drug manufactured by Biovail Corporation ("**Biovail**"), was involved in a multi-vehicle accident outside Chicago, Illinois (the "**Accident**") while in transit to GlaxoSmithKline Inc. ("**GSK**"). The allegations in this proceeding relate to statements made by Biovail about the financial implications of the Accident to its financial results for its 2003 third quarter. Those statements were made in news releases issued by Biovail on October 3, October 8 and October 30, 2003 and March 3, 2004 (referred to collectively as the "**Releases**"), on an analysts conference call and webcast on October 3, 2003 (the "**Analysts Call**") and in roadshow presentations held between October 13 and 16, 2003 (the "**Roadshows**").

[3] In the Statement of Allegations, Staff alleges that Biovail made statements in the Releases, on the Analysts Call and in the Roadshows that, in a material respect and at the time and in the light of the circumstances under which they were made, were misleading or untrue or did not state a fact that was required to be stated or that was necessary to make the statements not misleading. Staff alleges that Biovail knew or should have known that such statements were materially misleading or untrue. Staff alleges that Biovail thereby violated Ontario securities law and engaged in conduct contrary to the public interest. Staff also alleges that Eugene N. Melnyk ("**Melnyk**"), the Chairman and Chief Executive Officer of Biovail at the time, authorized, permitted or acquiesced in all of Biovail's alleged misstatements.

[4] The Statement of Allegations relates to a significant number of matters, circumstances and conduct that were not the subject matter of this proceeding. The Commission has approved settlement agreements entered into between Staff and each of Biovail, Brian H. Crombie ("**Crombie**"), Kenneth G. Howling ("**Howling**") and John R. Miszuk ("**Miszuk**") with respect to all of the allegations made against them in the Statement of Allegations. Accordingly, this proceeding relates only to Staff's allegations against Melnyk. Staff alleges that Melnyk knew or should have known that statements made by Biovail in the Releases, on the Analysts Call and in the Roadshows were misleading or untrue in a material respect. Staff alleges that Melnyk was deemed, pursuant to section 129.2 of the Act, not to have complied with Ontario securities law and that Melnyk has acted contrary to the public interest.

II. BACKGROUND

A. The Biovail Participants in the Hearing

(i) Biovail and Biovail Laboratories Incorporated

[5] Biovail is an international full-service pharmaceutical company, engaged in the formulation, clinical testing, registration, manufacture, sale and promotion of pharmaceutical products using advanced drug delivery technologies.

[6] Biovail is a reporting issuer in the Province of Ontario. At the time of the hearing, the common shares of Biovail were listed and posted for trading on the Toronto Stock Exchange and the New York Stock Exchange.

[7] Biovail Laboratories Incorporated ("**BLI**") is a company incorporated under the laws of Barbados and is a subsidiary of Biovail. BLI is a party to the GSK Agreement referred to below.

[8] The events that are the subject matter of this proceeding relate to Biovail's 2003 financial year and focus, in particular, on the financial results for the third quarter of that year ending September 30, 2003. These events occurred primarily over the period from September 2003 to March 30, 2004 (which we will refer to in these reasons as the "**relevant time**").

(ii) Melnyk

[9] Melnyk is the founder of Biovail. He was the Chairman of the Board of Directors of Biovail (the "**Board**") until his resignation from the Board effective June 30, 2007. From December 2001 to October 2004, Melnyk was Chairman and Chief Executive Officer ("**CEO**") of Biovail. Melnyk resigned as CEO of Biovail on October 8, 2004. Melnyk became Executive Chairman of the Board in November 2004 and relinquished that title on June 27, 2006. At the relevant time, Melnyk resided in Barbados.

(iii) Other Senior Officers of Biovail

[10] Crombie was the Chief Financial Officer ("**CFO**") of Biovail from May 2000 to August 2004. He became Senior Vice-President, Strategic Development in August 2004. Crombie left Biovail in 2007.

[11] Howling was Vice-President, Finance of Biovail from May 2000 to October 2004, and Vice-President, Finance and Corporate Affairs from October 2004 to December 2006. He was Senior Vice-President and CFO of Biovail from December 2006 to December 31, 2008, when he left Biovail. At the relevant time, Howling also served as Biovail's head of investor relations.

[12] Miszuk was Vice-President, Controller and Assistant Secretary of Biovail at the time of the events described in these reasons. He held the positions of Vice-President and Controller from November 1997, and the position of Assistant Secretary from June 2000. He left Biovail in 2008.

B. Background Facts

(i) The GSK Agreement

[13] In the fall of 2001, BLI and a predecessor company of GSK negotiated and entered into a Development, License and Copromotion Agreement (the "**GSK Agreement**") that was signed on October 26, 2001. When we refer in these reasons to "GSK", we are referring to GSK and its predecessor company that was a party to the GSK Agreement.

[14] Under the GSK Agreement, BLI granted GSK the exclusive right to sell WXL in the United States. WXL is a timed release drug to be taken once a day that was developed to replace an existing Wellbutrin drug that was required to be taken twice a day. Biovail manufactured WXL at its Steinbach, Manitoba manufacturing facility and sold WXL to GSK through BLI under the terms of the GSK Agreement. For purposes of these reasons, we will treat Biovail as the party to the GSK Agreement, except where it is necessary to distinguish between Biovail and its subsidiary, BLI.

[15] An important issue in this proceeding is the interpretation of section 9.05 of the GSK Agreement, which provides in part as follows: "With respect to PRODUCT to be delivered by BIOVAIL inside of the U.S.A., BIOVAIL shall deliver all PRODUCT to GSK *F.O.B., GSK's facilities in the U.S.A. (freight collect)*" [emphasis added]. We will refer to this provision as the "**GSK delivery term**". Melnyk submits that the words "freight collect" are particularly important in interpreting the GSK delivery term.

[16] Under section 9.21 of the GSK Agreement, Biovail was to be paid for WXL sold to GSK based on a percentage of the revenue that GSK received from selling WXL in the U.S. market. Section 9.21 of the GSK Agreement provides in part as follows:

> 9.21 GSK shall pay to BIOVAIL for the supply of PRODUCT by BIOVAIL to GSK for the U.S.A. market, the following amounts:
>
> (a) twenty-two percent (22%) on NET SALES in the U.S.A. of less than or equal to Tier One during the relevant calendar year;
>
> (b) twenty-eight percent (28%) on NET SALES in the U.S.A. of greater than Tier One during the relevant calendar year up to and including Tier Two during the relevant calendar year;
>
> (c) thirty-eight percent (38%) of NET SALES in the U.S.A. greater than Tier Two during the relevant calendar year.

[17] The revenue to be received by Biovail from its WXL sales to GSK increased as GSK's sales increased: for the 2003 year, Biovail was entitled to receive 22% of GSK's "net sales" (as defined in the GSK Agreement) less than or equal to $110 million.[1] "Net sales" for purposes of the GSK Agreement is defined as gross sales by GSK less certain deductions.

[18] Section 9.23 of the GSK Agreement provides that "[a]ll PRODUCT shipped by Biovail to GSK under this AGREEMENT shall be invoiced to GSK … at twenty-two (22%) of the estimated selling price for PRODUCT intended for sale in the U.S.A." That percentage would be adjusted for future financial quarters within a calendar year if GSK net sales increased beyond Tier One or Tier Two net sales (see paragraph 16 of these reasons).

[19] Melnyk did not play a direct role in negotiating the detailed terms of the GSK Agreement. While he had read earlier drafts of the agreement and he executed it by signing separate signature pages, he testified that he did not read or review the final version of the GSK Agreement and, in particular, that he was not aware of the accurate GSK delivery term at the time the GSK Agreement was signed or thereafter until the afternoon of October 3, 2003.

(ii) Biovail Earnings Guidance

[20] On February 7, 2003, Biovail issued a news release which contained revenue and earnings guidance for its 2003 financial year (the "**February 03 Release**"). In that release, Biovail provided, among other things, full year revenue guidance for various products including WXL. The news release forecast total revenue for 2003 of between $950 and $1,050 million and total third quarter revenue of between $260 and $300 million. The February 03 Release also forecast total WXL revenue for 2003 of between $75 and $150 million.

(iii) FDA Approval of WXL

[21] In early 2003, Biovail anticipated that it would obtain U.S. Food and Drug Administration ("**FDA**") approval for the manufacture and sale of WXL in the United States by as early as June 2003. However, Biovail did not in fact receive that

[1] Note: All dollar amounts in these reasons are in U.S. dollars.

approval until late August 2003. On August 29, 2003, Biovail publicly announced that it had obtained FDA approval for WXL. As a result, the commercial launch of WXL occurred in early September 2003.

[22] As September 2003 progressed, Melnyk and the other senior officers of Biovail were aware that there was an increasing risk that Biovail would not meet its revenue and earnings guidance in the February 03 Release.

(iv) The Accident

[23] Late on September 30, 2003, three trucks left Biovail's manufacturing facility in Steinbach, Manitoba carrying a substantial amount of WXL for delivery to GSK's facility in North Carolina. Because those shipments were in transit on October 1, 2003, it was clear that actual delivery of the shipments to GSK at its U.S. facility could not occur until after the end of Biovail's third quarter, which ended on September 30.

[24] On October 1, 2003, one of the trucks was involved in a multi-vehicle accident outside Chicago, Illinois. A portion of the WXL shipment being carried by that truck was damaged and all of the WXL in that shipment had to be returned to Biovail for inspection before it could be re-shipped to GSK. The other two trucks continued on to GSK's facility in North Carolina.

(v) The October 3 Release

[25] Following the Accident, on October 2, 2003, Melnyk, Crombie and Howling concluded for a number of reasons that Biovail would not meet its revenue and earnings guidance for the 2003 third quarter and that Biovail should issue an earnings warning news release and hold an analysts' conference call and webcast following issue of that news release.

[26] Accordingly, Biovail issued a two-page news release at approximately 10:15 a.m. on October 3, 2003 (the "**October 3 Release**") that provided, in part, as follows:

> …
>
> Biovail Provides Guidance on 2003 Third Quarter Results
>
> TORONTO, Ontario – Biovail Corporation (NYSE: BVF) (TSX: BVF) announced today that while it has not completed a final compilation and analysis of its 2003 third quarter, preliminary results indicate that revenues will be below previously issued guidance and will be in the range of $215 million to $235 million and earnings per share of $0.35 to $0.45 for the three months ended September 30, 2003. *Contributing significantly to this unfavourable variance was the loss of revenue and income associated with a significant in-transit shipment loss of Wellbutrin XL as a result of a traffic accident.*
>
> After leaving Biovail's Steinbach, Manitoba manufacturing facility on September 30, 2003, a truck carrying a material shipment of Wellbutrin XL was involved in a multi-vehicle traffic accident at approximately 4 p.m. eastern standard time October 1, 2003 near Chicago, Illinois. While this product may still be salable in the future, it must first be returned for inspection to Biovail's manufacturing facility in Manitoba to ensure it is still within acceptable specifications. *Revenue associated with this shipment is in the range of $10 to $20 million.* The manufacturing cost value of this shipment was fully insured.
>
> …
>
> [emphasis added]

The October 3 Release went on to say that Biovail anticipated a third quarter shortfall related to sales of two other Biovail products: generic omeprazole (a negative effect of up to $15 million in net income) and Cardizem CD (a significant shortfall related to the failure of the supplier to fill back orders).

[27] We will refer to the event described in the first sentence of the October 3 Release as the "**Earnings Miss**". In doing so, we recognise that the Earnings Miss relates to a variance in both revenues and earnings per share for the third quarter.

[28] The two statements in the October 3 Release that Staff alleges were misleading or untrue in a material respect are that the Accident contributed "significantly to this unfavourable variance" in revenue and earnings for the third quarter and that the "[r]evenue associated with this shipment is in the range of $10 to $20 million." We will refer to these two statements together as the "**Truck Accident Statement**". Where it is relevant to the analysis, we will distinguish between the two different elements of the Truck Accident Statement. We will refer to the statement that the Accident contributed to this "unfavourable variance" in revenue and earnings as the "**Accident Contribution Statement**"; except as otherwise noted, we will treat the Accident

Contribution Statement as not including the statement that the Accident contributed "significantly" to the unfavourable variance. We will refer to the statement that the revenue associated with the WXL product involved in the Accident was "in the range of $10 to $20 million" as the "**Revenue Loss Statement**".

[29] Staff alleges that the Accident did not contribute to or affect, at all, Biovail's 2003 third quarter financial results and that the revenue range of $10 to $20 million stated to be associated with the WXL product involved in the Accident was grossly inflated. Accordingly, Staff submits that each of those statements was misleading or untrue in a material respect at the various times those statements were made by Biovail.

(vi) The Analysts Call

[30] Immediately following the issue of the October 3 Release, Biovail held the Analysts Call to explain the reasons for the Earnings Miss and to give analysts an opportunity to ask questions.

[31] It is clear from the transcript of the Analysts Call (the "**Call Transcript**") that both Melnyk and Crombie stated that the Accident had had a negative financial impact on Biovail's third quarter revenues. They thereby repeated the Accident Contribution Statement. Crombie also stated that "… the impact of Wellbutrin loss due to the accident is in the range of $15 to $20 million". Crombie thereby repeated the Truck Accident Statement but increased the lower end of the revenue range reflected in the Revenue Loss Statement from $10 to $15 million. When we refer in these reasons to the Truck Accident Statement or the Revenue Loss Statement being made during the Analysts Call, we are referring to those statements with a revenue range of $15 to $20 million as stated by Crombie on the Analysts Call.

[32] Melnyk testified that the first time he heard the $15 to $20 million revenue range was on the Analysts Call. He stated on the Analysts Call, however, in response to a question about WXL financial guidance for the year that "[t]he only thing we are going to be changing is that for this quarter [third quarter 2003], the $15 million of lost product – not for next quarter". The $15 to $20 million revenue range stated by Crombie on the Analysts Call was inconsistent with the revenue range disclosed in the October 3 Release and the October 8 Release and it does not appear that it was ever repeated or expressly corrected in any subsequent Biovail news release or public statement.

[33] Melnyk also commented in the course of the Analysts Call, in response to a question about Biovail's new guidance:

> Well, yes, they are one-time events. What we are hoping for is to be in a position to provide by the next conference call guidance for next year. I mean we're just – you know, Wellbutrin is such a huge impact to next year, I think that anything we would give you right now would be premature.

In the first sentence of that comment, Melnyk is referring to the three factors contributing to the Earnings Miss described in the October 3 Release, one of which was the Accident.

[34] Crombie also explained in response to a question on the Analysts Call how one would calculate fourth quarter guidance as a result of the financial impact of the Accident. He stated that:

> … if I could just review the numbers, our original guidance for Wellbutrin XL for this year was $75 million to $150 million. If you take out our comment today of $15 million to $20 million impact because of the traffic accident, that would result in annual revenue guidance of between $60 million and $130 million. Subtract out from that the $18 million or so in Q2 and Q3 production, that would result in $42 million to $102 million worth of guidance for Q4.

[35] Biovail also disclosed on the Analysts Call that it estimated that its revenues from WXL for the third quarter would be below $10 million. Neither that information nor the analysis referred to in paragraph 34 of these reasons was disclosed in the October 3 Release.

[36] Crombie also stated in the course of the Analysts Call that "[o]ur contract with GSK has title change in Manitoba when it leaves our shipping dock". That statement is inconsistent with the GSK delivery term and the draft news release that Crombie initially prepared on October 2, 2003 in connection with the announcement of the Earnings Miss (see paragraph 137 of these reasons). As discussed more fully below, Staff and Melnyk disagree as to what the GSK delivery term means in terms of the transfer of title to the WXL product shipped. That question has a direct effect on whether revenue associated with the WXL product involved in the Accident could have been recognised in Biovail's 2003 third quarter.

(vii) The October 8 Release

[37] On October 8, 2003, David W. Maris, an analyst with Bank of America, issued a research report (the "**Maris Report**") that raised questions with respect to Biovail's statement of the revenue associated with the WXL product involved in the Accident (see paragraphs 184 to 187 of these reasons for a fuller description of the comments made in the Maris Report).

Melnyk says that Biovail's share price immediately fell by approximately $4.00 per share as a result of the issue of the Maris Report. Following the Maris Report, Biovail began to receive inquiries from analysts and investors questioning whether the truck involved in the Accident contained any WXL product at all. As a result of the inquiries and rumours in the market, Biovail concluded that it should issue a clarifying news release.

[38] At approximately 2:00 p.m. on October 8, 2003, Biovail issued a one-page news release (the "**October 8 Release**"), the substance of which was as follows:

> …
>
> Biovail Confirms Wellbutrin XL Shipment Recovery
>
> TORONTO, Ontario – Biovail Corporation (NYSE: BVF) (TSX: BVF) today confirmed that it has recovered the Wellbutrin XL shipment, which included bulk tablets, involved in a traffic accident on October 1, 2003. Although further testing is required at Biovail's Steinbach, Manitoba manufacturing facility, Biovail confirmed that approximately 60% of the shipment is salable and may be re-shipped within the next 30 days.
>
> *Furthermore, Biovail re-confirms that the sales value of these goods is within previously stated guidance.*
>
> [emphasis added]

[39] We have concluded that the reference to "the sales value of these goods" in the October 8 Release refers to the $10 to $20 million revenue range reflected in the Revenue Loss Statement. Accordingly, in our view, the October 8 Release repeated the Revenue Loss Statement. The October 8 Release did not expressly refer to the Accident Contribution Statement but, in our view, a reasonable investor would understand in the context of the October 8 Release that the Accident Contribution Statement was being repeated by necessary implication. Accordingly, in our view, the Truck Accident Statement was repeated by Biovail in the October 8 Release.

(viii) The Roadshows

[40] Between October 13 and 16, 2003, Melnyk, Crombie and Howling participated in a series of meetings with institutional investors in New York, Boston, Toronto and Montreal (referred to in these reasons as the Roadshows). There were between 30 to 35 meetings in those cities over that period. Melnyk attended some or all of those meetings. Staff alleges that Biovail through Melnyk and Crombie repeated the Truck Accident Statement in those meetings.

(ix) The October 30 Release

[41] On October 30, 2003, Biovail issued a 14-page news release that reported its third quarter and nine-month financial results for the period ended September 30, 2003 (the "**October 30 Release**"). Biovail reported revenues from the sale of WXL in the third quarter of $8.2 million and total revenues for the third quarter of $215.3 million.

[42] Biovail stated in the October 30 Release that the WXL product involved in the Accident had been returned to Biovail and that all but a small portion was recovered and re-shipped to GSK.

[43] The relevant portions of the October 30 Release provided as follows:

> BIOVAIL REPORTS THIRD QUARTER 2003 FINANCIAL RESULTS
>
> …
>
> TORONTO, Canada, October 30, 2003 – Biovail Corporation (NYSE/TSX: BVF) announced today its financial results for the three month and nine month periods ending September 30, 2003. Total revenues for the three months ended September 30, 2003 increased 3% to $215.3 million versus the prior year comparable period. Total revenues for the nine months ended September 30, 2003 were $624.0 million reflecting an increase of 14% versus the prior year comparable period.
>
> …
>
> A late third quarter 2003 shipment of Wellbutrin XL involved in an accident outside of Chicago was returned to Biovail's facility on October 8, 2003 for inspection. No revenue was recognised from this shipment in Q3 2003. The shipment included both bulk and fully packaged material. All bulk tablets,

> which are packaged in plastic drums, were salvaged and have already been shipped to GSK. A small portion of the packaged goods (less than 1,000 bottles) was effected [sic] in the accident and could not be re-shipped.
>
> …
>
> Wellbutrin XL product sales revenue was $8.2 million for third quarter 2003 and $16.3 million for the nine months ended September 30, 2003. Biovail receives a percentage of Glaxo's net sales as revenue for supplying trade supplies of Wellbutrin XL. Biovail also is paid for bulk sample product that is [sic] produces and supplies to Glaxo. Samples are sold at a contractually agreed price at approximately Biovail's manufacturing cost.
>
> …

The second and third paragraphs referred to above appear on different pages of the release and were not the principal focus of it.

(x) The March 2004 Release

[44] On March 3, 2004, Biovail issued a 15-page news release (the "**March 04 Release**") announcing its fourth quarter and full year 2003 financial results. In the March 04 Release, Biovail provided updated information regarding the WXL revenue loss associated with the Accident.

[45] The relevant portions of the March 04 Release provided as follows:

> BIOVAIL REPORTS 2003 FOURTH QUARTER AND FULL YEAR FINANCIAL RESULTS
>
> …
>
> TORONTO, Canada, March 3, 2004 – Biovail Corporation (NYSE/TSX: BVF) announced today its financial results for the three and twelve month periods ending December 31, 2003. Total revenues for the three months ended December 31, 2003 were $199.7 million versus $238.7 million for the three months ended December 31, 2002. Total revenues for the twelve months ended December 31, 2003 were $823.7 million representing an increase of 5% versus $788.0 million for the prior year.
>
> …
>
> Wellbutrin XL product sales revenue was $48.6 million for fourth quarter 2003 and $64.9 million for the year 2003. Fourth quarter 2003 Wellbutrin XL sales included the recovery of over 90% of Wellbutrin XL product that was involved in a traffic accident on October 1, 2003.
>
> As part of a comprehensive earnings guidance press release on October 3, 2003, Biovail announced that its estimated revenue from Wellbutrin XL for third quarter 2003 would be less than $10.0 million partially as a result of the truck accident and that the loss in revenue due to the accident would be in the range of $10.0 million to $20.0 million. Numerous variables that were not known and were unavailable on October 3, 2003 are now determinable given better information and the reconciliation provided by GSK to Biovail.
>
> Variables that determine Biovail's revenue that were not then known include levels of discounts, free goods or rebates that would have been deducted from GSK's gross sales and the percentage of GSK's net sales Biovail is to receive. In calculating the high end of the estimate range, Biovail also took into consideration the variables that analysts were generally using in their models to estimate the Wellbutrin XL revenues, which included typically higher pricing, higher percentage supply prices and did not reflect the typical gross to net deductions. This analysis with analyst estimates was completed to better explain why revenue in third quarter 2003 would be less than previously expected by analysts.
>
> *After a subsequent review of all of the facts, the actual revenue loss from the accident was determined to be $5.0 million.* Calculated with analysts' assumptions for these variables, the revenue loss estimate would range from $7.5 million to $8.0 million.
>
> …

[emphasis added]

The second and subsequent paragraphs of the release referred to above appear on page 4 of the release.

[46] Among other things, Biovail stated in the March 04 Release that the actual revenue loss from the Accident for the 2003 third quarter was $5.0 million. The March 04 Release thereby repeated the Accident Contribution Statement and corrected the Revenue Loss Statement. The March 04 Release also stated that the revenue loss from the Accident calculated *with analysts' assumptions* was in the range of $7.5 to $8.0 million.

C. Positions of the Parties

(i) Staff

[47] Staff alleges that Biovail made statements in the October 3 Release, on the Analysts Call, and in the October 8 Release, the Roadshows, the October 30 Release and the March 04 Release that, in a material respect and at the time and in the light of the circumstances under which they were made, were misleading or untrue or did not state a fact that was required to be stated or that was necessary to make the statements not misleading.

[48] In summary, Staff alleges that, in the October 3 Release, Biovail made the materially misleading or untrue statement that the Accident was one of the reasons for Biovail's failure to meet previously issued revenue and earnings guidance for the third quarter of 2003 (referred to in these reasons as the Accident Contribution Statement). In addition, Staff alleges that Biovail disseminated the materially misleading or untrue information that the revenue associated with the WXL product involved in the Accident was in the range of $10 to $20 million (referred to in these reasons as the Revenue Loss Statement). Staff alleges that Biovail repeated or implicitly reinforced these materially misleading or untrue statements during the Analysts Call (as modified by Crombie's statement that the revenue range was $15 to $20 million), in the October 8 Release and in the Roadshows. Staff also alleges that Biovail made a materially misleading or untrue statement in the October 30 Release and the March 04 Release by continuing to disseminate the previous statements and by failing to correct them. According to Staff, Biovail thereby violated Ontario securities law and engaged in conduct contrary to the public interest.

[49] Staff alleges that Biovail knew or should have known that the statements referred to above were misleading or untrue in a material respect.

[50] Staff alleges that Melnyk authorized, permitted or acquiesced in Biovail's misconduct in that:

(a) he knew or should have known at all material times that the GSK delivery term precluded Biovail from recognizing any revenue associated with the WXL shipment involved in the Accident in its financial statements for the third quarter of 2003;

(b) he knew or should have known at all material times that the value of the WXL tablets that were involved in the Accident was substantially below the $10 to $20 million that was initially disclosed;

(c) by October 2, 2003, before the October 3 Release was issued, Melnyk should have known or taken steps to verify the GSK delivery term; in particular, on October 2, 2003, Melnyk was sent a draft of the October 3 Release by Crombie which contained the accurate GSK delivery term;

(d) on October 8, 2003, Howling received a copy of the Maris Report questioning the GSK delivery term and the valuation of the WXL damaged in the Accident, and circulated the Maris Report to Melnyk;

(e) Howling also received information from GSK on October 8, 2003 highlighting the correct GSK delivery term, and forwarded that information to Melnyk;

(f) Melnyk participated in drafting the October 3 Release, the October 8 Release, the October 30 Release and the March 04 Release; and

(g) Melnyk participated in the Analysts Call and the Roadshows.

(ii) Melnyk

[51] Melnyk submits that the difference between the Truck Accident Statement and an accurate statement was not material to investors at the various times and in the circumstances under which the Truck Accident Statement was made. Accordingly, he says the Truck Accident Statement was not misleading or untrue in a material respect. Melnyk submits that the Earnings Miss

was the only material information contained in the October 3 Release and that Biovail acted appropriately by disclosing that information to the public as promptly as practicable, even though it had no legal obligation to do so.

[52] Melnyk also says that he was not aware of the accurate GSK delivery term until the afternoon of October 3, 2003 following the issue of the October 3 Release. In any event, he submits that New York law applied to the interpretation of the GSK delivery term and there was legal uncertainty as to the appropriate interpretation of that term. Melnyk submits that the GSK delivery term did not clearly distinguish between the risk of loss of WXL product and the transfer of title to that product and, as a result, it was ambiguous and unclear. Melnyk submits that ambiguity was, in part, a result of the use of the words "freight collect" in the GSK delivery term. Melnyk submits that the uncertainty with respect to the interpretation of the GSK delivery term was not resolved until that term was renegotiated by the parties to the GSK Agreement in November 2003. Accordingly, Melnyk submits that he did not know and could not have known that the Accident Contribution Statement was misleading or untrue at the various times that statement was made.

[53] Melnyk notes that he does not hold a university degree, is neither a lawyer nor an accountant and is not familiar with technical accounting rules. He submits that he properly relied on Crombie and other members of Biovail senior management for determining financial numbers, including those reflected in the Revenue Loss Statement. Melnyk says his principal role at Biovail was to act as a visionary and to provide strategic guidance. He says that he did not focus on specific or detailed product revenue numbers or estimates such as those related to the revenues associated with the WXL product involved in the Accident.

[54] In any event, Melnyk says it was not possible to determine the revenue to Biovail associated with the WXL product involved in the Accident until GSK provided a reconciliation of its "net sales" of WXL after the completion of the third quarter, as contemplated by the GSK Agreement. That is because revenue to Biovail was determined as a percentage of net sales made by GSK and that percentage increased as net sales reached higher tiers (see paragraphs 16 and 17 of these reasons). In addition, GSK was entitled to make various deductions in determining net sales, including deductions for discounts, allowances and rebates granted by it to its customers. Melnyk notes that the commercial launch by Biovail of WXL occurred in early September 2003 and, as a result, Biovail had never received a reconciliation statement from GSK.

[55] For all of these reasons, Melnyk submits that he did not know and could not have reasonably known that the Truck Accident Statement was misleading or untrue at the various times that statement was made. In any event, Melnyk submits that he exercised due care and diligence in authorizing and approving the Releases and in acquiescing to the statements made by Biovail with respect to the Accident on the Analysts Call and in the Roadshows. Melnyk also notes that he lives in Barbados and was not physically present in Biovail's offices over the period of October 1 to 8, 2003.

[56] Melnyk submits that Biovail did not contravene the Act in making the Truck Accident Statement and that, in all the circumstances, neither Biovail's conduct nor his own was contrary to the public interest.

III. THE ISSUES

[57] The questions we must address in this proceeding are the following:

1. What is the standard of proof to be applied?

2. What is the standard of materiality to be applied to the statements made by Biovail?

3. Did Biovail make a statement in the October 3 Release, on the Analysts Call or in the October 8 Release, the Roadshows, the October 30 Release or the March 04 Release that was, in a material respect and at the time and in the light of the circumstances under which it was made, misleading or untrue or did not state a fact that was required to be stated or that was necessary to make that statement not misleading?

4. If so, did Melnyk know or should he have known that such statements were misleading or untrue?

5. Were the Releases "required to be filed" within the meaning of subsection 122(1)(b) of the Act or, if not, were they "submitted to" the Commission within the meaning of subsection 122(1)(a) of the Act?

6. Did Melnyk authorize, permit or acquiesce in the statements made by Biovail?

7. Is Melnyk entitled to advance a due diligence defence to the allegation that he acted contrary to the public interest and, if so, did he exercise due care and diligence in the circumstances?

8. Was Melnyk's conduct in the circumstances contrary to the public interest?

IV. ANALYSIS

A. The Standard of Proof

[58] The civil standard of proof and the nature of the evidence that is required to meet that standard are integral to the duty of an administrative tribunal to provide a fair hearing. It is well established that the standard of proof that must be met in an administrative proceeding such as this is the civil standard of the balance of probabilities.

[59] T he Supreme Court of Canada recently considered the civil standard of proof. The Court confirmed that there is only one civil standard of proof, which is proof on a balance of probabilities:

> [l]ike the House of Lords, I think it is time to say, once and for all in Canada, that there is only one civil standard of proof at common law and that is proof on a balance of probabilities. Of course, context is all important and a judge should not be unmindful, where appropriate, of inherent probabilities or improbabilities or the seriousness of the allegations or consequences. However, these considerations do not change the standard of proof.
>
> (*F. H. v. McDougall*, [2008] 3 S.C.R. 41, at para. 40 ("***McDougall***"))

[60] The balance of probabilities standard requires the trier of fact to decide "whether it is more likely than not that the event occurred" (*McDougall*, *supra*, at para. 44).

[61] The Court noted in *McDougall* that "the evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test". However, this requirement of clear, convincing and cogent evidence does not elevate the civil standard of proof above a balance of probabilities (*McDougall*, *supra*, at para. 46).

[62] We will apply this standard of proof in addressing the matters before us.

B. Materiality of Statements

(i) Materiality Generally

[63] One of the key questions we must decide is whether the statements made by Biovail that are the subject matter of this proceeding were, in a material respect, misleading or untrue, as alleged by Staff. The words "in a material respect" impose a standard of materiality against which an impugned statement is to be judged.

[64] The Act does not define the words "in a material respect". (The Statement of Allegations uses the words contained in subsections 122(1)(a) and (b) of the Act but does not refer specifically to those sections of the Act.) See the discussion of the meaning of the words "in a material respect" commencing at paragraph 75 of these reasons.

[65] In general, the concept of "materiality" in the Act is a broad one that varies with the characteristics of the reporting issuer and the particular circumstances involved. In National Policy 51-201 of the Canadian Securities Administrators, it is stated that:

> In making materiality judgements, it is necessary to take into account a number of factors that cannot be captured in a simple bright-line standard or test. These include the nature of the information itself, the volatility of the company's securities and prevailing market conditions. The materiality of a particular event or piece of information may vary between companies according to their size, the nature of their operations and many other factors.
>
> (National Policy 51-201 *Disclosure Standards* (2002), 25 O.S.C.B. 4492 ("**NP 51-201**"))

NP 51-201 addresses materiality in the context of the definitions in the Act of "material change" and "material fact" (see paragraphs 70, 348 and 349 of these reasons). In our view, however, the comments set out above have wider application to the determination of materiality.

[66] In considering the term "material fact" in *Re Donnini*, the Commission stated that:

> … materiality is a fact-specific relative concept that varies from issuer to issuer according to size of profits, assets and capitalization, the nature of its operations, and many other factors.
>
> Counsel for staff referred us to the materiality standard used in the United States and quoted by the United States Supreme Court in *TSC Industries, Inc.* [citation deleted]:

> An omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote … It does not require proof of a substantial likelihood that disclosure of the omitted fact would have caused the reasonable investor to change his vote. What the standard does contemplate is a showing of a substantial likelihood that, under all the circumstances, the omitted fact would have assumed actual significance in the deliberations of the reasonable shareholder.
>
> (*Re Donnini* (2002), 25 O.S.C.B. 6225 ("***Re Donnini***"), at paras. 135 and 136)

[67] In *Re YBM Magnex International Inc.*, the Commission referred to the reasonable investor test adopted in *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438 at 449 (1976) ("***TSC Industries***") and stated that:

> Disclosure is contextual. In the U.S. this has been identified as the total mix of information test; TSC Industries at 449. It seems sensible that the respondents must take into account the import of all extant disclosures, positive or negative, in order to assess whether a fact is material.
>
> (*Re YBM Magnex International Inc.* (2003), 26 O.S.C.B. 5285 ("***Re YBM***") at para. 93)

[68] The Commission concluded in *Re YBM* that:

> Materiality is a question of mixed law and fact, i.e. do the facts satisfy the legal test? Some facts are material on their own. When one or more facts do not appear to be material on their own, materiality must also be considered in light of all the facts available to the persons responsible for the assessment.
>
> (*Re YBM*, *supra*, at para. 94)

[69] Accordingly, the assessment of the materiality of a statement is a question of mixed fact and law that requires a contextual determination that takes into account all of the circumstances including the size and nature of the issuer and its business, the nature of the statement and the specific circumstances in which the statement was made. The reasonable investor standard for determining materiality articulated in TSC Industries has been accepted and applied by the Commission in a number of decisions (see *Re Standard Broadcasting* (1985), 8 O.S.C.B. 3671 ("***Standard Broadcasting***") at 3677; *Re Rolland Inc.* (1987), 10 O.S.C.B. 1629 at 1635-1636; *Re Canfor Corp.* (1995), 18 O.S.C.B. 475 at paras. 21-22; *Re MacDonald Oil Exploration Ltd.* (1999), 22 O.S.C.B. 6453 at paras. 39-42; *Re Chapters Inc*. (2001), 24 O.S.C.B. 1064 at paras. 14-17; *Re Sears Canada Inc.*, (2006), 22 B.L.R. (4th) 267 (OSC) at para. 187; and *Re Sterling Centrecorp Inc.* (2007), 30 O.S.C.B. 6683 at para. 211).

(ii) "Material Change" and "Material Fact"

[70] The terms "material change" and "material fact" are defined in subsection 1(1) of the Act and require a determination whether a change or fact "would reasonably be expected to have a significant effect on the market price or value" of a security (see paragraphs 348 and 349 of these reasons for the definitions of "material change" and "material fact"). Those terms are not, however, used in subsection 122(1) of the Act. It has been held that the threshold of materiality imposed by section 122 is lower than for a material change or a material fact because section 122 does not require proof that a statement would have "a significant effect on the market price or value of securities" (see *R. v. Maxwell*, [1996] O.J. No. 4832 (Prov. Ct.) at paras. 119-120 ("***Maxwell***"); and *R. v. Felderhof* (2007), 24 C.C.C. (3d) 97 (Ont. C. J.) ("***Felderhof***") at p. 215).

[71] In *Maxwell*, the Court contrasted the definitions of "material change" and "material fact" with the language of subsection 122(1)(b) of the Act and adopted the following passage from V. Alboini, *Securities Law and Practice* (2nd Edition), at pp. 18-14:

> The effect of focussing on price or value of the securities as the appropriate test may be to exclude, as material changes, matters that may influence, and may therefore be material to, an investor in making decisions but do not have the probable effect of significantly altering market price or value of any securities of the issuer.
>
> (*Maxwell*, *supra*, at para. 54)

[72] Because the Act does not define "in a material respect", the Court in *Maxwell* concluded that the legislature intended those words to have their ordinary dictionary meaning and noted that the Oxford Dictionary defines "material" as "important, essential" (*Maxwell*, *supra*, at paras. 63-64). However, the Court found that the version of subsection 122(1)(b) under which the charges were brought in that matter (which is the current provision in the Act, introduced in 1994) is substantively different from its predecessor. The previous version of subsection 122(1)(b) made it an offence to make a statement that "at the time and in the light of the circumstances under which it is made, is a misrepresentation". "Misrepresentation" was defined as "an untrue

statement of material fact" or "an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it was made". The Court found that this amendment "indicates a clear legislative intent to reduce the Crown's burden by not requiring the Crown to show 'a significant effect on the market price or value of such securities'" (*Maxwell*, *supra*, at para. 97 and 104-106; see also *Felderhof*, *supra*, at pp. 176-187). We agree with that conclusion.

[73] It is perhaps worth noting in this context that if a statement would reasonably be expected to have a significant effect on the market price or value of a security, then that statement would clearly be important to an investor in making an investment decision. However, it does not necessarily follow that a statement that is important to an investor in making an investment decision would reasonably be expected to have a significant effect on the market price or value of a security.

(iii) The Reasonable Investor Standard

[74] For purposes of these reasons, we will treat a statement as material if there is a substantial likelihood that a reasonable investor would consider the statement to be important in making an investment decision. By an investment decision, we mean a decision to buy, sell or hold shares. That will require us to determine whether the statement or omission would have assumed actual significance to a reasonable investor. We will refer to this test for materiality as the "**reasonable investor standard**".

(iv) The Meaning of "In a Material Respect"

[75] We note that the words "in a material respect" in subsection 122(1) of the Act apply to statements made in a number of different kinds of documents and circumstances. For instance, subsection 122(1)(b) applies to any application, report, return or other document required to be filed or furnished under Ontario securities law. Subsection 122(1)(a) applies to statements made in any material, evidence or information submitted to the Commission, which would include, for instance, statements made to a Staff investigator carrying out an investigation under the Act. In our view, the meaning of the words "in a material respect" is contextual and will vary depending on the nature of the document in which the statement is made, the nature of the statement itself and the circumstances in which the statement is made. One would not necessarily apply the reasonable investor standard in assessing the materiality of a statement made (i) in a document that is not a disclosure document intended to be relied upon by investors in making investment decisions, (ii) in financial statements, or (iii) to an investigator carrying out a Commission investigation.

(v) Conclusion as to the Appropriate Materiality Standard

[76] In this proceeding, we are addressing the materiality of statements made primarily in the Releases. Both Staff and Melnyk made submissions to us as to the materiality of the alleged misstatements made by Biovail.

[77] Given the nature of a news release as a disclosure document that is relied upon by investors in making investment decisions, we believe that it is appropriate to apply the reasonable investor standard in assessing whether the statements made by Biovail in the Releases were misleading or untrue in a material respect, as alleged by Staff. Adopting that standard of materiality in this matter should not be interpreted as suggesting that the reasonable investor standard is the only appropriate or correct standard of materiality for purposes of subsection 122(1) of the Act. The circumstances in which the words "in a material respect" apply will vary and those circumstances may suggest or require a different standard of materiality.

[78] We must determine whether the statements made by Biovail were misleading or untrue in a material respect, as alleged by Staff. To paraphrase the reasonable investor standard, we must determine whether the statements made by Biovail were misleading or untrue in a respect that a reasonable investor would consider important in making an investment decision with respect to Biovail's shares. Counsel for Melnyk has submitted that to be misleading or untrue in a material respect, the difference between the alleged misstatement and an accurate statement must be important or essential to investors. By addressing the difference between two such statements, the test suggested by counsel for Melnyk seems to us to be a slightly different test or standard but one that, in this case, we have concluded does not lead to a different result.

[79] However, we do not agree with the submission of counsel for Melnyk that, to be material, a statement must be "essential" to a reasonable investor in making an investment decision. That was suggested by the dictionary definition of the word "material" referred to by the Court in *Maxwell*. Requiring that a statement be "essential" to a reasonable investor in making an investment decision seems to us to impose a higher standard that is inconsistent with the accepted articulation of the reasonable investor standard.

[80] The reasonable investor standard is an objective test and applying it is ultimately a matter of judgement to be exercised in light of all of the relevant circumstances. The assessment of the materiality of a statement is a question of mixed fact and law that falls squarely within the Commission's specialized expertise and does not require the opinion or evidence of expert witnesses or of investors (*Re Donnini*, *supra*, at para. 123). Such opinion or evidence may be relevant or useful but is not necessary.

[81] We will judge the materiality of each of the Biovail statements alleged to be misleading or untrue in a material respect at the time and in the light of the specific circumstances under which those statements were made. We recognise that in making determinations as to materiality, common sense judgement must be applied. The Commission noted in *Re YBM, supra*, at para. 90, that "[a]ssessments of materiality are not to be judged against the standard of perfection or with the benefit of hindsight. It is not a science and involves the exercise of judgement and common sense [citation omitted]". Accordingly, Biovail should not be held to a perfect standard of disclosure and its statements must not be judged with the benefit of hindsight.

C. The Evidence

(i) General Comments on the Evidence

[82] We heard testimony in this matter from a number of witnesses, including Melnyk, Crombie, Miszuk and Howling. We also heard testimony from Douglas Deeth ("**Deeth**"), Biovail's legal counsel in negotiating the GSK Agreement, Robert Scullion ("**Scullion**") and Martin Lundie ("**Lundie**"), accountants with Ernst & Young, Biovail's auditor at the relevant time, and three witnesses from GSK who were involved in negotiating the GSK Agreement and in discussing with Biovail after the Accident issues related to the interpretation of the GSK delivery term. We also heard testimony from three expert witnesses as to the materiality of the Truck Accident Statement. Four Biovail employees, Neil Smith, Manager of Financial Analysis and a certified general accountant ("**Smith**"), Le'raine Dunn, Plant Controller (Steinbach), Larry Thiessen, Plant Manager (Steinbach) and Naomi Nemeth, Manager of Corporate Communications, Finance Department, testified as to their knowledge of the circumstances surrounding the Accident and the issue of the Releases. We also received and reviewed a large number of documents, memoranda, e-mails, the Call Transcript, a draft slide deck used at one of the Roadshows and the reports of the three experts.

[83] In coming to our conclusions in this matter, we have considered, in particular, the credibility of the testimony given by Melnyk, Crombie, Howling and Miszuk. Some of Melnyk's testimony was not credible. For instance, we do not accept his testimony that he was not a hands-on CEO directly involved in the management decisions related to this matter and that he did not review or look at specific revenue numbers and estimates for WXL sales. We also believe that Melnyk knew very well the revenue value of the WXL shipped by Biovail to GSK late on September 30, 2003 (see paragraph 311 of these reasons). The testimony of witnesses such as Melnyk, Crombie and Howling, who are at least in some respects aligned in interest, presents challenges. Where the testimony of Melnyk, Crombie or Howling conflicted with the testimony of Miszuk, we preferred the testimony of Miszuk. In addition, where the testimony of Melnyk, Crombie and Howling conflicted with the various contemporaneous documents and e-mails that were tendered in evidence, we relied on that documentary evidence. We have based our findings on the preponderance of evidence before us and have concluded that, overall, the evidence is clear and cogent.

[84] In considering the evidence, we believe that it is appropriate to attribute to Biovail the knowledge of, and information known by, Melnyk, Crombie, Howling or Miszuk. We do so on the basis that each of those individuals was a senior officer of Biovail at the relevant time.

[85] In considering the allegations against Melnyk, we recognise that we must reach conclusions based on the evidence about what Melnyk knew or should have known at a particular time. We will not assume simply because one of the other senior officers or employees of Biovail was aware of particular information that Melnyk was necessarily also aware of that information. However, we are skeptical of some of Melnyk's testimony as to what he knew or did not know at various times. Further, we are entitled to make reasonable inferences from the evidence and to reach conclusions based on the balance of probabilities as to what Melnyk knew or should have known at a particular time.

(ii) Melnyk's Testimony

[86] We have summarized Melnyk's position on the key issues where we discuss the issues in these reasons. Melnyk's testimony was consistent with those positions. Where we considered it relevant, we have referred in these reasons to specific aspects of Melnyk's testimony. We have taken the same approach with respect to the testimony of Crombie, Howling and Miszuk.

(iii) Evidence of the GSK Witnesses

[87] We received videotaped evidence from three employees of GSK who testified from the offices of GSK's North Carolina counsel.

[88] Stanley Hull ("**Hull**") was Senior Vice-President of Pharmaceuticals of GSK at the time he testified, and was, at the relevant time, Senior Vice-President of GSK's RTP (Research Triangle Park) Business Unit. In that role, he was primarily responsible for managing sales and marketing at the North Carolina location; he reported to the President of U.S. Pharmaceuticals.

[89] Richard Dyer ("**Dyer**") was Director of Contract Manufacturing and Supply at GSK at the time he testified, and was, at the relevant time, Sourcing Group Manager for North American Contract Manufacturing. He is a Certified Public Accountant in the State of North Carolina. In his role as Sourcing Group Manager, Dyer was responsible for contractual issues with suppliers such as Biovail.

[90] Jack Davis ("**Davis**") was Vice-President, Finance for U.S. Commercial Operations at GSK at the time he testified and at the relevant time.

(a) Negotiation of the GSK Agreement

[91] Hull testified that Wellbutrin was developed by one of GSK's predecessor companies as a tablet to be taken three times a day, and later, as a twice-a-day tablet, under the name Wellbutrin SR. When Biovail developed WXL, the once-a-day tablet, GSK negotiated with Biovail the right to sell WXL in the United States. Hull was involved in negotiating some of the commercial aspects of the GSK Agreement.

(b) GSK's Pre-Launch Discussions with Biovail

[92] Hull testified that in the months prior to Biovail receiving final FDA approval for WXL at the end of August 2003, he was in contact with Biovail – primarily Crombie, Howling and Carol Chapuis, Vice-President, Strategic Alliances at Biovail ("**Chapuis**") – to ensure that everything was ready for the commercial launch of WXL. He testified that there were a number of questions around supply of WXL. GSK wanted to ensure Biovail would be able to supply sufficient WXL product and Biovail wanted firm orders for purchases by GSK. Hull testified there was "some back and forth" on these issues.

[93] Dyer testified that he dealt primarily with Chapuis, who was responsible for Biovail's relationship with GSK. Dyer testified that he discussed with Chapuis issues of supply and forecasts in the fall of 2003. GSK initially wanted to order only WXL sample tablets, but Biovail wanted GSK to order WXL trade product because of the higher revenue value to Biovail of that product (see paragraph 172 of these reasons).

(c) GSK's Response to the Truck Accident Statement

[94] Davis testified that his immediate reaction to the October 3 Release was that the amount quoted as revenue associated by Biovail with the WXL product involved in the Accident seemed to be high, because, at the 22% royalty rate, "that would be the equivalent of about $100 million of our sales, and that was – we barely sold over $100 million in the entire third and fourth quarters. And to have that much product on one truck seemed to me to be significantly high."

[95] Dyer testified that when the October 3 Release came to his attention shortly after it was issued, his reaction was that the revenue value was "a little bit high" because most of the shipment consisted of samples. Melnyk submits that Dyer did not know at the time that all of the WXL involved in the Accident consisted of trade tablets, most of which were shipped in bulk in drums.

[96] Dyer sent an e-mail to Howling and Chapuis on the morning of October 8 indicating that the statement by Crombie on the Analysts Call that title to WXL product changed hands when the shipment left Biovail's manufacturing facility was "incorrect" because the GSK Agreement provided that title did not pass until the shipment was delivered to GSK's facility. In the e-mail, Dyer asked Biovail to refrain from "making further inaccurate statements with respect to the transfer of title and the associated risk of loss and, if questioned, clarify the record." Dyer also requested Biovail to consult with GSK prior to issuing any further news releases related to their business relationship, as required under the GSK Agreement. Howling forwarded that e-mail to Crombie and Melnyk that morning, and Crombie called Dyer soon after. Crombie advised Dyer in that call that Biovail intended to issue another news release that day and he agreed to provide GSK with a copy for GSK's comments. Dyer testified that Biovail did provide GSK with an advance copy of the October 8 Release, but issued the release only 30 minutes later and before GSK was able to provide any comments.

[97] Hull had little recollection of his involvement in discussions with Biovail after the Accident. He testified, however, that he sent a letter that had been prepared by GSK's legal counsel to Melnyk on October 9, 2003 (the "**Hull Letter**"). The Hull Letter made three points. First, it stated that Biovail's statement on the Analysts Call that title to the WXL product involved in the Accident changed as soon as it left Biovail's manufacturing facility was "technically incorrect" as the GSK Agreement, "*as interpreted under the laws of the State of New York*, provides that title to and risk of loss with respect to the product would not have passed to GSK until the product was delivered to GSK's facility in the U.S.A." [emphasis added]. Hull continued in the letter, "I would ask that Biovail refrain from making any further statements inconsistent with [the GSK Agreement] with respect to the transfer of title and the associated risk of loss and, if questioned, please clarify the record." The Hull Letter also stated that GSK could not agree that the WXL product involved in the Accident was saleable without that product going through GSK's quality assurance process and inspection, and, accordingly, GSK reserved all rights to reject as non-conforming the WXL product involved in the Accident. Finally, the Hull Letter stated that GSK was not consulted in advance as to the content of the

October 3 Release and the statements made on the Analysts Call, and that GSK had been given the opportunity to review, but had no opportunity to comment on, the October 8 Release, contrary to the prior consultation provisions of the GSK Agreement.

[98] On October 29, 2003, Davis sent Crombie, by e-mail, GSK's draft WXL inventory and sales reconciliation to September 30, 2003. Davis testified that he assumed this was the first reconciliation GSK had sent to Biovail, since GSK had no WXL sales prior to the 2003 third quarter. A further updated reconciliation was provided by GSK to Biovail on November 14, 2003 and a final year-to-date (to December 31, 2003) reconciliation was provided on January 20, 2004. Melynk submits that the changes in the rates used for discounts, allowances and rebates in those reconciliations illustrate the challenges Biovail faced in determining the WXL revenue associated with the Accident, leading up to the issue of the October 3 Release and thereafter.

[99] Davis testified that the GSK Agreement provided that Biovail would invoice GSK for WXL product at the time of delivery at a pre-determined price that, at the relevant time, was based on the rate of 22% of GSK net sales. Reconciliation to actual GSK net sales was to be done on a quarterly (later a monthly) basis based on the information provided by GSK.

(d) Amendment of the GSK Delivery Term

[100] Melnyk and Hull discussed the GSK shipping term in several telephone conversations in late October 2003 and appear to have agreed to amend that term. Dyer led the discussions on behalf of GSK. He testified that Crombie called him after the Accident and said that Biovail had understood that GSK bore the risk of loss of WXL shipped, but on reviewing the matter after the Accident, "realized that GSK didn't have risk of loss, Biovail did, and then this whole series of negotiations around shipping terms followed that." In December 2003, Biovail and GSK agreed to amend the GSK delivery term on an interim basis so that it was clear that title to WXL product would transfer to GSK immediately after the shipment crossed the Canada-U.S. border, and in late 2004, after further negotiations, the GSK Agreement was amended accordingly. The new shipping term clearly distinguished between when title to the WXL product passed and who bore the risk of loss of a shipment.

[101] Although Melnyk made much of the fact that the amended shipping term addressed title to the WXL product and risk of loss separately, we do not accept that the subsequent amendment of the GSK delivery term has any bearing on what Biovail and Melnyk knew or should have known about the GSK shipping term as it read at the relevant time. We also heard testimony that Biovail made a proposal to GSK after the Accident to amend the GSK delivery term retroactive to the date of the Accident, but withdrew that proposal because of concerns about the implications for insurance coverage. It does not seem to us that a retroactive amendment of the GSK delivery term would, in any event, have changed the interpretation and application of that term at the various times the Truck Accident Statement was made prior to that amendment.

[102] In any event, it is not surprising that commercial parties to an agreement, following an event that gives rise to some uncertainty about the meaning of a particular contractual term, agree to amend the agreement to provide clarity and avoid future disagreement.

(iv) Evidence of the Ernst & Young Witnesses

[103] We also heard evidence from Scullion and Lundie, accountants with Ernst & Young. Scullion was the partner who led Ernst & Young's Biovail engagement team at the relevant time and Lundie reported to him. Lundie was not a partner of Ernst & Young at the time.

(a) Reaction to the October 3 Release

[104] Scullion and Lundie testified that they were surprised that no one at Biovail consulted them prior to issuing the October 3 Release. Upon seeing that news release, they immediately questioned the accuracy of the Accident Contribution Statement but later also questioned the Revenue Loss Statement.

[105] Lundie testified that he first saw the October 3 Release at 11:27 a.m. that morning. Lundie e-mailed his reaction to Scullion, stating: "Interesting – seems they got a lot of cut-off matters wrong by a few days!!" Lundie testified that he believed at the time that the GSK delivery term was F.O.B. Biovail, in which case "this would be Biovail's revenue and they would have recognised it [in the third quarter]." However, he also noted that the October 3 Release implied that Biovail was responsible for the WXL product and would take it back for inspection, which he thought was inconsistent with an F.O.B. Biovail delivery term.

[106] Scullion had a similar reaction. In his testimony, Scullion stated that in order for revenue to be recognised from the September 30 shipments, the risks and rewards of ownership of the WXL product had to be transferred to GSK on or prior to September 30. An accident occurring on October 1 should not have affected revenue recognition. As a result, Scullion testified that he was confused as to why an accident in October would affect revenue recognition in respect of a September shipment. In his e-mail response to Lundie, Scullion stated that "[t]hey have discussed none of this with me. We need to discussed [*sic*] F.O.B. destination vs. shipping point as well as everything else included here."

[107] Lundie testified that his e-mail was based only on his reading of the October 3 Release, on his understanding that Biovail's contracts generally provided for delivery of product F.O.B. Biovail, and on Biovail's historic revenue recognition policies.

[108] Scullion testified that he called Miszuk after the issue of the October 3 Release and they had several conversations about revenue recognition practices around cut-off dates (a cut-off date establishes the point in time after which shipments to a customer cannot be included in revenues for a particular financial period and must be recognised in the succeeding period). He also communicated to Crombie and Miszuk his surprise that Ernst & Young was not consulted prior to the issue of the October 3 Release.

[109] At the request of Ernst & Young, a meeting was held at Biovail on October 6 or 7, 2003 that Scullion, Lundie, Miszuk and Peter McLean (another Biovail employee) attended. Melnyk did not attend. At the meeting, Ernst & Young asked Biovail management to review the application of their revenue recognition criteria to all their contracts going back to the beginning of 2002 with respect to cut-off date policies. Later in October, Biovail management gave a presentation to Ernst & Young of their analysis in response to that request. Scullion and Lundie concluded that the GSK delivery term meant that revenue related to the WXL product involved in the Accident could not have been recognised in the third quarter unless it had arrived at GSK's facility by September 30, 2003. Scullion testified that he did not recall if the phrase "freight collect" was discussed at the time, but he testified that he understood that term to mean only that the recipient of a shipment pays transportation costs and that it does not speak to transfer of risks and rewards or title. He testified that he understood that title transfers based on the F.O.B. designation.

[110] Staff entered into evidence a copy of the Call Transcript of the Analysts Call, to which a typed note had been added at the top of the first page. Lundie testified that the typed note was his and that he had prepared it after the October 6 or 7 meeting at Biovail. Lundie's typed note was as follows:

> **Thoughts**
>
> **MISLEADING CONFERENCE CALL**
>
> - "While press releases are not regulated documents in themselves, a misleading press release could be actionable under s 127 of the Act (Ontario) [sic] on a public interest basis."
> - Both Eugene and Brian part of the misleading info.
> - Speaks to character
>
> **Actions**
>
> - Warning to change their ways otherwise we resign [or maybe we should just resign – can we re 2003?] actions required:
>   - o Full disclosure to auditors on a timely basis
>   - o Change CFO – one with CA or CPA
>   - o No more use of PWC to undertake valuations
>   - o In Camra sessins [*sic*] with audit committee

[111] Lundie's handwritten notation to the right of the note states "[t]his was me at 2 AM." Lundie testified that the handwritten notation was intended to let Scullion know that these were his initial thoughts after working 18 hours and being "pretty tired and maybe not . . . thinking totally rationally".

[112] Lundie testified that he spoke to Scullion about his comments the next morning and that they concluded that Melynk and Crombie were probably not aware of the accounting inconsistencies raised by the October 3 Release. They also concluded that Lundie's comments "were rather hasty and rash" and that Scullion would discuss them with more senior people at Ernst & Young.

[113] Scullion testified that Biovail was "a high risk audit" and that Lundie's comments (referred to in paragraph 110 of these reasons) were discussed at Ernst & Young to determine whether Ernst & Young should resign as Biovail's auditor. By that time, Biovail had retained external securities counsel to advise Biovail on disclosure matters and Crombie had provided information explaining his perspective on the disclosure made in the October 3 Release. Scullion testified that he did not understand

Crombie's explanation for how he determined the revenue range reflected in the Revenue Loss Statement, but Ernst & Young ultimately concluded that it would not resign as auditor.

[114] Scullion and Lundie both testified that the low end of the revenue range reflected in the Revenue Loss Statement (i.e., $10 million) was material, from an accounting perspective, with respect to Biovail's 2003 third quarter financial statements.

(b) The October 8 Release, October 30 Release and March 04 Release

[115] Scullion and Lundie testified that they were not involved in preparing the October 8 Release and were not consulted about it. Neither Scullion nor Lundie had a particular reaction to the disclosure in the October 8 Release. Scullion stated that "it was the same information I had seen before."

[116] Scullion and Lundie testified that they were not involved in preparing the October 30 Release, but reviewed it before it was issued. Scullion testified that his review was intended to ensure that the dollar numbers in the release were consistent with the financial statements they had reviewed and that the language was factually correct and consistent with the financial statements. Scullion also expressed his view that the October 30 Release, as it related to the Accident, "was factually correct". He acknowledged that the release did not explicitly state that the revenue associated with the WXL product involved in the Accident could never have been recognised in Biovail's 2003 third quarter, but he did not recall raising that issue with Biovail.

[117] Scullion acknowledged that the March 04 Release, though it corrected the Revenue Loss Statement, did not state that the Accident could not have affected Biovail's third quarter financial results. Scullion testified that he did not raise that issue with Biovail at the time of the March 04 Release.

(c) Conclusions as to the Evidence of the Ernst & Young Witnesses

[118] The evidence of Scullion and Lundie has somewhat limited value because they both testified that they did not discuss their concerns as to the disclosure in the October 3 Release with Melnyk or the Biovail audit committee. Nor did they suggest to Biovail that any of the statements in the October 3 Release should be corrected.

[119] Moreover, Scullion and Lundie acknowledged in cross-examination that they did not review the GSK Agreement before coming to their views with respect to the October 3 Release. They acknowledged that they (i) were not aware at the time of the accurate GSK delivery term, (ii) were not lawyers or experts in interpreting shipping terms, and (iii) did not consult with legal counsel on the meaning of the GSK delivery term. At the time, they did not fully consider the implications of the words "freight collect" in the GSK delivery term or the fact that damaged product had to be returned to Biovail for inspection before it was re-shipped to GSK.

[120] It is clear, however, that Scullion and Lundie expressed concern about the Accident Contribution Statement at or before the October 6 or 7 meeting with Biovail, and, as a result, requested Biovail to review its revenue recognition practices with respect to cut-off dates. Thus, their concerns were known to Biovail, but not necessarily to Melnyk, before the October 8 Release was issued.

[121] Further, the evidence of Scullion and Lundie shows that they had a common understanding of the accounting implications of a delivery term that provided F.O.B. shipping point rather than F.O.B. destination. Scullion and Lundie both understood that the Accident Contribution Statement was inconsistent with an F.O.B. GSK shipping term because, in that case, the revenue associated with the WXL product involved in the Accident would not have been recognised in the third quarter even if the Accident had not happened. Lundie testified that this accounting treatment was consistent with Biovail's revenue recognition policies at the time.

[122] Further, it was immediately apparent to Scullion and Lundie how important the GSK delivery term was to the accuracy of the statements made by Biovail in the October 3 Release. In addition, both Scullion and Lundie were of the view that the low end of the revenue range reflected in the Revenue Loss Statement was material, as an accounting matter, for purposes of Biovail's 2003 third quarter financial statements.

D. Was the Accident Contribution Statement Misleading or Untrue?

[123] The first question we will address is whether the Accident Contribution Statement was misleading or untrue at the time it was made in the October 3 Release and thereafter, as alleged by Staff. If we conclude that it was, we will then determine whether it was misleading or untrue in a material respect.

(i) Positions of the Parties

Staff's Position

[124] Staff's allegation that the Accident Contribution Statement was misleading or untrue in a material respect rests on the meaning and effect of the GSK delivery term. We heard a significant amount of evidence and lengthy submissions on that issue.

[125] Staff alleges that the Accident did not contribute at all to the Earnings Miss because the WXL product on the truck involved in the Accident could not, in any event, have been delivered to GSK on or before September 30, 2003, the end of Biovail's third quarter. There is no dispute that the shipment could not have been delivered to GSK on or before that date. Staff says that the GSK delivery term provided for delivery to "GSK F.O.B., GSK's facilities in the U.S.A. (freight collect)". Staff says that means that title to WXL product did not pass to GSK until it was delivered to GSK at its U.S. facility. Staff submits that, as a result, no revenue from the WXL product involved in the Accident, or from the WXL product on the other two trucks that were not involved in the Accident, could have been recognised or reflected in Biovail's 2003 third quarter financial results.

[126] Accordingly, Staff submits that the Accident had no effect whatsoever on Biovail's 2003 third quarter financial results. The WXL product shipped on the three trucks on September 30, 2003 was shipped too late to be included in Biovail's third quarter financial results. That means that the Accident Contribution Statement was misleading or untrue.

Melnyk's Position

[127] Melnyk does not make any submission on exactly how the GSK delivery term should be interpreted. He submits, however, that the interpretation of the GSK delivery term is a complex matter and that Staff's interpretation ignores the words "freight collect". He says that the GSK delivery term does not clearly distinguish between transfer of title to the product shipped and transfer of the risk of loss of that product. Melnyk says that it does not make business sense for Biovail to have given control over the shipping of WXL product to GSK but for Biovail to retain the risk of loss (because title to a shipment would not pass until delivery to GSK in the U.S.). He submits that the term "freight collect" suggests that GSK bore the risk of loss of the shipment and that, as a result, title may have passed upon shipment from Steinbach.

[128] Further, Melnyk submits that the interpretation of the GSK delivery term is a matter of New York law and we have no evidence before us as to the application of that law. Accordingly, he says that, having failed to establish the appropriate meaning of the GSK delivery term, Staff's allegation with respect to the Accident Contribution Statement cannot be sustained. Melnyk submits that failure is fatal to Staff's position that the Accident Contribution Statement was misleading or untrue.

[129] Melnyk also submits that the important point made in the October 3 Release as it related to the Accident was that the revenue associated with the WXL product involved in the Accident could not be recognised in Biovail's third quarter financial results and that contributed significantly to the Earnings Miss. Melnyk says that it is not important to investors whether the WXL revenue associated with the Accident could not be recognised in the third quarter because of the Accident or because of the meaning or interpretation of the GSK delivery term. Melnyk's counsel characterized that question as simply a debate over a "sub-reason for a reason" for the Earnings Miss.

[130] In any event, Melnyk submits that Biovail acted appropriately and with due care in making prompt disclosure of the Earnings Miss, despite the difficulty in determining the impact of the Accident on 2003 third quarter financial results given the limited information available at the time of the October 3 Release.

[131] Melnyk also testified that he received "repeated assurances" from senior officers of Biovail that the information reflected in the Truck Accident Statement was "both accurate and reliable". Crombie confirmed that in his testimony. Melnyk says that he had a strategic rather than operational role at Biovail and that he "trusted others to carry out their responsibilities on a timely basis and to make the right decisions". Further, he submits that there were no "red flags" that should have alerted him that further inquiry was necessary.

(ii) Analysis

(a) Biovail's Usual Delivery Term

[132] We did not receive any expert evidence with respect to the meaning or interpretation of the GSK delivery term under New York law. Having said that, we believe that some conclusions can be made.

[133] First, Melnyk testified that Biovail's usual practice was to include in its licensing agreements a delivery term that specified delivery F.O.B. Biovail's manufacturing facility (and not F.O.B. the licensee). Melnyk testified that he assumed, until the afternoon of October 3, 2003 when he first became aware of the accurate GSK delivery term, that this usual formulation was the delivery term in the GSK Agreement. Further, Melnyk knew that the usual delivery term meant that Biovail recognised the revenue from a shipment as of the date the shipment left Biovail's manufacturing facility. That appears to be what Biovail does

under its other licensing arrangements and that was why Melnyk was tracking shipments of WXL from Steinbach on an hourly basis on September 30. Melnyk testified that he assumed that if WXL was shipped from Steinbach before midnight on September 30, that shipment would be reflected in Biovail's third quarter revenues. He testified that had he known there was any uncertainty with respect to the meaning of the GSK delivery term, he would have arranged for Biovail to deliver the last three WXL September 30 shipments by air rather than by truck, ensuring delivery by the end of the day on September 30.

[134] It appears that the delivery term in the GSK Agreement was changed, in the last or close to last draft of the GSK Agreement before it was signed, from Biovail's usual delivery term used in licensing agreements. Melnyk testified that the last-minute change to the delivery term was made without his knowledge (he signed separate signature pages in executing the GSK Agreement and testified that he did not read the executed agreement). He may also have been misled by an incorrect summary of the GSK Agreement prepared and used by Biovail for internal purposes that referred to delivery to GSK F.O.B. Biovail and not the delivery term that was actually in the GSK Agreement. We accept this evidence, which was consistent with the documentary evidence and was not contradicted.

[135] Melnyk's position on this question is consistent with an e-mail he sent to Thiessen and Chapuis on October 1, 2003, immediately following the Accident, that stated:

> We ship FOB. I believe that GSK has the insurance claim … . We still bill … .

(b) Miszuk's Immediate Response to the Accident

[136] Miszuk testified that on October 2, 2003, after learning of the Accident, he obtained details related to the last WXL shipments made to GSK on September 30 and he obtained a copy of the accurate GSK delivery term. As a result, he testified that he understood that revenues associated with the WXL product involved in the Accident could not have been recognised by Biovail in its third quarter financial results. He asked Smith to prepare the preliminary estimate of the WXL revenues associated with the Accident that is referred to in paragraph 181 of these reasons. Miszuk testified that he told Crombie on October 2 that, based on his review of the GSK Agreement, the WXL revenues associated with the WXL product involved in the Accident could not be recognised in Biovail's third quarter financial results. That is key testimony in this matter. Crombie testified that he had no recollection of the conversation. That conversation may, however, have been why Crombie prepared the disclosure in the draft news release referred to below.

(c) The Draft Release

[137] On October 2, 2003 at 3:00 p.m., Crombie sent to Melnyk by e-mail attachment a draft news release announcing the Earnings Miss that he had prepared (the "**Draft Release**"). The Draft Release stated accurately that the GSK delivery term was F.O.B. GSK and that the revenue associated with the WXL product involved in the Accident could not be recognised in Biovail's third quarter. That paragraph of the Draft Release provided as follows:

> The Biovail product [involved in the Accident] was a material amount of Buproprian [*sic*] being shipped to Biovail's licensee. This product must be returned to Biovail's manufacturing plant in Manitoba Canada to ensure it is still within specifications. Since the supply agreement between Biovail and its licensee stipulates F.O.B. the licensee's warehouse, the revenue on this product cannot be recognised in Q3, 2003. The product, either the existing shipment once approved, or replacement shipment will be shipped within ten days. However this replacement shipment and its associated revenue will now be recognised in Q4 not Q3.

[138] As a result, while Crombie denied it in his testimony, it is clear that he knew the accurate GSK delivery term and its implications for revenue recognition before the October 3 Release was issued. Melnyk testified that he did not read the Draft Release in the chaos leading up to and surrounding the disclosure of the Earnings Miss and that it was not Crombie's role to prepare such releases. It seems to us unlikely that Melnyk and Crombie would not have discussed the information in the Draft Release referred to above prior to the issue of the October 3 Release.

(d) The Thompson Opinion

[139] Mark Thompson, an in-house lawyer at Biovail ("**Thompson**"), prepared a preliminary opinion with respect to the meaning of the GSK delivery term. He sent that opinion to Crombie by e-mail at 11:20 a.m. on October 8, 2003. Crombie would have received the e-mail before the issue of the October 8 Release but there is no evidence that he actually saw or read it at that time. Thompson concluded that the risk of loss and title to a WXL shipment did not pass until it was delivered to GSK at its facility in the United States. "Freight collect" meant that GSK named the carrier and paid for shipment. Thompson applied the United States Uniform Commercial Code to come to these conclusions. Melnyk submitted to us that there was no reason or justification for Thompson to have done so. Thompson was admittedly not a lawyer qualified to practise New York law and he had no experience in interpreting delivery terms. In any event, we recognise that Thompson's analysis does not resolve the

meaning or proper interpretation of the GSK delivery term. Melnyk was not copied on the original e-mail from Thompson to Crombie, but he acknowledged that he was subsequently informed of the substance of it.

(e) Interpretation of the GSK Delivery Term

[140] Counsel for Melnyk referred to a number of U.S. legal decisions that interpreted delivery terms, including the words "freight collect". While the legal analysis appears to be relatively complex, the ultimate conclusion appears to be that the interpretation of a particular delivery term turns primarily on the intention of the parties to the relevant agreement discerned from all of the circumstances. It was stated, for instance, in *C.I.F. AND F.O.B. Contracts*, Third Edition, David M. Sassoon and H. Orren Merren, London, Stevens & Sons, 1984 at p. 328:

> The foregoing description, though brief, should suffice to indicate that any rigid and inflexible interpretation of the f.o.b. term which failed to take account of the various factors surrounding a particular transaction would be doing violence to reality.

[141] In his testimony, Deeth stated that the term "freight collect" in the GSK delivery term was inserted in the agreement because, regardless of the F.O.B. term, GSK wanted control over any WXL shipment from the moment it left Biovail's manufacturing facility. GSK therefore wanted to arrange and pay for the shipping. GSK apparently had an unfortunate experience with a different manufacturer in which product was damaged while in transit.

[142] As noted above, Melnyk submits that it would not make business sense for Biovail to have agreed to give up control over shipping WXL product to GSK while retaining title and the risk of loss to that product until it was delivered.

[143] We do not agree with that submission. In the circumstances, Biovail had an interest in doing precisely that.

[144] The GSK delivery term provided for delivery F.O.B. GSK, meaning that title to the WXL product passed to GSK upon delivery to GSK at its U.S. facility. GSK wanted control over the shipping. The GSK delivery term therefore provided for delivery "freight collect", meaning delivery was at GSK's cost and under its control. We note that with respect to the risk of loss, Biovail stated in the October 3 Release that "[t]he manufacturing cost value of this shipment was fully insured". Accordingly, there seems to us to have been a business rationale for the formulation of the GSK delivery term and it is possible to give it a reasonable interpretation in the circumstances. It does not appear to us that the term "freight collect" affects the question of when title to the WXL product passes to GSK.

[145] The conclusion in paragraph 144 of these reasons is consistent with the position taken by GSK in the Hull Letter (see paragraph 97 of these reasons). The Hull Letter stated that "as interpreted under the laws of the State of New York", the GSK Agreement "provides that title to and risk of loss with respect to the product would not have passed to GSK until the product was delivered to GSK's facility in the U.S.A." That conclusion is also consistent with the Thompson opinion (see paragraph 139 of these reasons).

(f) Biovail's Revenue Recognition Policy

[146] The meaning of the GSK delivery term affects revenue recognition for purposes of Biovail's financial results.

[147] Scullion testified that revenue is recognised for accounting purposes when the risks and rewards of ownership to a product are transferred. Lundie testified that, in his view, if the GSK delivery term had been F.O.B. Biovail, then the revenue associated with the WXL product shipped on September 30 would have been recognised in Biovail's third quarter financial results irrespective of the Accident. Scullion testified that if the GSK delivery term was F.O.B. GSK, then no revenue related to that shipment could have been included in Biovail's revenues for the third quarter.

[148] On November 7, 2003, Dushi Srinathan, an internal auditor at Biovail, sent a memorandum to Miszuk and a number of Biovail employees involved in internal control, entitled "Q4 – 2003 Sales Cut-Off Procedures". That memorandum stated that:

> Biovail Corporation's policy for recognizing revenue on product sales is as follows:
>
> Product sales revenue is recognised when the product is shipped to the customer, provided that the Company has not retained any significant risks of ownership or future obligations with respect to the product shipped.
>
> …

[149] That policy was referred to as being a significant accounting policy in Biovail's 2002 Annual Report. The memorandum went on to address the meaning and accounting implications of the term "F.O.B.". The memorandum stated that:

> When the terms of our sale agreement with a customer state that the shipping terms are "F.O.B. – Biovail's Warehouse", title for the products will pass to the customer the moment the shipment leaves Biovail's Warehouse. Consequently, revenue on the sale would be recognised at this point …
>
> When the terms of our sale agreement with a customer state that the shipping terms are "F.O.B. – Destination", title for the products will pass to the customer the moment the shipment arrives at the Destination. Under these terms, Biovail should only recognise the revenue when the customer receives the product …

[150] While the memorandum referred to above is dated November 7, 2003 and was prepared after the events of September and October, 2003, it appears to reflect Biovail's revenue recognition policy during that period, as indicated by the disclosure of that policy in Biovail's 2002 Annual Report. Melnyk's assumption that any WXL shipment on September 30, 2003 would be recognised in Biovail's third quarter financial results was also consistent with that policy (because he assumed at the time that the GSK delivery term was F.O.B. Biovail).

(g) Deeth's Testimony

[151] Counsel for Melnyk submitted that Staff's case as to the meaning and interpretation of the GSK delivery term utterly failed as a result of Deeth's testimony. We have reviewed that testimony with care and we do not agree. Deeth acknowledged that he was not an expert on the interpretation or meaning of delivery terms and his testimony related primarily to the circumstances in which the GSK delivery term was negotiated and the positions taken by the parties at the time.

[152] Deeth had a clear understanding that the words "freight collect" meant only that GSK was to pay for delivery of the WXL product. Deeth must have thought he understood the meaning of the GSK delivery term because it was included in the agreement he negotiated. We give little weight to his acknowledgement in cross-examination that he still does not know what the GSK delivery term means in terms of transfer of title to a WXL shipment.

[153] On October 2, 2003 at 10:38 a.m., Deeth sent an e-mail to Chapuis related to the Accident. Deeth's e-mail stated:

> The agreement, and the PO [purchase order], say FOB GSK facilities, freight collect. We should still bill.

[154] Accordingly, it is clear that Deeth and Chapuis knew the accurate GSK delivery term on the morning of October 2, 2003. We do not take the words "[w]e should still bill" as an opinion by Deeth with respect to the meaning of the GSK delivery term or whether revenue associated with the WXL product involved in the Accident could be recognised by Biovail in its third quarter financial results. That was simply practical advice in the circumstances, intended to keep Biovail's options open, and it was consistent with Melnyk's own initial reaction (see paragraph 135 of these reasons).

(h) Amendment of the GSK Delivery Term

[155] Following the Accident, there was a relatively long negotiation between Biovail and GSK with respect to what the provisions of a new delivery term should be for purposes of the GSK Agreement. Ultimately, Biovail and GSK agreed to a new delivery term that clearly distinguished between transfer of title to WXL product and the risk of loss. In our view, that agreement does not affect the meaning or interpretation of the GSK delivery term at the time of the Accident.

(i) Miszuk's View of the Circumstances by the End of October

[156] Miszuk testified that by October 16, 2003, it was clear that revenue associated with the three WXL shipments on September 30 could never have been recognised in Biovail's third quarter. Miszuk's view was based in part on Thompson's opinion as to the meaning and interpretation of the GSK delivery term.

[157] In this respect, Miszuk sent an e-mail to Melnyk and Crombie on October 16, 2003 with the subject heading "Q3 Financials", which stated in part:

> With respect to the Q3 financials … I am developing position papers for the following:
>
> GSK – pursuant to the agreement that Biovail is required to ship product FOB-GSK, we have determined that for revenue recognition purposes that shipments to GSK will be cut-off 2 days prior to the end of the month-end (as delivery time is approx 36 to 40 hours). For Q2 [sic] this means that we will adjust the last 3 shipments completed in September (which includes the truck accident) … Total adjustment $7m in revenue.

[158] Crombie testified that Miszuk's e-mail stated a "preliminary" conclusion and, in his view, the matter had not been "finalized". He acknowledged that "[w]e continued to debate [the conclusion] for another week or ten days, but it did not change."

[159] When cross-examined about Miszuk's October 16, 2003 e-mail, Melnyk did not accept Miszuk's view, but acknowledged that he did not recall questioning it:

> Q. You got it on October 16th. This is a live issue and your controller is saying adjustment is $7 million and the reason is because the term FOB GSK we can't recognize revenue for the last two days?
>
> A. That was – I don't recall this and – looking at our road show schedule I may have been on the road show. I don't know where this came from.
>
> Q. It's coming from Mr. Miszuk.
>
> A. I know it's coming from Mr. Miszuk. There's no reconciliation or anything to look at before so I question where this came from. We're still working with the $10 to $20 million and if he's saying its $7 million for the last three shipments that's what we would have gone out and said. There was nothing to hide here. The number is what it is. Just get it right.
>
> Q. Mr. Miszuk is giving you that information?
>
> A. He's sending it to Mr. Crombie and I don't know if Mr. Crombie verified it at that point or not. I have no idea what the significance was of that number.
>
> Q. You have no reason to question that information coming from the controller?
>
> A. Until it's vetted by Mr. Crombie, I would, yes.
>
> Q. You never questioned it?
>
> A. I don't know if I did. I don't recall that.

[160] Accordingly, it appears clear that Biovail and Melnyk had sufficient information as of October 30, 2003 to reasonably determine the amount of, and the proper accounting treatment for, the WXL revenue associated with the Accident.

(iii) Conclusions

[161] We heard no compelling evidence that Biovail or Melnyk had any legitimate reason to believe that the WXL revenue associated with the WXL product involved in the Accident could have been recognised in Biovail's third quarter financial results given the GSK delivery term as it read at the relevant time. Melnyk did not submit any expert evidence that, under New York law, the GSK delivery term meant that title to WXL product passed to GSK when it left Biovail's manufacturing facility. The weight of the evidence was to the contrary (including the testimony of Miszuk, Hull, Scullion and Lundie, the conclusions reached by Thompson in his opinion and the terms of Biovail's revenue recognition policy at the time). We do not accept that the words "freight collect" in the GSK delivery term affected when title to WXL product passed to GSK or the appropriate revenue recognition from an accounting perspective.

[162] In all of the circumstances, we believe that both parties to the GSK Agreement intended, by including an F.O.B. destination delivery term in the GSK Agreement, that title to WXL product would not pass to GSK until it was delivered to GSK's facility in the United States. That is what Miszuk understood on October 2, 2003 and what Crombie must have understood when he prepared the Draft Release on that basis. We believe that Melnyk and the other senior officers of Biovail, once they became aware that the GSK delivery term was F.O.B. GSK, understood that title to the WXL product shipped on September 30 had not passed to GSK at the time of the Accident and therefore that revenues associated with that product could not have been reflected in Biovail's third quarter financial results.

[163] As noted in paragraph 156, Miszuk acknowledged in his testimony that, in any event, by October 16, 2003 it was clear that Biovail could not have recognised any revenue associated with the WXL product involved in the Accident in its third quarter financial results.

[164] Given the meaning and reasonable interpretation of the GSK delivery term and the time the three trucks carrying the WXL shipments left Biovail's manufacturing facility on September 30, 2003, we find that the Accident did not and could not have had any effect on Biovail's 2003 third quarter revenues or earnings. Accordingly, the Accident Contribution Statement made by Biovail was misleading or untrue at the time and in the light of the circumstances under which that statement was made in the

October 3 Release and at any time thereafter. Biovail knew or should have known that was the case. We address later in these reasons whether the Accident Contribution Statement was misleading or untrue in a material respect.

E. Was the Revenue Loss Statement Misleading or Untrue?

[165] We will now address whether the Revenue Loss Statement was misleading or untrue at the time it was made in the October 3 Release and thereafter, as alleged by Staff. If we conclude that it was, we will then determine whether it was misleading or untrue in a material respect.

(i) Positions of the Parties

Staff's Position

[166] Staff alleges that the Revenue Loss Statement was misleading or untrue in a material respect because the $10 to $20 million revenue range reflected in that statement was grossly inflated and did not represent a reasonable estimate of the revenues associated with the WXL product involved in the Accident. Staff says that Biovail and Melnyk knew or should have known that at the time of the October 3 Release and at any time thereafter.

Melnyk's Position

[167] Melnyk submits that at the time the October 3 Release was issued it was not possible to determine accurately the revenue loss associated with the WXL product involved in the Accident because that revenue was based on GSK "net sales" (as defined in the GSK Agreement) and those sales could not be determined until a subsequent reconciliation was provided by GSK. That reconciliation was not required to be delivered by GSK until after the end of the third quarter (in accordance with the terms of the GSK Agreement). Melnyk also says that there was uncertainty on October 3, 2003 as to whether all three trucks that left Steinbach late on September 30 were involved in the Accident and therefore uncertainty as to the associated revenue loss as a result of the Accident.

[168] Further, Melnyk submits that he is not an accountant and he relied properly and in good faith on Crombie and other members of senior management who had appropriate expertise for financial and accounting matters. He says that he did not focus on and was not aware of the revenue numbers related to WXL included in Biovail's internal financial reports and forecasts at the time. He also says that there was a crisis and chaos on October 2 and 3 surrounding the issue of the October 3 Release, which announced Biovail's first ever earnings miss.

[169] Finally, Melnyk says he acted reasonably and with due care and diligence in approving the October 3 Release and the Revenue Loss Statement made in that release.

(ii) Analysis

(a) Bulk Trade Shipment

[170] In considering whether the Revenue Loss Statement made in the October 3 Release was misleading or untrue, we will review the relevant circumstances at that time.

[171] Because FDA approval of WXL was not granted until late August 2003, the commercial product launch of WXL did not occur until early September 2003. As September progressed, management of Biovail was aware that there was an increasing risk that Biovail would not meet its revenue and earnings guidance for its third quarter. Biovail was having production problems in manufacturing and packaging the amount of WXL product it wanted to ship to GSK in the third quarter and there were also issues relating to sales of other products (see the October 3 Release).

[172] It is clear that Biovail was desperately attempting to ship as much WXL product as possible by the end of the day on September 30, 2003 so that the revenue associated with those shipments could be included in Biovail's third quarter financial results. Melnyk wanted to ensure that Biovail shipped "trade" rather than "sample" WXL tablets because the latter had a very low revenue value to Biovail (close to Biovail's manufacturing cost) compared to "trade" tablets. As of September 30, sample WXL tablets were invoiced to GSK at a set price of approximately 19% or 23% of the price of the trade tablets, depending on the size of the tablet. In an e-mail on August 20, 2003 to Chapuis, copied to Crombie and Miszuk, Melnyk responded to a proposed increased WXL sample order from GSK for September 2003:

> Under no circumstances. We need TRADE in September NOT SAMPLES. ARE THEY TRYING TO KILL US? WE LOSE MONEY ON SAMPLES!!! WE WANT TO SHIP MORE TRADE!

[173] On September 22, 2003, Chapuis sent an e-mail to Smith, copied to Miszuk and Crombie, that stated in part that:

> Eugene has asked that GSK accept bulk printed trade for them to inspect, then return to Steinbach for packaging as we can NOT package all product printed before quarter end …

[174] On September 23, 2003, Miszuk sent an e-mail on this topic to Melnyk and Crombie saying:

> I am having difficulty with the strategy to ship bulk product to GSK for inspection and then returned [*sic*] to Biovail for testing, QA release and packaging … How can we bill this at the rate of 22% of NS [net sales] (less [an amount] for packaging) …
>
> This is product deemed work in process inventory and I cannot see the rationale to even transfer ownership of the product to GSK … considering the product is being returned to Biovail … GSK is only completing a sub routine of mfg … In no way is this deemed qualified product in support of the agreement or even fall into a category that I can support within Revenue Recognition Regulations.

[175] In a subsequent e-mail exchange with Melnyk and Crombie, Miszuk stated:

> We are sacrificing integrity to come with numbers that at the end of the day will not achieve expectations … and if we do, we need a bigger event for Q4 … can we not just accept reality and develop the right story line, realign expectations and announce the restructure … Bring the market down and over achieve going forward. A small setback but one we can overcome as We have a great company and the future is unbelievable …
>
> Eugene … I have been with you for a long time, supported you 100% … and will do anything for you and the company … but I am concerned with the determination to achieve the market expectations no matter what.

[176] Ultimately, Biovail did not proceed with the proposal to ship WXL bulk trade tablets to GSK for return and packaging by Biovail. A strategy that Biovail did adopt to increase third quarter revenue was to convince GSK to accept WXL "trade" tablets shipped in bulk in drums rather than packaged and ready for sale by GSK. The trade tablets shipped in bulk were to be packaged by GSK.

[177] On September 25, 2003, agreement was reached between Biovail and GSK with respect to the shipment by Biovail of trade tablets in bulk. The agreement was confirmed in an e-mail from Stuart G. J. Norman to Chapuis, the relevant portion of which is as follows:

> Carol – to confirm our discussion today about this key issue:
>
> GSK would be able to pack trade bottles at our Zebulon [North Carolina] factory once change parts had been fitted. This is estimated to take about two months and would cost $160,000. GSK would be willing to absorb these costs. An initial packing run should be about 250,000 bottles. We would need to reach agreement on the cost of this operation and ongoing use of the GSK packing line to recoup some of the investment. Please let me know as soon as possible whether you agree in principle to this proposal so that we can proceed with the purchase of change parts.
>
> . . .
>
> Stuart G. J. Norman
> NPS Director - Neurology & Psychiatry
> Ware, UK

Chapuis forwarded this e-mail to Thiessen, copied to Crombie, Miszuk and Smith, on September 30, 2003.

[178] As a result, the WXL product on the truck involved in the Accident consisted primarily of WXL bulk trade tablets shipped in drums to be packaged at GSK's facility in North Carolina.

[179] On September 30, 2003, Melnyk was tracking by telephone on an hourly basis, directly with employees at Steinbach, shipments of WXL from Steinbach to GSK. He was doing that because he assumed that the GSK delivery term provided for delivery F.O.B. Biovail. As a result, Melnyk believed at the time that revenue from all WXL shipments leaving Biovail's manufacturing facility on September 30 would be recognised as revenue in Biovail's third quarter financial results.

[180] We do not accept Melnyk's testimony that he was not aware of the revenue value of the WXL shipped from Steinbach on September 30, 2003. To the contrary, we believe that he was focused on that very question.

(b) Biovail Estimates After the Accident

[181] On October 2, 2003, at Miszuk's request, Smith prepared a preliminary calculation of the revenue associated with the WXL product on the truck involved in the Accident, and concluded that the revenue value was approximately $4.9 million. He concluded that the revenue associated with the WXL product on all three trucks that left Steinbach late on September 30, 2003 was approximately $7.7 million. It is telling to us that this preliminary estimate, prepared immediately after the Accident and before the October 3 Release was issued, came so close to the final numbers determined by Biovail. Ultimately, the March 04 Release disclosed that the Biovail third quarter revenue loss associated with the Accident was $5.0 million (see paragraph 270 of these reasons for a discussion of the $5.0 million revenue loss number).

[182] Biovail also knew by October 3, 2003 that its third quarter WXL revenue for all of September was estimated to be below $10 million. That information was disclosed on the Analysts Call but not in the October 3 Release. The revenue range reflected in the Revenue Loss Statement meant that the sales value to GSK of the WXL on the truck involved in the Accident was in the range of approximately $45 to $90 million. Davis testified that the revenue range disclosed in the October 3 Release represented the equivalent of about $100 million of GSK sales. He said that "we barely sold over $100 million in the entire third and fourth quarters" (see paragraph 94 of these reasons).

(c) Market Response

[183] The response by analysts and investors to the $10 to $20 million revenue range contained in the October 3 Release was immediate skepticism, particularly as to how wide the range was. For example, on October 5, 2003, Howling received an e-mail from an investor asking a number of questions and stating "[T]here is $10 MM difference in between. Do you people think the this [*sic*] statement wouldn't not [*sic*] be questioned?" A reporter for Business Week also e-mailed Howling on October 5, 2003, " … Why don't you have a precise value to the shipment? What is the exact hit to your revenues for Q3? … Why was the company carrying up to $20 million of tablets in one truck?" On October 6, 2003, Howling e-mailed Melnyk and Crombie requesting that Biovail put out a release indicating the exact revenue associated with the WXL product involved in the Accident. He indicated that investors were saying "that this will go a long way to restoring credibility …". A reporter for the Wall Street Journal sent an e-mail to Howling on October 8 (which was forwarded to Melnyk) indicating that "[s]ome analysts and investors consider it odd that Biovail would ship $60 million in retail value worth of product on the last day of the quarter".

(d) The Maris Report

[184] The Maris Report was issued on October 8, 2003. Melnyk attacked the Maris Report on the basis that it was an "extraordinary and utterly irresponsible report that was scathing in its criticism" and led directly to market rumours that the truck involved in the Accident was in fact empty. Melnyk says that, as a result of the Maris Report, the market price of Biovail's shares fell approximately $4.00 per share or approximately 13.9% (see paragraph 229 of these reasons).

[185] The Maris Report did raise concerns based on the publicly available facts. The report stated with respect to the Accident that, "[f]ollowing our own review, we believe that this bears further investigation as there are serious unanswered questions regarding Biovail's statements".

[186] With respect to the question whether the truck involved in the Accident was empty, the Maris Report made the following statement:

> After studying the photographs and video of the scene available on the website, we believe that the Penner truck looks empty where the back of the vehicle is ripped open. From the angle, we estimate that one could see perhaps approximately 1/3 to 1/2 of the interior truck cargo bay. No material is visible.

[187] The Maris Report went on to state that:

> [w]e asked Biovail that the range of $15 to $20 million impact seemed like a large range, and they indicated that they simply did not have all the details of the accident. They emphasized that they were being conservative in their estimate … $20 million worth of tablets at average pricing would be a large volume of product and we wonder if this would be visible in the photos of the accident. While we are not in a position to know this for certain, we believe Biovail making the Bills of Lading available easily resolves this. While admittedly an unusual request, we are curious to see whether this was a $20 million shipment.

[188] Howling sent an e-mail to Melnyk and Crombie prior to the issue of the October 8 Release. It stated that:

> [w]e should consider either advising how many tablets were on the truck or have a statement issued by Pennier [*sic*] confirming that the truck was not empty as the biggest "short end" story out there is that the truck was empty and given our credibility (comment from Angela from Investors), *no one is believing us when we say it was not empty*. [emphasis added]

[189] It appears to us that the Maris Report was raising legitimate questions as a result of skepticism related to the WXL revenue range reflected in the Revenue Loss Statement and the other circumstances surrounding the Accident. We also note that the Maris Report used the $15 to $20 million WXL revenue range stated by Crombie on the Analysts Call.

[190] In any event, as a result of the Maris Report and the market rumours, Biovail issued the October 8 Release.

(e) Determining WXL Revenue

[191] Biovail attempted to justify in the March 04 Release why it was not able to determine accurately the WXL revenue loss associated with the Accident at the time of the October 3 Release and thereafter. Melnyk made similar submissions to us. Those rationalizations, explanations and submissions are not convincing.

[192] In our view, determining the 2003 third quarter revenue to Biovail associated with the WXL product involved in the Accident was not as complicated as Melnyk makes out. WXL tablets were invoiced by Biovail to GSK at a price that varied based on the size of the tablet and whether the tablets were "trade" tablets or "samples" (see paragraph 172 of these reasons). The pre-determined invoice price for trade tablets was based on GSK's estimated "net sales" of such tablets. Under the GSK Agreement, in determining net sales, a number of amounts were to be deducted from GSK's gross sales, including amounts for discounts, allowances and rebates granted by GSK to its customers. In establishing the pre-determined invoice price for WXL trade tablets, a percentage discount rate for such deductions was assumed.

[193] It was clear on October 3, 2003 that GSK's net sales of WXL for the third quarter would not exceed $110 million, the threshold for moving to Tier Two pricing under the GSK Agreement. Biovail knew that its total sales of WXL to GSK for the third quarter were estimated to be below $10 million, making it impossible for GSK to have net sales in the third quarter of more than $110 million. (The same conclusion applies using year to date sales of WXL.) Accordingly, the total revenue to Biovail from the sale of WXL to GSK for the third quarter was never going to be more than 22% of GSK net sales. While revenue to Biovail could be affected by deductions that GSK was permitted in determining net sales, in our view, there was never any reasonable possibility that the revenue to Biovail from the WXL product involved in the Accident was going to range from $10 to $20 million.

[194] The WXL product shipped on September 30 could not, as a practical matter, have been sold by GSK in the third quarter because that product was not received by GSK until after the end of that quarter. Further, the WXL product shipped in bulk on September 30 was required to be packaged by GSK before it could be sold. As a result, any reconciliation of net sales provided by GSK to Biovail related to Biovail's 2003 third quarter would not reflect the subsequent sale by GSK of that product in the fourth quarter.

[195] While admittedly it was a preliminary estimate, Smith concluded on October 2, 2003 that revenue associated with the WXL product on the truck involved in the Accident was approximately $4.9 million. That number is very close to the $5.0 million revenue loss ultimately attributed by Biovail to the Accident in the March 04 Release. Even if one includes the revenue associated with the WXL product shipped on all three trucks on September 30 (which we conclude below is not appropriate), Smith's estimate of the total revenue loss was approximately $7.7 million (see paragraphs 318 to 320 of these reasons for a discussion of whether the WXL product on all three trucks should ever have been included in the WXL revenue loss number).

[196] It is striking how accurate Biovail's revised overall guidance for 2003 revenues and earnings announced in the October 3 Release turned out to be. In our view, it was much more difficult to determine that overall guidance than to determine the revenue value of the WXL product involved in the Accident. It seems improbable to us that Biovail would get the Revenue Loss Statement so wrong when it got all of the other more complex numbers right.

(f) Analysts' Estimates and Variables

[197] The March 04 Release indicated that "[i]n calculating the high end of the estimate range, Biovail also took into consideration the variables that analysts were generally using in their models to estimate the Wellbutrin XL revenues, which included typically higher pricing, higher percentage supply prices and did not reflect the typical gross to net deductions". Neither the October 3 Release nor the October 8 Release disclosed that analysts' estimates and variables were a consideration in determining the $10 to $20 million revenue range. Investors were led to believe by those news releases that the Revenue Loss Statement represented the actual revenue loss to Biovail associated with the Accident for its 2003 third quarter. If the revenue range reflected in the Revenue Loss Statement was based even in part on analysts' estimates and variables, that should have

been clearly disclosed in the October 3 Release and the October 8 Release. It was not. That failure to disclose rendered the Revenue Loss Statement in those releases misleading or untrue for that reason alone.

(iii) Conclusions

[198] At the end of the day, we believe that Biovail seized on the Accident as a ready excuse or justification for a portion of the Earnings Miss and, in proffering that excuse, grossly inflated the WXL revenue loss associated with the Accident.

[199] Based on all of these considerations, we have concluded that the WXL revenue loss associated by Biovail with the Accident was grossly inflated and that was or should have been obvious to Biovail at the time of the October 3 Release. There was no reasonable possibility that the 2003 third quarter WXL revenue loss associated with the Accident was ever going to exceed approximately $5.0 million and that amount could be reasonably estimated at the time of the October 3 Release (as it was estimated by Smith). Accordingly, we find that the Revenue Loss Statement was misleading or untrue at the time and in the light of the circumstances under which it was made in the October 3 Release and at any time thereafter. Biovail knew or should have known that was the case. We address below whether the Revenue Loss Statement was misleading or untrue in a material respect.

F. Were Biovail Statements Misleading or Untrue in a Material Respect?

[200] We concluded above that the Accident Contribution Statement made by Biovail in the October 3 Release and at any time thereafter, and the Revenue Loss Statement made by Biovail in the October 3 Release and at any time thereafter, were misleading or untrue at each time those statements were made. As a result, the Truck Accident Statement was also misleading or untrue. We must now consider whether the Truck Accident Statement, the Accident Contribution Statement and/or the Revenue Loss Statement were misleading or untrue in a material respect. In reaching our conclusions with respect to the materiality of those statements, we have taken into account the following evidence and considerations.

(i) Expert Evidence

[201] We received an expert report prepared at Staff's request by Dr. Craig McCann ("**McCann**"), and two expert reports prepared at Melnyk's request, one report by Dr. Ronald Miller ("**Miller**") and one report by Dr. Charlotte Chamberlain ("**Chamberlain**"). McCann, Miller and Chamberlain are economists, and all were qualified by us as expert witnesses. They took different approaches to determining materiality. McCann concluded that the Truck Accident Statement made in the October 3 Release was important to investors and therefore material. Miller and Chamberlain concluded that it was not.

(a) McCann's Evidence

[202] McCann conducted an event study to assess the significance of the statements made in the October 3 Release and on the Analysts Call. He concluded that the October 3 Release reduced the market's consensus estimate of the value of Biovail's shares by a statistically significant amount, and that, to the extent the market believed the Accident explained $10 to $20 million, or $15 to $20 million, of the revenue variance reflected by the Earnings Miss, the Truck Accident Statement was material to investors. It was also McCann's opinion, based on his review of analyst reports following the October 3 Release, that analysts and investors believed the explanation proffered by Biovail in the October 3 Release through the making of the Truck Accident Statement. Accordingly, analysts and investors would have adjusted Biovail's revenue for the 2003 third quarter upwards by approximately $15 million.

[203] McCann noted that Biovail's share price dropped approximately $4.00 per share or 13.9%, a statistically significant amount, following the release of the Maris Report and the issue of the October 8 Release, which was intended by Biovail to address issues raised by the Maris Report and market rumours (see paragraph 229 of these reasons.) In McCann's opinion, this demonstrated that the Truck Accident Statement, which attributed the WXL revenue variance to a one-time event, was important to investors. However, McCann did not consider that the October 8 Release contained any meaningful new information for investors.

[204] Melnyk submitted that we should not accept McCann's evidence because, among other things, he did not carry out a separate event study with respect to each of the two alleged misstatements (the Accident Contribution Statement and the Revenue Loss Statement), and did not isolate those statements from the unquestionably correct statements made in the October 3 Release, in particular, the statements disclosing the Earnings Miss. Melnyk submitted that McCann, in his testimony, placed too much reliance on the Maris Report, which was not referred to at all in his report, and that he failed to provide any empirical support for his opinions. Melnyk also submitted that McCann did not testify impartially but rather as an advocate for Staff. That would be inconsistent with McCann's role as an expert.

(b) The Evidence of Miller and Chamberlain

[205] Miller compared the estimated economic impact of the Truck Accident Statement with the estimated economic impact of several alternative correct statements that could have been made. He also considered the market response to the Releases. In his opinion, there was no economic significance to Biovail attributing its 2003 third quarter revenue shortfall to the Accident rather than to the GSK delivery term or to a two-day delay in shipping. It was also Miller's opinion that any alleged overstatement of the revenue associated with the WXL product involved in the Accident would have had an economic impact that was small relative to the daily fluctuations in Biovail's share price.

[206] Miller also stated that Biovail's share price did not react to further news related to the Accident after October 3, 2003, which, in Miller's view, was consistent with statements made about the Accident being generally immaterial to investors. In Miller's opinion, the market reacted as if Biovail's reduction in earnings guidance on October 3, 2003 was a recurring event, which supports the view that the misstatements alleged by Staff were not material to investors.

[207] Chamberlain testified that the important information disclosed in the October 3 Release and on the Analysts Call was that Biovail's 2003 third quarter revenues would significantly miss its revenue and earnings guidance and analysts' consensus estimates by specified amounts. This resulted in a substantial downward revision in analysts' estimates for WXL revenues and total revenues for 2003, bringing them closer to the actual WXL revenues and total revenues disclosed in Biovail's March 04 Release. In Chamberlain's opinion, this shows that the Truck Accident Statement did not mask any ongoing revenue issues for analysts or investors.

[208] According to Chamberlain, the difference between postponed revenue recognition caused by a truck accident and postponed revenue recognition due to a misunderstanding as to the legal interpretation or effect of the GSK delivery term was not material to investors because neither was a recurring event.

[209] Chamberlain expressed the view that the estimated impact of the Accident on Biovail's third quarter revenues of $15 to $20 million equalled roughly 1% to 2% of Biovail's 2003 total annual revenue guidance, and was therefore not material. She testified that the rule of thumb threshold for materiality is generally viewed to be approximately 5% of revenues. Chamberlain also noted that even if Biovail had recorded $20 million in WXL revenues for the third quarter (i.e., the high end of the range), revenues for the third quarter would still not have met Biovail's third quarter revenue and earnings guidance.

[210] Staff submitted that we should not accept the evidence of Melnyk's experts because, among other things, Miller compared the low end of the revenue range reflected in the Revenue Loss Statement to the revenue associated with the shipments on all three trucks that left Steinbach late on September 30 (approximately $7.7 million), rather than to the revenue associated with the WXL on the one truck involved in the Accident (approximately $4.9 million). Miller and Chamberlain also compared Biovail's disclosure in the Releases to theoretically correct disclosure, and considered the impact of the Accident on Biovail's annual, rather than quarterly, revenues and earnings. Staff submitted that Miller and Chamberlain were not impartial experts but advocates for Melnyk. That would be inconsistent with their roles as experts.

(c) Conclusions as to the Expert Evidence

[211] The experts' evidence was helpful in identifying issues and factors that we should consider in assessing the materiality of the Truck Accident Statement, the Accident Contribution Statement and the Revenue Loss Statement. However, at the end of the day, the experts did not, in our view, resolve the basic question whether those statements were material to investors at the various times they were made. One of the difficulties is that the Truck Accident Statement was initially made in the October 3 Release which also announced the Earnings Miss. The Earnings Miss constituted clearly material information and the public announcement of it had an immediate and significant negative effect on Biovail's share price (see paragraph 216 of these reasons). Similarly, it is not possible to assess the market impact, if any, of the statements made in the October 8 Release given the issue of the Maris Report and the rumours in the market at that time.

[212] However, the reasonable investor standard does not impose a market impact test such as that reflected in the definitions of "material change" and "material fact" (see paragraphs 70, 72 and 73 of these reasons). The question in applying the reasonable investor standard is whether there is a substantial likelihood that a reasonable investor would consider a particular statement to be important in making an investment decision. The impact of the statement on share price is clearly relevant to that assessment but a market impact is not necessary in order for us to conclude that a statement is material.

[213] Ultimately, materiality is a question of mixed fact and law that falls squarely within the specialized expertise of the Commission. It is for us to determine whether the statements made by Biovail were, in a material respect and at the time and in the light of the circumstances under which they were made, misleading or untrue.

[214] Given our conclusions with respect to reliance on the experts' testimony and reports, we do not consider it necessary to address the allegations made as to the experts' lack of impartiality.

(ii) Factors Considered in Determining Materiality

[215] In addition to the expert reports described above, the following are the factors we considered in addressing the materiality of the Truck Accident Statement, the Accident Contribution Statement and the Revenue Loss Statement.

(a) The Earnings Miss

[216] The disclosure in the October 3 Release that was clearly material (regardless of whichever materiality test is applied) was the fact that Biovail had substantially missed its third quarter 2003 revenue and earnings guidance. That was a fact that, when disclosed, substantially and adversely affected Biovail's share price, which fell from approximately $37.77 per share on October 2, 2003 (the trading day prior to the public announcement of the Earnings Miss in the October 3 Release) to approximately $31.10 per share on October 3, 2003 (immediately following the public announcement of the Earnings Miss). That is a drop in share price of approximately 17.7%. There is no dispute as to the materiality of the fact that Biovail would miss its 2003 third quarter revenue and earnings guidance.

[217] Melnyk and the other senior officers of Biovail knew that the information related to the Earnings Miss disclosed in the October 3 Release would have a substantial negative impact on Biovail's share price. That is one of the reasons they wanted to publicly release that information as soon as possible. Doing so was clearly appropriate so that all investors had access to that information in making investment decisions with respect to Biovail's shares.

[218] It is not possible to isolate the impact of the Truck Accident Statement in the October 3 Release on the market price of Biovail's shares because that statement is contained in the news release that announced the Earnings Miss. While McCann, Staff's expert, conducted an event study of the effect of the October 3 Release on Biovail's share price, that study could not overcome this basic problem.

(b) One-Time Event

[219] The implication of the Truck Accident Statement to analysts and investors was that the revenue loss Biovail associated with the Accident was a one-time event out of the control of management, and not a recurring event that would affect future financial reporting periods. It suggested that to "normalise" 2003 third quarter revenues as a result of that event, one would add back to Biovail's revenues for the third quarter an amount of between $10 and $20 million.

[220] That conclusion is also consistent with the testimony we heard that the $10 to $20 million revenue range, or at least the high end of that range, was determined by Biovail based in part on analysts' estimates and variables (as Crombie stated on the Analysts Call). Crombie testified that analysts appropriately adjusted their financial models for future financial reporting periods based on the revenue range reflected in the Revenue Loss Statement. The fact that Biovail used analysts' estimates and variables in determining the revenue range was disclosed on the Analysts Call and in the March 04 Release. Neither the October 3 Release nor the October 8 Release disclosed that analysts' estimates and variables were used in determining the Revenue Loss Statement. In our view, the failure to do so rendered the Truck Accident Statement made in those releases misleading or untrue.

[221] Staff suggested that the WXL revenue variance in the third quarter was the result of manufacturing problems and ineffective management, both factors that could have a recurring effect on Biovail's future financial performance. It appears to us that the circumstances surrounding the Accident and the failure to ship more WXL product in the 2003 third quarter were likely one-time events that would not have a recurring effect on Biovail's financial performance in future periods. Accordingly, we have assessed the materiality of the statements made by Biovail based on the assumption that the third quarter variance in WXL revenues reflected in the Revenue Loss Statement was a one-time event. That gives the benefit of any doubt to Biovail and Melnyk. That is not to say, however, that the fact that the WXL revenue variance was a one-time event was not meaningful or relevant information to investors.[2]

(c) Contributing Reasons for the Earnings Miss

[222] The Accident was one of three reasons given by Biovail in the October 3 Release for the Earnings Miss. The two other reasons were a net income shortfall associated with sales of generic omeprazole and a revenue shortfall related to the failure of the supplier to fill back orders of Cardizem CD. It is difficult for us to determine from the October 3 Release the precise financial impact of the latter two circumstances, although they appear to have been of a similar financial magnitude to that reflected in the Truck Accident Statement.

[223] Counsel for Melnyk submitted that the Earnings Miss was fully and accurately disclosed in the October 3 Release and that should be the end of the matter in terms of the materiality of the statements made in the October 3 Release.

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[2] When we refer to "meaningful" or "relevant" statements or information in these reasons, we are using neutral words that are intended to convey that such statements or information are of some relevance to investors but not necessarily material in accordance with the reasonable investor standard.

[224] It is clear, however, that Biovail itself considered the Accident Contribution Statement to be meaningful and relevant information to investors. Biovail stated in the first paragraph of the October 3 Release disclosing the Earnings Miss that the Accident contributed significantly to this unfavourable variance. In the second paragraph of that release, Biovail referred to "a material shipment of Wellbutrin XL" as having been involved in the Accident. Melnyk also emphasised the importance of WXL to Biovail's future when he referred on the Analysts Call to the "huge impact" of WXL on Biovail's future financial performance (see paragraph 33 of these reasons). As noted in paragraph 219 of these reasons, we believe that Biovail intended the Truck Accident Statement to convey to investors that the third quarter revenue shortfall associated with the Accident was a one-time event out of the control of management and that revenues for the 2003 third quarter could be "normalised" by adding back the $10 to $20 revenue shortfall. We understand that it also led financial analysts to appropriately adjust their financial models.

[225] We recognise that even if the WXL revenue loss attributed by Biovail to the Accident had not occurred, Biovail would nonetheless have substantially missed its 2003 third quarter revenue and earnings guidance. If there had been no Earnings Miss but for the Accident, the disclosure about the Accident would have been clearly material to investors. However, in our view, disclosure relating to the Accident can be misleading or untrue in a material respect, even if the Accident was only one of three significant contributing factors to the Earnings Miss.

(d) Quantitative Analysis

[226] The WXL revenue loss attributed by Biovail to the Accident constituted approximately 4.6% to 9.2% (based on the low and high end of the revenue range of $10 to $20 million) of Biovail's total third quarter revenues ($215.3 million) disclosed in the October 30 Release. (We believe that is a reasonable comparison, although one could have used other comparisons, such as the corrected third quarter revenue guidance as of October 3, 2003.) Chamberlain testified that a percentage of approximately 5% of revenues is often viewed by market participants as approaching a level of materiality (although she compared the revenue loss to Biovail's annual rather than quarterly revenues). There was also testimony that Ernst & Young considered $10 million of revenues to be material for accounting purposes for Biovail's 2003 third quarter financial statements. There is, of course, no hard and fast rule or principle that a variation of 5% or more of revenues is material for securities law purposes. Based on this quantitative analysis, the Revenue Loss Statement may be viewed as being material.

(e) Share Price Decline on October 8, 2003

[227] As noted above, the October 8 Release was issued by Biovail in response to (i) the skeptical reaction of analysts and investors to the Revenue Loss Statement in the October 3 Release, and (ii) the Maris Report and the market rumour that the truck involved in the Accident had not, in fact, contained any WXL product.

[228] The October 8 Release repeated the Revenue Loss Statement when it stated that "Biovail re-confirms that the sales value of those goods is within previously stated guidance". As noted above, we believe that a reasonable investor would also have understood that statement as reconfirming and repeating the Accident Contribution Statement.

[229] The market price of Biovail's shares fell from $29.05 per share on October 7, 2003 (the day prior to the issue of the October 8 Release) to $25.20 per share at the close of trading on October 8, 2003, but the share price recovered to $28.43 per share by October 13, 2003. The drop in Biovail's share price on October 8, 2003 was approximately $4.00 or approximately 13.9% of the closing share price on the previous day. In our view, that was a significant effect on Biovail's share price. However, Melnyk attributed the share price loss to the issue of the Maris Report and rumours in the market, not to the issue of the October 8 Release. While it is impossible to determine one specific cause of that share price decline, that decline suggests that investors considered the disclosure related to the Accident as meaningful information that was relevant to them. We note that the only new information contained in the October 8 Release was that "60% of the shipment [was] salable" and "may be re-shipped within the next 30 days".

[230] One would expect the Truck Accident Statement, if it was a material statement, to have had any impact on Biovail's share price only the first time that statement was publicly made. Once the information conveyed by that statement was publicly known, it would be reflected in Biovail's share price thereafter. However, a statement may continue to be important to a reasonable investor in making an investment decision even if that statement has already been reflected in the issuer's share price and repeating it has no subsequent effect on that share price.

[231] While the October 8 Release provided little additional information to the market, Biovail nonetheless clearly concluded that it was important to issue the October 8 Release as a response to the Maris Report and market rumours. That suggests that Biovail considered the questions around the Accident and the making of the Truck Accident Statement to have been meaningful and relevant to investors.

(f) Market Skepticism

[232] As discussed above, it is clear that investors and analysts were immediately skeptical of the $10 to $20 million revenue range reflected in the Revenue Loss Statement. That is evidenced by various e-mails received by Biovail following the issue of

the October 3 Release (including the e-mails referred to in paragraph 183 of these reasons). Investors were skeptical about the size of the stated revenue loss and management's apparent inability to determine the revenue associated with the Accident except by providing a $10 million range. We note that at the time, Biovail had estimated that its entire WXL revenue for the third quarter would be less than $10 million (as stated on the Analysts Call).

(g) Integrity of Management

[233] We agree with the statement of the Alberta Securities Commission in *Re Ironside*, 2006 ABASC 1930 at para. 615 ("***Ironside***") that "[t]he market price of the securities of a public company reflects, in large part, the market's confidence in the fitness and integrity of that company's management team". A public statement can take on more significance to investors than it might otherwise have if it causes investors to question the integrity or competence of management. The Truck Accident Statement had that effect in this case. Howling acknowledged that when he stated that an explanatory release "will go a long way to restoring credibility" (see paragraph 183 of these reasons). The Truck Accident Statement contributed to a crisis of confidence in Biovail management. That lack of confidence was reflected in the rumour that the truck involved in the Accident had contained no WXL at all. This is a qualitative factor in assessing the materiality of the Truck Accident Statement.

(h) Comparison to Correct Statement

[234] Melnyk and Chamberlain suggested that we should determine the materiality of a statement alleged to be misleading or untrue in a material respect by assessing the difference between the alleged misstatement and a correct or accurate statement. As noted in paragraph 78 of these reasons, we have considered that approach in assessing the materiality of the statements made by Biovail in this matter. We certainly recognise that in determining whether a particular statement is misleading or untrue in a material respect, one must have an understanding as to what a correct or accurate statement would have been.

[235] For this purpose, a correct or accurate statement by Biovail with respect to the 2003 third quarter revenue effect of the Accident would have been along the following lines:

> A truck carrying WXL product for delivery to GSK was involved in a traffic accident outside Chicago, Illinois on October 1, 2003. Some of the product was damaged and all of it will be returned to Biovail for inspection. All undamaged product will be re-shipped to GSK in the fourth quarter. The accident did not have any effect on Biovail's 2003 third quarter financial results because the revenues associated with the product on the truck involved in the accident would have been recognised in Biovail's fourth quarter in any event. The total revenue value to Biovail of the WXL product on the truck involved in the accident was approximately $5 million. The manufacturing cost value of the shipment was fully insured.

[236] In our view, a correct or accurate statement of that kind would not have been material to investors in the circumstances, primarily because of the $5.0 million revenue value referred to and the statement that the Accident had no effect on Biovail's 2003 third quarter financial results. However, the Truck Accident Statement was by its terms a much more meaningful and relevant statement to investors than this accurate statement. That suggests to us that the difference between the Truck Accident Statement and an accurate statement may have been material to investors in accordance with the reasonable investor standard.

(i) Objective Standard

[237] As noted in paragraph 80 of these reasons, the legal test for determining materiality that we are applying is an objective one based on the reasonable investor standard. In making that determination, we do not need any evidence submitted to us as to whether any particular investor actually considered the Truck Accident Statement to be misleading or untrue in a material respect. No investor testified in this matter.

(iii) Conclusions as to the Materiality of the Statements Made in the October 3 Release

[238] We have considered the experts' reports, the testimony of the experts and the factors and considerations discussed in paragraphs 216 to 236 of these reasons in assessing whether the Truck Accident Statement, the Accident Contribution Statement and/or the Revenue Loss Statement contained in the October 3 Release was misleading or untrue in a material respect. There is no doubt that determining whether those statements were material to investors in the circumstances is a matter of judgement. Unlike the Earnings Miss, those statements are not obviously or clearly material. At the same time, in our view, the Truck Accident Statement, the Accident Contribution Statement and the Revenue Loss Statement were on their face statements that were communicating meaningful information that was relevant to investors in making investment decisions.

(a) The Materiality of the Truck Accident Statement Made in the October 3 Release

[239] The Earnings Miss was clearly material information, the disclosure of which had an immediate and adverse impact on the market price of Biovail's shares. Disclosure of the reasons for the Earnings Miss permitted an investor to assess the implications of the Earnings Miss for Biovail's future financial performance. In our view, it makes a significant difference to investors whether the reasons for the Earnings Miss were one-time events out of the control of management, such as a truck accident, and whether those reasons would have a recurring financial effect in future financial periods. That, in our view, is why Biovail highlighted the Accident in the October 3 Release and why Melnyk referred on the Analysts Call to the three principal causes of the Earnings Miss as one-time events. The Truck Accident Statement communicated to investors the meaningful and relevant information that one of the significant causes of the Earnings Miss was not a recurring event that would affect future financial periods. It also quantified the revenues that investors should impliedly add back to determine Biovail's normalised revenues for the 2003 third quarter unaffected by that one-time event, and also guided analysts to appropriately adjust their financial models going forward.

[240] There is equally no doubt that revenues from WXL were an important component of Biovail's future financial performance (see paragraph 33 of these reasons).

[241] The Truck Accident Statement also precipitated a loss of confidence by analysts and investors in Biovail's management. As Howling stated in his e-mail to Melnyk on October 8, 2003, "no one is believing us when we say [the truck] was not empty" (see paragraph 188 of these reasons).

[242] On balance, we find that there is a substantial likelihood that, at the time of the October 3 Release, a reasonable investor would have considered the Truck Accident Statement important in making an investment decision with respect to Biovail's shares. That means that, in our view, the Truck Accident Statement made in the October 3 Release was, *in a material respect* and at the time and in the light of the circumstances under which it was made, misleading or untrue. We have also concluded that the difference between the Truck Accident Statement made in the October 3 Release and an accurate statement was material to investors. We find that Biovail knew or should have known that was the case.

(b) The Materiality of the Accident Contribution Statement Made in the October 3 Release

[243] The Accident Contribution Statement stated that the Accident contributed to the variance in revenues and earnings for Biovail's 2003 third quarter. For the reasons discussed above, we have concluded that statement was misleading or untrue because the Accident did not contribute at all to that variance or affect Biovail's 2003 third quarter financial results. The Accident Contribution Statement does not, however, quantify the variance referred to; the second sentence of the October 3 Release simply says that the Accident contributed "significantly" to the variance. The variance in WXL revenues as a result of the Accident is addressed and quantified by the Revenue Loss Statement. While it is a close call, on balance, we conclude that a reasonable investor would not have considered the Accident Contribution Statement that the Accident contributed significantly to the variance in Biovail's revenues and earnings for the third quarter, standing alone, to be material in making an investment decision. Accordingly, we find that the Accident Contribution Statement made in the October 3 Release was not, *in a material respect* and at the time and in the light of the circumstances under which it was made, misleading or untrue.

[244] The Accident Contribution Statement takes on much greater importance as part of the Truck Accident Statement because it provides the causal link of the Revenue Loss Statement to Biovail's 2003 third quarter financial results and the Earnings Miss.

(c) The Materiality of the Revenue Loss Statement Made in the October 3 Release

[245] The Revenue Loss Statement made in the October 3 Release provided a range for the WXL revenue loss to Biovail associated with the Accident.

[246] The Revenue Loss Statement quantifies the purported WXL revenue associated with the WXL product involved in the Accident. It does not, however, standing alone, characterize the significance of that revenue loss or indicate that it has any effect on Biovail's 2003 third quarter financial results. As noted above, the Revenue Loss Statement takes on much greater importance when it is linked by the Accident Contribution Statement to Biovail's 2003 third quarter financial results and the Earnings Miss. While it is a close call, on balance, we conclude that a reasonable investor would not have considered the Revenue Loss Statement, standing alone, to be material in making an investment decision. Accordingly, we find that the Revenue Loss Statement made in the October 3 Release was not, *in a material respect* and at the time and in the light of the circumstances under which it was made, misleading or untrue.

(iv) Conclusions as to the Materiality of the Truck Accident Statement Made on the Analysts Call

[247] The Truck Accident Statement was also made by Biovail on the Analysts Call immediately following the issue of the October 3 Release. However, Crombie stated on that call that Biovail's WXL revenue loss associated with the Accident was in

the range of $15 to $20 million (thereby increasing the lower end of the range from the $10 million reflected in the Revenue Loss Statement). There is no evidence before us that Biovail ever repeated or expressly corrected that statement.

[248] It is fairly obvious that Crombie changed the lower end of the revenue range to $15 million in order to lead analysts to his fourth quarter revenue guidance going forward (see paragraph 34 of these reasons) and because he realized that a $10 million revenue range was not credible.

[249] The Analysts Call was held immediately following the issue of the October 3 Release. Accordingly, the circumstances in which the Truck Accident Statement was made during the Analysts Call had not changed. We also note that Crombie stated on the Analysts Call that Biovail's total WXL revenues for the third quarter would be below $10 million. That statement was not made in the October 3 Release. That disclosure does not affect our assessment of the materiality of the Truck Accident Statement in the circumstances in which it was made on the Analysts Call.

[250] Consistent with our conclusion in paragraph 242 of these reasons, on balance, we find that there is a substantial likelihood that, at the time of the Analysts Call, a reasonable investor would have considered the Truck Accident Statement important in making an investment decision with respect to Biovail's shares. That means that, in our view, the Truck Accident Statement made on the Analysts Call was, *in a material respect* and at the time and in the light of the circumstances under which that statement was made, misleading or untrue. We have also concluded that the difference between the Truck Accident Statement made on the Analysts Call and an accurate statement was material to investors. We find that Biovail knew or should have known that was the case.

(v) Conclusions as to the Materiality of the Statements Made in the October 8 Release

[251] The October 8 Release included the statement that "[f]urthermore, Biovail re-confirms that the sales value of these goods [the WXL involved in the Accident] is within previously stated guidance". We have concluded that Biovail thereby repeated the Revenue Loss Statement and, in our view, a reasonable investor would understand in the context of the October 8 Release that the Accident Contribution Statement was being repeated by necessary implication. Accordingly, in our view, the Truck Accident Statement was repeated in the October 8 Release.

[252] We must assess the materiality of the Truck Accident Statement repeated in the October 8 Release in light of the circumstances on October 8, 2003. We note that those circumstances had not changed in any significant way from those on October 3, 2003. In fact, the October 8 Release was issued because of concerns being expressed by investors and others with respect to the veracity of the Truck Accident Statement contained in the October 3 Release. While the October 8 Release provided some new information (see paragraph 229 of these reasons), in substance it was primarily repeating the Truck Accident Statement.

[253] Consistent with our conclusion in paragraph 242 of these reasons, on balance, we find that there is a substantial likelihood that, at the time of the October 8 Release, a reasonable investor would have considered the Truck Accident Statement important in making an investment decision with respect to Biovail's shares. That means that, in our view, the Truck Accident Statement made in the October 8 Release was, *in a material respect* and at the time and in the light of the circumstances under which that statement was made, misleading or untrue. We have also concluded that the difference between the Truck Accident Statement made in the October 8 Release and an accurate statement was material to investors. We find that Biovail knew or should have known that was the case.

(vi) Conclusion as to the Statements Made in the Roadshows

[254] The Roadshows were held over the period of October 13 to 16, 2003. Melnyk, Crombie and Howling participated in them, although Melnyk testified that he may not have attended all of them.

[255] The objective of the Roadshows was to explain Biovail's business strategy and financial prospects, particularly in light of the Earnings Miss. The Roadshows began only five days after the issue of the October 8 Release. Roadshows were hosted by, among others, Citicorp, J.P. Morgan, Deutsche Bank, National Bank Financial and RBC Capital Markets. The presentation material for the roadshow held on October 15, 2003 at the Royal York Hotel in Toronto, includes one page in the slide presentation deck addressing the Accident. It indicates that the Accident affected Biovail's 2003 third quarter financial results and that the revenue impact was $10 to $20 million. We heard testimony that Biovail did not necessarily use or review the whole slide presentation in any particular meeting, although copies of the presentation were available to participants. Howling testified that reference was made to the Truck Accident Statement in the Roadshows and it seems to us to be highly unlikely that the Truck Accident Statement would not have been made and discussed at the Roadshows.

[256] On balance, however, we are not satisfied that there is sufficient direct evidence to conclude that the Truck Accident Statement was actually made during the Roadshows and if so, by whom and whether Melnyk was present when that statement was made. Accordingly, we dismiss that allegation.

(vii) Conclusions as to the Materiality of the Statements Made in the October 30 Release

[257] Biovail stated in the October 30 Release announcing its 2003 third quarter financial results that:

> [a] late third quarter 2003 shipment of WXL involved in an accident outside of Chicago was returned to Biovail's facility on October 8, 2003 for inspection. No revenue was recognised from this shipment in Q3 2003. The shipment included both bulk and fully packaged material. All bulk tablets, which are packaged in plastic drums, were salvaged and have already been shipped to GSK. A small portion of the packaged goods (less than 1,000 bottles) was effected [sic] in the accident and could not be re-shipped.

That paragraph was the only reference made by Biovail to the Accident in the 14-page October 30 Release. We will refer to that paragraph as the "**October 30 Accident Statement**".

[258] Staff alleges that the October 30 Release continued to disseminate or implicitly reinforce the materially misleading or untrue information reflected in the Truck Accident Statement.

(a) Was the October 30 Release Factually Accurate?

[259] The October 30 Release announced Biovail's actual 2003 third quarter financial results for the period ending September 30, 2003 and the financial results for the nine months ended on that date. Those financial results necessarily provided better information to investors than the amended revenue and earnings guidance contained in the October 3 Release. Crombie stated on the Analysts Call that WXL revenues for the third quarter were estimated to be below $10 million. The October 30 Release disclosed that Biovail's actual WXL revenues for the third quarter were $8.2 million and for the nine-month period ended on that date were $16.3 million.

[260] We note that the Truck Accident Statement was not expressly repeated in the October 30 Release.

[261] The October 30 Accident Statement disclosed that the WXL product involved in the Accident was returned to Biovail for inspection and that no revenue was recognised from the shipment in Biovail's third quarter financial results. Both those statements are true. The October 30 Release also provides information with respect to Biovail's actual WXL revenues in the 2003 third quarter and for the nine months ended September 30, 2003. Accordingly, we have no reason to believe that the October 30 Accident Statement was not factually accurate.

(b) Did the October 30 Release Repeat the Truck Accident Statement by Necessary Implication?

[262] Staff alleges, however, that the Truck Accident Statement was repeated or implicitly reinforced in the October 30 Release.

[263] Staff is not alleging that Biovail had a positive legal obligation to correct the materially misleading or untrue Truck Accident Statement that was made in the October 3 Release and repeated on the Analysts Call and in the October 8 Release. What Staff is alleging is that, in the particular circumstances, the October 30 Release repeated the Truck Accident Statement by necessary implication. As a result, we will not address in these reasons whether Biovail had a positive duty to correct the previously made materially misleading or untrue Truck Accident Statement.

[264] The October 30 Release disclosed Biovail's 2003 final third quarter revenues and earnings, the very financial results that Biovail had previously stated in the October 3 Release had been significantly affected by the Accident. We concluded above that the Truck Accident Statement was, in a material respect, misleading or untrue at the time and in the circumstances under which it was made on October 3 and October 8, 2003. By referring to the Accident in the October 30 Release and by saying nothing with respect to the Truck Accident Statement in that release, Biovail continued to allow the Truck Accident Statement to be relied upon by investors. Investors were entitled to assume that the Truck Accident Statement continued to be relevant to Biovail's third quarter financial results and they were entitled to make investment decisions based on that assumption.

[265] Melnyk argues, however, that by October 30, 2003 circumstances had changed. He submits that once Biovail's final 2003 third quarter financial results were announced in the October 30 Release, it became irrelevant whether the inability to recognise revenues associated with the WXL product involved in the Accident was a result of the Accident or the interpretation and meaning of the GSK delivery term. In either case, the market knew that no revenues related to the Accident were included in Biovail's third quarter financial results.

[266] We do not agree with that submission. Biovail disclosed on the Analysts Call on October 3 that WXL revenues for the third quarter were estimated to be below $10 million. The October 30 Release announced that Biovail's actual WXL revenues were $8.2 million for the third quarter. Accordingly, the October 30 Release provided little additional information to investors on that topic. Investors already knew, based on the Truck Accident Statement, that the revenue associated with the WXL involved

in the Accident would not be recognised in the third quarter and they had no reason to believe that there had been any change in that position or the reasons for it.

[267] Having said that, we are not prepared to conclude that the Truck Accident Statement was repeated by necessary implication in the October 30 Release. The October 30 Accident Statement appears to be factually accurate and the October 30 Release did not expressly repeat the Truck Accident Statement. The October 30 Release was otherwise silent with respect to the Truck Accident Statement. Accordingly, we find that the Truck Accident Statement was not repeated by necessary implication in the October 30 Release.

(c) Did the October 30 Release Omit Necessary Information?

[268] There is, however, a remaining question whether the October 30 Release omitted to state any facts that were required to be stated or that were necessary to make the October 30 Accident Statement not misleading, as alleged by Staff.

[269] By the time of the October 30 Release, it was or should have been clear to Biovail that the revenue associated with the WXL involved in the Accident could never have been recognised in its 2003 third quarter financial results. Miszuk acknowledged that was clearly the case by October 16, 2003 (see paragraph 156 of these reasons). In our view, Biovail knew or should have known by October 30 that the Accident Contribution Statement was misleading or untrue.

[270] In addition, by October 30, 2003, Biovail had re-shipped to GSK all of the undamaged WXL product involved in the Accident (excluding only a "small portion of the packaged goods"). Biovail knew by October 30 that it had re-shipped that WXL product as samples and not trade tablets. The intention to ship the WXL product as samples was confirmed by an e-mail dated October 20, 2003 from Chapuis to Melnyk, Crombie and Miszuk. As a result, Biovail could determine the exact revenue value of that shipment because, as samples, WXL tablets were sold to GSK at a set price that was not subject to any subsequent adjustments. The revenue value of the re-shipment, as samples, was substantially below even the $5.0 million revenue loss attributed in the March 04 Release to the WXL product involved in the Accident. Further, Crombie testified that, except for the September 30 shipments, no WXL product had ever been shipped by Biovail as trade tablets in bulk for packaging by GSK. These circumstances raise a serious question whether the higher revenue value for WXL trade tablets should ever have been used as a basis for the Truck Accident Statement.

[271] By October 30, 2003, Biovail had all of the information necessary to correct the Accident Contribution Statement and the Revenue Loss Statement and to make appropriate disclosure of the information and matters referred to in paragraphs 269 and 270 of these reasons. In our view, silence was not an option in the context of the October 30 Release, which announced Biovail's 2003 third quarter financial results.

[272] We find that the omission by Biovail to disclose in the October 30 Release the information and matters referred to in paragraph 271 of these reasons resulted in that release not stating facts that were required to be stated or that were necessary to make the October 30 Accident Statement not misleading. We find that Biovail knew or should have known that was the case.

(viii) Conclusion as to the Materiality of the Accident Contribution Statement Made in the March 04 Release

[273] The March 04 Release announced Biovail's audited financial results for the 2003 fourth quarter and for the 2003 financial year. That news release consisted of 15 pages and contained the following disclosure related to the Accident and the revenue impact of it:

> As part of a comprehensive earnings guidance press release on October 3, 2003, Biovail announced that its estimated revenue from Wellbutrin XL for third quarter 2003 would be less than $10.0 million partially as a result of the truck accident and that the loss in revenue due to the accident would be in the range of $10.0 million to $20.0 million. Numerous variables that were not known and were unavailable on October 3, 2003 are now determinable given better information and the reconciliation provided by GSK to Biovail.
>
> Variables that determine Biovail's revenue that were not then known include levels of discounts, free goods or rebates that would have been deducted from GSK's gross sales and the percentage of GSK's net sales Biovail is to receive. In calculating the high end of the estimate range, Biovail also took into consideration the variables that analysts were generally using in their models to estimate the Wellbutrin XL revenues, which included typically higher pricing, higher percentage supply prices and did not reflect the typical gross to net deductions. This analysis with analyst estimates was completed to better explain why revenue in third quarter 2003 would be less than previously expected by analysts.

> *After a subsequent review of all of the facts, the actual revenue loss from the accident was determined to be $5.0 million.* Calculated with analysts' assumptions for these variables, the revenue loss estimate would range from $7.5 million to $8.0 million.
>
> [emphasis added]

Clearly, the last paragraph of that excerpt provides the definitive information that Biovail's actual WXL revenue loss from the Accident was $5.0 million. That statement corrects the previously made misleading or untrue Revenue Loss Statement.

[274] However, the reasonable conclusion an investor would take from that excerpt is that the Accident caused an actual revenue loss of $5.0 million for Biovail's 2003 third quarter. It was absolutely clear to Biovail by March 3, 2004 that the Accident had had no effect on third quarter WXL revenues. Accordingly, that statement in the March 04 Release was misleading or untrue. Melnyk acknowledged that in his cross-examination when he stated that the March 04 Release was "mis-worded" to that extent (see paragraph 333 of these reasons).

[275] We have concluded that the Accident Contribution Statement made in the October 3 Release was misleading or untrue but that it was not, in a material respect, misleading or untrue (see paragraphs 164 and 243 of these reasons).

[276] Further, we must determine the materiality of the Accident Contribution Statement made in the March 04 Release at the time and in the light of the circumstances under which that statement was made. Once the 2003 year-end and fourth quarter financial results are known, the financial results for the third quarter relative to the fourth quarter become much less important to investors. Biovail's financial results for the 2003 financial year included results for both quarters. In addition, disclosure of the fact that "the actual revenue loss from the accident was determined to be $5.0 million" corrects the Revenue Loss Statement and, in our view, renders the Accident and its financial consequences not material to investors at the time of the March 04 Release. The question of the integrity of Biovail management may have continued to be an issue but that does not, in our view, make the Accident Contribution Statement made in the March 04 Release misleading or untrue in a material respect. Accordingly, we find that the Accident Contribution Statement made in the March 04 Release was not, *in a material respect* and at the time and in the light of the circumstances under which it was made, misleading or untrue.

[277] The March 04 Release is, however, notable for three other reasons.

[278] First, the March 04 Release states that "[a]s part of a comprehensive earnings guidance press release on October 3, 2003, Biovail announced that its estimated revenue from Wellbutrin XL for third quarter 2003 would be less than $10.0 million …" (see paragraph 273 of these reasons). Biovail did not, in fact, disclose that information in the October 3 Release. To the contrary, that sentence was deleted from the proposed news release and the Revenue Loss Statement was included in the final release instead. We suspect that was done, at least in part, because it is difficult to reconcile the less than $10 million estimated total WXL third quarter revenues with a revenue range of $10 to $20 million associated with the WXL product involved in the Accident. There was evidence that Melnyk required that change to the release and, in any event, he approved it. In our view, that means that highly relevant financial information was dropped from the October 3 Release and replaced by the Revenue Loss Statement that we have concluded was misleading or untrue. The less than $10 million estimated total WXL third quarter revenues were, however, selectively disclosed to those who listened to the Analysts Call on October 3, 2003. That selective disclosure was not appropriate. In addition, in our view, the omission to disclose the estimated WXL revenues for the 2003 third quarter in the October 3 Release rendered the October 3 Release misleading or untrue.

[279] Second, Biovail states that "[i]n calculating the high end of the estimate range, Biovail also took into consideration the variables that analysts were generally using in their models to estimate the Wellbutrin XL revenues, which included typically higher pricing, higher percentage supply prices and did not reflect the typical gross to net deductions. This analysis with analyst estimates was completed to better explain why revenue in third quarter 2003 would be less than previously expected by analysts."

[280] That is an express acknowledgement by Biovail that the Revenue Loss Statement was misleading or untrue because it failed to disclose that the WXL revenue range reflected in that statement was based in part on analysts' estimates and variables. The October 3 Release and the October 8 Release purported to disclose the actual WXL revenue loss for the 2003 third quarter associated with the Accident. It did not purport to describe some theoretical revenue range reflecting analysts' estimates and variables intended to assist analysts in correcting their financial models. If that is what the revenue range reflected in the Revenue Loss Statement was based on, even in part, that should have been expressly stated in the October 3 Release and thereafter whenever the revenue range was used or referred to. In our view, the failure to make that disclosure rendered the Revenue Loss Statement misleading or untrue each time it was made.

[281] Finally, the March 04 Release is full of rationalizations and justifications for why the revenue range reflected in the Revenue Loss Statement could not be accurately determined when that statement was made on October 3 and October 8, 2003. In our view, those statements were misleading in suggesting that the original $10 to $20 million revenue range was a reasonable attempt to estimate Biovail's third quarter WXL revenue loss associated with the Accident. We find that there was no

reasonable basis for the revenue range reflected in the Revenue Loss Statement. We have expressed our conclusions above with respect to the accuracy of the Revenue Loss Statement and the ability of Biovail to know that statement was misleading or untrue (see paragraphs 191 to 196 of these reasons). If it was so difficult to determine the revenue range reflected in the Revenue Loss Statement, then that statement should not have been made or that uncertainty should have been expressly stated and discussed each time the Revenue Loss Statement was made.

[282] We note that each of the Releases contained a form of general "safe harbour" warning that any forward-looking information contained in such release was subject to risks and uncertainties. It does not appear to us that the Revenue Loss Statement contained or constituted forward-looking information. That statement purported to reflect the actual WXL third quarter revenue loss associated with the Accident. In any event, there must be a reasonable basis for any forward-looking information or estimate. Melnyk has not satisfied us that there was any reasonable basis for the revenue range reflected in the Revenue Loss Statement. Further, in these circumstances, we do not believe that the general safe harbour warnings contained in the Releases protect the Revenue Loss Statement from the allegation made by Staff that it was misleading or untrue in a material respect. If there was significant uncertainty with respect to the determination of the revenue range reflected in the Revenue Loss Statement, that uncertainty should have been specifically disclosed and discussed. A general warning with respect to the risks and uncertainties related to forward-looking information was not enough.

G. Melnyk's Responsibility for Biovail's Misleading Statements

(i) Positions of the Parties

[283] We must now address Melnyk's responsibility for Biovail's misleading or untrue statements.

[284] Staff submits that Melnyk authorized, permitted or acquiesced in all of Biovail's misleading or untrue statements, and that he knew or should have known that such statements were misleading or untrue in a material respect each time those statements were made. Staff also submits that Melnyk has the onus of establishing that he acted with due care and diligence and that he has failed to satisfy that onus.

[285] Melnyk's position is summarized in paragraphs 51 to 56, paragraphs 127 to 131 and paragraphs 167 to 169 of these reasons.

(ii) Melnyk's Knowledge of a Likely Earnings Miss

[286] Staff submits that Melnyk knew or should have known, well before October 2, 2003 (when the decision was made by Biovail to announce the Earnings Miss), that Biovail would likely miss its 2003 third quarter revenue and earnings guidance. As a result, Staff submits that Melnyk cannot rely on the chaos and crisis atmosphere at the time of the issue of the October 3 Release as an excuse for the misstatements it alleges were made in that release.

[287] Melnyk denies that he knew or should have known, in advance of October 2, 2003, that the Earnings Miss would occur.

[288] In considering this issue, we note that because FDA approval of WXL was not granted until late August 2003, the commercial product launch of WXL did not occur until early September 2003. As September progressed, management of Biovail was aware that there was an increasing risk that Biovail would not meet its revenue and earnings guidance for the third quarter. Biovail was having production problems in manufacturing and packaging the amount of WXL it wanted to ship to GSK in the third quarter. Melnyk was well aware of this risk. It is clear that Biovail was attempting to ship as much WXL product as possible by the end of the day on September 30, 2003 so that revenue from those shipments could be included in its 2003 third quarter financial results (see paragraph 172 of these reasons). Melnyk was directly involved in decisions related to Biovail's attempts to meet its revenue and earnings guidance in the 2003 third quarter.

[289] In response to a Biovail employee's e-mail on September 13, 2003 stating that the employee wished to exercise a grant of options, Melnyk replied on September 15, 2003 that:

> … before you do anything, take five minutes to speak with me and John. I know there are narrow openings to sell for Insiders but you should be made aware of the 3rd quarter earnings risks that exist. We are working at filling those gaps but the gap is definitely there.

The employee responded, "… I can't remember a quarter in my history here that there weren't earnings risks." Melnyk replied, "not this challenging …".

[290] On cross-examination, Melnyk stated that the 2003 third quarter was Biovail's most challenging financial quarter ever.

[291] While we heard a significant amount of testimony and submissions as to the risk that Biovail would not meet its 2003 third quarter revenue and earnings guidance and as to when Biovail knew or should have known that the Earnings Miss would

occur, we do not believe that anything turns on that issue. The decision to issue the October 3 Release announcing the Earnings Miss was made on October 2, 2003. At that point, Biovail made the decision to provide revised financial guidance, and information with respect to the three principal reasons for the Earnings Miss that were described in the October 3 Release. It was certainly in the best interests of Biovail shareholders to receive as much accurate information as possible with respect to the Earnings Miss. No advance planning for a possible earnings miss public announcement was going to make these circumstances easy for Biovail management to address. The circumstances were compounded by the fact that this was Biovail's first ever announcement of an earnings miss. We accept Melnyk's testimony that these circumstances created a crisis and a chaotic environment in which senior management was scrambling to settle the appropriate disclosure and issue the October 3 Release. That does not excuse, however, the making of any misleading or untrue statements in the October 3 Release.

(iii) Melnyk's Knowledge related to the Accident Contribution Statement

[292] It appears that Biovail's usual practice was to include in its licensing agreements a delivery term that specified delivery F.O.B. Biovail's manufacturing facility (and not F.O.B. the customer or licensee).

[293] Melnyk testified that he became aware that the GSK delivery term was F.O.B. GSK (freight collect) on October 3 shortly after the issue of the October 3 Release. He testified that he assumed, until the afternoon of October 3, 2003, that the GSK Agreement contained the usual delivery term used by Biovail (providing for delivery F.O.B. Biovail). Further, Melnyk knew that the usual delivery term meant that Biovail recognised the revenue from a shipment as of the date the shipment left Biovail's manufacturing facility. That is what Biovail does under its other licensing arrangements that provide for delivery F.O.B. Biovail and that was why Melnyk was tracking shipments of WXL from Steinbach during the last hours of September 30. Melnyk testified that he assumed that if WXL was shipped from Steinbach before midnight on September 30, any such shipment would be reflected in Biovail's third quarter revenues. He testified that had he known the accurate GSK delivery term or that there was any uncertainty with respect to the meaning of that term, he could have arranged for Biovail to deliver the WXL September shipments by air rather than by truck, ensuring delivery by the end of the day on September 30. That would have resulted in the revenues associated with those shipments being recognised in Biovail's third quarter financial results.

[294] It appears that the delivery term in the GSK Agreement was changed, in the last or close to last draft of the GSK Agreement before it was signed, from the delivery term that Biovail usually used in its licensing agreements. Melnyk testified that the last-minute change to the delivery term was made without his knowledge (he signed signature pages in executing the GSK Agreement but testified that he did not read the executed agreement). He may also have been misled by an incorrect summary of the GSK Agreement prepared and used by Biovail for internal purposes that referred to the usual F.O.B. Biovail delivery term and not the delivery term that was actually in the GSK agreement.

[295] It is clear that Deeth, Chapuis and Miszuk were aware of the accurate GSK delivery term on October 2, 2003 (see paragraphs 136 and 153 of these reasons). It is also clear, despite his denials, that Crombie knew the accurate GSK delivery term and its implications for revenue recognition before the October 3 Release was issued (see paragraphs 137 and 138 of these reasons). Melnyk testified, however, that he did not know the accurate GSK delivery term when the October 3 Release was issued and that he did not read or know the contents of the Draft Release as it related to the GSK delivery term.

[296] We find it surprising that Melnyk says that he did not know the accurate GSK delivery term on October 2 when Deeth, Chapuis, Miszuk and Crombie clearly did. It seems to us unlikely that the accurate GSK delivery term and its implications for revenue recognition were not discussed by Crombie with Melnyk when it was so clearly relevant to the disclosure in the October 3 Release and had been addressed by Crombie in the Draft Release. While we are sceptical of Melnyk's testimony in this respect, we are prepared to give him the benefit of the doubt.

(a) Melnyk's Knowledge at the Time of the October 3 Release

[297] Accordingly, on balance, we are prepared to accept that at the time of the Accident and the October 3 Release, Melnyk had a mistaken belief that the delivery term in the GSK Agreement was F.O.B. Biovail and that, accordingly, he understood that revenue from the WXL product shipped on September 30 could be recognised in Biovail's 2003 third quarter financial results. That means that Melnyk did not know that the Accident Contribution Statement was misleading or untrue at the time of the October 3 Release or at the time of the Analysts Call that immediately followed.

(b) Melnyk's Knowledge After the October 3 Release

[298] Melnyk testified that he became aware of the accurate GSK delivery term on the afternoon of October 3, after the issue of the October 3 Release but well before the issue of the October 8 Release. At 9:13 a.m. on the morning of October 8, Howling forwarded Dyer's e-mail (referred to in paragraph 96 of these reasons) to Crombie and Melnyk. That e-mail stated that Biovail had made an incorrect statement on the Analysts Call because title to the WXL product involved in the Accident did not transfer to GSK until delivery at its U.S. facility. Dyer requested that Biovail refrain from making further incorrect statements. Melnyk testified that his response to the GSK position was to consider a retroactive amendment to the GSK delivery term.

[299] On October 8, 2003, Thompson sent Crombie by e-mail his preliminary opinion with respect to the meaning of the GSK delivery term (described in paragraph 139 of these reasons). Melnyk acknowledged in his testimony that Crombie told him Thompson's conclusions. Melnyk says, however, that the Thompson opinion did not resolve the issue, which Biovail's lawyers and accountants were continuing to examine throughout October.

[300] On October 9, 2003, the day after the issue of the October 8 Release, Melnyk received the Hull Letter reiterating the contents of Dyer's e-mail the day before (see paragraph 97 of these reasons).

[301] Melnyk testified that he initially focused in his discussions with GSK on implementing a retroactive amendment to the GSK delivery term to provide for delivery F.O.B. Biovail. On October 27, 2003, Deeth sent an e-mail to Crombie and Miszuk concerning the possible implications of a retroactive amendment for the relevant insurance coverage. Melnyk testified that Deeth's advice put an end to the discussions about such an amendment.

[302] Melnyk continues to characterize the meaning and interpretation of the GSK delivery term as an open question. We reject that position for the reasons set forth in paragraphs 161 to 164 of these reasons.

[303] Melnyk acknowledged that he knew by the time he approved the October 8 Release that the GSK delivery term was F.O.B. GSK (freight collect) and he knew by that time of GSK's interpretation of that term. Melnyk also knew at that time Biovail's policy with respect to revenue recognition based on F.O.B. terms. Further, by the time of the October 8 Release, the initial crisis and chaos created by the Earnings Miss had passed and Melnyk had had sufficient time to make the inquiries that he should have made as CEO in approving a news release containing the Accident Contribution Statement. Accordingly, based on our conclusions in paragraphs 161 to 164 of these reasons, we find that Melnyk knew or should have known that the Accident Contribution Statement made in the October 8 Release was misleading or untrue.

[304] In any event, Melnyk could not have had any reasonable doubt as to the meaning of the GSK delivery term and its implications for revenue recognition purposes by the time the October 30 Release was issued.

[305] Accordingly, we find that Melnyk knew or should have known that the Accident Contribution Statement made in the October 8 Release and at any time thereafter was misleading or untrue at the time and in the light of the circumstances under which that statement was made.

(iv) Melnyk's Knowledge related to the Revenue Loss Statement

[306] Melnyk testified that he did not know that the revenue range reflected in the Revenue Loss Statement was misleading or untrue at any time that statement was made by Biovail. Melnyk says that he relied on Crombie for financial matters. Melnyk says that Crombie prepared the revenue numbers reflected in the Revenue Loss Statement and assured him that they were accurate. Melnyk says he was entitled to rely on an expert such as Crombie for such matters.

[307] Melnyk also says that it was not possible on October 3 or 8, 2003 to produce accurate revenue numbers with respect to the WXL product involved in the Accident. First, he says that the revenues to Biovail from WXL are determined based on a percentage that changes as GSK net sales increase (see paragraphs 16 and 17 of these reasons). In addition, in determining net sales, deductions are made for discounts, allowances and rebates given by GSK to its customers. As a result, Melnyk says that Biovail could not determine its revenues associated with the September 30 WXL shipments until all of those numbers were provided and reconciled after quarter end by GSK. Melnyk also says that this issue was further complicated because September 2003 was the first month WXL had been shipped to GSK and, accordingly, Biovail had never received a reconciliation statement from GSK.

[308] Melnyk also submits that there was a crisis and chaos on October 2 and 3, 2003 because Biovail was issuing its first ever earnings miss news release and that he and the other senior officers were scrambling to settle the re-issued guidance for revenue and earnings for the 2003 third quarter together with the related disclosure. He submits that Biovail was attempting to provide as much meaningful information to investors as possible. He also notes that he was not physically in Biovail's corporate office in Toronto over this period but was participating by phone from his home in Barbados.

[309] Melnyk submits that there was added confusion as to whether only one or all three trucks that left Biovail's manufacturing facility late on September 30, 2003 were involved in the Accident.

[310] Melnyk submits that all of these considerations make it unreasonable to conclude that he should have known that the revenue range reflected in the Revenue Loss Statement was misleading or untrue.

(a) The Information Available to Melnyk at the time of the October 3 Release

[311] As noted above, on September 30, 2003, Melnyk was tracking by telephone, on an hourly basis, shipments of WXL made by Biovail to GSK from its Steinbach manufacturing facility. We do not accept that he would be tracking those shipments

without being well aware of their financial impact on third quarter revenues. Melnyk was very alive to the financial impact of shipping WXL as samples rather than trade product (see paragraph 172 of these reasons).

[312] It was immediately obvious to analysts and investors that the Revenue Loss Statement raised significant questions (see paragraphs 183 to 187 of these reasons).

[313] The Revenue Loss Statement used a range of $10 to $20 million. Melnyk knew on October 3, 2003 that WXL revenues for the third quarter were estimated to be less than $10 million (meaning, presumably, less than a one truck shipment if the Revenue Loss Statement was to be believed). Those numbers raised an obvious question and inconsistency.

[314] Crombie testified that the high end of the revenue range ($20 million) was based on the WXL product shipped on all three trucks that left Steinbach late on September 30, 2003. Melnyk testified that he was not aware of that until the time of the Roadshows. Crombie also testified that Melnyk knew before the issue of the October 3 Release that the high end of the revenue range was based on analysts' estimates and variables. Melnyk denied that, but he clearly knew that as a result of participating on the Analysts Call. As noted above, neither the October 3 Release nor the October 8 Release disclosed that analysts' estimates and variables were used in determining the Revenue Loss Statement.

[315] While Melnyk was entitled to place reasonable reliance on Crombie and other members of senior management, we find that Melnyk had knowledge and information that should have led him to question, at the time of the October 3 Release, the $10 to $20 million revenue range reflected in the Revenue Loss Statement.

[316] Limited evidence was submitted to us as to how the revenue range reflected in the Revenue Loss Statement was calculated and certainly no satisfactory explanation was given (see, for instance, Crombie's explanation on the Analysts Call set out in paragraph 34 of these reasons). Certainly, the estimates prepared by Smith on October 2, 2003 and known to Miszuk provided no support for the revenue range. Those estimates were available to Melnyk for the asking. As CEO, Melnyk should have required a detailed explanation from Crombie as to how the Revenue Loss Statement was determined. There is no evidence before us that he obtained that explanation.

[317] Melnyk says, however, that Biovail could not accurately determine the revenue associated with the WXL involved in the Accident because revenues to Biovail under the GSK Agreement were based on GSK net sales. Melnyk says those revenues could not be determined until a reconciliation statement was provided by GSK following the end of a financial quarter. We have rejected that submission for the reasons set forth in paragraphs 191 to 196 of these reasons.

(b) Uncertainty As to the Number of Trucks Involved in the Accident

[318] Melnyk also says there was initially some uncertainty whether only one or all three trucks that left Biovail's manufacturing facility late on September 30, 2003 were involved in the Accident. That position was apparently based on a reference to "two Penner drivers" (Penner was the transport company delivering the September 30 WXL shipments to GSK) having been involved in the Accident. We do not accept that as a justification for the revenue range reflected in the Revenue Loss Statement. On October 1, 2003 at 5:38 p.m., Melnyk received the following e-mail from Larry Thiessen:

> Not good news, we were just informed that the semi carrying the last shipment bulk tablets and 1 lot of packaged 300mg was in an accident near Chicago. It appears from what we know right now that the semi was part of a bigger accident and was rear ended with substantial damage to the trailer and the cargo. How much we don't know at this point.

It seems clear from that e-mail that Biovail and Melnyk knew that only one truck was involved in the Accident.

[319] The October 3 Release also seems clear to us that "a truck carrying a material shipment of Wellbutrin XL" was involved in the Accident. Melnyk's letter to employees on October 3, 2003 stated that "one of the vehicles" involved in the Accident contained a shipment of WXL. On October 3, 2003 at 8:30 a.m., Crombie sent an e-mail to Chapuis asking whether the "other two trucks" had arrived at GSK. Chapuis responded that she would confirm with GSK. In any event, the total revenue associated with all three trucks was estimated at the time by Smith to be approximately $7.7 million. Even if we accepted (which we do not) that there was uncertainty in the number of trucks involved in the Accident as a complicating factor in the context of the October 3 Release, there was no uncertainty at the time the October 8 Release was issued or thereafter.

[320] In our view, there was never any reasonable basis to include the WXL revenue associated with the WXL product shipped on all three trucks on September 30 in the Revenue Loss Statement. Biovail and Melnyk knew from the beginning that only one truck was involved in the Accident.

(c) Conclusions

[321] For the reasons discussed above, we do not accept that confirming the WXL revenue range reflected in the Revenue Loss Statement was as complex or difficult as Melnyk suggests.

[322] We also note that there was evidence that it was Melnyk who required that revenue information with respect to the WXL involved in the Accident be included in the October 3 Release in substitution for the very relevant statement that estimated third quarter WXL revenues were below $10 million.

[323] If there was such great uncertainty about the revenue to Biovail associated with the WXL product involved in the Accident, then the revenue numbers should not have been used in a news release until Biovail had a sufficient degree of certainty with respect to those numbers. Certainly, there was no specific disclosure in the October 3 Release, on the Analysts Call or in the October 8 Release as to any uncertainty related to calculating the revenue range disclosed or the reasons for that uncertainty. To the contrary, Crombie stated on the Analysts Call that the revenue range was conservative.

[324] For the reasons discussed above, we find that Melnyk knew or should have known that the Revenue Loss Statement made in the October 3 Release was, at the time and in the light of the circumstances under which that statement was made, misleading or untrue. It follows that Melnyk knew or should have known that the Revenue Loss Statement made at any time thereafter was also misleading or untrue.

[325] We would add that, on the Analysts Call on the afternoon of October 3, 2003, Crombie made the statement that the WXL revenue loss associated with the Accident was in the range of $15 to $20 million (increasing the lower end of the revenue range reflected in the Revenue Loss Statement by $5.0 million). Melnyk testified that was the first time he had heard that range and was surprised by it. Notwithstanding, Melnyk repeated the $15 million low end of the range on that call. Melnyk was clearly on notice as a result of Crombie's statement on the Analysts Call that there was a serious issue with the WXL revenue range being put forward by Crombie. Melnyk apparently did nothing to resolve that issue or to clarify the accurate range. To the contrary, Melnyk approved the making of the Revenue Loss Statement in the October 8 Release referring to the $10 to $20 million revenue range.

(v) The Truck Accident Statement Made in the October 8 Release

[326] We concluded above that:

(1) Melnyk knew or should have known that the Accident Contribution Statement made in the October 8 Release and at any time thereafter was misleading or untrue (see paragraph 305 of these reasons);

(2) Melnyk knew or should have known that the Revenue Loss Statement made in the October 3 Release and at any time thereafter was misleading or untrue (see paragraph 324 of these reasons); and

(3) the Truck Accident Statement made in the October 8 Release was misleading or untrue *in a material respect* (see paragraph 253 of these reasons).

It follows that Melnyk knew or should have known that the Truck Accident Statement repeated by Biovail in the October 8 Release was, *in a material respect* and at the time and in the light of the circumstances under which that statement was made, misleading or untrue.

(vi) The Omissions from the October 30 Release

[327] As concluded in paragraph 269 of these reasons, by October 30, 2003, Biovail knew or should have known that the revenue associated with the WXL product involved in the Accident could never have been recognised in its 2003 third quarter financial results. Further, by that date Biovail had re-shipped the undamaged WXL product involved in the Accident as samples, which had a revenue value to Biovail substantially below even the $5 million revenue loss attributed to the Accident in the March 04 Release. Melnyk knew or should have known that (see paragraph 270 of these reasons).

[328] On cross-examination, Melnyk testified that, by the time of the October 30 Release, he was aware of the correct shipping term (he became aware of that on the afternoon of October 3, 2003) and that he was aware that the Earnings Miss was entirely unrelated to the Accident. He also acknowledged that Deeth's e-mail of October 27, 2003, just three days before the October 30 Release was issued, put an end to discussions about any retroactive amendment to the GSK delivery term. We find that Melnyk could not have had any reasonable doubt as to the meaning of the GSK delivery term and its implications for revenue recognition by the time the October 30 Release was issued.

[329] Melnyk also testified that he could not recall whether he knew, by the time the October 30 Release was issued, that the revenue range reflected in the Revenue Loss Statement was proposed to be adjusted to $7.0 million, but acknowledged that he

"could have been aware of it". By that time, Melnyk knew or should have known that the undamaged WXL involved in the Accident had been re-shipped to GSK as samples.

[330] Although Melnyk testified that the October 30 Release was reviewed by internal and external counsel, he acknowledged that he could not recall instructing counsel, or asking anyone at Biovail to instruct counsel, whether Biovail should correct the Truck Accident Statement. We note in this respect that Scullion testified that he reviewed the October 30 Release only to ensure that the numbers disclosed were factually correct and consistent with the financial statements.

[331] Based on the foregoing and our conclusion in paragraph 272 of these reasons, we find that Melnyk knew or should have known that the October 30 Release did not state facts that were required to be stated or that were necessary to make the October 30 Accident Statement not misleading.

(vii) The Accident Contribution Statement Made in the March 04 Release

[332] The March 04 Release corrected the revenue range reflected in the Revenue Loss Statement but repeated the Accident Contribution Statement. The March 04 Release stated that "[a]fter a subsequent review of all of the facts, the actual revenue loss from the accident was determined to be $5.0 million".

[333] In cross-examination, Melnyk acknowledged that sentence was "mis-worded":

> … it is not correctly written because by this time we certainly know that it was the issue of the shipping term. So you're right, that is miswritten. And how that was missed, it's not meant to mislead, it was meant to say, That truck that we all talked about and was all over the newspapers, it ended up being 5 million. And if you looked at the research reports coming out, we were ridiculed. Okay, in all fairness, we were ridiculed. How did you get the 5 million, boy, we were right all along, it wasn't 10 to 20 million, it was 5 million. So that's what that was meant to say. [*sic*]

[334] Melnyk was directly involved in the preparation of the March 04 Release, including the language relating to the Accident. For example, in an e-mail exchange with Howling on February 10, 2004, Melnyk stated that a draft of the language relating to the truck accident "needs a lot of work"; Howling replied that he would "take a stab at it" and send it back to him. Melnyk replied, "keep in mind that it will be buried in our Earnings release".

[335] Accordingly, we find that Melnyk knew or should have known that the statement made in the March 04 Release referred to in paragraph 332 of these reasons was, at the time and in the light of the circumstances under which that statement was made, misleading or untrue because that statement repeated the Accident Contribution Statement. However, consistent with our conclusion in paragraph 243 of these reasons, we find that statement was not in a material respect misleading or untrue.

(viii) Conclusions

[336] Our conclusions are summarized as follows. We were not persuaded that Melnyk knew or should have known that the Accident Contribution Statement made in the October 3 Release was misleading or untrue, but we have found that he knew or should have known that the Accident Contribution Statement made in the October 8 Release and at any time thereafter was misleading or untrue; however, the Accident Contribution Statement, standing alone, was not, in a material respect, misleading or untrue. We have found that Melnyk knew or should have known that the Revenue Loss Statement made in the October 3 Release and at any time thereafter was misleading or untrue; however, the Revenue Loss Statement, standing alone, was not, in a material respect, misleading or untrue. We have found that Melnyk knew or should have known that the Truck Accident Statement repeated in the October 8 Release was, *in a material respect* and at the time and in the light of the circumstances under which it was made, misleading or untrue. We have found that Melnyk knew or should have known that the October 30 Release did not state facts that were required to be stated or that were necessary to make the October 30 Accident Statement not misleading. Finally, we have concluded that Melnyk knew or should have known that the Accident Contribution Statement made in the March 04 Release was misleading or untrue; but that statement was not, in a material respect, misleading or untrue.

H. Did Biovail Contravene Section 122 of the Act?

(i) Positions of the Parties

[337] Staff submits that the Releases contravened subsection 122(1) of the Act and that Melnyk "as CEO of Biovail, authorized, permitted or acquiesced in Biovail's conduct and is therefore liable for Biovail's breaches of Ontario securities law under sections 122(3) and 129.2 of the *Securities Act*." Staff submits that subsection 122(1)(b) of the Act applies to any news release filed under the Act, not just those "required to be filed". In the alternative, Staff submits that any news release filed under the Act is "submitted to the Commission" within the meaning of subsection 122(1)(a) of the Act.

[338] Melnyk submits that subsection 122(1)(b) of the Act does not apply in the circumstances because Biovail was not "required to file" any of the Releases or a material change report in respect of them. Melnyk submits that, in order for the Releases to be required to be filed, a material change with respect to Biovail's business, operations or capital must have occurred within the meaning of section 75 of the Act. Melnyk notes that Staff has not alleged in the Statement of Allegations that a material change occurred at any time.

[339] Melnyk notes that Biovail did not file a material change report in respect of the October 3 Release, the October 8 Release or the October 30 Release. Biovail did file a material change report in connection with the March 04 Release. Melnyk submits, however, that fewer than five of the 51 paragraphs of that news release concerned the Accident and third quarter WXL revenues, and it did not "suggest, state or indicate that there was any material change in Biovail's business, operations or capital, either in March 2004 or at any other time". Melnyk submits that Biovail's decision to file a material change report does not establish that a material change occurred.

[340] Melnyk submits that subsection 122(1)(a) of the Act does not apply because, although Biovail posted all of the Releases on the System for Electronic Document Analysis and Retrieval ("**SEDAR**"), a document posted on SEDAR is not thereby "submitted" to the Commission within the meaning of subsection 122(1)(a) of the Act.

(ii) Sections 122(1)(a) and (b) of the Act

[341] Sections 122(1)(a) and (b) of the Act provide as follows:

> 122(1) Every person or company that,
>
> (a) makes a statement in any material, evidence or information *submitted to the Commission*, a Director, any person acting under the authority of the Commission or the Executive Director or any person appointed to make an investigation or examination under this Act that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading;
>
> (b) makes a statement in any application, *release*, report, preliminary prospectus, prospectus, return, financial statement, information circular, take-over bid circular, issuer bid circular or other document *required to be filed or furnished under Ontario securities law* that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading; or
>
> ...
>
> is guilty of an offence ... [emphasis added]

(iii) The Interpretation of Subsection 122(1)(b) of the Act

(a) Further Staff Submissions

[342] Staff relies on Felderhof, *supra*, at p. 97 for the proposition that the term "release" in subsection 122(1)(b) of the Act includes news releases such as the Releases (*Felderhof*, *supra*, at pp. 179-180). The Court stated in *Felderhof* that subsection 122(1)(b) applies only to news releases that are "required to be filed" under Ontario securities law (*Felderhof*, *supra*, at pp. 177-179). Staff submits, however, that *Felderhof* is not dispositive of that issue because in *Felderhof* the Crown elected to prove that the news releases at issue were required to be filed and the accused conceded that point.

[343] Staff submits that the phrase "required to be filed or furnished under Ontario securities law" in subsection 122(1)(b) of the Act qualifies the phrase "other document" but does not apply to the other documents listed earlier in paragraph (b), including releases. Staff submits that Melnyk's reading of paragraph (b) suggests that an issuer could be prosecuted for making misleading statements in a required news release but could mislead the investing public with impunity in a news release issued voluntarily, a result that is inconsistent with a purposive interpretation of the Act.

[344] Staff notes that the SEDAR Filer Manual: Standards, Procedures and Guidelines for Electronic Filing with the Canadian Securities Administrators, dated November 1, 1996, which is incorporated by reference into National Instrument 13-101 – *System for Electronic Document Analysis and Retrieval ("SEDAR")* ("NI 13-101") states:

> News releases and, where required, material change reports should not be filed with a securities regulatory authority in a jurisdiction if the electronic filer does not have a legal obligation to do so.

> (SEDAR Filer Manual, p. 99)

[345] Staff submits that this passage supports its position that documents filed on SEDAR are documents "required to be filed or furnished under Ontario securities law".

[346] Staff notes that documents now filed on SEDAR were, in the past, filed physically at the offices of the relevant securities regulator (in the days before SEDAR). NI 13-101 now states that an electronic filer that "is required or otherwise is proposing to file" certain documents, including news releases, is required to file the documents on SEDAR.

(b) Material Change; Material Fact

[347] Section 122(1)(b) of the Act should be considered in the context of subsection 75(1) of the Act, which states that "where a material change occurs in the affairs of a reporting issuer, it shall forthwith issue and file a news release authorized by a senior officer disclosing the nature and substance of the change."

[348] The Act defines "material change", which, for our purposes, means,

> a change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the issuer …

[349] The Act defines "material fact" as follows:

> "material fact", when used in relation to securities issued or proposed to be issued, means a fact that would reasonably be expected to have a significant effect on the market price or value of the securities.

[350] Accordingly, a "material change" triggers a requirement to forthwith issue and file a news release. In contrast, the existence of a "material fact" gives rise to restrictions on trading and tipping pursuant to section 76 of the Act but does not trigger a disclosure obligation. This distinction was addressed by the Supreme Court of Canada in *Kerr v. Danier Leather Inc.*, at para. 5, as follows:

> Although disclosure lies at the heart of an effective securities regime, the extent of the disclosure is a matter of legislative policy. Balancing the needs of the investor community against the burden imposed on issuers, the Ontario legislature adopted a policy governing the continuous disclosure requirements of an issuer that drew the line at "material change" in the "business, operations or capital of the issuer" (s. 1).

And, at para. 32:

> The *Securities Act* is remedial legislation and is to be given a broad interpretation: *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557. … At the same time, in compelling disclosure, the Act recognises the burden it places on issuers and in Part XV [Prospectuses – Distribution] sets the limits on what is required to be disclosed. The problem for the appellants is that when a prospectus is accurate at the time of filing, subsection 57(1) of the Act limits the obligation of post-filing disclosure to notice of a "material change", which the Act defines in section 1 in relevant part as
>
> > a change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the issuer ... ;
>
> An issuer has no similar express obligation to amend a prospectus or to publicize and file a report for the modification of material facts occurring after a receipt for a prospectus is obtained. That is where the legislature has drawn the line.
>
> (*Kerr v. Danier Leather Inc.*, [2007] 3 S.C.R. 331("***Danier Leather***"))

[351] The distinction between a "material change" and "material fact" was also at the heart of the Commission's decision in *Re AiT Advanced Information Technologies et al.* In that case, the Commission dealt with the different legal effects of a material change and a material fact as follows:

> … only in the event of a material change does section 75 of the Act require an issuer to issue a news release and also file with the Commission a material change report on a timely basis, or

> alternatively file a confidential material change report with the Commission. In contrast, section 76 of the Act does not require disclosure of either material changes or material facts, but prohibits anyone from purchasing or selling securities with knowledge of a material fact or material change that has not been generally disclosed to the public.
>
> (*Re AiT Advanced Information Technologies Corporation et al.* (2008), 31 O.S.C.B. 712 ("***Re AiT***"), at para. 210)

(c) Analysis and Conclusion as to the Application of Subsection 122(1)(b) of the Act

[352] OSC Policy 13-601, "Public Availability of Material Filed under the Securities Act" states that "[t]he word "filed" is one of precise meaning in the Act". That policy deals with "all of the classes and types of material that the Act and Regulation require to be filed." Included in that material are timely disclosure reports under subsections 75(1) and (2) of the Act.

[353] Subsection 122(1)(b) of the Act also applies to documents required to be "furnished" under Ontario securities law. That word suggests a requirement to provide a document to a person that is an obligation different from the requirement to "file" a document. In this case, Staff did not argue that the Releases were required to be furnished to anyone under Ontario securities law. Accordingly, we will not address the meaning of that element of subsection 122(1)(b).

[354] We note the statement from the SEDAR Filer Manual referred to in paragraph 344 of these reasons that Staff says supports its position. While that provision provides that news releases should not be filed on SEDAR if the filer has no obligation to do so, it does not create a legal requirement to file news releases under the Act. Further, that statement may be addressing whether an issuer is a reporting issuer in a particular jurisdiction, and is therefore subject to timely disclosure obligations, rather than whether a material change has occurred. In any event, a comment in a procedural manual cannot determine the proper interpretation of a statutory provision such as subsection 122(1)(b). We also note that NI 13-101 by its terms applies to both documents required to be filed under SEDAR as well as documents that a filer is "proposing to file".

[355] We do not believe that the legislature intended that any "application, release, report, preliminary prospectus, prospectus, return, financial statement, information circular, take-over bid circular, [or] issuer bid circular" should attract liability under subsection 122(1)(b), whether or not the document is "required to be filed or furnished under Ontario securities law". Section 122(1)(b) could have been expressed to apply to a document "filed or furnished" under Ontario securities law but that is not what the section says. In our view, the language of subsection 122(1)(b) is relatively clear that the section applies only to the enumerated documents if they are "required to be filed or furnished under Ontario securities law".

[356] Further, it is consistent with the nature of section 122, which creates a quasi-criminal offence, that only documents "required to be filed" should subject a person to potential quasi-criminal charges under that section. The Act makes clear when a document is required to be filed. In particular, section 75 of the Act requires a news release and a material change report to be filed only when a material change has occurred. Notwithstanding, issuers often issue news releases and file them on SEDAR even though those documents may not be required to be filed under the Act.

[357] We agree with Staff that we should interpret subsection 122(1)(b) of the Act in a purposive manner within the context of the regulatory objectives of the Act (see, for example, *Bell ExpressVu Limited Partnership v. Rex*, 2 S.C.R. 599, at paras. 26-30). We do not condone any issuer making a misleading or untrue public statement that may be relied upon by investors, whether or not that statement is subject to subsection 122(1)(b). We cannot, however, ignore the clear words of the Act. The legislature could have created an offence for a materially misleading or untrue statement in any document filed under Ontario securities law, but it did not do so. It chose to address in that section only the enumerated documents that are "required to be filed".

[358] That conclusion is based on our interpretation of the language of subsection 122(1)(b) and is consistent with the decision in *Felderhof*. The Court in *Felderhof* appeared to consider it beyond dispute that subsection 122(1)(b) of the Act applies to news releases only when they are "required to be filed or furnished under Ontario securities law."

[359] The Alberta Securities Commission stated in *In the Matter of Cartaway Resources Corporation et al.* that:

> Subsection 161(1)(b) of the Act makes it an offence to make "a misrepresentation in any document required to be filed or furnished under this Act or the regulations". A news release may be required to be filed by subsection 118(1)(a) of the Act, but only if the news release relates to a material change. Although the information in the May 16, 1996 release was material, it is doubtful that it constituted a material change as defined by the Act. Therefore, the misrepresentation did not violate subsection 161(1)(b) of the Act.
>
> (*In the Matter of Cartaway Resources Corporation et al.* (2000), 9 ASCS 3092 at p. 26 ("***Cartaway***"))

[360] While section 161(1)(b) of the Alberta *Securities Act* (S.A. 1981, c. S-6-1, as amended) (the "**Alberta Act**") applies only to a "document required to be filed" under the Alberta Act and does not refer to a list of specific documents such as that contained in subsection 122(1)(b) of the Act, the decision in *Cartaway* is consistent with our interpretation and conclusion as to the application of subsection 122(1)(b).

[361] Staff has not alleged in the Statement of Allegations or in its submissions that a material change occurred with respect to Biovail at the time any of the Releases was issued. Nor has Staff alleged that Biovail contravened section 75 of the Act by failing to file a material change report with respect to the October 3 Release, the October 8 Release or the October 30 Release. Further, we are not persuaded that Biovail's decision to file a material change report in respect of the March 04 Release necessarily means that a material change occurred and, as a result, that subsection 122(1)(b) applies to that release. In any event, we did not conclude that the Accident Contribution Statement made in the March 04 Release was *in a material respect* misleading or untrue. As a result, Biovail did not breach subsection 122(1)(b) of the Act by making the Accident Contribution Statement in the March 04 Release.

[362] Accordingly, we find that Staff has not established that the Releases were required to be filed or furnished under the Act within the meaning of subsection 122(1)(b) of the Act. As a result, Staff has not established that subsection 122(1)(b) of the Act applies to any statement made in the Releases.

[363] We note that section 11.4 of National Instrument 51-102 – *Continuous Disclosure Obligations* creates a requirement that "a reporting issuer must file a copy of any news release issued by it that discloses information regarding its historical or prospective results of operations or financial condition for a financial year or interim period". That section came into effect on March 31, 2004, after the events that gave rise to this proceeding, and therefore has no application in this proceeding.

(iv) The Interpretation of Section 122(1)(a) of the Act

(a) Positions of the Parties

[364] Without conceding Melnyk's argument with respect to the interpretation of subsection 122(1)(b) of the Act, Staff submits that, even if that section does not apply to the Releases, subsection 122(1)(a) applies to all documents filed on SEDAR, whether voluntarily or required, because such documents are "submitted" to the Commission by virtue of such filing. Staff submits that subsection 122(1)(a) is intended to ensure that news releases filed on a voluntary basis provide full and accurate disclosure to investors. In effect, Staff submits that voluntarily filing a document on SEDAR is "submitting" it to the Commission. Staff submits that SEDAR "not only widely disseminates disclosure documents, it lends them the imprimatur of the Canadian securities regulatory authorities" and therefore requires that they be free of material misstatements. Staff submits that this advances the policy aim of promoting full and accurate disclosure in the marketplace.

[365] Melnyk submits that subsection 122(1)(a) of the Act applies only to material, evidence or information that is "submitted to" the Commission (or the other persons named in that subsection) for its review and consideration. Melnyk submits that there is no evidence that any of the Releases were submitted to, received, read or reviewed by the Commission or any other such person.

(b) Analysis and Conclusion as to the Application of Subsection 122(1)(a) of the Act

[366] In our view, the fact that the four Releases were filed by Biovail on SEDAR does not make them materials, evidence or information "submitted to the Commission" within the meaning of subsection 122(1)(a) of the Act. Many types of documents are filed on SEDAR with no intention of submitting them to the Commission and with no expectation that they will be reviewed, considered or acted upon by the Commission. Rather, they are filed on SEDAR for the purpose of making them easily accessible to the public. In this respect, SEDAR's website expressly states that "continuous disclosure documents such as news releases … do not require the securities commissions' review" and are available to members of the public on SEDAR's website the day after filing.

[367] Further, accepting Staff's interpretation of subsection 122(1)(a) of the Act would render subsection 122(1)(b) redundant, because the documents "submitted to the Commission" under subsection 122(1)(b) would always include the documents required to be filed under subsection 122(1)(a). Accordingly, Staff's interpretation of subsection 122(1)(a) is inconsistent with our interpretation of subsection 122(1)(b).

[368] It appears that previous Commission decisions relating to the application of subsection 122(1)(a) of the Act have involved misleading documents or information that have been submitted to the Commission for its review and reliance, or misleading statements that were made to a person appointed by the Commission to conduct an investigation or examination. (See, for example, *Wilder v. OSC* (2001), 53 O.R. (3d) 519; *Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 1727, *Re Fortuna-St. John* (1998), 21 O.S.C.B. 3851, and *Re Kader* (2006), 29 O.S.C.B. 4565.) In our view, material, evidence or information "submitted to the Commission" for purposes of subsection 122(1)(a) means material, evidence or information submitted to the Commission for its review or consideration with the intention or expectation that the Commission would rely on

that material, evidence and information in connection with the administration of the Act. That would clearly include statements and representations made to the Commission or Staff in connection with an investigation or an examination under Part VI of the Act. In our view, the four Releases were not submitted to the Commission for its review, consideration or reliance. They were simply filed on SEDAR so that they would be publicly available.

[369] Accordingly, we find that Staff has not established that the Releases were submitted to the Commission within the meaning of subsection 122(1)(a) of the Act. As a result, Staff has not established that subsection 122(1)(a) of the Act applies to any statement made in the Releases.

(v) Conclusions as to the Application of Subsections 122(1)(a) and (b) of the Act

[370] For the reasons discussed above, we find that Staff has not established that subsections 122(1)(a) or (b) of the Act apply to the Releases or the statements made in them. Accordingly, we find that neither Biovail nor Melnyk contravened Ontario securities law as a result of the statements made in the Releases or on the Analysts Call that are addressed in these reasons. It remains for us to consider whether Melnyk has acted contrary to the public interest by reason of our findings against him.

I. Section 127: Conduct Contrary to the Public Interest

(i) Disclosure and the Commission's Public Interest Jurisdiction

(a) Positions of the Parties

[371] Staff submits that "in addition to constituting misstatements as defined in section 122 of the Act, all of the incorrect and/or misleading public disclosures identified by Staff in this case constitute conduct contrary to the public interest" within the meaning of section 127 of the Act. Staff describes section 122 and section 127 as "two separate grounds … two different lenses through which to view the conduct of Mr. Melnyk". Accordingly, Staff submitted that Melnyk's conduct was contrary to the public interest even if it did not violate Ontario securities law.

[372] Melnyk submits that Staff cannot make out its case under section 127 unless it can prove a breach of the Act or abuse of the capital markets. He submits that only an egregious misstatement going to the core of Biovail's business or existence could amount to abuse of the capital markets, not any misstatement. He says such misstatements must be egregious, like the misstatements at issue in *Re Standard Trustco* (1992), 15 O.S.C.B. 4322 ("***Re Standard Trustco***"), *Re YBM* and *Re Rex Diamond Mining Corp.* (2008), 31 O.S.C.B. 8337 ("***Re Rex Diamond***").

(b) Importance of Disclosure

[373] In order to determine whether Melnyk's conduct was contrary to the public interest, we must consider the regulatory context in which that conduct occurred.

[374] The Commission is entitled to make various sanctions orders under section 127 of the Act if it is of the opinion that doing so is in the public interest. In considering the Commission's power to make such orders in the public interest, the Supreme Court of Canada has observed that "the OSC has the jurisdiction and a broad discretion to intervene in Ontario capital markets if it is in the public interest to do so" (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 ("***Asbestos***"), at para. 45). The Court indicated that this discretion is subject to two constraints:

> In exercising its discretion, the OSC should consider the protection of investors and the efficiency of, and public confidence in, capital markets generally. In addition, s. 127(1) is a regulatory provision. The sanctions under the section are preventive in nature and prospective in orientation. Therefore, s. 127 cannot be used merely to remedy Securities Act misconduct alleged to have caused harm or damages to private parties or individuals.
>
> (*Asbestos*, *supra* at para. 45)

The Commission's public interest jurisdiction allows it to make an order under section 127 of the Act even if there is no breach of Ontario securities law or any conduct inconsistent with a policy statement. We recognise, however, that our public interest jurisdiction must be exercised with some caution and restraint.

[375] In *Re Cablecasting Ltd.*, the Commission applied its public interest jurisdiction to a going private transaction that was not effected in compliance with the disclosure requirements applicable to issuer bids under a policy of the Commission. In its decision, the Commission provided guidance as to when it is more likely to intervene on policy grounds under its public interest jurisdiction despite the absence of any breach of Ontario securities law. The Commission stated that:

> Another relevant consideration in assessing whether to act against a particular transaction is whether the principle of the new policy ruling that would be required to deal with the transaction is foreshadowed by principles already enunciated in the Act, the regulations or prior policy statements. Where this is the case the Commission will be less reluctant to exercise its discretionary authority than it will be in cases that involve an entirely new principle.
>
> (*Re Cablecasting Ltd.* [1978] O.S.C.B. 37 ("***Re Cablecasting***") at p. 43)

[376] Far from being a new principle, disclosure by reporting issuers is a fundamental cornerstone of securities regulation. Section 2.1 of the Act states:

> In pursuing the purposes of this Act, the Commission shall have regard to the following fundamental principles:
>
> …
>
> 2. The primary means for achieving the purposes of this Act are,
>
> i. requirements for timely, accurate and efficient disclosure of information,
>
> …

[377] The Commission has emphasized the importance of disclosure to investors and capital markets in a number of decisions. In *Re Philip Services Corp.*, the Commission stated that:

> [d]isclosure is the cornerstone principle of securities regulation. All persons investing in securities should have equal access to information that may affect their investment decisions. The Act's focus on public disclosure of material facts in order to achieve market integrity would be meaningless without a requirement that such disclosure be accurate and complete and accessible to investors.
>
> (*Re Philip Services Corp.* (2006), 29 O.S.C.B. 3941, at para. 7)

[378] In examining the consequences of a misleading news release issued by a reporting issuer, the Commission stated in *Re Standard Trustco* that:

> [a] sound financial disclosure system is fundamental to the operation of our capital markets, in terms of investor decisions, public confidence in the capital markets and the fair and efficient operation of the capital markets as a whole. A sound disclosure system is one of the underpinnings of the securities regulatory system.
>
> (*Re Standard Trustco*, *supra*, at p. 4358)

[379] Information that is publicly disclosed must be accurate and not misleading or untrue in order to accomplish the goals of our securities regulatory regime to protect investors from unfair or improper practices and to foster fair and efficient capital markets and confidence in those markets (*Re Rex Diamond*, *supra*, at para. 205). The Commission concluded in *Re Standard Trustco* that the issue of a misleading news release is itself injurious to capital markets.

[380] The Commission has applied its public interest jurisdiction to misleading disclosure in news releases in *Re Cineplex Corporation, Drabinsky and Gottlieb* (1983), 6 O.S.C.B. 3845, *Re Standard Trustco*, *Re YBM* and *Re Rex Diamond*. While those cases involved news releases required to be filed under the Act, it is clear that the Commission considered the making of inaccurate, misleading or untrue disclosure to be contrary to the public interest.

[381] The decision in *Re Canadian Tire Corp.* (1987), 10 O.S.C.B. 857 ("***Canadian Tire***") established that the Commission may exercise its public interest jurisdiction, even if there is no breach of Ontario securities law, where a take-over bid transaction is abusive of shareholders. Abuse was defined in that decision as something more than mere unfairness. We note that the *Canadian Tire* decision related to a take-over bid that was being carried out in full compliance with the take-over bid regime contained in the Act. *Canadian Tire* was not a disclosure case.

[382] In our view, where market conduct engages the animating principles of the Act, the Commission does not have to conclude that an abuse has occurred in order to exercise its public interest jurisdiction. That is no doubt one of the reasons why the Commission concluded in *Re Standard Trustco* that the issue of a misleading news release is itself injurious to capital markets. We should not interpret or constrain our public interest jurisdiction in a manner that condones inaccurate, misleading or

untrue public disclosure regardless of whether that disclosure contravenes Ontario securities law. The issues raised by this matter directly engage the fundamental principle recognised in the Act for timely, accurate and efficient disclosure.

[383] There should be no doubt in the minds of market participants that the Commission is entitled to exercise its public interest jurisdiction where any inaccurate, misleading or untrue public statement is made, whether or not that statement contravenes Ontario securities law. It is, of course, a separate question whether the Commission should exercise its public interest jurisdiction under section 127 of the Act in any particular circumstances.

(c) The Responsibility of Corporate Officers

[384] Corporate directors and officers have a central role to play in ensuring that corporate disclosure is accurate and not misleading or untrue.

[385] Directors and officers of a reporting issuer are ultimately responsible for ensuring that information disclosed by the issuer complies with the Act:

> [t]he responsibility of companies to make timely and accurate financial disclosure ultimately rests with directors of those companies. In practice, the responsibility is shared by the directors, audit committees, chief executive officers, chief financial officers and other management. The company itself would also be responsible.
>
> The public has a right to expect that when a reporting issuer releases financial information to the public, the directors and officers of the company will have met certain standards of care in satisfying themselves that there is no question about the integrity of the information and that the information is accurate, complete and represents a fair picture of the financial condition of the company. The whole continuous disclosure system demands this from all directors and officers of reporting issuers.
>
> (*Re Standard Trustco*, *supra*, at p. 4364)

[386] More is expected of officers and directors with superior qualifications, such as experienced business people, and more is expected of inside directors who have much greater involvement in corporate decision making and much greater direct access to corporate information. In *Soper v. Canada*, a case concerning a director's responsibility for a company's failure to remit taxes, Robertson J.A. stated that:

> it is difficult to deny that inside directors, meaning those involved in the day to day management of the company and who influence the conduct of its business affairs, will have the most difficulty in establishing the due diligence defence. For such individuals, it will be a challenge to argue convincingly that, despite their daily role in corporate management, they lacked business acumen to the extent that that factor should overtake the assumption that they did know, or ought to have known, of both remittance requirements and any problem in this regard.
>
> (*Soper v. Canada* (1997), F.C.J. No. 881, at para. 41; see also *Re YBM*, *supra*, at paras. 177, 183 and 184)

[387] The Chief Executive Officer of a corporation plays a "pivotal" role in "co-ordinating, compiling and vetting material corporate disclosure" (*Ironside*, *supra*, at paras. 963 and 982; *Re Workum and Hennig*, 2008 ABASC 363, at para. 713).

(d) Conclusions as to Disclosure and the Commission's Public Interest Jurisdiction

[388] We do not agree that, in order for Melnyk's conduct in this matter to engage the Commission's public interest jurisdiction, we must find abusive or egregious conduct or misstatements for which he has responsibility. There is an essential public interest in ensuring that all public statements made by reporting issuers and others are accurate and not misleading or untrue and can be relied upon by investors in making investment decisions. It may make sense for the Act to create an offence under section 122 only with respect to statements in documents that are "required to be filed or furnished" under the Act or are "submitted to the Commission". Our public interest jurisdiction under section 127 of the Act is not and should not be so limited.

[389] If a reporting issuer makes a public statement or discloses information that is relevant to investors, it should take appropriate steps to ensure that the statement or information is accurate and not misleading or untrue. In our view, that obligation applies to a statement or information that is material to investors as well as to a statement or information that may not meet the applicable standard of materiality. It goes without saying that in exercising our public interest jurisdiction, we must consider all of the relevant circumstances including the nature and significance of the misleading or untrue statements and the

circumstances in which they were made. We agree, in this respect, with the Commission's statement *In the Matter of Sterling Centrecorp Inc. and SCI Acquisition Inc.*, at para. 212, that:

> … [t]he Commission's "public interest" jurisdiction is broad and powerful, and it must be exercised with caution, as recognised in the *Re Canadian Tire* decision. When considering the exercise of this jurisdiction, the Commission needs to have regard to all of the facts, all of the policy consideration [*sic*] at play, all of the underlying circumstances of the case, and all of the interests affected by the matter and the remedy sought.
>
> (*In the Matter of Sterling Centrecorp Inc. and SCI Acquisition Inc.* (2007), 30 O.S.C.B. 6683, at para. 212)

(ii) Conclusions as to Biovail's Conduct

[390] Biovail has entered into a settlement agreement with the Commission with respect to the circumstances before us in this proceeding, as well as the other allegations made by Staff against Biovail in the Statement of Allegations. That settlement resolved to the Commission's satisfaction all of the allegations made by Staff against Biovail related to this proceeding. As a result, Biovail was not a party to this proceeding and did not participate in it. Notwithstanding, in order to address the allegations made by Staff against Melnyk, it is necessary for us to make certain findings with respect to Biovail's statements and omissions for purposes only of addressing Melnyk's conduct.

(a) Conclusions as to Biovail's Statements

[391] We have concluded that:

1. by making the Truck Accident Statement in the October 3 Release and on the Analysts Call, and by repeating that statement in the October 8 Release, Biovail made a statement that, *in a material respect* and at the time and in the light of the circumstances under which that statement was made, was misleading or untrue;

2. Biovail omitted to state facts in the October 30 Release that were required to be stated or that were necessary to make the October 30 Accident Statement not misleading; and

3. by making the Accident Contribution Statement in the March 04 Release, Biovail made a statement that, at the time and in the light of the circumstances under which that statement was made, was misleading or untrue; but that statement was not, *in a material respect*, misleading or untrue.

Staff did not establish that the making of those statements by Biovail, or the omission of such facts from the October 30 Release, breached Ontario securities law.

[392] Melnyk made much of the fact that Biovail acted appropriately in "opting for early disclosure of the Earnings Miss" by issuing the October 3 Release. The Earnings Miss was clearly material information that was disclosed to the market and investors promptly. However, that did not relieve Biovail or Melnyk of the obligation to ensure that the statements and information contained in the October 3 Release and later disclosures were accurate and not misleading or untrue.

(b) Other Biovail Conduct

[393] Apart from our conclusions referred to in paragraph 391 of these reasons, we have identified certain other actions or omissions by Biovail that appear to us to have constituted inappropriate conduct. Those actions or omissions include the following:

1. Biovail failed to disclose in the October 3 Release that its WXL revenues for the 2003 third quarter were estimated to be below $10 million;

2. Biovail selectively disclosed on the Analysts Call the information referred to in clause 1 above;

3. Crombie stated in the Analysts Call that the WXL revenue loss associated with the Accident was $15 to $20 million. Biovail subsequently repeated the $10 to $20 million revenue range in the October 8 Release and failed to ever expressly correct the $15 to $20 million range; and

4. Biovail failed to disclose that the WXL bulk trade tablets involved in the Accident were ultimately re-shipped to GSK by October 30, 2003 as sample tablets, which had a fixed revenue value to Biovail that was substantially lower than the revenue value for the WXL trade tablets used as a basis for the Revenue Loss Statement.

[394] We are not making any finding against Biovail with respect to the matters referred to in paragraph 393 of these reasons. Further, while Melnyk authorized, permitted or acquiesced in the conduct referred to in that paragraph, we are not making any finding against him on that account because those matters were not the principal focus of the allegations made by Staff and were not the subject matter of submissions made to us.

(iii) Melnyk's Conduct

(a) Did Melnyk Authorize, Permit or Acquiesce in Biovail's Misleading Statements?

[395] Staff has alleged that Melnyk authorized, permitted or acquiesced to Biovail's conduct described in paragraph 391 of these reasons. In considering Melnyk's responsibility for Biovail's conduct, in our view, it is relevant whether Melnyk authorized, permitted or acquiesced to that conduct.

[396] We interpret the words "authorize, permit or acquiesce" as bearing their ordinary or dictionary meaning. In *R. v. Armaugh Corp.*, the Ontario Court of Justice stated that:

> In *Webster's New World Dictionary*, 3rd college edition **acquiesce** means to agree or consent quietly without protest. **Authorize** is defined in part as to give official approval or permission, to give power or authority, to give justification for, and **permit** is defined as to allow, consent to tolerate, to give permission, authorize permission especially in writing, a document granting permission, licence, warrant.
>
> (*R. v. Armaugh Corp.* (1993), 1 C.C.L.S. 87 (Ont. Ct. J.) at para. 20)

[397] It is clear that Melnyk participated in the preparation of and approved all of the Releases. There was evidence that Melnyk specifically requested that revenue information with respect to the WXL involved in the Accident be included in the October 3 Release. There was also evidence that he requested that the last sentence of the October 8 Release that repeated the Truck Accident Statement be included in that release. He had final approval over the content and issue of all Biovail news releases. Accordingly, we find that Melnyk authorized, permitted or acquiesced in the issue of each of the Releases and in making the disclosure and statements contained in each of them.

[398] It is also clear that Melnyk authorized, permitted or acquiesced in the making of the Truck Accident Statement on the Analysts Call. We have no evidence that he knew in advance that Crombie intended to change the low end of the revenue range reflected in the Revenue Loss Statement, but Melnyk heard that statement, repeated the $15 million revenue number on the Analysts Call and took no action after the call to confirm the accuracy of the Revenue Loss Statement made on that call or to expressly correct it. Accordingly, Melnyk acquiesced in the making of the Truck Accident Statement on the Analysts Call.

(b) Availability of a Due Diligence Defence

[399] We heard submissions as to whether a due diligence defence is available in connection with a public interest proceeding under section 127 of the Act. A due diligence defence is available under subsection 122(2) of the Act, which provides that no person or company is guilty of an offence under subsections 122(1)(a) or (b) of the Act if that person "did not know and in the exercise of reasonable diligence could not have known" that a statement was misleading or untrue. This proceeding is not brought under section 122, however, and we have concluded that subsections 122(1)(a) and (b) do not apply to the statements made by Biovail in the circumstances before us.

[400] Staff also alleges that Melnyk's conduct was contrary to the public interest. In our view, in considering whether Melnyk's conduct was contrary to the public interest, we should consider whether, in all of the circumstances, Melnyk has demonstrated that he exercised due care and diligence. If we are satisfied that he exercised such care or diligence, we would not conclude that it is in the public interest to issue an order against him under section 127.

(c) Conclusions as to Melnyk's Role

[401] Melnyk was the Chairman and CEO of Biovail at the relevant time. He was the founder and driving force of Biovail. At the end of the day, Melnyk cannot separate himself from the actions of Biovail. He had a heavy responsibility as Chairman and CEO to ensure that Biovail did not make inaccurate, misleading or untrue public statements. In particular, Melnyk (i) had access at any time to whatever information was known by Biovail and its senior officers and employees and could have obtained appropriate supporting information with respect to all of the statements made by Biovail addressed in these reasons, (ii) was directly involved in and made decisions related to the content and extent of the disclosure made by Biovail in the Releases and on the Analysts Call, and (iii) had final approval of the Releases and other public statements made by Biovail. Contrary to his testimony, the evidence has shown him to have been an active and hands-on CEO directly involved in the conduct of Biovail's business and the disclosure decisions made by Biovail. In our view, Melnyk cannot simply claim innocence on the basis that he relied in good faith on the other senior officers or employees of Biovail.

[402] Certain of Melnyk's submissions in this matter relied upon denials that he knew key information that other senior officers and employees of Biovail knew at a particular time. In our view, that position tends to undermine his submissions that he acted reasonably throughout and exercised due care and diligence.

[403] We do not consider this matter to be, at its core, a question whether there were red flags that should have alerted Melnyk to make further inquiries in the circumstances. Melnyk had direct responsibility and involvement in Biovail's various disclosure decisions and had an obligation to exercise due care and diligence in carrying out that responsibility. There is very limited evidence before us that Melnyk did anything at the relevant times to satisfy that obligation other than rely on the assurances that he says were given by Crombie and other Biovail senior officers. Having said that, there were a number of obvious red flags that arose in the circumstances including:

1. the revenue range itself reflected in the Revenue Loss Statement, particularly when that range is compared to Biovail's estimated total WXL third quarter revenues of less than $10 million at the time of the October 3 Release;

2. Melnyk's direct knowledge of the details of the WXL shipments made to GSK on September 30, 2003;

3. Melnyk's knowledge of Biovail's revenue recognition policies;

4. the statement by Crombie on the Analysts Call changing the revenue range reflected in the Revenue Loss Statement to $15 to $20 million, a statement that was never repeated or expressly corrected;

5. Melnyk's knowledge, following the Analysts Call, that the Revenue Loss Statement was based in part on analysts' estimates and variables;

6. Melnyk's knowledge, by the afternoon of October 3, 2003, of the accurate GSK delivery term;

7. the immediate skeptical reaction of analysts and investors to the Truck Accident Statement made in the October 3 Release, including the Maris Report; and

8. GSK's responses to the October 3 Release, which were communicated to Melnyk on October 8 and 9, 2003.

[404] We note that Ernst & Young was not consulted with respect to the disclosure in the October 3 Release and that Ernst & Young requested an opportunity to comment on the October 8 Release but was not given sufficient time to do so. It was immediately clear to Scullion and Lundie, upon reviewing the October 3 Release, that the F.O.B. delivery term was important to the disclosure in that release. They also recognized the questions raised by that disclosure with respect to revenue recognition. By October 8, 2003, Melnyk should have known about the meeting between Ernst & Young and Biovail employees on October 6 or 7 discussing delivery terms, cut off dates and their effect on revenue recognition. There was no evidence submitted to us that Biovail or Melnyk attempted to obtain outside legal or accounting advice prior to the issue of the October 3 Release or the October 8 Release.

[405] We reject Melnyk's submissions that Biovail's disclosure failures were the result only of the failures of others.

[406] Melnyk has the onus of establishing that he acted with due care and diligence in the circumstances. In our view, he has not satisfied that onus.

[407] Based on our conclusions in paragraphs 336, 397, 398 and 406 of these reasons, we find that Melnyk acted contrary to the public interest.

V. FINDINGS AGAINST MELNYK

[408] Based on the foregoing, we make the following findings with respect to Melnyk's responsibility for Biovail's misstatements and omissions referred to in paragraph 391 of these reasons:

1. Melnyk knew or should have known that the Revenue Loss Statement made by Biovail in the October 3 Release and on the Analysts Call was misleading or untrue at the time and in the light of the circumstances under which that statement was made; but that statement was not, *in a material respect*, misleading or untrue.

2. Melnyk knew or should have known that the Truck Accident Statement repeated by Biovail in the October 8 Release was, *in a material respect* and at the time and in the light of the circumstances under which that statement was made, misleading or untrue.

3. Melnyk knew or should have known that the October 30 Release omitted to state facts that were required to be stated or that were necessary to make the October 30 Accident Statement not misleading.

4. Melnyk knew or should have known that the Accident Contribution Statement made by Biovail in the March 04 Release was misleading or untrue at the time and in the light of the circumstances under which that statement was made; but that statement was not, *in a material respect*, misleading or untrue.

5. By reason of the foregoing, Melnyk did not contravene Ontario securities law but his conduct was contrary to the public interest.

[409] Staff and Melnyk should contact the Office of the Secretary of the Commission within thirty days to schedule a date for a sanctions hearing, failing which, a date will be set by the Office of the Secretary.

DATED in Toronto this 30th day of September, 2010.

"James E. A. Turner"
James E. A. Turner

"David L. Knight"
David L. Knight, F.C.A.

"Paulette L. Kennedy"
Paulette L. Kennedy

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
ConjuChem Biotechnologies Inc.	04 Oct 10	15 Oct 10		
Chai Cha Na Mining Inc.	04 Oct 10	15 Oct 10		
Lands End Resources Ltd.	05 Oct 10	18 Oct 10		

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
Mitec Telecom Inc.	23 Sept 10	05 Oct 10		07 Oct 10	
Cleanfield Alternative Energy Inc.	30 Sept 10	12 Oct 10			

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
Mitec Telecom Inc.	23 Sept 10	05 Oct 10		07 Oct 10	
Cleanfield Alternative Energy Inc.	30 Sept 10	12 Oct 10			

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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
09/17/2010	1	1710 Kingsway Holdings Inc. - Units	1,900,000.00	1,900,000.00
05/06/2010	5	99 Capital Corporation - Common Shares	600,000.00	4,000,000.00
08/17/2010	52	Admiralty Oils Ltd. - Common Shares	1,214,500.00	4,858,000.00
09/13/2010	28	AM Gold Inc. - Units	740,075.00	2,114,500.00
08/26/2010	3	Augen Gold Corp. - Units	442,740.86	2,604,358.00
08/27/2010	56	Barkerville Gold Mines Ltd. - Warrants	5,535,000.00	N/A
09/16/2010	4	BE Aerospace, Inc. - Notes	6,379,820.00	4.00
09/15/2010	3	BNP Paribas Arbitrage Issuance B.V. - Certificates	29,375.50	28.00
09/08/2010	3	Canadian International Minerals Inc. - Common Shares	28,500.00	300,000.00
09/15/2010	3	Celanese US Holdings LLC - Notes	8,328,420.00	8,100.00
09/13/2010	17	CellAegis Devices Inc. - Preferred Shares	2,934,765.54	446,692.00
07/28/2010	17	Creston Moly Corp. - Common Shares	3,687,300.00	20,485,000.00
04/07/2009	54	CRH Medical Corporation - Units	2,300,000.82	N/A
09/20/2010	2	Cypress Sharpridge Investments, Inc. - Common Shares	17,973,758.25	1,350,000.00
08/31/2010	53	Edgewater Exploration Ltd. - Receipts	10,403,000.00	10,403,000.00
09/20/2010	24	Exploration Lounor inc. - Common Shares	250,000.00	1,666,666.66
09/16/2010	1	Fem Med Formulas Limited Partnership - Notes	750,000.00	1.00
09/16/2010	1	First Leaside Fund - Units	5,000.00	5,000.00
09/16/2010	1	First Leaside Mortgage Fund - Units	50,000.00	50,000.00
09/17/2010	1	Foundation Mortgage "3" Corporation - Bonds	30,000.00	300.00
09/16/2010	1	FTI Consulting, Inc. - Notes	5,137,000.00	5,000.00
09/17/2010 to 09/23/2010	2	Fuel Transfer Technologies Inc. - Preferred Shares	45,000.00	11,250.00
09/17/2010	1	GGL Resources Corp. - Units	150,000.00	3,000,000.00
08/18/2010	43	Golden Band Resources Inc. - Units	5,228,750.00	13,597,143.00
09/15/2010	1	Graphic Packaging International, Inc. - Notes	3,084,600.00	1.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
09/24/2010	2	Hatteras Financial Corp. - Common Shares	5,163,571.88	6,500,000.00
06/18/2009	1	High River Gold Mines Ltd. - Common Shares	10,623,486.06	N/A
09/17/2010	2	Hilldale Gardens Developments (Phase II) Inc. - Units	12,700,000.00	12,700,000.00
01/01/2009 to 12/31/2009	267	IA Clarington Bond Pooled Fund - Trust Units	6,946,263.00	29,930.37
01/01/2009 to 12/31/2009	247	IA Clarington Canadian Equities Pooled Fund-Defensive - Trust Units	3,639,869.00	9,772.01
01/01/2009 to 12/31/2009	133	IA Clarington Canadian Equities Pooled Fund-Quality - Trust Units	2,041,020.00	2,225.30
01/01/2009 to 12/31/2009	39	IA Clarington Canadian Preferred Shares Pooled Fund - Trust Units	1,221,915.00	3,034.53
01/01/2009 to 12/31/2009	252	IA Clarington Money Market Pooled Fund - Trust Units	10,481,166.00	1,397.41
05/14/2010	1	Intelimax Media Inc. - Units	103,440.00	250,000.00
08/10/2010 to 08/16/2010	100	Kiska Metals Corporation - Units	6,435,700.00	7,848,414.00
08/12/2010	92	Lakeland Resources Inc. - Common Shares	600,000.00	6,000,000.00
09/20/2010	4	LifePoint Hospitals, Inc. - Notes	27,604,485.00	26,850.00
02/18/2010	20	Loncor Resources Inc. - Units	15,208,125.00	12,166,500.00
09/21/2010	1	Lord Lansdowne Inc. - Units	150,000.00	210.00
09/17/2010	16	Matamec Explorations Inc. - Common Shares	550,000.00	2,750,000.00
08/27/2010	4	Medrunner Health Solutions Inc. - Common Shares	75,000.00	750.00
08/13/2010	4	Morumbi Oil & Gas Inc. - Units	150,333.50	601,334.00
09/22/2010	11	Navada Exploration Inc. - Units	147,500.00	2,950,000.00
09/07/2010	6	NetShelter Inc. - Preferred Shares	6,256,200.00	612,216.00
09/23/2010	2	NeurAxon Inc. - Debentures	5,291,554.66	N/A
08/24/2010	2	New Nadina Explorations Limited - Flow-Through Units	350,000.00	3,500,000.00
09/14/2010	4	NiSource Inc. - Common Shares	13,043,250.00	775,000.00
09/22/2010	8	North American Limestone Corporation - Common Shares	446,123.85	2,883,334.00
09/21/2010	16	Orko Silver Corp. - Common Shares	15,180,000.00	9,200,000.00
09/15/2010	2	Plenary Canada Funding LP - Limited Partnership Units	18,803,328.00	N/A
09/23/2010	16	Powerbase Inc. - Common Shares	435,000.00	4,350,000.00
09/14/2010	1	Real Matters Inc. - Debentures	5,000,000.00	1.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
01/29/2010	3	Red Mile Capital Corp. - Common Shares	190,250.00	N/A
09/17/2010	1	ROI Private Capital Trust Series R - Units	7,100,000.00	66,921.23
09/22/2010	1	SGX Resources Inc. - Common Shares	23,760.00	72,000.00
08/27/2010	71	Shear Minerals Ltd. - Units	10,978,834.62	N/A
08/26/2010	72	Silver Quest Resources Ltd. - Units	3,711,899.75	N/A
10/06/2009 to 12/01/2009	30	Silvercove Hard Asset Fund LP - Limited Partnership Units	2,275,000.00	227,500.00
08/23/2010	1	Star Team LLC - Units	8,900.00	8,900.00
08/25/2010	1	Talson Partners, LP - Limited Partnership Interest	10,642,000.00	3.00
09/20/2010	8	Tartisan Resources Corp. - Common Shares	132,000.00	1,320,000.00
09/16/2010 to 09/20/2010	6	The Hertz Corporation - Notes	1.00	6.00
09/15/2010	6	Trillium Power Wind Corporation - Flow-Through Shares	260,000.00	N/A
09/16/2010	16	UBS AG, Jersey Branch - Notes	2,236,000.00	2,236.00
09/17/2010 to 09/21/2010	18	Valley of the Sun Fund - Units	426,000.00	42,600.00
09/17/2010 to 09/21/2010	18	Valley of the Sun Limited Partnership - Limited Partnership Units	426,000.00	42,600.00
08/13/2010	57	Walton GA Woodbury Park LP - Limited Partnership Units	1,837,138.83	176,614.00
09/03/2010	39	Walton GA Woodbury Park LP - Limited Partnership Units	1,023,567.88	98,316.00
08/27/2010	29	Walton Southern U.S. Land 2 Investment Corporation - Common Shares	619,830.00	61,983.00
09/17/2010	1	Wimberly Apartments Limited Partnership - Units	15,497.53	21,430.00
09/20/2010 to 09/21/2010	2	Wimberly Fund - Units	74,074.00	74,074.00
09/21/2010	10	Windarra Minerals Ltd. - Units	165,450.00	1,103,000.00
09/03/2010	37	Wynnchurch Capital Partners III, L.P. - Limited Partnership Interest	155,491,483.90	0.00

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Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Atacama Pacific Gold Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated September 28, 2010
NP 11-202 Receipt dated September 30, 2010
Offering Price and Description:
$ * - * Common Shares Price: $ * per Common Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
GMP Securities L.P.
RBC Dominion Securities Inc.
Promoter(s):
Carl Hansen
Albrecht Schneider
Project #1640889

Issuer Name:
Guerrero Exploration Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated September 30, 2010
NP 11-202 Receipt dated October 5, 2010
Offering Price and Description:
MINIMUM $750,000.00 - 5,000,000 UNITS; MAXIMUM $1,000,000.00 - 6,666,667 UNITS
PRICE: $0.15 PER UNIT
Underwriter(s) or Distributor(s):
Macquarie Private Wealth Inc.
Promoter(s):
-
Project #1642752

Issuer Name:
Lago Dourado Minerals Ltd.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated October 4, 2010
NP 11-202 Receipt dated October 5, 2010
Offering Price and Description:
$5,000,000.00 to $7,000,000.00 - * Common Shares Price: $ * per Common Share
Underwriter(s) or Distributor(s):
Jennings Capital Inc.
Raymond James Ltd.
Promoter(s):
Gungnir Resources Inc.
Project #1642433

Issuer Name:
BMO Aggressive Growth ETF Portfolio
BMO Balanced ETF Portfolio
BMO Canadian Tactical ETF Class
BMO Global Tactical ETF Class
BMO Growth ETF Portfolio
BMO Security ETF Portfolio
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated October 1, 2010
NP 11-202 Receipt dated October 4, 2010
Offering Price and Description:
BMO Guardian Canadian Tactical ETF Class Series T6,
BMO Guardian Global Tactical ETF Class Series T6,
BMO Guardian Security ETF Portfolio Series T6,
BMO Guardian Balanced ETF Portfolio Series T6,
BMO Guardian Growth ETF Portfolio Series T6
and BMO Guardian Aggressive Growth ETF Portfolio Series T6.
Underwriter(s) or Distributor(s):
BMO Investments Inc.
Promoter(s):
BMO Investmetns Inc.
Project #1642021

Issuer Name:
Boyuan Construction Group, Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated October 1, 2010
NP 11-202 Receipt dated October 4, 2010
Offering Price and Description:
$15,000,000.00 -10% Convertible Unsecured Subordinated Debentures Due October 31, 2015
Underwriter(s) or Distributor(s):
Mackie Research Capital Corporation
National Bank Financial Inc.
PI Financial Corp.
Promoter(s):
-
Project #1642002

Issuer Name:
Brigus Gold Corp.
Principal Regulator - Nova Scotia
Type and Date:
Preliminary Short Form Prospectus dated October 1, 2010
NP 11-202 Receipt dated October 4, 2010
Offering Price and Description:
$50,000,000.00 - 30,000,000 Units at $1.50 per Unit and 2,941,177 Flow-Through Shares at $1.70 per Flow-Through Share
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Cormark Securities Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Jennings Capital Inc.
Paradigm Capital Inc.
Brant Securities Limited
Promoter(s):
-
Project #1641901

Issuer Name:
Brompton Advantaged Tactical Yield Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated September 28, 2010
NP 11-202 Receipt dated September 29, 2010
Offering Price and Description:
$ * - * Units Price: $12.00 per Unit
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
TD Securities Inc.
Scotia Capital Inc.
HSBC Securities (Canada) Inc.
Mackie Research Capital Corporation
Raymond James Ltd.
Dundee Securities Corporation
Canaccord Genuity Corp.
Macquarie Private Wealth Inc.
GMP Securities L.P.
Desjardins Securities Inc.
Manulife Securities Incorporated
Wellington West Capital Markets Inc.
Promoter(s):
Brompton Funds Management Limited
Project #1640603

Issuer Name:
Connor, Clark & Lunn Capital Class Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated September 29, 2010
NP 11-202 Receipt dated September 29, 2010
Offering Price and Description:
Natural Resources Class Shares and Balanced Portfolio Class Shares, Series 1
Underwriter(s) or Distributor(s):
-
Promoter(s):
Connor, Clark & Lunn Capital Markets Inc.
Project #1640610

Issuer Name:
Emerge Oil & Gas Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated September 29, 2010
NP 11-202 Receipt dated September 29, 2010
Offering Price and Description:
$30,090,000.00 - 8,850,000 Common Shares Price: $3.40 per Share
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
Dundee Securities Corporation
Cormark Securities Inc.
GMP Securities L.P.
Peters & Co. Limited
Promoter(s):
-
Project #1640920

Issuer Name:
Enseco Energy Services Corp.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated September 28, 2010
NP 11-202 Receipt dated September 29, 2010
Offering Price and Description:
$6,000,000.00 - 30,000,000 Common Shares and 15,000,000 Purchase Warrants Issuable upon Conversion of 30,000,000 Outstanding Special Warrants
Price: $0.20 per Special Warrants
Underwriter(s) or Distributor(s):
Desjardins Securities Inc.
Promoter(s):
-
Project #1640262

Issuer Name:
Front Street MLP Income Fund Ltd.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated September 30, 2010
NP 11-202 Receipt dated September 30, 2010
Offering Price and Description:
Maximum $ * - * Units Price: $10.00 per Unit
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
Promoter(s):
Front Street Capital 2004
Project #1641437

Issuer Name:
Frontier Rare Earths Limited
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated September 30, 2010
NP 11-202 Receipt dated October 1, 2010
Offering Price and Description:
$ * - * Units Price: $ * per Unit
Underwriter(s) or Distributor(s):
CIBC Word Markets Inc.
Canaccord Genuity Corp.
Cormark Securities Inc.
Byron Securities Limited
National Bank Financial Inc.
Promoter(s):
-
Project #1641728

Issuer Name:
International Tower Hill Mines Ltd.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated October 4, 2010
NP 11-202 Receipt dated October 4, 2010
Offering Price and Description:
$65,000,000.00 -10,400,000 Common Shares Price: $6.25 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
BMO Nesbitt Burns Inc.
GMP Securities L.P.
Salman Partners Inc.
Promoter(s):
-
Project #1642446

Issuer Name:
MCM Capital One Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated September 30, 2010
NP 11-202 Receipt dated October 1, 2010
Offering Price and Description:
Minimum Offering: $420,000.00 or 2,100,000 Common Shares; Maximum Offering: $1,000,000.00 or 5,000,000 Common Shares Price: $0.20 per Common Share
Underwriter(s) or Distributor(s):
Union Securities Ltd.
Promoter(s):
Rob Fia
Project #1641606

Issuer Name:
New University Holdings Corp.
Principal Regulator - Alberta
Type and Date:
Preliminary CPC Prospectus dated September 29, 2010
NP 11-202 Receipt dated September 30, 2010
Offering Price and Description:
$475,000.00 - 4,750,000 COMMON SHARES Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Macquarie Private Wealth Inc.
Promoter(s):
Paul Lapping
Mark Klein
Project #1641462

Issuer Name:
O'Leary Canadian Balanced Yield Fund
O'Leary Canadian Bond Yield Fund
O'Leary Canadian Equity Yield Fund
O'Leary Founder's Series Income & Growth Fund
O'Leary Global Bond Yield Fund
O'Leary Global Equity Yield Fund
O'Leary Global Infrastructure Yield Fund
O'Leary Global Yield Opportunities Fund (formerly O'Leary Global Balanced Yield Fund)
O'Leary Money Market Yield Fund
O'Leary Strategic Yield Class
Principal Regulator - Quebec
Type and Date:
Preliminary Simplified Prospectuses dated September 28, 2010
NP 11-202 Receipt dated September 29, 2010
Offering Price and Description:
Founder's Series Units, Founder's Series Shares, Series A, F, H, I and M)
Underwriter(s) or Distributor(s):
-
Promoter(s):
O'Leary Funds Management Inc.
Project #1640499

Issuer Name:
Otelco Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated October 4, 2010
NP 11-202 Receipt dated October 4, 2010
Offering Price and Description:
US$56,000,000 (C$57,204,000) - Income Deposit Securities (IDSs) representing shares of Common Stock and 13% Senior Subordinated Notes due 2019
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1642297

Issuer Name:
Pro FTSE Fundamental North American Dividend Fund
Pro FTSE RAFI Canadian Index Fund
Pro FTSE RAFI Emerging Markets Index Fund
Pro FTSE RAFI Global Index Fund
Pro FTSE RAFI Hong Kong China Index Fund
Pro FTSE RAFI US Index Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated September 30, 2010
NP 11-202 Receipt dated October 1, 2010
Offering Price and Description:
Class A, Class B, Class F and Class I Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Pro-Financial Asset Management Inc.
Project #1641580

Issuer Name:
Quest Rare Minerals Ltd.
Principal Regulator - Quebec
Type and Date:
Preliminary Short Form Prospectus dated September 28, 2010
NP 11-202 Receipt dated September 29, 2010
Offering Price and Description:
$ * - Up to * Units and up to * Flow-Through Shares Price: $ * per Unit and $ * per Flow-Through Share
Underwriter(s) or Distributor(s):
Dundee Securities Corporation
CIBC World Markets Inc.
Stonecap Securities Inc.
Promoter(s):
-
Project #1640572

Issuer Name:
Renegade Petroleum Ltd.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated September 29, 2010
NP 11-202 Receipt dated September 29, 2010
Offering Price and Description:
$10,002,300.00 - 3,031,000 Offered Shares; $10,004,000.00 - 2,440,000 Flow-Through Common Shares Price: $3.30 per Offered Share and $4.10 per Flow-Through Share
Underwriter(s) or Distributor(s):
GMP Securities L.P.
Canaccord Genuity Corp.
Dundee Securities Corporation
FirstEnergy Capital Corp.
Paradigm Capital Inc.
Macquarie Capital Markets Canada Inc.
Haywood Securities Inc.
Raymond James Ltd.
Promoter(s):
-
Project #1640760

Issuer Name:
Retrocom Mid-Market Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated October 4, 2010
NP 11-202 Receipt dated October 4, 2010
Offering Price and Description:
$20,000,000.00 - 4,000,000 Trust Units Price: $5.00 per Trust Unit
Underwriter(s) or Distributor(s):
TD Securities Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
Desjardins Securities Inc.
National Bank Financial Inc.
Canaccord Genuity Corp.
Dundee Securities Corporation
Promoter(s):
-
Project #1642370

Issuer Name:
Sprott Physical Silver Trust
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Long Form PREP Prospectus dated October 1, 2010 amending and restating the Amended and Restated Preliminary Long Form PREP Prospectus dated September 7, 2010 which amended and restated the Preliminary Long Form PREP Prospectus dated July 9, 2010
NP 11-202 Receipt dated October 4, 2010
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
Morgan Stanley Canada Limited
Promoter(s):
Sprott Asset Management LP
Project #1605635

Issuer Name:
Tethys Petroleum Limited
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated October 4, 2010
NP 11-202 Receipt dated October 4, 2010
Offering Price and Description:
US$ * - * Shares Price: US$ * per Share
Underwriter(s) or Distributor(s):
Fraser Mackenzie Limited
Promoter(s):
-
Project #1642379

Issuer Name:
VentureLink Innovation Fund Inc.
Type and Date:
Preliminary Long Form Prospectus dated September 28, 2010
Receipted on September 30, 2010
Offering Price and Description:
CLASS A SHARES, SERIES III, CLASS A SHARES, SERIES IV AND CLASS A SHARES, SERIES VI
Underwriter(s) or Distributor(s):
VL Advisors Inc.
Promoter(s):
VL Advisors Inc.
Project #1640082

Issuer Name:
Walton Big Lake Development L.P.
Principal Regulator - Alberta
Type and Date:
Preliminary Long Form Prospectus dated September 28, 2010
NP 11-202 Receipt dated September 29, 2010
Offering Price and Description:
Maximum: $22,500,000 (2,250,000 Units) - Minimum: $* (* Units)
Price: $ 10.00 per Unit
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
GMP Securities L.P.
Scotia Capital Inc.
Canaccord Genuity Corp.
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Desjardins Securities Inc.
Dundee Securities Corporation
Laurentian Bank Securities Inc.
Mackie Research Capital Corporation
Promoter(s):
Walton Asset Management L.P.
Project #1639887

Issuer Name:
Zephyr Minerals Ltd.
Principal Regulator - Nova Scotia
Type and Date:
Preliminary CPC Prospectus dated September 29, 2010
NP 11-202 Receipt dated September 30, 2010
Offering Price and Description:
$240,000.00 - (2,400,000 Common Shares) Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Macquarie Private Wealth Inc.
Promoter(s):
G. William Felderhof
Project #1641068

Issuer Name:
Firm Capital Mortgage Investment Trust
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated October 5, 2010
NP 11-202 Receipt dated October 5, 2010
Offering Price and Description:
$27,500,000.00 - 5.75% Convertible Unsecured Subordinated Debentures due October 31, 2017: PRICE: $1,000 per Debenture
Underwriter(s) or Distributor(s):
TD Securities Inc.
CIBC World Markets Inc.
Dundee Securities Corporation
Canaccord Genuity Corp.
Desjardins Securities Inc.
National Bank Financial Inc.
Promoter(s):
-
Project #1639594

Issuer Name:
Aecon Group Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated October 1, 2010
NP 11-202 Receipt dated October 1, 2010
Offering Price and Description:
$ 80,000,000.00 - 6.25% Convertible Unsecured Subordinated Debentures: $1,000.00 Per Debenture
Underwriter(s) or Distributor(s):
GMP Securities L.P.
TD Securities Inc.
Raymond James Ltd.
CIBC World Markets Inc.
Macquarie Capital Markets Canada Ltd.
BMO Nesbitt Burns Inc.
Canaccord Genuity Corp.
National Bank Financial Inc.
Paradigm Capital Inc.
Scotia Capital Inc.
Promoter(s):
-
Project #1638496

Issuer Name:
NuLoch Resources Inc.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated October 12, 2010
NP 11-202 Receipt dated October 5, 2010
Offering Price and Description:
$28,100,000.00: $20,000,000.00 - 16,000,000 Class A Common Shares $8,100,000.00 5,400,000 Flow-Through Shares Price: $1.25 per Class A Common Share $1.50 per Flow-Through Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Raymond James Ltd.
Wellington West Capital Markets Inc.
Clarus Securities Inc.
Promoter(s):
-
Project #1640024

Issuer Name:
ProspEx Resources Ltd.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated October 5, 2010
NP 11-202 Receipt dated October 5, 2010
Offering Price and Description:
$5,500,250.00 - 3,143,000 Flow-Through Shares Price: $1.75 per Flow-Through Share
Underwriter(s) or Distributor(s):
Cormark Securities Inc.
Peters & Co. Limited
CIBC World Markets Inc.
Stifel Nicolaus Canada Inc.
Wellington West Capital Markets Inc.
Promoter(s):
-
Project #1639038

Issuer Name:
AGF Canadian Growth Equity Class (formerly, AGF Canadian Growth Equity Fund Limited)
(Mutual Fund Series, Series D, Series F and Series O Securities)
AGF Canadian Resources Class (formerly, AGF Canadian Resources Fund Limited)
(Mutual Fund Series, Series D, Series F and Series O Securities)
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated October 1, 2010 to the Simplified Prospectuses and Annual Information Form dated April 19, 2010
NP 11-202 Receipt dated October 1, 2010
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
AGF Funds Inc.
Promoter(s):
-
Project #1548453

Issuer Name:
CI Income Advantage Fund (formerly Select Income Advantage Managed Fund)
Principal Regulator - Ontario
Type and Date:
Amended and Restated Simplified Prospectus and Annual Information Form dated September 21, 2010 (the amended prospectus) amending and restating the Simplified Prospectus and Annual Information Form dated July 13, 2010.
NP 11-202 Receipt dated October 1, 2010
Offering Price and Description:
Class A, C, F and I Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
CI Investments Inc.
Project #1593781

Issuer Name:
Creststreet 2010 FT National Class
Creststreet 2010 FT Québec Class
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated September 30, 2010
NP 11-202 Receipt dated September 30, 2010
Offering Price and Description:
Maximum Offering: $50,000,000.00 - 5,000,000 Creststreet 2010 FT National Class Units @ $10.00/unit
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
CIBC World Markets Inc.
Desjardins Securities Inc.
National Bank Financial Inc.
Dundee Securities Corporation
GMP Securities L.P.
HSBC Securities (Canada) Inc.
Canaccord Genuity Corp.
Wellington West Capital Markets Inc.
Industrial Alliance Securities Inc.
Laurentian Bank Securities Inc.
Raymond James Ltd.
Macquarie Capital Markets Canada Ltd.
Promoter(s):
Creststreet General Partner Limited
Creststreet Asset Management Limited
Project #1622084/1622085

Issuer Name:
Front Street Flow-Through 2010-II Limited Partnership
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated September 27, 2010
NP 11-202 Receipt dated September 29, 2010
Offering Price and Description:
$30,000,000.00 - (Maximum Offering – 1,200,000 Units);
$10,000,000.00 - (Mininum Offering - 400,000 Units)
Subscription Price: $25.00 per Unit
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
TD Securities Inc.
GMP Securities L.P.
Scotia Capital Inc.
Canaccord Genuity Corp.
Macquarie Capital Markets Canada Ltd.
Raymond James Ltd.
Tuscarora Capital Inc.
Dundee Securities Corporation
HSBC Securities (Canada) Inc.
Manulife Securities Incorporated
Sherbrooke Street Capital (SSC) Inc.
Wellington West Capital Markets Inc.
Promoter(s):
FSC GP VI Corp.
Front Street Capital 2004
Project #1622258

Issuer Name:
GMIncome & Growth Fund
Principal Regulator - Alberta
Type and Date:
Final Long Form Prospectus dated September 29, 2010
NP 11-202 Receipt dated September 30, 2010
Offering Price and Description:
Maximum $125,000,000.00 - 10,416,666 Combined Units @ $12.00/Unit Minimum $20,000,000.00 - 1,666,667 Combined Units @ $12.00/Unit
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Scotia Capital Inc.
GMP Securities L.P.
Canaccord Genuity Corp.
Dundee Securities Corporation
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Macquarie Private Wealth Inc.
Manulife Securities Incorporated
Wellington West Capital Markets Inc.
Middlefield Capital Corporation
Worldsource Securities Inc.
Promoter(s):
Middlefield Limited
Project #1627757

Issuer Name:
HBanc Capital Securities Trust
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated September 28, 2010
NP 11-202 Receipt dated September 30, 2010
Offering Price and Description:
Maximum $155,000,000.00 - Class A Units and/or Class U Units (Maximum 6,200,000 Class A Units and/or Class U Units at $25.00/Unit) Minimum $25,000,000 Class A Units and/or Class U Units
(Minimum 1,000,000 Class A Units and/or Class U Units at $25.00/Unit)
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
HSBC Securities (Canada) Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
National Bank Financial Inc.
Scotia Capital Inc.
GMP Securities L.P.
Canaccord Genuity Corp.
Dundee Securities Corporation
Macquarie Capital Markets Canada Ltd.
Raymond James Ltd.
Desjardins Securities Inc.
Mackie Research Capital Corporation
Wellington West Capital Markets Inc.
Promoter(s):
Connor, Clark & Lunn Capital Markets Inc.
Project #1631716

Issuer Name:
Horizons AlphaPro Tactical Bond ETF
(formerly Horizons AlphaPro Fiera Tactical Bond ETF)
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated September 24, 2010
NP 11-202 Receipt dated October 1, 2010
Offering Price and Description:
Class E Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
Alphapro Management Inc.
Project #1599229

Issuer Name:
Mackenzie Saxon International Equity Fund
Mackenzie Saxon World Fund
Principal Regulator - Ontario
Type and Date:
Amendment #6 dated September 24, 2010 to the Simplified Prospectuses and Annual Information Form dated October 30, 2009
NP 11-202 Receipt dated September 30, 2010
Offering Price and Description:
Series A, F, I and O Securities, B-Series and Investor Series @ Net Asset Value
Underwriter(s) or Distributor(s):
Quadrus Investment Services Ltd.
Promoter(s):
Mackenzie Financial Corporation
Project #1478783

Issuer Name:
Marret High Yield Strategies Fund
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated September 29, 2010
NP 11-202 Receipt dated September 29, 2010
Offering Price and Description:
Maximum $165,020,000.00 - (Maximum 14,800,000 Units)
Underwriter(s) or Distributor(s):
GMP Securities L.P.
TD Securities Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
National Banks Financial Inc.
Scotia Capital Inc.
Dundee Securities Corporation
HSBC Securities (Canada) Inc.
Canaccord Genuity Corp.
Raymond James Ltd.
Macquarie Capital Markets Canada Ltd.
Manulife Securities Inc.
Wellington West Capital Markets Inc.
Promoter(s):
Marret Asset Management Inc.
Project #1636330

Issuer Name:
RBC Dominion Securities U.S. Focus List Portfolio
(Series A, Series F, Series B and Series G shares)
RBC Dominion Securities Canadian Focus List Portfolio
(Series A and Series F units)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated September 28, 2010
NP 11-202 Receipt dated September 29, 2010
Offering Price and Description:
Series A, Series F, Series B and Series G shares.
Underwriter(s) or Distributor(s):
First Defined Portfolio Management Co.
Promoter(s):
First Defined Portfolio Management Co.
Project #1621525

Issuer Name:
Rubicon Minerals Corporation
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated September 29, 2010
NP 11-202 Receipt dated September 30, 2010
Offering Price and Description:
$190,171,725.00 - 45,714,357 Common Shares $4.16 per Offered Share
Underwriter(s) or Distributor(s):
GMP Securities L.P.
Promoter(s):
-
Project #1636149

Issuer Name:
ScotiaMcLeod Canadian Core Portfolio
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated September 29, 2010
NP 11-202 Receipt dated September 30, 2010
Offering Price and Description:
Series A and Series F Units
Underwriter(s) or Distributor(s):
First Defined Portfolio Management Co.
Promoter(s):
-
Project #1623758

Issuer Name:
Star Portfolio Corp.
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated September 28, 2010
NP 11-202 Receipt dated September 29, 2010
Offering Price and Description:
$400,000,008.00 Maximum - 33,333,334 Units in respect of Star Yield Managers Class
$12.00 per Unit
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Dundee Securities Corporation
CIBC World Markets Inc.
RBC Dominion Securities Inc.
National Bank Financial Inc.
Scotia Capital Inc.
TD Securities Inc.
GMP Securities L.P.
HSBC Securities (Canada) Inc.
Canaccord Geniuty Corp.
Macquarie Private Wealth Inc.
Raymond James Ltd.
Desjardins Securities Inc.
Manulife Securities Incorporated
Rothenberg Capital Management Inc.
Wellington West Capital Markets Inc.
Promoter(s):
BMO Nesbitt Burns Inc.
Project #1631489

Issuer Name:
Strategic Oil & Gas Ltd.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated September 29, 2010
NP 11-202 Receipt dated September 29, 2010
Offering Price and Description:
$20,035,000.00 - 16,700,000 Common Shares: Price: $.90 per Common Share; and 4,550,000 Flow-Through Shares: Price: $1.10 per Flow-Through Share
Underwriter(s) or Distributor(s):
Macquarie Capital Markets Canada Ltd.
CIBC World Markets Inc.
Clarus Securities Inc.
PI Financial Corp.
Raymond James Ltd.
Promoter(s):
-
Project #1637726

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Verition Advisors (Canada) ULC	Portfolio Manager	September 29, 2010
New Registration	Davis Distributors, LLC	Exempt Market Dealer	September 29, 2010
Change of Category	Capital International Asset Management (Canada),Inc.	From: Portfolio Manager To: Portfolio Manager and Investment Fund Manager	September 29, 2010
Change of Category	Stylus Asset Management Inc.	From: Exempt Market Dealer and Portfolio Manager To: Exempt Market Dealer, Portfolio Manager and Investment Fund Manager	September 29, 2010
Change of Category	Wingate Investment Management Ltd.	From: Exempt Market Dealer and Portfolio Manager To: Exempt Market Dealer, Portfolio Manager and Investment Fund Manager	September 29, 2010
Consent to Suspension	League Assets Corp.	Exempt Market Dealer	September 29, 2010
Change of Category	VL Advisors Inc.	From: Portfolio Manager To: Portfolio Manager and Investment Fund Manager	September 30, 2010
Consent to Suspension	Fresno Securities Inc.	Exempt Market Dealer	September 29, 2010
Change of Name	From: EdgePoint Investment Management Inc. To: EdgePoint Investment Group Inc.	Exempt Market Dealer, Portfolio Manager, and Investment Fund Manager.	Septembe 24, 2010

Type	Company	Category of Registration	Effective Date
New Registration	David Fox Capital Consulting	Exempt Market Dealer	October 1, 2010
Change of Category	Presima Inc.	From: Exempt Market Dealer and Portfolio Manager To: Exempt Market Dealer, Portfolio Manager and Investment Fund Manager	October 1, 2010
New Registration	CWM Capital Inc.	Investment Dealer	October 1, 2010
Consent to Suspension	Adilas Capital Limited ("Adilas")	Exempt Market Dealer	September 29, 2010
Consent to Suspension	Equity Securities Inc.	Exempt Market Dealer	October 4, 2010
Name Change	From: Sceptre Mutual Fund Dealer Inc. To: Fiera Sceptre Funds Inc./Fonds Fiera Sceptre Inc.	Mutual Fund Dealer	September 27, 2010
Registration Reinstated	Magna Partners Ltd.	Investment Dealer	October 4, 2010
Registration Reinstated	Fox-Davies Capital Inc.	Exempt Market Dealer	October 5, 2010
Name Change	From: Spreng Asset Management Inc. To: Quantus Investment Corp.	Portfolio Manager and Investment Fund Manager	September 21, 2010
Voluntary Surrender of Registration	A2B2 Investment Management Ltd.	Portfolio Manager	October 5, 2010
Consent to Suspension (s. 30 of the Act – Surrender of Registration)	Arjuna Corporation	Exempt Market Dealer Portfolio Manager	October 5, 2010
Name Change	From: Brompton Capital Advisors Inc. To: Brompton Funds Management Limited	Exempt Market Dealer, Portfolio Manager, and Investment Fund Manager	September 29, 2010

Type	Company	Category of Registration	Effective Date
Change in Registration Category	Marvin & Palmer Associates, Inc.	From: International Adviser To: Portfolio Manager	September 27, 2010
Change in Registration Category	Goldman, Sachs & Co.	From: Exempt Market Dealer & International Adviser To: Exempt Market Dealer & Portfolio Manager	September 28, 2010
Change in Registration Category	Wentworth, Hauser & Violich, Inc.	From: International Adviser To: Portfolio Manager	September 28, 2010
Change in Registration Category	Nordea Investment Management Canada, Inc.	From: International Adviser To: Portfolio Manager	September 28, 2010
Change in Registration Category	McKinley Capital Management, LLC	From: International Adviser To: Portfolio Manager	September 28, 2010
Change in Registration Category	Panagora Asset Management, Inc.	From: Portfolio Manager & Commodity Trading Manager To: Portfolio Manager, Commodity Trading Manager & Exempt Market Dealer	September 27, 2010
Change in Registration Category	Gluskin Sheff + Associates Inc.	From: Mutual Fund Dealer, Exempt Market Dealer & Portfolio Manager To: Mutual Fund Dealer, Exempt Market Dealer, Portfolio Manager & Commodity Trading Manager	September 30, 2010
Change in Registration Category	Nomura Asset Management U.S.A. Inc.	From: International Adviser To: Portfolio Manager	September 28, 2010

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Chapter 13

SROs, Marketplaces and Clearing Agencies

13.1 SROs

13.1.1 IIROC Rules Notice – Request for Comments – Plain language rule re-write project – Financial and Operational Rules, Rules 4100 through 4900

IIROC RULES NOTICE – REQUEST FOR COMMENTS –
PLAIN LANGUAGE RULE RE-WRITE PROJECT –
FINANCIAL AND OPERATIONAL RULES,
RULES 4100 THROUGH 4900

10-0267
October 8, 2010

Summary of the nature and purpose of the proposed Rules

On April 30, 2010, the Board of Directors ("the Board") of the Investment Industry Regulatory Organization of Canada ("IIROC") approved the publication for comment of the proposed 4000 series of plain language rules (collectively referred to as the "proposed Rules").

IIROC has undertaken a project to rewrite its rules in plain language. The primary objective of this project is to develop a set of rules that is clearer and more concise and organized, without changing the rules themselves. In addition, we have identified a number of rules that also require substantive revisions.

The new rules will be submitted to the Board and issued for public comments in 8 tranches. This tranche submitted to the Board and issued for public comments includes the following five sets of substantive and non-substantive change rules:

Rule number and title	**Rule type**
Rules 4100 and 4200, *General Dealer Member Financial Standards*;	Substantive
Rules 4300 and 4400, *Protection of Client Assets*;	Substantive
Rules 4500 and 4600, *Financing Arrangements*;	Substantive
Rules 4700 and 4800, *Operations*; and	Substantive
Rule 4900, *Other Internal Control Requirements*	Non-substantive

The existing rules relating to *General Dealer Member Financial Standards*, *Protection of Client Assets*, *Financing Arrangements*, and *Operations* have been identified as requiring substantive revision in order to:

- eliminate unnecessary rule provisions;
- clarify IIROC's expectations with respect to certain rules;
- ensure that the rules reflect current industry practices;
- ensure consistency with other IIROC Dealer Member rules; and
- streamline the decision making and rule interpretation process.

Proposed Rules 4100 and 4200, "*General Member Financial Standards*" are a consolidation of the relevant requirements currently in IIROC Dealer Member Rules 16, 17, 30, 200, 300, 1100, 1400 and 2600.

Proposed Rules 4300 and 4400, "*Protection of Client Assets*" are a consolidation of the relevant requirements currently in IIROC Dealer Member Rules 1, 17, 300, 400, 1200, 2000 and 2600, and Form 1.

Proposed Rules 4500 and 4600, "*Financing Arrangements*" are a consolidation of the relevant requirements currently in IIROC Dealer Member Rules 100, 2200, 3000, and Form 1.

Proposed Rules 4700 and 4800, "*Operations*" are a consolidation of the relevant requirements currently in IIROC Dealer Member Rules 17, 800 and 2300.

Proposed Rule 4900, "*Other Internal Control Requirements*" is a rewrite of current Dealer Member Rule 2600's Internal Control Policy Statement 8.

Issues and specific proposed amendments

Current rules

Other than the proposed substantive revisions set out below, the proposed 4000 series of Rules do not create any new obligations for Dealer Members.

Proposed rules

In addition to the plain language rewrite of the existing requirements to create proposed Rules 4100 and 4200, the following substantive amendments are proposed:

- *Exclusion of discretionary early warning situations from the early warning level 2 frequency test:* The proposed amendment specifically excludes discretionary early warning situations (level 1 and 2) from the early warning level 2 frequency test. The use of the discretionary early warning designation is intended to apply immediately and, once the condition of the Dealer Member is satisfactory, the designation is immediately removed. This designation was never intended to trigger the early warning level 2 frequency test. Without this substantive amendment, a Dealer Member may be classified as being in early warning several months after the situation that triggered the discretionary early warning has been remedied. *[4132(1)]*

- *Corporation's monthly reporting requirement for early warning levels 1 and 2:* The current rules require IIROC to report monthly to the applicable District Council where a Dealer Member (without naming the Dealer Member) is designated as being in early warning level 1 or 2. There is no ongoing need for this reporting requirement as the District Council plays no role in determining whether to classify a Dealer Member as being in early warning. Further, if a Dealer Member is classified as being in early warning, a hearing process is provided should they wish to appeal any business restriction imposed by IIROC staff. The proposed amendment will eliminate this District Council reporting requirement. *[N/A]*

- *Cost reimbursement for early warning level 1:* The proposed amendment will extend the early warning level cost reimbursement provision to early warning level 1 situations. The current rule provision only applies to early warning level 2 situations. Under this revised provision, IIROC may require any Dealer Member classified as being in early warning to pay for IIROC's costs and expenses incurred to administer the Dealer Member's early warning situation. *[4133(1)]*

- *Extending deadline for financial filings:* The proposed amendment gives IIROC the discretion to grant a time extension to a Dealer Member for filing its monthly or annual financial report. The proposed amendment also requires the Dealer Member to make its extension request in writing. This revision is reflective of industry practice. *[4152(3)]*

- *Approval of list of approved auditors:* The proposed amendment would give IIROC the authority to assemble the list of audit firms that are approved to audit IIROC Dealer Members. The current rule requires District Council approval of the list of approved audit firms. *[4171(1) and (2)]*

- *Review the Dealer Member's position balancing and account reconciliations:* The proposed amendments replace the term "*commodity and option contracts*" with the term "*derivatives*" and replace the term "mutual funds" with the term "*non-certificated instruments*". These revisions allow the position balancing and reconciliation requirements to be extended to other derivatives and non-certificated instruments. *[4179(1)]*

- *Obtain written positive confirmations:* The proposed amendments replace the term "*commodity and option contracts*" with the term "*derivatives*" and replace the term "mutual funds" with the term "*non-certificated instruments*". These revisions allow the confirmation requirements to be extended to other derivatives and non-certificated instruments. *[4182(1)]*

- *Bond quotations to the press under IIROC's name:* The proposed amendment no longer requires a Dealer Member who provides bond quotations to the press to provide those bond quotations under IIROC's name. The requirement was removed because IIROC no longer plays a role in the pricing of bonds. *[N/A]*

In addition to the plain language rewrite of existing requirements to create proposed Rules 4300 and 4400, the following substantive amendments are proposed:

- *Fully paid and excess margin securities:* The proposed rule clarifies IIROC's expectation that a Dealer Member may only use a client's fully paid and excess margin securities if it obtains the express written approval of the client through the execution of a cash and securities loan agreement. The current requirements do not explicitly describe the circumstances under which a Dealer Member may use a client's fully paid and excess margin securities; rather they simply state that these securities are not to be used improperly by the Dealer Member. *[4312(2)]*

- *Records of segregated securities:* The proposed rule clarifies IIROC's expectation that the description of the segregated securities must be in substance a fair representation of how the securities are being held in segregation at a custodian. The current requirements specify how segregated securities are to be described on a Dealer Member's security position record (or related records) and customer's ledger and statement of account, but do not specify that these records and accounts must be a fair representation of how these securities are held at a custodian. *[4328(1)]*

- *Annual approval of foreign institutions or securities dealers as an acceptable securities location:* The proposed rule clarifies IIROC's expectations that the annual approval of foreign institutions and foreign securities dealers as "acceptable securities locations" must be evidenced within the Dealer Member Board of Director minutes. The current requirements for auditors allude to an annual Board of Director approval but do not specify how this approval is to be documented. *[4350(2)]*

- *Custodial indemnification clause:* The current rules for Dealer Member custodial agreements require the inclusion of three minimum agreement clauses. The standard form custodial agreement published by IIROC includes a fourth clause not specified within the current rules. This fourth clause provides important added protection to a Dealer Member by requiring that the custodian indemnify the Dealer Member against any and all Dealer Member losses that result from the custodian's failure to return any securities or property to the Dealer Member. This custodial indemnification clause also limits the custodian's liability to the market value of the securities or property. Use of this clause is standard industry practice. The proposed rule adds the custodial indemnification clause as a fourth minimum agreement clause. *[4352(1)(iv)]*

- *Bare trustee custodial agreement:* A bare trustee custodial agreement is a written custodial agreement between IIROC (acting on behalf of all of its Dealer Members) and a custodian outlining the terms upon which book-based security positions are held with the custodian. The current rules require Dealer Members to execute written custodial agreements with all organizations holding securities for their clients but do not specify the bare trustee custodial agreement as an acceptable form of written custodial agreement. The proposed rule recognizes the bare trustee custodial agreement as an acceptable form of written custodial agreement for book-based security holdings and reflects current industry practice. *[4353(1)]*

- *Annual audit confirmations and difference account:* The current rules require that a Dealer Member's auditor obtain annual positive written confirmation of all security positions held at acceptable securities locations. The rules do not state what must be done if the confirmation is not received. Comparable current rules for securities held at transfer locations require that, after a certain number of days, the unconfirmed positions be moved to a difference account and be treated as a segregation deficiency. The proposed rule reflects current industry practice and ensures consistency with other Dealer Member rules by requiring that the unconfirmed positions be moved to a difference account if a positive annual written confirmation is not received. *[4355(2)]*

- *Reconciliation of books and records for deposit investment contracts:* The current rules specify that a Dealer Member must provide margin on mutual fund positions if the Dealer Member does not reconcile them on a monthly basis but does not require the same for deposit investment contract (e.g. guaranteed investment certificates) positions. Previous guidance issued does explicitly state that a Dealer Member must reconcile its books and records of its holdings of deposit investment contracts at least monthly with the issuer's records. The proposed rule adds both monthly reconciliation and capital requirements for deposit investment contract positions. This proposed change codifies previously issued guidance and is consistent with the current rule treatment of other investment products. *[4360(1)]*

- *Insurance reduction application:* The current rules specify that the applicable District Council has the authority, with IIROC's recommendation, to approve a Dealer Member's application to reduce the amount of insurance for a period of

six months that the Dealer Member must maintain. The current rules also specify that the applicable District Council, with IIROC's recommendation, has the authority to renew the Dealer Member's insurance reduction application. These proposed changes remove the insurance reduction application and renewal requirements, which have never been used. *[N/A]*

In addition to the plain language rewrite of existing requirements to create proposed Rules 4500 and 4600, the following substantive amendments are proposed:

- *General collateral:* The proposed rule expands upon the definition of general collateral to specifically include Government of Canada real-return bonds, strips and coupons. This revision is reflective of industry practice and is intended to provide greater flexibility to Dealer Members in negotiating repurchase and reverse repurchase (repo) transactions. *[4511(1)(iii)]*

- *Marking to market:* The proposed rule ensures consistency with current industry practice for marking to market and the notification of marks. The current requirement specifies that the marking of a counterparty shall be done by 11:30 a.m. (Toronto time) and that the mark-to-market should be done on a net basis rather than marking on a specific issue by issue basis. In practice, these terms are generally handled bilaterally and specified within Standard Industry Agreements. As a result, the proposed rule includes the proviso "unless otherwise agreed by the parties" to account for customized bilateral agreements. *[4513(2)]*

In addition to the plain language rewrite of existing requirements to create proposed Rules 4700 and 4800, the following substantive amendments are proposed:

- *Annual review and test of business continuity plan:* The proposed amendment adds the requirement for a Dealer Member's senior management to annually approve the Dealer Member's business continuity plan. This requirement was set out as an expectation in previous guidance. *[4714(1)(ii)]*

- *Membership in other trading organizations or associations:* The current rules prohibit a Dealer Member from becoming a member or continuing as a member of any Canadian bond trading organization unless the organization agrees to observe the IIROC rules for trading and delivery of securities. The proposed rule eliminates this prohibition, because it is unnecessary. *[N/A]*

- *Delivery through CDS:* The current rules state how securities must be delivered through CDS Clearing and Depository Services Inc. (CDS). The proposed rule eliminates these requirements since Dealer Members who are CDS participants are already required to report and settle trades in accordance with CDS's rules and procedures. *[N/A]*

- *Use of a clearing corporation:* The current rules require that a Dealer Member who reports a trade to a clearing corporation (such as CDS Clearing and Depository Services Inc.) for settlement must do so in accordance with the requirements of the clearing corporation. The current rules are unclear as to what requirements apply when both trade parties agree to settle a trade without using a clearing corporation. The proposed rules clarify that IIROC's settlement requirements apply when a trade is to be settled without using a clearing corporation. *[4752(3)]*

- *Forbidden transactions:* The current rule states that if a Dealer Member is in doubt as to whether a specific type of transaction is forbidden, it is recommended that the Dealer Member obtain a ruling on a similar hypothetical case from the Chair of the District Council of his or her District. The proposed rule eliminates this requirement, because Dealer Members are already required to ensure their transactions are in compliance with IIROC's rules and securities legislation. *[N/A]*

- *Fixed income physical delivery time:* The current rule states that in the case of dealings between Dealer Members in the same municipality, physical delivery by the seller should be completed before 5:30 p.m. on a clearing day if the trade is to be settled outside of a settlement service. The current rule is outdated as a most banking arrangements must be completed before 4:30 p.m. The proposed rule updates the clearing day delivery time to 4:30 p.m. *[4761(5)(i)]*

- *Timing in assuming margin responsibility for an account transfer:* The current rule is silent on when the receiving Dealer Member must assume responsibility for margining an account that is in the process of being transferred in. The proposed rule introduces a start date of the earlier of: (i) the date all the assets and money balances have being transferred; and (ii) 10 clearing days after it has received the transfer request from the delivering Dealer Member. *[4813(1)]*

The full text of the proposed plain language 4000 series of Dealer Member Rules is attached.

Rule-making process

IIROC Staff involved representatives of Dealer Members in the rule development process, through preliminary consultations. Every rule in the proposed 4000 series of rules was available to all Dealer Members for their input through a Members-only website. The Financial Administrators Section and its Capital Formula and Operations Sub-committees also reviewed and provided comment on all substantive change rules within the proposed 4000 series of rules. A number of changes to the draft proposal were made in response to the comments IIROC received through these consultations.

The proposed Rules were approved for publication by the IIROC Board of Directors on April 30, 2010.

The text of proposed plain language 4000 series of rules is set out in Attachment A. The text of guidance notes and instructions relating to the proposed 4000 series of rules is set out in Attachment B. The text of the existing Dealer Member Rules to be repealed is set out in Attachment C. A table of concordance is included as Attachment D.

Issues and alternatives considered

An alternative to the inclusion of the substantive amendments being proposed was to leave the rules substantively as they were prior to the plain language rewrite. IIROC staff considered other pending projects and proposals as well as the extent of the potential substantive changes identified in order to decide which of the substantive changes would be proposed as part of the plain language rule rewrite project. Those substantive changes that were originally identified as part of the plain language rule rewrite project, but which were ultimately excluded from the plain language rewrite project will be pursued as separate rulemaking projects.

Proposed Rule classification

Statements have been made elsewhere as to the nature and effects of the proposed Rules. The purposes of the proposed Rules are to:

- Ensure compliance with securities laws;
- Prevent fraudulent and manipulative acts and practices;
- Promote just and equitable principles of trade and emphasize the duty to act fairly, honestly and in good faith;
- Foster cooperation and coordination with entities engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities;
- Foster fair, equitable and ethical business standards and practices; and
- Promote the protection of investors.

IIROC staff proposes that rules regarding general Dealer Member financial standards, protection of client assets, financing arrangement, operations, and other internal control requirements should be rewritten to reflect actual IIROC expectations, to enhance the clarity of the rule, to ensure consistency with other IIROC Dealer Member rules and to streamline the decision making and rule interpretation process. These amendments are in addition to the plain language rewrite of the existing rule provisions. The Board has determined that the proposed amendments are not contrary to the public interest.

Due to the extent and substantive nature of these proposed amendments, they have been classified as Public Comment Rule proposals.

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

With the proposed 4000 series of plain language Rules, Dealer Members and investors will benefit from the enhanced clarity and certainty in the proposed Rules relating to general Dealer Member financial standards, protection of client assets, financing arrangements, operations, and other internal control requirements.

The proposed Rules will not have any significant effects on Dealer Members or non-Dealer Members, market structure or competition. Furthermore, it is not expected that there will be any significant, increased costs of compliance as a result of the proposed Rules.

The proposed Rules do not impose any burden or constraint on competition or innovation that is not necessary or appropriate in the furtherance of IIROC's regulatory objectives. The proposed Rules do not impose costs or restrictions on the activities of market participants that are disproportionate to the goals of the regulatory objectives sought to be realized.

Technological implications and implementation plan

There should not be significant technological implications for Dealer Members as a result of the proposed amendments. The proposed 4000 series of plain language Rules will be implemented at the same time as the rest of the plain language rules.

Request for public comment

Comments are sought on the proposed amendments. Comments should be made in writing. Two copies of each comment letter should be delivered within 90 days of the publication of this notice. One copy should be addressed to the attention of:

Answerd Ramcharan
Specialist, Member Regulation Policy
Investment Industry Regulatory Organization of Canada
(416) 943-5850
aramcharan@iiroc.ca

A second copy should be addressed to the attention of:

Manager of Market Regulation
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario
M5H 3S8
marketregulation@osc.gov.on.ca

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

Questions may be referred to:

Answerd Ramcharan
Specialist, Member Regulation Policy
Investment Industry Regulatory Organization of Canada
(416) 943-5850
aramcharan@iiroc.ca

Bruce Grossman
Information Analyst, Member Regulation Policy
Investment Industry Regulatory Organization of Canada
(416) 943-5782
bgrossman@iiroc.ca

Mindy Kwok,
Information Analyst, Member Regulation Policy
Investment Industry Regulatory Organization of Canada
(416) 943-6979
mkwok@iiroc.ca

Attachments

Attachment A - Text of the proposed 4000 series of rules

Attachment B - Test of guidance notes and instructions relating to the proposed 4000 series of rules

Attachment C - Text of the existing relevant provisions of Dealer Member Rules 1, 16, 17, 100, 200, 300, 400, 800, 1100, 1200, 1400, 2000, 2200, 2300, 2600, and 3000

Attachment D - Table of Concordance

ATTACHMENT A

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

DEALER MEMBER FINANCIAL AND OPERATIONAL RULES
PLAIN LANGUAGE RULES 4100 THROUGH 4900
PROPOSED AMENDMENTS

1. As part of a project to rewrite IIROC Rules in plain language, the following current rules are repealed and replaced:

Repealed current rule	Proposed plain language rule
	Rules 4100 and 4200 – **General Dealer Member Financial Standards**
New	**4101. Introduction** (1) Rules 4100 and 4200 set out the following Dealer Member general financial requirements: (i) Minimum capital level and related requirements ***[Part A, Sections 4110 through 4118]***; (ii) Early Warning System tests and related requirements ***[Part B, Sections 4130 through 4138]***; (iii) Regulatory financial report filing requirements ***[Part C, Sections 4150 through 4153]***; (iv) Appointment of auditors and audit requirements ***[Part D, Sections 4170 through 4192]***; (v) Financial disclosure to clients ***[Part E, Sections 4200 through 4207]***; (vi) General internal control requirements ***[Part F, Sections 4220 through 4225]***; (vii) Pricing internal control requirements ***[Part G, Sections 4240 through 4244]***; and (viii) Calculation of prices on a yield basis ***[Part H, Sections 4260 through 4266]***.
New	**4102. - 4109. - Reserved**
New	**Part A - Minimum capital level and related requirements**
New	**4110. Introduction** (1) Part A of Rule 4100 sets out general Dealer Member requirements for: (i) maintaining positive risk adjusted capital; (ii) averting, reporting and remedying capital deficiency situations; (iii) calculating their current capital position; (iv) maintaining and utilizing a capital adequacy reporting system; and (v) consolidating their financial position reporting with related companies.

Repealed current rule	Proposed plain language rule
Rule 17.1	**4111. Maintain risk adjusted capital** (1) A Dealer Member must at all times maintain risk adjusted capital greater than zero.
Rules 17.1 and 2600, Statement 2 – Procedure (6)	**4112. Capital deficiency and early warning situations** (1) Senior management of a Dealer Member must take prompt action to: (i) avert or remedy any projected or actual capital deficiency; (ii) report any *risk adjusted capital* deficiencies to the Corporation; and (iii) report to the Corporation any circumstances that could require the Dealer Member to be designated in early warning Level 1 or Level 2, including circumstances that should be apparent if the Dealer Member had complied with the requirements of this Rule.
Rules 17.1, 200.1(k) and 200.1(m)	**4113. Calculating current capital position - general requirements** (1) A Dealer Member must calculate risk adjusted capital according to Form 1 and any other requirements the Corporation prescribes. (2) A Dealer Member must know its current capital position by computing it as often as necessary to ensure it has adequate capital at all times. This includes weekly, monthly and annual calculation and documentation.
Rule 2600, Statement 2 – Procedure (5)	**4114. Calculating current capital position - weekly documentation** (1) At least weekly, but more frequently if required (e.g., the Dealer Member is operating close to early warning levels or volatile market conditions exist), the Chief Financial Officer or designate must document that he or she has: (i) received management reports produced by the Dealer Member's accounting system showing information relevant to estimating the Dealer Member's capital position; (ii) obtained other information about items that, while perhaps not yet recorded in the accounting system, are likely to significantly affect the Dealer Member's capital position (e.g., bad and doubtful debts, unreconciled positions, underwriting and inventory commitments and margin requirements); (iii) estimated the Dealer Member's capital position, compared it to planned capital limits and the prior period, and reported adverse trends or variances to senior management; (iv) estimated the liquidity, capital and, where applicable, profitability tests under the early warning calculations for early warning Level 1 or Level 2 for the Dealer Member.
Rules 200.1(k), 200.1(m) and 2600, Statement 2 – Procedure (7)	**4115. Calculating current capital position - monthly documentation and reconciliation** (1) A Dealer Member must generate monthly trial balances and capital computations based on its current ledger accounts to: (i) check on status and accuracy of those ledger accounts; and (ii) keep itself informed of its capital position as required under Part A of Rule 4100.

Repealed current rule	Proposed plain language rule
	(2) The month-end estimate of risk adjusted capital must be reconciled to the MFR. Material discrepancies must be investigated and steps taken to avoid re-occurrence.
Rules 200.1(k), 200.1(m) and 2600, Statement 2 – General and Procedures (2), (3), (4) and (8)	**4116. Dealer Member capital adequacy reporting system** (1) A Dealer Member must: (i) establish and maintain policies and procedures to ensure that its books and records are timely, complete and accurate; (ii) maintain a capital adequacy reporting system: (a) based on timely, complete and accurate accounting books and records; (b) that reflects projected capital requirements resulting from current and planned business activities in each of its major functional areas (e.g. capital markets, principal trading, borrowing/lending, etc); (c) that includes senior management approved capital usage limits for each functional area designed to ensure that its combined operations maintain adequate intra-day and end of day *risk adjusted capital;* and (d) that identifies and informs functional area management of breaches of approved capital usage limits. (iii) monitor and act on information produced by its capital adequacy reporting system so that it maintains positive *risk adjusted capital* as prescribed by Corporation requirements; (iv) identify and implement changes, on an ongoing basis, to its capital adequacy reporting system required to reflect developments in its business or in regulatory requirements; and (v) perform and document, at least annually, a supervisory review of its capital adequacy reporting system. (2) A Dealer Member's Chief Financial Officer must continuously monitor the Dealer Member's capital position to ensure that the Dealer Member maintains positive *risk adjusted capital* as prescribed by Corporation requirements.
Rules 16.02(iv) and (v)	**4117. Consolidation of financial position with related companies** (1) In calculating its risk adjusted capital a Dealer Member may consolidate its financial position with the financial position of any of its related companies if: (i) the Corporation has given prior approval of the consolidation; (ii) the related company is subject to Corporation requirements; (iii) the Dealer Member has guaranteed the obligations of the *related company* and the *related company* has guaranteed the obligations of the Dealer Member; (iv) the guarantees are: (a) in a form acceptable to the Corporation; and

Repealed current rule	Proposed plain language rule
	(b) unlimited in amount; and (v) the consolidation is made according to subsection 4117(2). (2) A Dealer Member consolidating its financial position with a related company under subsection 4117(1) must comply with the following rules or with other requirements acceptable to the Corporation: (i) eliminate inter-company accounts between the Dealer Member and the *related company*; (ii) eliminate any minority interests in the *related company* from the capital calculation; and (iii) combine Dealer Member and *related company* financial information prepared as at the same date.
Rule 200.1(m)	**4118. Options for calculating risk adjusted capital available to well-capitalized Dealer Members** (1) A Dealer Member, whose capital position is substantially in excess of that required under Corporation requirements, may apply requirements more stringent than the Corporation capital computation requirements and thereby omit certain documentation in support of the computation. For example, when calculating *risk adjusted capital*: (i) inventories can be grouped into broader margin categories and maximum margin rates applied; (ii) margin requirement reductions for offset positions recognized elsewhere in the Rules can be ignored; and (iii) assets partly allowable or of questionable value can be excluded entirely.
New	**4119. - 4129. - Reserved**
New	**Part B - Early Warning Tests and related requirements**
New	**4130. Introduction** (1) Part B of Rule 4100 describes the early warning system that alerts the *Corporation* to a *Dealer Member's* financial or operational problems. It also sets out the process the *Corporation* follows and the requirements that Dealer Members must comply with to resolve early warning alert situations before they worsen. (2) A *Dealer Member* has a responsibility to: (i) monitor for an early warning violation; (ii) avoid the potential for an early warning violation; and (iii) report an early warning violation to the *Corporation* when it occurs.
Rules 30.1, 30.2 and 30.4	**4131. Definitions** (1) "*Average monthly loss"* means the sum of the *Dealer Member's* monthly *profit and loss* amounts for a particular period divided by the number of months in the period and the result is a loss.

<table>
<tr><th>Repealed current rule</th><th>Proposed plain language rule</th></tr>
<tr><td></td><td>(2) “Early warning excess” and “early warning reserve” have the meanings set out in Statement C of Form 1.

(3) “Early warning violation” means the Dealer Member has failed an early warning test.

(4) “Loss” means the Dealer Member’s loss, if any, before interest on internal subordinated debt, bonuses, income taxes and extraordinary items as set out in Statement E of Form 1.

(5) “Risk adjusted capital” and “total margin required” have the meanings set out in Statements B of Form 1.</td></tr>
<tr><td>Rules 30.2 and 30.4</td><td>4132. Early warning designation, levels and tests

(1) A Dealer Member is designated as being in early warning level 1 or level 2 if at any time it fails any one of the following tests:

<table>
<tr><th>Early warning tests</th><th>Early warning level 1</th><th>Early warning level 2</th></tr>
<tr><td>Liquidity test</td><td>Dealer Member’s early warning reserve is less than zero.</td><td>Dealer Member’s early warning excess is less than zero.</td></tr>
<tr><td>Capital test</td><td>Dealer Member’s risk adjusted capital is less than 5 per cent of its total margin required.</td><td>Dealer Member’s risk adjusted capital is less than 2 per cent of its total margin required.</td></tr>
<tr><td>Profitability test #1</td><td>Dealer Member’s current month risk adjusted capital is less than six times but greater than or equal to three times the absolute value of its average monthly loss, if any, for the six-month period ending with the current month;
and
Dealer Member’s preceding month risk adjusted capital is less than six times the absolute value of its average monthly loss, if any, for the six-month period ending with the preceding month.</td><td>Dealer Member’s current month risk adjusted capital is less than three times the absolute value of its average monthly loss, if any, for the six-month period ending with the current month;
and
Dealer Member’s preceding month risk adjusted capital is less than six times the absolute value of its average monthly loss, if any, for the six-month period ending with the preceding month.</td></tr>
<tr><td>Profitability test #2</td><td>Dealer Member’s current month risk adjusted capital is less than six times the absolute value of its loss, if any, for the current month.</td><td>Dealer Member’s current month risk adjusted capital is less than three times the absolute value of its loss, if any, for the current month.</td></tr>
<tr><td>Profitability test #3</td><td>Not applicable</td><td>Dealer Member’s current month risk adjusted capital is less than the absolute</td></tr>
</table>
</td></tr>
</table>

<table>
<tr><th>Repealed current rule</th><th>Proposed plain language rule</th></tr>
<tr><td></td><td>
<table>
<tr><td></td><td></td><td>value of its loss, if any, for the three month period ending with the current month.</td></tr>
<tr><td>Frequency</td><td>Not applicable</td><td>Dealer Member has been designated as being in any early warning, excluding discretionary early warnings, three or more times in the preceding six months; or
Dealer Member has failed an early warning level 1 profitability test and at the same time has also failed either an early warning level 1 liquidity or capital test.</td></tr>
</table>
</td></tr>
<tr><td>Rules 30.3 and 30.5</td><td>
4133. Early warning related requirements

(1) When a Dealer Member determines that there is an early warning violation:
<table>
<tr><th></th><th>Early warning level 1</th><th>Early warning level 2</th></tr>
<tr><td>Notifying the Corporation in writing</td><td>The Dealer Member's chief executive officer and chief financial officer must immediately deliver a letter to the Corporation detailing:

(i) The early warning tests in section 4132 that have been failed;

(ii) The identified problems that resulted in the test's failure;

(iii) The Dealer Member's proposed plan to rectify the problems identified; and

(iv) The Dealer Member's acknowledgement that it is in early warning level 1 and that the restrictions in section 4135 apply.

The Dealer Member must send a copy of the notification letter to its auditor and the Canadian</td><td>The Dealer Member's chief executive officer and chief financial officer must immediately deliver to the Corporation a letter detailing:

(i) The early warning tests in section 4132 that have been failed;

(ii) The identified problems that resulted in the tests failure;

(iii) The Dealer Member's proposed plan to rectify the problems identified; and

(iv) The Dealer Member's acknowledgement that it is in early warning level 2 and that the restrictions in section 4135 apply.

The Dealer Member must send a copy of the notification letter to its</td></tr>
</table>
</td></tr>
</table>

Repealed current rule	Proposed plain language rule			
			Investor Protection Fund.	auditor and the Canadian Investor Protection Fund.
		Meeting with the *Corporation*	Not applicable	The *Dealer Member's* chief executive officer and chief financial officer must meet with the *Corporation* to present the *Dealer Member's* plan for rectifying the identified problems.
		Taking required actions	A *Dealer Member* in early warning level 1 must: (i) File its next monthly financial report required under section 4151 within 15 business days of month's end or on any earlier day that the *Corporation* considers practicable; (ii) Provide any other information that the *Corporation* requests; and (iii) Follow the business restrictions in section 4135. (iv) File its monthly financial reports within the time specified in subsection (1) above as long as it remains in early warning.	A *Dealer Member* in early warning level 2 must: (i) File a weekly capital report with the same information as a monthly financial report within 5 business days of the end of each week or on any earlier day that the *Corporation* considers practicable; (ii) File a weekly report, in a *Corporation*-prescribed form, of its aged-segregation deficiencies and an outline of its plan under to correct them; (iii) File a business plan for such period and covering such matters as the *Corporation* specifies; (iv) File its next monthly financial report required under section 4151 by the 10th business day after the end of each month or any earlier day that the *Corporation* considers practicable; (v) Provide any other information that the *Corporation* requests; and (vi) Follow the business restrictions in section 4135.

Repealed current rule	Proposed plain language rule			
		Responding to the Corporation's letter	The Corporation will send a letter to a Dealer Member in early warning level 1 confirming that the Dealer Member is in early warning level 1 and requesting information from the Dealer Member. A *Dealer Member* will respond to the *Corporation's* early warning letter within 5 business days: (i) with the requested information, **or** (ii) acknowledging it will submit the information promptly, **and** (iii) with an update on the *Dealer Member's* early warning situation if any material circumstances have changed. The *Dealer Member* must send copies of its response letter to its auditor and the Canadian Investor Protection Fund.	The *Corporation* will send a letter to a *Dealer Member* in early warning level 2 confirming that the *Dealer Member* is in early warning level 2 and requesting information from the *Dealer Member*. A *Dealer Member* will respond to the *Corporation's* early warning letter within 5 business days: (i) with the requested information, **or** (ii) acknowledging it will submit the information promptly, **and** (iii) with an update on the *Dealer Member's* early warning situation if any material circumstances have changed. The *Dealer Member* must send copies of its response letter to its auditor and the Canadian Investor Protection Fund.
		On-site reviewing of the Dealer Member's procedures	The Corporation will as soon as practicable: (i) conduct an on-site review of the Dealer Member's procedures for monitoring capital on daily basis, and (ii) prepare a report as to the results of the review.	The Corporation will as soon as practicable: (i) conduct an on-site review of the Dealer Member's procedures for monitoring capital on daily basis, and (ii) prepare a report as to the results of the review.
		Reimbursing the Corporation for costs	The *Corporation* may require a *Dealer Member* to pay reasonable costs and expenses incurred to administer the *Dealer Member's* early warning situation under this Rule.	The *Corporation* may require a *Dealer Member* to pay reasonable costs and expenses incurred to administer the *Dealer Member's* early warning situation under this Rule.

<table>
<tr><th>Repealed current rule</th><th>Proposed plain language rule</th></tr>
<tr><td>Rules 30.2 and 30.4</td><td>4134. Discretion to designate a Dealer Member as being in early warning

(1) The Corporation may designate a Dealer Member as being in early warning level 1 or 2 if at any time the condition of the Dealer Member is not satisfactory for any reason including:

(i) financial or operating difficulties;

(ii) problems arising from record-keeping conversion or significant changes in clearing methods;

(iii) issues related to being a new Dealer Member; or

(iv) lateness in any filing or reporting required by the Corporation.</td></tr>
<tr><td>Rule 30.3(iv)</td><td>4135. Restrictions on a Dealer Member in early warning

(1) A Dealer Member in early warning must comply with all the Corporation directions. It must also obtain the Corporation's written consent before:

(i) reducing its capital in any way, including by share redemption, re-purchase or cancellation;

(ii) reducing any of its Corporation-approved subordinated indebtedness;

(iii) incurring any direct or indirect loan, advance, bonus, dividend, capital or other payments or distributions of assets to any director, officer, partner, shareholder, related company, affiliate or associate; or

(iv) incurring any commitments to increase its non-allowable assets.</td></tr>
<tr><td>Rules 30.5(j) and 30.6</td><td>4136. Additional Restrictions

(1) The Corporation may impose any of the following additional restrictions on a Dealer Member in early warning:

<table><tr><th>Early warning level 1</th><th>Early warning level 2</th></tr><tr><td>None</td><td>(i) Reducing the amount of clients' free credit balances that the Dealer Member or its carrying broker may use under to an amount the Corporation considers desirable.

(ii) Imposing restrictions on a Dealer Member that is designated in early warning level 2 under Rule 20, Part 9, Early Warning Review Proceedings.</td></tr></table></td></tr>
<tr><td>Rule 30.3</td><td>4137. Prohibited transactions

(1) A Dealer Member must not enter into any transaction or take any action described in section 4135 that would cause the Dealer Member to be in early warning unless it first notifies the Corporation in writing of its intention to do so and receives the Corporation's written approval.</td></tr>
</table>

Repealed current rule	Proposed plain language rule
Rule 30.8	**4138. Lifting an early warning designation** (1) A *Dealer Member* will remain designated as being in early warning level 1 or 2 until the *Corporation* confirms in writing that the early warning designation has been lifted. The Corporation will lift the early warning designation when the *Dealer Member* files a monthly financial report, or submits such other evidence or assurances, that satisfies the *Corporation* that the *Dealer Member* has solved the problems that placed it in early warning.
New	**4139. -4149. - Reserved**
New	**Part C – Regulatory financial report filing requirements**
New	**4150. Introduction** (1) Part C of Rule 4100 sets out a *Dealer Member*'s financial reporting obligations. Financial reporting enables the *Corporation* to monitor a *Dealer Member*'s financial position and compliance with capital requirements, as well as to receive early warning of any deterioration in that position.
Rule 16.2	**4151. Dealer Member financial filings** [LINK GN 4150-1] (1) A *Dealer Member* must file: (i) an audited *Form 1* for its fiscal year; and (ii) a monthly financial report (MFR) for each calendar month, [LINK *Form 1*], in accordance with *Corporation* requirements. [LINK Instructions 4150-1]
Rule 16.2(iii)	**4152. Extending deadline for financial filings** (1) A *Dealer Member* may request an extension of time for filing its MFR by writing to the *Corporation*. (2) A *Dealer Member*'s auditor may request an extension of time for filing the *Dealer Member*'s annual *Form 1* by writing to the *Corporation*. (3) The *Corporation* may grant an extension under subsections 4152(1) and (2) if it considers the request to be appropriate in the circumstances.
Rule 16.10	**4153. Late filing fee** (1) A *Dealer Member* must pay a fee [LINK Instructions 4150-1] to the *Corporation* if it does not file a document or information required under Part C of Rule 4100 within the time prescribed by the *Corporation*.
New	**4154. - 4159. - Reserved**
New	**Part D – Appointment of auditors and audit requirements**
New	**4170. Introduction** (1) Part D of Rule 4100 sets out the minimum requirements for the appointment of auditors and for the conducting of audits. The audit requirements ensure that auditors test for specific financial and regulatory compliance issues and report any breaches of rules or standards to the *Corporation*.
Rule 16.1	**4171. Approved auditors** (1) The *Corporation* annually approves, based on adopted criteria [LINK Criteria for Panel Auditors], a list of audit firms as panel auditors eligible to perform a *Dealer Member*'s annual audit.

Repealed current rule	Proposed plain language rule
	(2) The *Corporation* may remove an audit firm from the approved list if the audit firm no longer meets the criteria in subsection (1).
Rule 16.1	**4172. Dealer Member's auditor** (1) A *Dealer Member* must use a *Corporation*-approved auditor.
Rule 16.5 (Remainder of 1st sentence)	**4173. Responsibilities of a Dealer Member's auditor** (1) The *Dealer Member*'s auditor must: (i) conduct an audit of the *Dealer Member*'s annual *Form 1* filing; and (ii) carry out procedures of sufficient scope during the audit to enable the auditor to express an opinion on the *Dealer Member*'s annual *Form 1* filing.
Rule 300.2 (End of 1st sentence)	**4174. No limitation on scope or procedures** (1) Nothing in this Rule: (i) limits the scope of the audit, or (ii) allows the *Dealer Member*'s auditor to omit any additional audit procedure that it considers necessary under the circumstances.
Rules 16.5, 300.1 and 300.2 (2nd paragraph after{ii})	**4175. Audit in accordance with Canadian Auditing Standards (CAS)** (1) The *Dealer Member*'s auditor must audit the *Dealer Member* in accordance with Canadian Auditing Standards (CAS). (2) Although conducted in accordance with CAS, a *Dealer Member*'s substantive audit procedures must be done as at the audit date because of the nature of the securities industry. (3) A *Dealer Member*'s *risk adjusted capital* (RAC) and early warning reserve (EWR) must be considered when determining materiality for the *Dealer Member*'s audit.
Rule 300.2 (Paragraph after {ii})	**4176. Test procedures as at the fiscal year-end date** (1) The *Dealer Member*'s auditor must conduct the test procedures in sections 4177 through 4185 as at the audit date.
Rule 300.2(a)(ii)	**4177. Account for all securities, currencies, and other like assets** (1) The *Dealer Member*'s auditor must account for all securities, currencies and other like assets, including those held in safekeeping or in segregation, on hand, in a vault, or otherwise in the *Dealer Member*'s physical possession. (2) The *Dealer Member*'s auditor must physically examine the assets and compare them with the *Dealer Member*'s books and records. [LINK: Form 1, General Notes and Definitions, Note #10] (3) If a *Dealer Member* has employees who are independent of its employees who handle or record securities, those independent employees may conduct all or part of the count and examination under the observation of the *Dealer Member*'s auditor. (4) The *Dealer Member*'s auditor must test count and compare sufficient securities with the independent employees' counts, if applicable, and with the security position records, to be satisfied that the entire count was substantially correct.

Repealed current rule	Proposed plain language rule
Rules 300.2(a)(ii) and (iii)	**4178. Verify securities in transfer and in transit** (1) On a test basis, the *Dealer Member*'s auditor must verify securities in transfer and in transit between the *Dealer Member*'s offices.
Rule 300.2(a)(iv)	**4179. Review the Dealer Member's position balancing and account reconciliations** (1) The *Dealer Member*'s auditor must review: (i) the *Dealer Member*'s balancing of all security positions and all derivatives; and (ii) the *Dealer Member*'s reconciliation of all broker, dealer, clearing account positions, and non-certificated instrument (NCI) positions the *Dealer Member* holds (in inventory and for clients) with the counterparty's corresponding statements. (2) If a position or account is not in balance according to the records (after adjusting to the physical count): (i) the *Dealer Member*'s auditor must find out whether the *Dealer Member* has adequately provided for any potential loss; and (ii) the *Dealer Member* must make that provision according to the Notes and Instructions for out-of-balance positions in Statement B of *Form 1*. [LINK Form 1, Statement B, Instructions for Line 20]
Rule 300.2(a)(v)	**4180. Review bank reconciliations** (1) The *Dealer Member*'s auditor must: (i) obtain bank statements, cancelled cheques, and all other debit and credit memos directly from the *Dealer Member*'s banks which cover a period ending at least 10 business days after the audit date; and (ii) verify the accuracy of the reconciliations between the bank statements and the ledger control accounts, on a test basis, using appropriate audit procedures.
Rule 300.2(a)(vi)	**4181. Review custodial agreements and approvals** (1) The *Dealer Member*'s auditor must: (i) ensure that all custodial agreements in the form prescribed by the *Corporation* [LINK: Guidance Note 4340-2, Appendices 1, 2 and 3], are in place [LINK: Form 1, General Notes and Definitions, Note #13] for securities lodged with *acceptable securities locations* [LINK: Form 1, General Notes and Definitions, Definition of "acceptable securities locations"]; and (2) annually obtain evidence of a *Dealer Member*'s Board of Directors' or authorized Board committee's approval of *other foreign securities locations* [LINK: Form 1, General Notes and Definitions, Definition of "acceptable securities locations"]. These approvals must be documented in the meeting minutes.
Rule 300.2(a)(vii)(1-9)	**4182. Obtain written positive confirmations** (1) The *Dealer Member's auditor* must obtain written positive confirmation of:

Repealed current rule	Proposed plain language rule
	(i) all bank balances and other deposits including hypothecated securities; (ii) all money, security positions, and derivative positions, including with clearing houses, similar organizations, and issuers of non-certificated instruments; (iii) all money and securities loaned or borrowed (including subordinated loans) and details of collateral received or pledged, if any; (iv) a sample of accounts of, or with, brokers or dealers representing regular, joint, and contractual commitment positions including money and security positions and derivative positions; [LINK: Form 1, General Notes and Definitions, Note #11] (v) all accounts of directors and officers or partners, including money and security positions and derivative positions; (vi) a sample of client, employee, and shareholder accounts, including money and security positions and derivative positions; (vii) a sample of account guarantee agreements, in cases where a margin reduction has been taken in the accounts for which the guarantee has been provided during the period subject to the audit; [LINK: Form 1, General Notes and Definitions, Note #12]; (viii) a sample of guarantees, in cases where a margin reduction has been taken in the accounts for which the guarantee has been provided as at the audit date; [LINK: Form 1, General Notes and Definitions, Note #12]; and (ix) all other accounts which, in the opinion of the *Dealer Member*'s auditor, should be confirmed.
Rule 300.2(a)(vii) (last sentence)	**4183. Review a sample of signed guarantee agreements** (1) The *Dealer Member*'s auditor must review a sample of the *Dealer Member*'s guarantee agreements to ensure they are signed, completed, and comply with the minimum requirements set out in sections 5120 through 5125. [LINK: Rule 5120].
Rule 300.2(a)(viii)	**4184. Tests and procedures on statements and schedules of Form 1** (1) The additional information set out in Part II of *Form 1* should be subjected to the procedures in the audit of Part I of *Form 1*, which are in accordance with Canadian Auditing Standards. No procedures are required to be carried out in addition to those necessary to form an opinion on Part I of *Form 1*.
Rule 300.2(b)	**4185. Test statements for a description of securities held in safekeeping** (1) The *Dealer Member*'s auditor must check on a test basis whether the *Dealer Member*'s security position record and client statements accurately describe securities held in safekeeping.
Rules 16.6 and 300.2(a)(ix)	**4186. Dealer Member obligations to auditor** (1) A *Dealer Member* must fully disclose all material facts and issues about its business and operations in a representation letter from the *Dealer Member*'s senior officers to the *Dealer Member*'s auditor. (2) A *Dealer Member* must provide its auditor with unrestricted access to all of the *Dealer Member*'s books and records and related documents.

Repealed current rule	Proposed plain language rule
	(3) A *Dealer Member* must not interfere with the audit process, nor conceal, withhold, or destroy any information, document or records reasonably required for the audit.
Rule 300.2(a)(vii)(3rd and 4th sentences)	**4187. Selection of accounts for positive confirmation** (1) For accounts in clauses 4182(1)(iv), (vi), (vii), and (viii) the *Dealer Member*'s auditor must: (i) select specific accounts for positive confirmation based on: (a) size (all accounts with equity exceeding a certain dollar value, based on the level of materiality); and (b) other characteristics such as accounts in dispute, accounts that are significantly undermargined, nominee accounts, and accounts that would require significant margin during the year or as at year-end without an effective guarantee; and (ii) select a sufficiently representative sample from all other accounts to provide reasonable assurance that any material error will be detected.
Rule 300.2(a)(vii)(5th sentence following {9})	**4188. Written confirmation of clients' accounts with no balance** (1) The *Dealer Member*'s auditor must, using positive or negative written confirmation procedures, confirm on a test basis clients' accounts with no balance and those closed since the last fiscal year-end audit date. The *Dealer Member*'s auditor may consider the adequacy of the *Dealer Member*'s internal control system to decide the extent of these procedures.
Rule 300.2(a)(vii)(6th and 7th sentences following {9})	**4189. Effect on capital if no positive written confirmation received for a guarantee** (1) If the *Dealer Member*'s auditor does not receive a reply to a positive account guarantee agreement confirmation request made under clause 4182(1)(vii) or (viii), the guarantee agreement must not be accepted for margin reduction purposes for the accounts guaranteed until: [LINK *Form 1*, General Notes and Definitions, #12, p. 2 – re: guarantees disallowed] (i) the *Dealer Member's* auditor (or the *Dealer Member*, if after the *Form 1* filing) receives positive written confirmation of the account guarantee agreement; or (ii) the parties sign a new account guarantee agreement. [LINK Rule 5124(3)] (2) If in response to a positive or negative confirmation request, a guarantor disputes the validity or extent of the guarantee, that guarantee must not be accepted for margin reduction purposes until: (i) the dispute is resolved; and (ii) the guarantor provides an acceptable form of confirmation of the account guarantee agreement.
Rules 300.2(c) and 300.3(a)	**4190. Calculations for Form 1 and other reporting** (1) The *Dealer Member*'s auditor must perform the procedures identified in the Report on Compliance for Segregation of Securities in *Form 1* and report on the results as at the fiscal year-end audit date.

Repealed current rule	Proposed plain language rule
	(2) The *Dealer Member*'s auditor must perform the procedures identified in the Report on Compliance for Insurance in *Form 1* and report on the results as at the fiscal year-end audit date.
Rule 300.5	**4191. Auditor's records** (1) The *Dealer Member*'s auditor must retain a final copy of *Form 1* and all audit working papers in accordance with section V(5) [LINK Introduction Section V(5)] of the Introduction to the Rulebook. (2) All audit working papers for the two most recent years must be readily accessible. (3) The *Dealer Member*'s auditor must make all working papers available for review by the *Corporation* and the Canadian Investor Protection Fund (CIPF).
Rule 300.6	**4192. Reporting a material breach of Corporation requirements** (1) If during the regular conduct of an audit, the *Dealer Member*'s auditor observes any material breach of the *Corporation* requirements related to: (i) calculating the *Dealer Member*'s financial position, (ii) handling and custody of securities, or (iii) maintaining adequate records, the *Dealer Member*'s auditor must report that breach to the *Corporation*.
New	**4193. - 4199. - Reserved**
New	**Part E - Financial disclosure to clients**
New	**4200. Introduction** (1) If a client so requests, a Dealer Member must disclose its financial condition to the client to enable them to assess the Dealer Member's financial condition. Part E of Rule 4200 sets out the requirements that a Dealer Member must meet in order to present this information to the client in a complete and consistent manner.
Rule 1400.1 (1st sentence)	**4201. Statement of financial condition available** (1) A Dealer Member must provide a statement of its financial condition, when requested, to any client who has traded in his or her account within the past 12 months. (2) The statement of financial condition must be as at the Dealer Member's latest fiscal year-end date and based on its latest annual audited financial statements. (3) A Dealer Member must prepare the statement of financial condition within 75 days of its fiscal year-end.
Rule 1400.3	**4202. Statement of financial condition - contents** (1) A Dealer Member's statement of financial condition must contain material information including assets, liabilities and shareholders' or partners' equity.

Repealed current rule	Proposed plain language rule
Rules 1400.1 and 1400.4 (opening paragraph), (a) and (b)	**4203. Consolidated financial statements - similar named entity** (1) A Dealer Member must disclose its financial statements separately from those of any affiliate or holding company with a similar name. (2) If a Dealer Member's accounts are included in the consolidated financial statements of its holding company or affiliate with a name similar to the Dealer Member's, and those consolidated financial statements are published or circulated in any *document*, then either: (i) the consolidated financial statements must include a note indicating that: (a) they relate to an entity that is not the Dealer Member, and (b) although the statements include the Dealer Member's accounts, they are not the Dealer Member's financial statements. or (ii) at the time of publication or circulation, the Dealer Member must send to each client who has traded in his or her account within 12 months of the date of publication: (a) its unconsolidated statement of financial condition, and (b) a letter explaining why the statement is being sent.
Rules 17.1 and 1400.5	**4204. Dealer Member's auditor's report** (1) A Dealer Member may publish or circulate a financial statement only if: (i) its auditor's report accompanies the statement; and (ii) the auditor's report states that the financial statement fairly summarizes the Dealer Member's financial position. (2) The Dealer Member's auditor's report that accompanies its financial statement must state that the statement fairly summarizes the Dealer Member's financial position.
1400.2	**4205. Publishing a statement of financial condition** (1) If a Dealer Member publishes or circulates a financial statement in any *document*, it must: (i) be in the same form; and (ii) contain the same information as the statement made available to the Dealer Member's clients.
1400.6	**4206. List of current executives and directors** (1) A Dealer Member must provide a current list of its executives and directors, when requested, to any client who has traded in his or her account within the past 12 months.
1400.7	**4207. Statement of financial condition available to clients** (1) A Dealer Member must state on each account statement sent to clients, or in

Repealed current rule	Proposed plain language rule
	another manner the Corporation approves, that: (i) its statement of financial condition; and (ii) list of executives and directors are available on request to any client who has traded in his or her account within the previous 12 months.
New	**4208. - 4219. - Reserved**
New	**Part F – General internal control requirements**
New	**4220. Introduction** (1) Part F of Rule 4200 sets out Corporation requirements for a Dealer Member's *internal controls and risk management infrastructure*. Effective internal controls will assist a Dealer Member not only in complying with Corporation requirements and applicable securities law but also in conducting its business with integrity and due regard to the interests of its clients.
Rule 2600, Statement 1 – General Matters (iv)	**4221. Definitions** (1) "*Detective controls*" means controls that discover, or increase the chances of finding, fraud or error, so the Dealer Member can take prompt corrective action. Even knowing that detective controls exist may have a deterrent effect and be preventive in that sense. (2) *"Preventive controls"* mean controls that prevent, or minimize the chances of, fraud and error.
Rules 17.2(A) and 2600, Statement 1 – General Matters (2nd paragraph, 2nd sentence) and (v)	**4222. Adequate internal controls** (1) A Dealer Member must establish and maintain appropriate *internal controls*. (2) A Dealer Member's management is responsible for ensuring adequate *internal controls* as part of its overall responsibility for the Dealer Member's operations. (3) A Dealer Member's management must use best judgment in determining whether *internal controls* are adequate.
Rule 2600, Statement 1 – General Matters (iv)(1st sentence)	**4223. Preventive controls** (1) When necessary, a Dealer Member must implement *preventive controls* based on management's view of the risk of loss and the cost-benefit relationship of controlling that risk.
Rule 2600, Statement 1 – General Matters [2nd paragraph after (iv)(1st sentence)]	**4224. Written record** (1) A Dealer Member must maintain a detailed written record of its *internal controls*, including, at a minimum, the policies and procedures senior management has approved to comply with this Rule and related Corporation internal control requirements.
Rule 2600, Statement 1 – General Matters [2nd paragraph after (v)(iv)(2nd sentence)]	**4225. Review and written approval of internal controls** (1) Senior management must review a Dealer Member's *internal controls* for adequacy and suitability at least annually and more frequently as necessary or stipulated by Corporation *requirements*. Senior management must approve a Dealer Member's *internal controls* in writing after each review.

Repealed current rule	Proposed plain language rule
New	**4226. - 4239. - Reserved**
New	**Part G - Pricing internal control requirements**
New	**4240. Introduction** (1) Part G of Rule 4200 sets internal control requirements to so that a Dealer Member can ensure that securities are valued using prices from objective and verifiable sources, and independent management oversight exists to ensure reasonability of prices used.
Rule 2600, Statement 7 – Control objectives (c) and (d) and minimum required firm policies and procedures (2), (3), (7) and (8)	**4241. Pricing procedures** (1) A Dealer Member must consistently and accurately price all securities. In Part G of Rule 4200, references to securities include client and inventory securities, securities used in financing transactions such as such as security borrow and lend, repurchase and reverse repurchase transactions. (2) On a daily basis, a Dealer Member must consistently and accurately mark to market its "owned" and "sold short" security positions to ensure accurate profit and loss reporting in accordance with Corporation rules. (3) A Dealer Member must develop, document, and follow policies and procedures in consistently pricing and verifying prices of securities. (4) A Dealer Member's policies and procedures must ensure appropriate pricing in security records that it uses to prepare management reports for monitoring: (i) securities-inventory profit and loss; (ii) its regulatory capital position; and (iii) security segregation. (5) A Dealer Member must assign knowledgeable personnel, who are independent of its trading functions, to prepare the reports in subsection (4), and must supervise the reports' preparation. Conflicted personnel must not be involved in security pricing or, failing that, the Dealer Member must adopt compensating procedures to ensure appropriate pricing.
Rule 2600, Statement 7 – Control objectives (a) and minimum required firm policies and procedures (1) and (5)(2nd sentence)	**4242. Independent price verification and adjustment** (1) A Dealer Member must independently verify its security prices at each month-end by comparing them with alternative third-party pricing sources. (2) The verification work must detect and quantify all pricing differences (distinguishing adjusted and unadjusted differences). (3) Senior management must: (i) On a monthly basis, approve the resolution of all material differences; and (ii) On an annual basis, review and verify the continued appropriateness of the existing pricing sources. Where appropriateness is identified as a material concern, the pricing sources used must be changed.
Rule 2600, Statement 7 – Minimum required firm policies and procedures (6)	**4243. Retention of supporting documents** (1) A Dealer Member must retain supporting documents to show that it has verified securities pricing and made appropriate adjustments.

Repealed current rule	Proposed plain language rule
Rule 2600, Statement 7 – Minimum required firm policies and procedures (4)	**4244. Access to records** (1) Dealer Member personnel involved in securities trading must not have access to back-office security-price records.
New	**4245. - 4259. - Reserved**
New	**Part H - Calculation of prices on a yield basis**
New	**4260. Introduction** (1) Part H of Rule 4200 describes how to calculate a security price based on a security's current market yield.
Rule 1100.1 (1st paragraph)	**4261. Calculating price if no method is stated for calculating unexpired term** (1) When a Dealer Member quotes a bid or offer based on yield, and neither the buyer nor seller Dealer Member states a price or a method for calculating the unexpired term, the price must be established according to sections 4262 through 4266.
Rule 1100.1(a)	**4262. Bonds with unexpired terms to maturity up to and including ten years** (1) For a bond with an unexpired term to maturity up to and including 10 years, calculate the unexpired term as the exact period in years, months, and days: (i) from the regular delivery date to the maturity date of a non-callable bond or callable bond selling at less than the call price, and (ii) to the first redemption date of a callable bond selling at, or at a premium over, the call price. (2) In calculating the price for the term, one day is 1/30th of one month.
Rule 1100.1(b)	**4263. Bonds with unexpired terms to maturity over ten years** (1) For a bond with an unexpired term to maturity of over 10 years, calculate the unexpired term as the period in years and months: (i) from the month in which the regular delivery date occurs to the month and year of maturity of a non-callable bond or callable bond selling at less than the call price; and (ii) to the first month and year that the bond is redeemable for a callable bond selling at, or at a premium over, the call price.
Rule 1100.1(c)	**4264. Price precision** (1) For all bond transactions between Dealer Members and their clients where the price has been determined using the calculation approach set out in either section 4262 or 4263, the price must be extended to three decimal places of precision.
Rule 1100.1(d)	**4265. New Issues** (1) Part H of Rule 4200 applies to new issues, and the unexpired term starts on the date up to which accrued interest is charged to the client.
Rule 1100.2	**4266. Exceptions** (1) Sections 4262 through 4265 do not apply to trades in:

Repealed current rule	Proposed plain language rule
	(i) Government of Canada bonds and guaranteed bonds; (ii) Short-term securities that have: (a) an unexpired term to maturity of six months or less; (b) an unexpired term-to-call date of six months or less and selling at, or at a premium over, the call price; or (c) been called for redemption; (iii) securities callable on future dates at varying prices; and (iv) securities callable at the issuer's option if the call date is not stated and the securities are selling at a premium over call price.
New	**4267. - 4299. - Reserved**

Repealed current rule	Proposed plain language rule
	Rules 4300 and 4400 – Protection of Client Assets
New	**4301. Introduction** (1) Rules 4300 and 4400 set out the following Dealer Member requirements relating to the protection of client assets: (i) Segregation and related internal control requirements including: (a) General segregation requirements ***[Part A.1, Sections 4310 through 4314]***; (b) Bulk segregation calculation ***[Part A.2, Sections 4315 through 4319]***; (c) Security usage restrictions and correcting segregation deficiencies ***[Part A.3, Sections 4320 through 4326]***; and (d) Minimum segregation policies and procedures ***[Part A.4, Sections 4327 through 4331]***. (ii) Custody and related internal control requirements including: (a) General custody requirements ***[Part B.1, Sections 4340 through 4342]***; (b) Acceptable securities locations ***[Part B.2, Sections 4343 through 4351]***; (c) Written custodial agreement requirement ***[Part B.3, Sections 4352 and 4353]***; (d) Confirmation and reconciliation requirements ***[Part B.4, Sections 4354 through 4360]***; and (e) Margin requirements ***[Part B.5, Sections 4361 through 4367]***. (iii) Client free credit balance requirements ***[Part C, Sections 4380 through 4386]***; (iv) Safekeeping requirements ***[Part D, Sections 4400 through 4405]***; (v) Internal controls requirements for safeguarding cash and securities ***[Part E, Sections 4420 through 4433]***; and (vi) Insurance requirements ***[Part F, Sections 4450 through 4465]***.
New	**4302. - 4309. - Reserved**
New	**Part A - Segregation and related internal control requirements**
New	**Part A.1 - General segregation requirements**
New	**4310. Introduction**

Repealed current rule	Proposed plain language rule
	(1) A *Dealer Member* is required to segregate client fully paid and excess margin securities. Any segregation deficiencies must be resolved promptly, as provided in Part A.1 of Rule 4300, and, if material, reported to senior management.
Rules 2000.4(b) and (c)	**4311. Definitions** (1) In Part A of Rule 4300: (i) *"net loan value of a security"* means, for: (a) a long position, the market value of the security less any margin required; (b) a short position, the market value of the security plus any margin required expressed as a negative number; and (c) a short security option position, any margin required as a negative number. (ii) *"qualifying hedge position"* means, for all the accounts of each client: (a) a long position in a security; and (b) a short position in a security issued or guaranteed by the same issuer of the security in (a); where: (c) the long position is convertible to or exchangeable for securities of the same class and number of the securities held in the short position; and (d) the *Dealer Member* is using the long position as collateral to cover the short position.
Rules 17.3, 17.3B and 2600, Statement 4 – Control Objective (b)	**4312. Fully paid and excess margin securities** (1) A *Dealer Member* holding fully paid or excess margin securities for a client must: (i) segregate those securities; and (ii) identify those securities as being held in trust for that client. (2) A *Dealer Member* must not use securities held in segregation for its own purposes except with the express written approval of its client under the terms of a cash and securities loan agreement as detailed in Part B of Rule 4600. (3) The *Corporation* may prescribe how *segregated securities* are held, and how the amount or value of securities to be segregated must be calculated.
Rule 2000.3	**4313. Restricted and non-negotiable securities** (1) Securities that are restricted, non-negotiable, or that cannot be made fully negotiable solely by signature or guarantee of the *Dealer Member* are deemed not to be segregated, unless such securities are registered in the name of the client (or name of a person required by the client) on whose behalf they are being held in an *acceptable segregation location.*

Repealed current rule	Proposed plain language rule
Rule 17.3A	**4314. Segregation of client securities** (1) A *Dealer Member* holding *segregated securities* must: (i) segregate those securities in bulk in accordance with sections 4315 through 4319; or (ii) segregate specific securities for each client. (2) A *Dealer Member* must not segregate in bulk client securities that are subject to a written safekeeping agreement.
New	**Part A.2 - Bulk segregation calculation**
New	**4315. Steps for bulk segregation calculation** (1) A *Dealer Member* that segregates securities in bulk must, in accordance with sections 4316 through 4319: (i) determine the *net loan value* and *market value* of securities held in a client's account; (ii) calculate the number of *segregated securities* to be segregated in bulk; (iii) determine the securities to use to satisfy segregation requirements; and (iv) perform regular calculations and compliance reviews.
Rule 2000.4(a)	**4316. *Net loan value* and *market value* of securities in a client's account** (1) A *Dealer Member* holding *segregated securities* in bulk segregation must determine for all securities held for all accounts of each client: (i) the number of securities that are part of a *qualifying hedge* position; (ii) the *net loan value* of securities (excluding securities that are part of a *qualifying hedge position*) less the aggregate debit cash balance in accounts (or plus in the case of a credit); and (iii) the market value of securities (excluding securities that are part of a *qualifying hedge* position) not eligible for margin less the aggregate amount, if any, by which those accounts are under-margined as calculated in clause (ii). [LINK - Form 1, General Notes and Definitions, (f) "market value".] (2) A *Dealer Member* must segregate the *net loan value* of securities calculated in clause 4316(1)(ii) and the *market value* of securities calculated in clause 4316(1)(iii) for each client account. (3) A *Dealer Member* is not required to segregate an amount of securities greater than the market value of the securities held for those accounts.
Rule 2000.5, 1st sentence and (a) and (b)	**4317. Calculating the number of client securities to be segregated in bulk** (1) A *Dealer Member* that chooses to satisfy its segregation obligations under section 4312 by segregating in bulk must segregate in bulk for all its clients the number of securities calculated as follows: (i) Equities

Repealed current rule	Proposed plain language rule
	Number of securities required to be segregated = aggregate loan value + *market value* of a class or series of security required to be segregated for each client in section 4316 ÷ loan or market value of one unit of the security
	(ii) Debt securities
	Principal amount of securities required to be segregated = aggregate loan value + *market value* of a class or series of security required to be segregated for each client in section 4316 ÷ loan or market value of each $100 principal amount of the security x 100, rounded to lowest issuable denomination
Rule 2000.5, paragraphs after (b)	**4318. Determining securities to satisfy segregation requirements** (1) A *Dealer Member* may choose any securities from a client's accounts to satisfy the segregation requirements for that client's positions, subject to the restrictions of any applicable securities legislation including, without limitation, a requirement that fully-paid securities in a cash account be segregated before unpaid securities. (2) A *Dealer Member* that sells securities required to be segregated for a client must keep them segregated until one business day prior to settlement or value date. (3) Securities required to be segregated for a client must not be removed from segregation as a result of the purchase of any securities by that client until settlement or value date.
Rules 2000.6 and 2000.7	**4319. Frequency and review of bulk segregation calculation** (1) At least twice weekly, a *Dealer Member* must determine the securities required to be segregated according to the calculations in this section. (2) A *Dealer Member* must conduct a daily review of securities segregated for clients to identify any deficiencies that exist between the actual amounts segregated and the amounts, determined in accordance with 4319(1), required to be segregated. Where a deficiency exists, the Dealer Member must correct it in accordance with the requirements of sections 4320 through 4326.
New	**Part A.3 - Security usage restrictions and correcting segregation deficiencies**
Rules 2000.8(a) and (b)	**4320. General restrictions** (1) A *Dealer Member* must: (i) ensure that a segregation deficiency is not knowingly created or increased; (ii) not deliver securities it holds against payment for the account of any client if those securities are required to satisfy the *Dealer Member's* segregation requirements.
Rules 2000.9, 1st paragraph and 2600, Statement 4 – Minimum required firm policies and procedures (6) and (8)	**4321. Correcting segregation deficiencies** (1) If any segregation deficiency exists, or if a *Dealer Member* identifies any segregation deficiency in a supervisory review, the *Dealer Member* must promptly take the most appropriate action necessary to correct the deficiency. (2) Common deficiencies and appropriate remedial actions include, but are not limited to, those in sections 4322 through 4326.

Repealed current rule	Proposed plain language rule
Rule 2000.9, 2nd paragraph	**4322. Call loan segregation deficiency** (1) A *Dealer Member* that determines it has a call loan segregation deficiency must recall the securities within the business day following the day it determines the deficiency exists.
Rule 2000.9, 3rd paragraph	**4323. Securities loan segregation deficiency** (1) A *Dealer Member* that determines it has a securities loan segregation deficiency must: (i) recall the securities from the borrower within the business day following the day it determines the deficiency exists; or (ii) borrow the same issue of securities to cover the deficiency. (2) If the *Dealer Member* has not received the securities within five business days following the date it determines the deficiency, it must undertake to buy-in the borrower.
Rule 2000.9, 4th paragraph	**4324. Inventory or trading account short position segregation deficiency** (1) A *Dealer Member* that determines it has an inventory or trading account short position segregation deficiency must: (i) borrow the same issue of securities to cover the deficiency within the business day following the day it determines the deficiency exists; or (ii) undertake to purchase the same issue of securities immediately.
Rule 2000.9, 5th paragraph	**4325. Client declared short sales segregation deficiency** (1) A *Dealer Member* that determines it has a client declared short sale segregation deficiency must: (i) borrow the same issue of securities to cover the deficiency within the business day following; or (ii) undertake to buy-in the same issue of securities within five business days of, the day it determines the deficiency exists.
Rule 2000.9, 6th paragraph	**4326. Fails – client or other Dealer Member** (1) If a *Dealer Member* has failed to receive securities within 15 business days of settlement date from a client or another *Dealer Member*, the *Dealer Member* must: (i) borrow the same issue of securities to cover the deficiency; or (ii) undertake to buy-in the securities.
New	**Part A.4 - Minimum segregation policies and procedures**
New	**4327. General** (1) A *Dealer Member* must, at a minimum, comply with the policies and procedures for *segregated securities* in sections 4328 through 4331 and the supervision requirements in Rule 3900, Dealer Member's Supervisory Obligations.

Repealed current rule	Proposed plain language rule
Rule 1.1, "Segregated Securities"	**4328. Records of *segregated securities*** (1) Segregated *securities* must be described as being held in segregation on a *Dealer Member*'s security position record (or related records) and client ledger and statement of account. This description must be in substance a fair representation of how the securities are being held in segregation at the custodian and therefore, the security box locations of the *Dealer Member* must have a direct mapping (or relationship) to custody accounts set up at the custodian on behalf of the *Dealer Member*.
Rule 2600, Statement 4 – Minimum required firm policies and procedures (1)	**4329. Twice-weekly report of items requiring segregation** (1) A *Dealer Member* must produce a segregation report at least twice weekly.
Rule 2600, Statement 4 – Minimum required firm policies and procedures (9)	**4330. Reporting segregation deficiency** (1) A *Dealer Member* must set reasonable guidelines so that any material segregation deficiency is reported promptly to senior management.
Rule 2600, Statement 4 – Minimum required firm policies and procedures (4)	**4331. Authorized personnel move securities** (1) A *Dealer Member* must limit who can move *segregated securities* into or out of segregation to only authorized personnel.
New	**4332. - 4339. - Reserved**
New	**Part B - Custody and related internal control requirements**
New	**Part B.1 - General custody requirements**
New	**4340. Introduction** (1) A Dealer Member takes on certain operational risks when it has custody of securities. These risks arise in connection with the location where and by whom the securities are held and whether a Dealer Member has adequate internal controls to deal with these risks. Part B of Rule 4300 prescribes requirements for managing the risks related to securities custody. As these risks are quantifiable, they are treated as margin charges when calculating Dealer Member *risk adjusted capital.* This Part B of Rule 4300, in conjunction with *Form 1*, prescribes these charges.
Rules 2000.1 and 2000.2	**4341. Hold securities in an *acceptable securities location*** (1) A Dealer Member must hold securities, including book-based securities, in an *acceptable securities location* as prescribed in this Rule and Form 1 [LINK Form 1, definition "acceptable securities locations"]. Acceptable securities locations can either be acceptable internal securities locations, which include acceptable transfer locations; or acceptable external securities locations, which in Form 1 are simply referred to as "acceptable securities locations".
Rules 2000.2, 1st sentence and 2600, Statement 4 – Minimum required firm policies and procedures (2)	**4342. Timely deposit** (1) A Dealer Member must deposit securities requiring segregation in an *acceptable securities location* on a timely basis.
New	**Part B.2 - Acceptable securities locations**

Repealed current rule	Proposed plain language rule
Rule 2000.2, 1st sentence	**4343. Acceptable internal storage location** (1) Securities in a Dealer Member's physical possession must be held in an internal storage location that meets the requirements in section 4344, in order for the internal storage location to be an acceptable internal securities location.
Rule 2000.2(a)	**4344. Acceptable Internal storage location requirements** (1) A Dealer Member's internal storage location must: (i) be subject to ongoing adequate internal controls and systems for safeguarding securities; and (ii) hold all unencumbered security positions in the physical possession of the Dealer Member.
Rule 2000.2(b)	**4345. Acceptable transfer locations** (1) Securities in transfer must be in the possession of a registered or recognized transfer agent and a Dealer Member must comply with the applicable confirmation requirements in sections 4355 through 4359, in order for the transfer location to be an acceptable transfer location.
Rule 2000.1, 1st paragraph	**4346. Securities not under a Dealer Member's control or physical possession** (1) Securities not under a Dealer Member's control or physical possession must be held in an *acceptable external securities location* or the Dealer Member must comply with the client waiver requirements in section 4351.
Form 1, General Notes and Definitions, (d) "acceptable securities locations"	**4347. Entities that may be *acceptable external securities locations*** (1) Entities that may be *acceptable external securities locations* must comply with the *Corporation's requirements* prescribed in this Rule and in *Form 1* [LINK: Form 1, General Notes and Definitions, definition of "acceptable securities locations"]. In Form 1, the entities that may qualify as *"acceptable securities locations"* are grouped into 7 categories: depositories and clearing agencies, acceptable institutions and subsidiaries of acceptable institutions, acceptable counterparties, banks and trust companies, mutual funds or their agents, regulated entities, and foreign institutions and foreign securities dealers.
Form 1, General Notes and Definitions, (d) "acceptable securities locations"	**4348. Approval of foreign institutions and foreign securities dealers** (1) To obtain the Corporation's approval of a foreign institution or foreign securities dealer as an acceptable securities location, a Dealer Member must: (i) perform due diligence; (ii) approve the foreign institution or securities dealer as an *acceptable external securities location*; and (iii) complete a certificate in the form prescribed in Guidance Note 4340-1 [LINK: Guidance Note 4340-1, Appendix 1] evidencing its due diligence and approval.
Form 1, General Notes and Definitions, (d) "acceptable securities locations"	**4349. Application to the Corporation for approval of foreign institutions and foreign securities dealers** (1) A Dealer Member must apply in writing to the Corporation for review and approval of a foreign institution or foreign securities dealer as an acceptable securities location.

<table>
<tr><th>Repealed current rule</th><th>Proposed plain language rule</th></tr>
<tr><td></td><td>(2) The application to the Corporation must include the following:
<table>
<tr><th>Document</th><th>Contents</th><th>Form (if Corporation-prescribed)</th></tr>
<tr><td>1. Foreign custodian questionnaire and certificate of Dealer Member board approval</td><td>1. Due diligence questionnaire
2. Certificate of Dealer Member board approving foreign custodian as location for holding securities</td><td>Guidance Note 4340-1, Appendix 1 [LINK: Guidance Note 4340-1, Appendix 1]</td></tr>
<tr><td>2. Latest audited financial statements of proposed foreign custodian</td><td>Must evidence minimum net worth of C$150 million</td><td></td></tr>
</table></td></tr>
<tr><td>Form 1, General Notes and Definitions, (d) “acceptable securities locations”</td><td>4350. Annual approval of foreign institutions and foreign securities dealers as acceptable securities locations

(1) A Dealer Member’s board of directors or appropriate committee must annually approve in writing a foreign institution or foreign securities dealer for it to continue to be an acceptable securities location.

(2) The annual approval must be given as follows:
<table>
<tr><th>Document</th><th>Contents</th><th>Notes</th></tr>
<tr><td>Dealer Member’s annual approval of foreign custodian</td><td>Dealer Member board’s or appropriate committee’s annual written approval of foreign custodian as foreign location for holding securities
Evidence that the Dealer Member Board had reviewed the most recently available audited financial statements and verified that the foreign custodian continued to meet the $150 million capital requirement</td><td>Approval must be documented in minutes of a meeting.
Approval must be available for review by examiners during a field examination of the Dealer Member</td></tr>
</table>
(3) Without this written approval, the location is a non-acceptable securities location.</td></tr>
</table>

Repealed current rule	Proposed plain language rule
Form 1, Statement B, Notes and Instructions, Note to Line 18	**4351. Obtaining a client waiver when an *acceptable external securities location* is unavailable** (1) If a Dealer Member holds client securities in a foreign jurisdiction where: (i) laws and circumstances may restrict the transfer of securities from that jurisdiction; and (ii) the Dealer Member cannot arrange to hold the client's securities in the jurisdiction at an *acceptable external securities location*, the Dealer Member must obtain a waiver from the client [LINK: Guidance Note 4340-1]. (2) The client's waiver in approved form must be obtained for each transaction [LINK: Guidance Note 4340-1, Appendix 2]. (3) In the waiver, the client must: (i) consent to the arrangement; (ii) acknowledge the risks associated with holding securities at the specified foreign custodian on behalf of the Dealer Member in the specified country; and (iii) waive any claims it may have against the Dealer Member and hold the Dealer Member harmless if the foreign custodian loses the securities. (4) On obtaining the waiver, a Dealer Member may hold those client securities at a custodian in the foreign jurisdiction if the Dealer Member has a written custodial agreement with the custodian.
New Rule 2000.1, 1st sentence and (a), (b) and (c) and Rule 2600, Statement 4 – Minimum required firm policies and procedures (3)	**Part B.3 - Written custodial agreement requirement** **4352. Agreement with each *acceptable external securities location*** (1) A Dealer Member and each *acceptable external securities location* holding securities for the Dealer Member must have a written custodial agreement [LINK: Guidance Note 4340-2, Appendices 1 and 2] that states that: (i) the Dealer Member must give prior written consent to any use or disposal of the securities; (ii) security certificates can be delivered promptly on demand or, if certificates are not available and the securities are book-based, must be transferable either from the location or to another person at the location promptly on demand; (iii) the securities are held in segregation for the Dealer Member or its clients free and clear of any charge, lien, claim or encumbrance in favour of the custodian; and (iv) the custodian indemnifies and saves the Dealer Member harmless against and from any and all Dealer Member losses due to the custodian's failure to return any securities or property it holds to the Dealer Member. However, the custodian's liability is limited to the market value of the securities and property at the time it was required to deliver them to the Dealer Member. (2) This written custodial agreement is a condition of the custodian qualifying as an *acceptable external securities location*.

Repealed current rule	Proposed plain language rule
New	**4353. Bare trustee custodial agreement** (1) For book-based security holdings, a Dealer Member is in compliance with section 4352 if the Corporation, as bare trustee for Dealer Members, has an approved form of custodial agreement with the custodian [LINK: Guidance Note 4340-2, Appendix 3].
New	**Part B.4 - Confirmation and reconciliation requirements**
Rule 2000.2(a)	**4354. Securities in transit** (1) If securities are in transit between internal storage locations: (i) for which there are no adequate internal controls maintained; or (ii) for more than five business days, those securities are not considered to be under the Dealer Member's control or physical possession for purposes of good *segregation*.
Rule 300.2(a)(vii)(2)	**4355. Confirmations from *external securities locations*** (1) A Dealer Member must receive a positive confirmation of all securities positions annually at its audit date from each *external securities location*. (2) If a Dealer Member does not receive a positive annual audit confirmation of a securities position from an *external securities location*, then the Dealer Member must transfer the position to its difference account.
Rule 2000.2(b), 2nd paragraph	**4356. Confirmations from *transfer locations* in Canada** (1) If a Dealer Member has delivered securities for re-registration to a *transfer location* in Canada, the Dealer Member must receive those securities within 20 business days of delivery. (2) If a Dealer Member has not received those securities within 20 business days of delivery, it must obtain written confirmation of the position receivable from the *transfer location* within 45 business days of delivery. (3) If the position remains unconfirmed after 45 business days from delivery, the *transfer location* is a non-acceptable *transfer location* for that position, and the Dealer Member must transfer the position to its difference account.
Rule 2000.2(b), 1st sentence of 3rd paragraph	**4357. Confirmations from *transfer locations* in the United States** (1) If a Dealer Member has delivered securities for re-registration to a *transfer location* in the United States, the Dealer Member must receive those securities within 45 business days of delivery. (2) If a Dealer Member has not received those securities within 45 business days of delivery, it must obtain written confirmation of the position receivable from the *transfer location* within 70 business days of delivery. (3) If the position remains unconfirmed after 70 business days from delivery, the *transfer location* is a non-acceptable *transfer location* for that position, and the Dealer Member must transfer the position to its difference account.

Repealed current rule	Proposed plain language rule
Rule 2000.2(b), 2nd sentence of 3rd paragraph	**4358. Confirmations from *transfer locations* outside Canada and the United States** (1) If a Dealer Member has delivered securities for re-registration to a *transfer location* outside Canada and the United States, the Dealer Member must receive those securities within 70 business days of delivery. (2) If a Dealer Member has not received those securities within 70 business days of delivery, it must obtain written confirmation of the position receivable from the *transfer location* within 100 business days of delivery. (3) If the position remains unconfirmed after 100 business days from delivery, the *transfer location* is a non-acceptable *transfer location* for that position, and the Dealer Member must transfer the position to its difference account.
Rule 2000.9, 7th paragraph	**4359. Confirmations of stock dividends receivable and stock splits** (1) If a Dealer Member has not received the securities from a declared stock dividend or stock split within 45 business days of the date receivable, the Dealer Member must obtain written confirmation of the position receivable. (2) If the position remains unconfirmed after 45 business days, the Dealer Member must transfer the position to its difference account.
New	**4360. Reconcile books and records for mutual funds and deposit investment contracts** (1) A Dealer Member must, at least monthly, reconcile its books and records of securities consisting of mutual funds and evidences of deposit with records provided by the issuing mutual fund or financial institution. [LINK GN 4340-2]
New	**Part B.5 - Margin requirements** [LINK GN 4340-2]
Form 1, Statement B, Notes and Instructions, Notes to Lines 18 and 20	**4361. *Acceptable securities location*** (1) For securities a Dealer Member holds at an *acceptable securities location*, custodial related margin requirements will only apply to unresolved differences. [LINK Form 1, Statement B, Notes and Instructions, Line 20]
Form 1, Statement B, Notes and Instructions, Notes to Lines 18 and 20	**4362. Margin charges – non-acceptable securities location** (1) For securities a Dealer Member holds at a non-acceptable securities location, additional margin requirements prescribed in this Part B.5 must be provided unless a client waiver is obtained that complies with the requirements in section 4351.
Form 1, Statement B, Notes and Instructions, Notes to Lines 18 and 20	**4363. Non-acceptable internal storage and non-acceptable securities location** (1) If securities are: (i) not considered to be under the Dealer Member's control or physical possession for purposes of good *segregation* under section 4354; or (ii) not under a Dealer Member's physical possession and are held at a non-acceptable securities location because: (a) the location does not meet the criteria for an acceptable external securities location as specified in section 4347; or (b) there is no annual written approval of a foreign institution or foreign securities dealer as an acceptable securities location as specified in section 4350,

Repealed current rule	Proposed plain language rule
	Then, when it calculates *risk adjusted capital,* a Dealer Member must deduct 100% of *the market value of the securities* held in custody with the non-acceptable securities location. [LINK Form 1, Statement B, Notes and Instructions, Line 18]
Rules 2000.2(b), 4th paragraph and 2000.9, 7th and 8th paragraphs and Form 1, Statement B, Notes and Instructions, Notes to Line 20	**4364. No confirmation from securities location** (1) Security positions where the Dealer Member has not received: (i) a positive annual audit confirmation under subsection 4355(2); or (ii) a confirmation from a transfer agent, within the required time period, under subsection 4356(3), 4357(3) or 4358(3); or (iii) a confirmation of a related stock split or stock dividend under subsection 4359(2) are not considered to be under the Dealer Member's control or physical possession for purposes of good *segregation* and must be transferred to a Dealer Member's difference account. (2) For difference account positions in subsection (1), the Dealer Member must: (i) provide for the purposes of calculating *risk adjusted capital*, as an amount required to margin, the sum of the security position market value and the normal inventory margin; and [LINK Form 1, Statement B, Notes and Instructions, Line 20] (ii) undertake to borrow or buy-in the position pursuant to section 4367.
Form 1, Statement B, Notes and Instructions, Notes to Lines 18 and 20 and Statement C, Notes and Instructions, Notes to Line 2(c)	**4365. No written custodial agreement** (1) If a Dealer Member does not have a written custodial agreement with a custodian, and that entity would otherwise qualify as an acceptable securities location, it must provide margin on the security positions held in custody at that custodian in accordance with subsections 4365(2) and 4365(3). [LINK GN 4340-2] (2) **Dealer Member has no *set-off risk* with the custodian** (i) If the Dealer Member has no *set-off risk* with the custodian, in determining its early warning excess and early warning reserve, the Dealer Member must deduct as a margin requirement 10% of the market value of the securities held in custody at the custodian. [LINK Form 1, Statement C, Notes and Instructions, Line 2(c)] (3) **Dealer Member has *set-off risk* with the custodian** (i) If the Dealer Member has *set-off risk* with the custodian, in determining: (a) its *risk adjusted capital*, the Dealer Member must deduct as a margin requirement the lesser of: (I) 100% of the *set-off risk* exposure, and (II) 100% of the *market value of securities* held in custody and (b) its early warning excess and early warning reserve, the Dealer

Repealed current rule	Proposed plain language rule
	Member must deduct as a margin requirement the lesser of: (I) 10% of the market value of the securities held in custody at the custodian; and (II) 100% of the market value of the securities held in custody at the custodian less amount required in sub-clause 4365(3)(i)(a). [LINK Form 1, Statement B, Notes and Instructions Line 18]
Rule 2000.9, 8th paragraph and Form 1, Statement B, Notes and Instructions, Notes to Line 20	**4366. Books and records – reconciliation** (1) If a Dealer Member reconciles its books and records to an issuing mutual fund's or financial institution's monthly files or statements in accordance with section 4360, the Dealer Member must provide margin based on the requirements in Form 1, Statement B, Line 20, Notes and Instructions for any unresolved differences. [LINK Form 1, Statement B, Line 20] (2) If a Dealer Member does not reconcile its books and records with files or statements received from mutual funds, or financial institutions for evidences of deposit, it must: (i) in determining its *risk adjusted capital*, deduct as a margin requirement for unresolved differences an amount equal to: (a) 10% of the *market value of the securities,* where there have been no transactions in the securities, other than redemptions and transfers, for at least six months and no loan value has been given on the securities; or (b) 100% of the *market value of the securities*. [LINK Form 1, Statement B, Line 20] (ii) undertake to borrow or buy-in the position pursuant to section 4367.
Rule 2000.9, 8th paragraph	**4367. Difference accounts** (1) A Dealer Member must maintain a difference or suspense account to record all securities not received due to unreconcilable differences or errors in any accounts. (2) If a Dealer Member has not received the securities recorded in a difference account within 30 business days of recording the deficiency, the Dealer Member must: (i) borrow the same class or series of securities to cover the deficiency; or (ii) undertake to purchase the securities immediately.
New	**4368. - 4379. - Reserved**
New	**Part C – Client free credit balance requirements**
New	**4380. Introduction** (1) Part C of Rule 4300 restricts a Dealer Member's use of clients' *free credit balances* in its business.
Rules 1200.1(a) and (b)	**4381. Definitions** (1) In Part C of Rule 4300:

Repealed current rule	Proposed plain language rule
	(i) *"client free credit balance"* means: (a) For cash and margin accounts, the credit balance less an amount equal to the aggregate of: (I) the market value of short positions and (II) margin required on those short positions. (b) For futures accounts, the credit balance less an amount equal to the aggregate of: (I) margin required to carry open futures contracts or futures contract option positions; less (II) any equity in those contracts; plus (III) any deficits in those contracts. However, the aggregate amount must not exceed the dollar amount of the credit balance. (ii) *"net allowable assets"* means a Dealer Member's net allowable assets calculated in Statement B of Form 1.
Form 1, Statement D	**4382. Dealer Member's use of client *free credit balances*** (1) A Dealer Member may use its clients' *free credit balances* in its business only in accordance with Part C of Rule 4300.
Rule 1200.2	**4383. Notation on client account statements** (1) A Dealer Member that does not keep its clients' *free credit balances*: (i) segregated in trust for clients in an account with an *acceptable institution* and (ii) separate from other money the Dealer Member receives; must clearly write the following or equivalent on all statements of account it sends to clients: "Any *free credit balances* represent funds payable on demand which, although properly recorded in our books, may not be segregated and may be used in the conduct of our business."
Rule 1200.3	**4384. Calculating usable *free credit balances*** (1) A Dealer Member may not use in its business an amount of clients' *free credit balances* that totals more than (i) eight times the Dealer Member's *net allowable assets* plus (ii) four times the Dealer Member's early warning reserve [LINK to Statement C of Form 1 on calculating EW reserve] (2) A Dealer Member must segregate clients' *free credit balances* in excess of the amount calculated in (1) above either: (i) in cash held in trust for clients in a separate account with an acceptable

Repealed current rule	Proposed plain language rule
	institution; or (ii) in bonds, debentures, treasury bills, and other securities with a maturity of less than one year of, or guaranteed by, the Government of Canada, a province of Canada, the United Kingdom, the United States, or any other national foreign government that is on the List of Basle Accord Countries.
Rule 1200.4	**4385. Weekly calculation** (1) At least weekly, a Dealer Member must calculate the amounts that must be segregated under Section 4384.
Rules 1200.5 and 1200.6	**4386. Daily compliance review** (1) Every day, a Dealer Member must review its compliance with Section 4384 against the amounts Part C of Rule 4300 requires it to segregate. (2) A Dealer Member must identify and promptly correct any deficiency in amounts of *free credit balances* required to be segregated.
New	**4387. - 4399. - Reserved**
New	**Part D – Safekeeping requirements**
New	**4400. Introduction** (1) Part D of Rule 4400 requires a Dealer Member to have adequate safekeeping arrangements in place to protect its clients' assets.
Rule 2600, Statement 5 – Minimum required firm policies and procedures (1)	**4401. Written safekeeping agreement** (1) A Dealer Member with *securities held for safekeeping* must have a written safekeeping agreement with each client it holds securities for.
Rule 1.1, "Securities Held for Safekeeping"	**4402. Securities free from encumbrance** (1) A Dealer Member must keep *securities held for safekeeping* free from any encumbrance.
Rule 2600, Statement 5 – Min required firm policies and procedures (2)	**4403. Procedures to keep securities apart** (1) A Dealer Member must keep *securities held for safekeeping* separate from all other securities and must have procedures in place to ensure this separation.
Rule 2600, Statement 5 – Minimum required firm policies and procedures (3)	**4404. Identifying *securities held for safekeeping* in records** (1) A Dealer Member must specifically identify and record *securities held for safekeeping* in its securities position records and client's ledger and statement of account.
Rule 2600, Statement 5 – Minimum required firm policies and procedures (4)	**4405. Release of *securities held in safekeeping*** (1) A Dealer Member may release *securities held for safekeeping* to others only when the client so instructs.
New	**4406. - 4419. - Reserved**
New	**Part E – Internal controls requirements for safeguarding cash and securities**
New	**4420. Introduction**

Repealed current rule	Proposed plain language rule
	(1) Part E of Rule 4400 requires a Dealer Member to have policies and procedures to prevent loss of its clients' and its own assets.
Rule 2600, Statement 6 – Control Objectives (a) and (b) and Minimum required firm policies and procedures	**4421. Safeguarding client and Dealer Member cash and securities** (1) A Dealer Member must safeguard its clients' and its own cash and securities: (i) to protect them against material loss; and (ii) to detect and account for potential losses (for regulatory, financial and insurance purposes) on a timely basis. (2) A Dealer Member must develop, and comply with, internal policies and procedures that meet at least the minimum requirements for safeguarding cash and securities as described in sections 4422 through 4433. (3) The Corporation recognizes that a Dealer Member with a small operation may be unable to comply with this Rule's requirements to segregate duties. If these minimum requirements are inappropriate because of a Dealer Member's small size, it must implement alternative control procedures that the Corporation approves.
Rule 2600, Statement 6 – Minimum required firm policies and procedures (1)	**4422. Receipt and delivery of securities** (1) Personnel who receive and deliver physical securities must not have access to the Dealer Member's security records. (2) The Dealer Member must handle securities in a restricted and secure area. (3) The receipt and delivery of securities must be promptly and accurately recorded (including certificate numbers, registrations, and coupon numbers). (4) A Dealer Member using mail service must send negotiable certificates by registered mail. (5) A Dealer Member must obtain signed receipts from the client or agent for all securities not delivered against payment.
Rule 2600, Statement 6 – Minimum required firm policies and procedures (2)	**4423. Restricting access to securities** (1) Only designated individuals may physically handle securities. (2) Securities may be physically handled only in a restricted and secure area. (3) Only individuals not involved in maintaining or balancing Dealer Member records may handle physical securities.
Rule 2600, Statement 6 – Minimum required firm policies and procedures (3)	**4424. Clearing** (1) A Dealer Member must promptly compare and balance its records with reports of the previous day's settlements. (2) Only personnel who do not carry out trading functions may reconcile clearing or settlement accounts. (3) A Dealer Member must take prompt action to correct differences in its records. (4) A Dealer Member must regularly review aged "fails to deliver" and "fails to receive" and identify the reason(s) for settlement delay.

Repealed current rule	Proposed plain language rule
	(5) Any fail that continues for an extended period of time must be promptly reported to senior management. (6) A Dealer Member must not use client securities in settling non-client short sales. (7) A Dealer Member must not use a client's fully-paid securities in settling short sales of other clients unless it has obtained written permission from, and provided appropriate collateral to, the client pursuant to clause 4607(2)(ii). (8) A Dealer Member must reconcile its records daily with clearing corporation and depository records to ensure they agree.
Rule 2600, Statement 6 – Minimum required firm policies and procedures (4)	**4425. Protecting securities** (1) A Dealer Member must assess the risk of any securities location that holds securities for it. (2) A Dealer Member's processing controls must separate duties for recording entries from duties for initiating transfers on depository records (for example, transfers between the "free" and "seg" boxes). (3) At least monthly, a Dealer Member must reconcile its records of security and other asset positions to the custodian's records where securities are held. The Dealer Member must investigate differences and make appropriate adjustment entries as necessary. (4) A Dealer Member must have a proper written custody agreement with each custodian where securities are held.
Rule 2600, Statement 6 – Minimum required firm policies and procedures (5)	**4426. How to handle security records** (1) Personnel maintaining and balancing securities records must not be involved in handling physical securities. (2) A Dealer Member must promptly update its securities records to reflect changes in location and ownership of securities under its control. (3) Journal entries made to securities records must be clearly identified and a Dealer Member must review and approve adjustments before processing.
Rule 2600, Statement 6 – Minimum required firm policies and procedures (6)	**4427. Rules for counting securities** (1) At least once a year, a Dealer Member must count physical securities held: (i) in segregation, and (ii) for safekeeping in addition to its annual external audit physical security count. (2) At least monthly, a Dealer Member must count physical securities held in current boxes. (3) Only personnel who do not handle securities may conduct physical security counts. (4) Count procedures must include all physical securities held in the box location(s)

Repealed current rule	Proposed plain language rule
	subject to the count and must simultaneously verify related positions such as positions in-transit or in the process of being transferred. (5) During a physical security count, both the description of the security and the quantity must be compared to the Dealer Member's records. Any discrepancies must be investigated and corrected promptly. Positions not reconciled within a reasonable period must be promptly reported to senior management and accounted for.
Rule 2600, Statement 6 – Minimum required firm policies and procedures (7)	**4428. Moving certificates and securities between branches** (1) A Dealer Member must record the location of certificates in-transit between its offices in separate transit accounts on its security position records. The Dealer Member must reconcile these accounts monthly. (2) When securities are in transit, a Dealer Member must book out the securities from the branch account and book them into the transit account. When the securities are physically received at a branch, the Dealer Member must book them out of the transit account and into the receiving branch's account. (3) The receiving branch must check securities received against the accompanying transit sheet. (4) The methods of transportation a Dealer Member chooses for securities in transit must: (i) comply with insurance policy terms; and (ii) take into account the value, negotiability, urgency, and cost factors.
Rule 2600, Statement 6 – Minimum required firm policies and procedures (8)	**4429. Transferring securities** (1) A Dealer Member must maintain a record showing all securities sent to, and held by, transfer agents. (2) Only designated individuals outside the transfer department have authority to request transfers into a name other than the Dealer Member's name. Only fully-paid securities (new issues excepted) may be transferred into a name other than the Dealer Member's name. (3) The transfer department may carry out transfers only when it receives a properly authorized request. (4) A Dealer Member's security position record must record, and name them as, "securities out for transfer". (5) A Dealer Member must have a receipt for a securities position at a transfer agent. (6) A Dealer Member must prepare, and management must review, a weekly ageing of all transfer positions to verify the validity of the positions and the reasons for any undue delay in receiving securities from transfer agents. (7) Personnel handling transfers must not have other security-cage functions such as deliveries, current box, or segregation.
Rule 2600, Statement 6 – Minimum required firm policies and procedures	**4430. Re-organization** (1) A Dealer Member must have a formal procedure to identify and record the timing

Repealed current rule	Proposed plain language rule
(9)	and terms of all issuances such as forthcoming rights and offers. (2) A Dealer Member must have a clear method of communicating upcoming re-organization activities to the sales force. These include deadlines for submitting special instructions in writing and any special handling procedures required for key dates. (3) A single person or department must have clear responsibility for organizing and handling each offer. (4) A Dealer Member must clearly define procedures to balance positions daily and to physically control securities. (5) A Dealer Member must regularly reconcile and review suspense accounts involving offers and splits.
Rule 2600, Statement 6 – Minimum required firm policies and procedures (10)	**4431. Handling dividends and interest** (1) A Dealer Member must have a system to record the total dividends and interest payable and receivable at due date. (2) Record-keeping personnel must not handle cash or authorize payments. (3) At least monthly, a Dealer Member must: (i) reconcile dividend and interest accounts; and (ii) review aged dividend receivables. (4) Only the department manager or other senior personnel may authorize write-offs. (5) A supervisor or manager must approve journal entries to and from dividend and interest accounts. (6) A Dealer Member: (i) must not pay dividend claims - other than as part of an automatic settlement system - unless accompanied by supporting documents such as proof of registration; and (ii) must compare supporting documents with internal records for validity and then have senior personnel approve them. (7) A Dealer Member must withhold non-resident tax when required by law. (8) A Dealer Member must ensure client income is appropriately reported for income tax purposes.
Rule 2600, Statement 6 – Minimum required firm policies and procedures (11)	**4432. Reconciling internal accounts** (1) At least monthly, a Dealer Member must reconcile internal accounts. (2) A supervisor must review the reconciliation.
Rule 2600, Statement 6 – Minimum required firm policies and procedures (12)	**4433. Cash** (1) Senior personnel must review and approve all bank reconciliations. (2) At least monthly, a Dealer Member must reconcile bank accounts in writing,

Repealed current rule	Proposed plain language rule
	identifying and dating all reconciling items. (3) Journal entries to clear reconciling items must be made on a timely basis and approved by management. (4) Bank accounts must be reconciled by personnel who do not have: (i) access to funds, either receipts and disbursements; or (ii) access to securities; or (iii) record-keeping responsibilities that include the authority to write or approve journal entries. (5) Senior management must establish criteria for approving the requisition of a cheque. (6) Cheques must be pre-numbered, and a Dealer Member must account for numerical continuity. (7) Cheques require the signatures of two authorized individuals. (8) The authorized individuals must only sign a cheque when the appropriate supporting documents are provided. The supporting documents must be cancelled after they sign the cheque. (9) A Dealer Member must limit and supervise access to any facsimile-signature machine.
New	**4434. - 4449. - Reserved**
New	**Part F – Insurance Requirements**
New	**4450. Introduction** (1) Part F of Rule 4400 requires a Dealer Member to have enough insurance to protect against potential losses from theft, fraudulent acts, et cetera.
Rule 400.4	**4451. Definitions** (1) In Part F of Rule 4400: (i) *"base amount"* means the greater of: (a) the aggregate client net equity for all client accounts, where net equity for each client is the excess, if any, of the total value of cash and securities the Dealer Member owes to the client over the total value of cash and securities the client owes to the Dealer Member; and (b) the aggregate Dealer Member liquid and other allowable assets calculated in accordance with Form 1, Statement A. (ii) *"standard form FIB"* means the standard form of Financial Institution Bond insurance coverage a Dealer Member must obtain.
Rule 17.5	**4452. Dealer Member must have insurance** (1) A Dealer Member must have and maintain insurance:

Repealed current rule	Proposed plain language rule
	(i) against the types of loss including fidelity, premises, in-transit, forgery or alterations, securities, and mail; and (ii) with at least the minimum amount of coverage prescribed in Part F of Rule 4400.
Rule 400.6, 1st sentence	**4453. Qualified insurance carriers** (1) A Dealer Member must obtain and maintain insurance underwritten by either: (i) an insurer registered or licensed under the laws of Canada or a province of Canada; or (ii) a foreign insurer the Corporation has approved.
Rule 400.6, 2nd sentence	**4454. Foreign insurers** (1) To obtain Corporation approval, a foreign insurer must: (i) have a minimum net worth of $75 million on its last audited balance sheet; (ii) have financial information acceptable to, and available for inspection by, the Corporation; and (iii) satisfy the Corporation that it is subject to supervision by regulatory authorities in its incorporation jurisdiction that is substantially similar to a Canadian insurance company's supervision.
Rule 400.1	**4455. Mail insurance** (1) A Dealer Member must have mail insurance that covers 100% of losses from any outgoing shipments of negotiable or non-negotiable securities by registered mail. (2) If a Dealer Member delivers a written promise to the Corporation that it will not use registered mail for outgoing shipments of securities, the Corporation may exempt the Dealer Member from the requirement in subsection (1).
Rule 400.2	**4456. Financial Institution Bond** (1) A Dealer Member must have and maintain insurance against losses, using a financial institution bond (FIB) with a discovery rider attached or discovery provisions incorporated in the FIB. The five types of losses the insurance must cover are: (i) Any loss, including loss of property, from a dishonest or fraudulent act of a Dealer Member's employees: (a) committed anywhere; and (b) committed alone or with others. (ii) Any loss of money, securities, or other property through robbery, burglary, theft, hold-up or other fraudulent means, mysterious disappearance, damage, or destruction while in any of: (a) the insured's offices;

Repealed current rule	Proposed plain language rule
	(b) a banking institution's offices; (c) a clearing house; or (d) a recognized place of safe-deposit; all as defined in the *standard form FIB*. (iii) Any loss of money and negotiable or non-negotiable securities or other property, while in transit. The value of securities in transit in an employee's or agent's custody must not exceed the protection under this clause. In-transit coverage must be calculated on a dollar-for-dollar basis. A Dealer Member must provide, for Corporation approval, a list of exceptions to the money, securities, or other property protected under this clause. (iv) Any loss through forgery or alteration of any: (a) cheques; (b) drafts; (c) promissory notes; or (d) other written orders or directions to pay sums in money; excluding securities, as defined in the *standard form FIB*. (v) Any loss: (a) through the purchase, acquisition, sale, delivery, extension of credit, or action on securities or other written instruments which prove to have been: (I) forged; (II) counterfeited; (III) raised or altered; or (IV) lost or stolen; or (b) due to having guaranteed in writing or having witnessed any signatures on any transfers, assignments or other documents or written instruments, as defined in the *standard form FIB*.
Rule 400.4	**4457. General minimum insurance requirement** (1) Full-service and introducing Dealer Members types 3 and 4 must maintain minimum insurance for each clause in subsection 4456(1) for the greater of: (i) $500,000; or (ii) 1% of the base amount, subject to a maximum of $25,000,000 for each clause.

Repealed current rule	Proposed plain language rule
Rule 400.4	**4458. Minimum insurance requirement for certain introducing brokers** (1) Introducing Dealer Members types 1 and 2 must maintain minimum insurance for each loss in subsection 4456(1) for the greater of: (i) $200,000 for an introducing type 1 arrangement and $500,000 for an introducing type 2 arrangement; or (ii) ½% of the base amount, subject to a maximum of $25,000,000 for each clause.
Rule 400.5(b)	**4459. Double aggregate limit** (1) A Dealer Member must maintain minimum insurance coverage with a double aggregate limit or a provision for full reinstatement
Rule 400.5(f) and Form 1, Schedule 10	**4460. Calculating minimum insurance requirement and RAC provisions** (1) Every month, a Dealer Member must calculate its required minimum insurance coverage and file Schedule 10 with its MFR. (2) In calculating minimum insurance coverage requirements, a Dealer Member must treat non-negotiable and negotiable form securities as the same. (3) When calculating *risk adjusted capital*, a Dealer Member must provide capital for the amount of its insurance deductible.
Rule 400.5(c)	**4461. Correction of insufficient coverage** (1) If a Dealer Member has less coverage than the calculated minimum insurance requirement coverage and the deficiency: (i) is less than 10% of the minimum insurance requirement, the Dealer Member must correct the deficiency within 2 months of the filing date of the MFR within which the deficiency was reported. (ii) is 10% or more of the insurance requirement, the Dealer Member must promptly notify the Corporation and correct the deficiency within 10 days of identifying it.
Rule 400.7	**4462. Global Financial Institution Bonds** (1) If a Dealer Member maintains insurance under Part F of Rule 4400 that names the insured as, or that benefits, the Dealer Member and any other person, then: (i) the Dealer Member must have the right to claim directly against the insurer for losses, and payment or satisfaction of losses must be made directly to the Dealer Member; and (ii) the individual or aggregate limits under the *standard form FIB* may only be affected by claims made by or for: (a) the Dealer Member, (b) the Dealer Member's subsidiaries whose financial results are consolidated with the Dealer Member's, or (c) the Dealer Member's holding company, if the holding company

Repealed current rule	Proposed plain language rule
	does not carry on any business or own any investments other than its interest in the Dealer Member. This applies no matter what the claims, experience, or any other factor that refers to any other person.
Rule 400.3	**4463. Notify the Corporation of underwriter insurance termination** (1) A Dealer Member's *standard form FIB* and mail insurance policies must require the underwriter to notify the Corporation at least 30 days before it terminates or cancels insurance coverage.
Rule 400.3(b), 1st 3.5 lines and end of section	**4464. When insurance ends due to take-over** (1) A Dealer Member taken over by another entity must ensure it has *standard form FIB* coverage for 12 months from the date of the take-over to cover discovery of any losses it had before the take-over date. (2) The Dealer Member must ensure that any additional premium is paid.
Rule 17.6	**4465. Notify the Corporation of claims** (1) A Dealer Member must give written notice to the Corporation within two business days of reporting a claim to the insurer or its authorized representative.
New	**4466. - 4499. - Reserved**

Repealed current rule	Proposed plain language rule
New	**Rules 4500 and 4600 – Financing Arrangements**
New	**4501. Introduction** (1) Rules 4500 and 4600 set out the following Dealer Member requirements relating to financing arrangements: (i) Repurchase market trading practices ***[Part A, Sections 4510 through 4518]***; and (ii) Cash and securities loan, repurchase, and reverse repurchase transactions ***[Part B, Sections 4600 through 4608]***;
New	**4502. - 4509. - Reserved**
New	**Part A – Repurchase market trading practices**
Rule 3000, Introduction	**4510. Introduction** (1) Part A of Rule 4500 sets out a standard set of trading practices to increase the transparency of the repo markets and to promote liquidity and efficiency in the markets.
Rule 3000, Definitions	**4511. Definitions** (1) In Part A of Rule 4500, the following definitions apply: (i) *"best efforts"* means, a repo trade where the buyer assumes the risk that the seller cannot deliver the securities within the specified time. (ii) *"forward repo"* means, a repo trade that settles later than next day. (iii) *"general collateral"* means, Government of Canada debt that is CDSX eligible, including real-return bonds, strips and coupons. For real-return bonds an all-in price should be used and the coupon exchanged on coupon payment date. (iv) *"inter-dealer broker"* means, an organization that provides customers information, electronic trading and communications services for trading in wholesale financial markets. (v) *"odd-lot"* means, a lot less than $25 million for either (i) overnight and term general collateral; or (ii) specials, both term and overnight. (vi) *"repo"* means, repurchase agreement that allows a debt securities owner to borrow money by selling the securities and agreeing to buy them back at an agreed price on a specific date.
New	**4512. General** (1) A Dealer Member trading in the repo market that does not include all necessary terms about sales and set-offs in an agreement with the other party must make a capital adjustment. [LINK: C-77, paragraph 6]
Rules 3000D(1), (2), (3), (4), (5) and (6)	**4513. Marking to market** (1) Unless otherwise agreed by the parties, a Dealer Member must periodically review its margins to ensure that they are still appropriate for the maturity dates.

Repealed current rule	Proposed plain language rule
	(2) Unless otherwise agreed by the parties, a Dealer Member that wants to mark-to-market its counterparties must do so by 11:30 a.m. (Toronto time). The mark-to-market must be done on a net basis and not done by issue. (3) If the parties cannot agree on a price, the current mid-market prices must be used to determine the mark-to-market price. A Dealer Member must use the composite prices on an inter-dealer broker's screen to determine mid-market price. (4) A Dealer Member must maintain margin through margin calls and not through substitutions. (5) Cash and collateral considerations: (i) unless the parties agree otherwise, all dealer-to-dealer margin calls must be met with the transfer of cash and/or collateral. (ii) if a Dealer Member chooses to meet the margin call with cash, the cash may not be used to change the economic nature of the trade. The cash will bear interest at the rate agreed between the parties. (iii) if a Dealer Member chooses to meet a margin call using collateral, the collateral must have characteristics similar to or better than the collateral being repoed, be reasonably acceptable to the other party and be applied on a reasonable basis. (iv) a Dealer Member may deliver a maximum of one piece of collateral per million dollars. (6) A Dealer Member that wishes to substitute previously margined collateral must do so by 11:30 a.m. (Toronto time).
Rules 3000E(1) and (2)	**4514. Forward repo confirmations** (1) Trade confirmations and minimum requirements (i) a Dealer Member must send a confirmation of a forward repo on the trade date. (ii) in addition to other regulatory requirements, the confirmation must include, at a minimum, the: (a) money or par amount, as applicable; (b) start date; (c) end date; (d) interest rate; (e) collateral type; and (f) any substitution rights. (2) All forward settlement transactions must be confirmed on the CDSX system.
Rules 3000F(1) and (2)	**4515. Obligation to make coupon payments** (1) A repo seller must receive payment from the repo buyer of any income on the securities that the seller would have been entitled to if it had not entered the repo transaction.

Repealed current rule	Proposed plain language rule
	(2) A repo buyer does not need to transfer an amount equal to the income payment to the repo seller, but can apply it to reduce the amount transferred to the repo buyer at the end of the transaction. All repo agreements are priced this way, unless otherwise agreed. [LINK: section 4, Corporation Repurchase/Reverse Repurchase Transaction Agreement]
Rules 3000I(1) and (2)	**4516. Substitutions** (1) A repo purchaser does not need to accept collateral substitutions unless it agreed to do so before the transaction. (2) Collateral passed for an overnight or term trade may be substituted on a best efforts basis only.
Rules 3000G and H	**4517. General collateral repo allocations** (1) General collateral transactions in the repo market are allocated based on the type of transaction. The general allocation methods for cash settlements, forward settlements and replacement transactions when substitutions occur are set out in this section. (2) Money-fill basis (i) general collateral transactions are completed on a money-fill basis (defined below), unless otherwise agreed. (ii) a transaction executed on a money-fill basis means that the loan or principal amount allocated must be equal to the loan amount transacted. Collateral allocations will be no more than two issues to make $50 million. (iii) clause (ii) applies to cash trades, forward settlements and substitutions. (3) If a transaction is executed on a par basis: (i) the allocated amount must equal the par amount for cash and forward settlements; and (ii) for substitutions, the replacement transaction must be done on the basis of the par amount originally transacted. (4) Special repo trades must be done on a par basis.
Rule 3000A	**4518. Confidentiality** (1) Subject to subsection (3), all Dealer Members and inter-dealer brokers must maintain the confidentiality of the names of the parties to a trade. (2) Dealer Members and inter-dealer brokers must not ask questions to try to discover the identity of a party. (3) Certain information may be disclosed as follows: (i) for a trade that is done through an inter-dealer broker, a Dealer Member may disclose the identity of a party to only counterparties to the trade after the trade is completed. (ii) an inter-dealer broker may inform a Dealer Member that it does not have a

Repealed current rule	Proposed plain language rule
	line of credit with the other party to the trade before a market is made, as long as it does not give any other information about that party. (iii) for a name "give up" trade, the full names of parties must be disclosed to counterparties to the trade at the time of the trade to ensure that Dealer Members follow proper credit procedures. (iv) subsections (1) and (2) do not prevent Dealer Members or inter-dealer brokers from asking or answering questions to determine the size of the bid or offer.
New	**4519. - 4599. - Reserved**
New	**Part B - Cash and securities loan, repurchase, and reverse repurchase transactions**
New	**4600. Introduction** (1) Part B of Rule 4600 covers requirements for cash and securities loan, *repurchase*, and *reverse repurchase* transactions and includes: (i) Definitions (ii) General requirements (iii) Written agreement requirement (iv) Margin requirements for cash and securities loans (v) Cash and securities loans between a Dealer Member and an *acceptable institution* or *acceptable counterparty* (vi) Cash and securities loans between regulated entities (vii) Cash and securities loans with other counterparties (viii) Margin requirements for repurchase and reverse repurchase transactions
Rules 100.17(a), (b)(ii), (b) 2nd to last sentence and 2200.1 and Form 1, Schedules 1 and 7	**4601. Definitions** (1) In Part B of Rule 4600, the following definitions apply: (i) *"excess collateral deficiency"* means, the actual collateral provided to the counterparty less the collateral that the counterparty must receive under regulatory or legislative requirements. The Corporation regularly publishes a list of current collateralization rates for each category of acceptable counterparties. (ii) *"fixed rate"* means, a rate expressed as a price, decimal, or percentage per year or expressed in another manner that does not vary until termination. (iii) *"overnight cash loan agreement"* means, an oral or written agreement under which a Dealer Member deposits cash with another Dealer Member for up to two business days. (iv) *"overnight repurchase, reverse repurchase, or securities loan agreement"* means, an obligation to repurchase or resell a security or terminate a loan within five business days of the date on which the obligation is assumed. (v) *"regular settlement"* means, the settlement or delivery dates generally

Repealed current rule	Proposed plain language rule
	accepted in industry practice for a security in the market where the transaction occurs. (vi) *"repurchase agreement"* means, an agreement to sell and repurchase securities. (vii) *"reverse repurchase agreement"* means, an agreement to purchase and resell securities. (viii) *"Schedule I bank"* means, under the Bank Act (Canada), a Schedule I bank that has a capital and reserves position of one billion ($1,000,000,000) or more at the time of the securities loan transaction. (ix) *"written cash and securities loan agreement"* means, a written cash and securities loan agreement, other than an overnight cash loan agreement, where the Dealer Member receives or pays cash, that contains the minimum provisions described in this Rule.
Rules 2200.4, 2200.5, 2200.6(c), 2200.7(a) and 2200.8(a), (b) and (e) last 2 lines	**4602. General requirements** (1) **Marking to market** (i) Borrowed securities and collateral must be marked to market daily on a loan-by-loan basis. (2) **Record transactions** (i) A Dealer Member must record all financing transactions in its books and records. (3) **Loan accounts** (i) A Dealer Member must keep financing accounts separate from the Dealer Member's securities trading accounts. (ii) A Dealer Member must keep financing accounts separate from the client's securities trading accounts. (4) **Confirmations and month-end statements** (i) A Dealer Member must issue confirmations and month-end statements, except when the transaction with other regulated entities is processed through an *acceptable clearing corporation*. (5) **Buy-ins** (i) A Dealer Member must begin a buy-in (liquidating transaction) within two business days of the date on which the buy-in notice is given.
Rules 2200.2, first sentence and 2200.3 and Form 1, Schedules 1 and 7	**4603. Written agreement requirement** (1) If a Dealer Member has a cash and securities loan agreement, other than an *overnight cash loan* agreement, that agreement must be in writing and contain the minimum provisions described in Rule 5100. (2) If a Dealer Member has a written agreement for a *repurchase agreement* or *reverse repurchase agreement*, that agreement must include the parties' acknowledgement that either has the right, on notice, to—at any time—call for any shortfall in the difference between the collateral and the securities.

Repealed current rule	Proposed plain language rule
	(3) If a Dealer Member does not have a *written agreement* for a securities loan, a *repurchase agreement* or *reverse repurchase agreement*, then applicable margin rates are affected.
Form 1, Notes and Instructions to Schedules 1 and 7	**4604. Margin requirements for cash and securities loans** (1) A Dealer Member must calculate margin requirements for cash and securities loans as follows:

Margin requirements for cash and securities loans

Counterparty	*With a written borrowing and lending agreement*	*No written borrowing and lending agreement*
Acceptable Institution	No margin	No margin
Acceptable Counterparty	Excess collateral deficiency	100% of the market value of the securities or cash delivered to the other party
Regulated Entity	Market value deficiency	100% of the market value of the securities or cash delivered to the other party
Other	Margin	100% of the market value of the securities or cash delivered to the other party

Rules 2200.7(a) and (b)	**4605. Cash and securities loans between a Dealer Member and an *acceptable institution* or *acceptable counterparty*** (1) When a cash or securities loan is between a Dealer Member and an *acceptable institution* or an *acceptable counterparty*, they may use as collateral letters of credit that a *Schedule I bank* issues.
Rules 2200.6(a) and (b)	**4606. Cash and securities loans between *regulated entities*** (1) If a cash or securities loan is between *regulated entities*: (i) the *written securities loan agreement* must state that either party has the right, at any time by giving notice to the other party, to call for any shortfall in the difference between the collateral and the borrowed securities; and (ii) They may use as collateral, a *Schedule I bank* letter of credit.
Rules 2200.8(c)(A), (B) and (C) and 2200.8(d)	**4607. Cash and securities loans with *other counterparties*** (1) When a cash or securities loan is between a Dealer Member and a party to which neither section 4605 nor 4606 applies, a Dealer Member must comply with subsections (2) and (3). (2) Securities pledged as collateral must: (i) be held by: (a) the Dealer Member in segregation,

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(b) an acceptable depository, or

(c) a bank or trust company that is either an acceptable institution or an acceptable counterparty under an escrow agreement. The escrow agreement must be between the Dealer Member and the depository, institution, or counterparty and must be in a form acceptable to the Corporation.

(ii) either:

(a) be securities with a margin rate of 5% or less, or

(b) be preferred shares or debt securities, convertible into common shares of the class borrowed.

(3) If a Dealer Member does not comply with subsection (2) above, its net allowable assets are subject to a charge calculated in the same manner as for client account short securities balances.
</td></tr>
<tr><td>Form 1, Notes and Instructions to Schedules 1 and 7</td><td>
4608. Margin requirements for repurchase and reverse repurchase agreement transactions

(1) A Dealer Member must calculate margin requirements for repurchase and reverse repurchase agreement transactions as follows:

<table>
<tr><th colspan="4">Margin requirements for repurchase and reverse repurchase agreement transactions</th></tr>
<tr><td rowspan="3">Counterparty</td><td rowspan="3">With a written repurchase or reverse repurchase agreement</td><td colspan="2">No written repurchase or reverse repurchase agreement</td></tr>
<tr><td colspan="2">Calendar days after regular settlement</td></tr>
<tr><td>30 days or less</td><td>Greater than 30 days</td></tr>
<tr><td>Acceptable institution</td><td>No margin</td><td colspan="2">No margin, if confirmed within 15 business days.
Margin, if unconfirmed after 15 business days</td></tr>
<tr><td>Acceptable counterparty</td><td>Excess collateral deficiency</td><td>Excess collateral deficiency, if confirmed within 15 business days.
Margin, if unconfirmed after 15 business days.</td><td>Margin</td></tr>
<tr><td>Regulated entity</td><td>Market value deficiency</td><td>Market value deficiency, if confirmed within 15 business days.
Margin, if unconfirmed after 15 business days.</td><td>Margin</td></tr>
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Repealed current rule	Proposed plain language rule

Other	Margin	Margin	200% of margin (to a maximum of the market value of the underlying securities)

Note: Margin for repo and reverse repo transactions is calculated from the date of *regular settlement*. "Calendar days" refers to the original term of the *repo* or *reverse repo*.

Rules 100.17(b), (c) and (d)

4609. Margin requirements for cash and securities loan, repurchase, and reverse repurchase transactions with term risk

(1) Despite any requirement in sections 4604 and 4608, if the special conditions for a *securities loan* or *repurchase agreement* set out in the chart below are met, the Dealer Member must provide margin as follows for un-hedged and offsetting positions, respectively:

Un-hedged position		
Position	**Special conditions**	**Margin required**
Securities loan, *repurchase agreement*, or *reverse repurchase agreement*	▪ the obligation to repurchase, resell or terminate the loan is outstanding for more than five business days; ▪ the date of repurchase, resale, or termination of a loan is decided at the time of entering into the transaction; ▪ the amount of any compensation, price differential, fee, commission, or other financing charge to be paid in connection with the repurchase, resale, or loan is calculated according to a *fixed rate*; and ▪ the dealer member must perform the calculations daily and make full provision for any principal and return of capital then payable, and for all accrued interest, dividends, or other distributions on securities used as collateral.	Calculate margin required according to the requirements in sections 5310 and 5311

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<tr><th>Repealed current rule</th><th>Proposed plain language rule</th></tr>
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<table>
<tr><th colspan="3">Offsetting positions</th></tr>
<tr><th>Offsetting positions</th><th>Special conditions</th><th>Margin required</th></tr>
<tr><td>Securities loan versus securities loan
or
Repurchase agreement versus reverse repurchase agreement</td><td>▪ the date of repurchase, resale, or termination of a loan is more than one year away for each of the offsetting positions; and

▪ the offsetting positions are in the same maturity band for margin purposes and are denominated in the same currency;</td><td>Calculate margin required based on the net market value of the two positions</td></tr>
<tr><td>Securities loan versus securities loan
or
Repurchase agreement versus reverse repurchase agreement</td><td>▪ the date of repurchase, resale, or termination of a loan is within one year away for each of the offsetting positions;</td><td>Margin required is the difference between the normal margin required on the two positions</td></tr>
</table>
</td></tr>
<tr><td>New</td><td>4610. - 4699. - Reserved</td></tr>
</table>

Repealed current rule	Proposed plain language rule
New	**Rules 4700 and 4800 - Operations**
New	**4701. Introduction** (1) Rules 4700 and 4800 set out the following requirements relating to Dealer Member operations: (i) Business continuity plan ***[Part A, Sections 4710 through 4714]***; (ii) Trading and delivery standards including: (a) General ***[Part B.1, Sections 4751 through 4758]***; (b) Fixed income ***[Part B.2, Sections 4759 through 4762]***; (c) Stocks ***[Part B.3, Sections 4763 through 4765]***; and (d) Buy-ins ***[Part B.4, Section 4766]***; and (iii) Account transfers ***[Part C, Sections 4800 through 4815]***.
New	**4702. - 4709. - Reserved**
New	**Part A - Business continuity plan**
New	**4710. Introduction** (1) To manage risk prudently and maintain investor confidence, *Dealer Members* must ensure they can continue to carry on business after a significant disruption and provide clients with prompt access to their assets.
Rule 17.16, 1st sentence, 1st clause	**4711. Creating a business continuity plan** (1) A *Dealer Member* must establish and maintain a business continuity plan.
Rule 17.16, 1st sentence, 2nd clause and 2nd sentence	**4712. Business continuity plan procedures** (1) A *Dealer Member's* business continuity plan must identify the procedures it will take to deal with a significant business disruption. (2) The procedures in subsection (1) must be based on the *Dealer Member's* assessment of its key business functions and required levels of operation during and following a disruption. (3) The procedures in (1) must be designed to ensure the *Dealer Member* stays in business long enough to meet its obligations to its clients and capital markets counterparties after a significant business disruption.

Repealed current rule	Proposed plain language rule
Rule 17.16, 2nd paragraph, 1st sentence	**4713. Update business continuity plan** (1) A *Dealer Member* must update its business continuity plan to reflect any significant change in any of its operations, structure, business, or locations.
Rule 17.16, 2nd paragraph	**4714. Annual review and test** (1) Every year: (i) a *Dealer Member* must review and test; and (ii) its senior management must approve its business continuity plan. (2) During its annual review, a *Dealer Member* must make any modifications to its business continuity plan that are necessary due to changes in its operations, structure, business, or locations. (3) The *Corporation* may require a qualified third party to carry out the annual review and test.
	4715. – 4749. - Reserved
New	**Part B - Trading and Delivery**
New	**4750. Introduction** (1) The main purpose of Part B of Rule 4700 is to establish minimum trading and delivery requirements for transactions that will not be cleared and settled through a clearing corporation. Part B also sets additional *Dealer Member* reporting requirements on how quickly certain trades are to be reported to an acceptable trade matching utility. (2) Part B of Rule 4700 is divided into 4 sub-parts: ▪ Part B.1 – General ▪ Part B.2 – Fixed Income ▪ Part B.3 – Stocks ▪ Part B.4 – Buy-ins. (3) Sub-part B.1 applies to transactions that will be cleared and settled through a clearing corporation and also to those that will not be cleared and settled through a clearing corporation. (4) Sub-parts B.2, B.3 and B.4 apply to transactions that will be not be cleared and settled through a clearing corporation.
New	**Part B.1 - General**
Rules 800.30(c), 800.30A, definition of “Participant” and “Settlement Service”, 800.30D(a)(vii), 800.31(b)(i) and (ii) and 800.49, 2nd paragraph	**4751. Definitions** (1) In this Rule: (i) “*Acceptable trade matching utility*” means the broker-to-broker trade matching utility in CDS Clearing and Depository Services Inc.’s CDSX, or a

Repealed current rule	Proposed plain language rule
	similar system approved by the *Corporation*. A list of approved acceptable trade matching utilities is updated and published as a notice by the *Corporation*. (ii) "*Eligible securities*" mean securities that are eligible to be deposited in the clearing corporation. (iii) "*Participant*" means a participant in a clearing corporation's *settlement service.* (iv) "*Qualified Canadian trust company*" means a trust company licensed to do business in Canada or a Canadian province with a minimum paid up capital and surplus of $5,000,000. (v) "*Settlement service*" means a securities settlement service made available by *CDS Clearing and Depository Services Inc.* (vi) "*Recognized securities depository*" means *CDS Clearing and Depository Services Inc.* (vii) "*Depository eligible transactions*" means transactions in securities where the affirmation and settlement can be performed through the facilities or services of a *recognized securities depository*.
Rules 800.30B and 800.30C, 2nd sentence and one new provision	**4752. Use of a clearing corporation** (1) *Dealer Members* who are participants in the same clearing corporation must use the clearing corporation's settlement service to settle all trades between themselves involving eligible securities, unless both the delivering *Dealer Member* and the receiving *Dealer Member* agree otherwise. (2) If a Dealer Member is using a clearing corporation to settle a trade, it must report and settle the trade in accordance with Part B.1 of Rule 4700 and the clearing corporation's rules and procedures. (3) If a Dealer Member is not using a clearing corporation to settle a trade, it must use Parts B.1, B.2, B.3, and B.4 of Rule 4700.
Rule 800.49, 1st sentence	**4753. Use of a trade matching utility** (1) For each non-exchange trade, involving CDS *eligible securities*, executed by a *Dealer Member* with another *Dealer Member*, each *Dealer Member* within one hour of executing the trade must: (i) Enter the trade into an *acceptable trade matching utility*; or (ii) Accept or reject any trade entered into an *acceptable trade matching utility* by another *Dealer Member*.
Rules 800.31(a) and (c)	**4754. Payment or delivery through client settlement agent** (1) For any arrangement where the payment of securities purchased or delivery of securities sold is to be made to or through a client's settlement agent, all of the following procedures must be followed: (i) The *Dealer Member* receives from the client prior to or at the time of accepting the order the name and address of the settlement agent and account number of the client on file with the settlement agent. Where settlement is made through a depository offering an identification number

Repealed current rule	Proposed plain language rule
	system for the clients of settlement agents of the depository, the *Dealer Member* must have the client identification number prior to or at the time of accepting the order and use the number in the settlement of the trade; (ii) Each order accepted from the client is identified as either a delivery or receipt against payment trade; (iii) The *Dealer Member* provides to the client a confirmation according to Rule 3600, Business Records; (iv) The *Dealer Member* has obtained an agreement from the client stating that the client will: (a) Promptly provide its settlement agent with instructions regarding the transaction following its receipt of the transaction confirmation from the *Dealer Member*, or the relevant date and information as to each execution from the *Dealer Member*, relating to such order (even though such execution represents the purchase or sale of only a part of the order), and (b) Ensure that its settlement agent affirms the transaction no later than the next business day after the date of execution of the trade to which the confirmation relates; (v) The client and its settlement agent must use the facilities or services of a *recognized securities depository* for the affirmation and settlement of all *depository eligible transactions* through such facilities or services including book based or certificated settlement. This clause (v) applies only to transactions: (a) To be settled in Canada; and (b) Where both the *Dealer Member* and the settlement agent are not participants in the same recognized securities depository or the same facilities or services of such depository required in respect of the trade.
Rule 800.10	**4755. Early registration of securities** (1) Prior to the receipt of payment, a *Dealer Member* must not register any security, with the exception of a new issue at take down date, in the name of the customer or his or her nominee. A *Dealer Member*'s absorption of bank or other charges incurred by a customer or his or her nominee for the registration of a security will be considered an infraction of this requirement. (2) After the receipt of payment, a *Dealer Member* may absorb transfer fees incurred in the transfer of a security according to a customer's instructions.
Rule 800.13	**4756. Repo and option granting transactions with clients** (1) Before entering into the following transactions a *Dealer Member* must have in writing all terms relevant to the transaction on the face of the contract or if necessary, on an additional page attached to the contract provided those terms are referred to on the face of the contract, with a client: (i) An agreement to purchase or repurchase a security (ii) An agreement to sell or resell a security (iii) The granting of a put, call or similar option involving a security.

Repealed current rule	Proposed plain language rule
Rule 800.47	**4757. When issued trading** (1) Unless the parties to the trade agree otherwise or the *Corporation* provides a separate ruling: (i) All when issued trades made before the second trading day before the anticipated date of issue of the security must be settled on the anticipated date of issue of such security (ii) All when issued trades made on or after the second trading day before the anticipated date of issue of the security must be settled on the third settlement day after the trade date (iii) If the security has not been issued on the settlement date in clause (i) or (ii), such trades must be settled on the date that the security is actually issued.
Rule 800.38	**4758. Tax payments** (1) A selling *Dealer Member* must pay, or certify payment of, taxes required for a buying *Dealer Member* to transfer the securities purchased to nominee name, except in the situation where there is a register in the buying *Dealer Member's* province, and the buying *Dealer Member* chooses to transfer the securities to a register outside that province.
New	**Part B.2 – Fixed income**
Rules 800.5, 800.6, 800.7, 800.8, 800.9, 800.16, 800.33(a) and (b), 800.35 and 800.48	**4759. Fixed income accrued interest** (1) All securities having interest payable as a fixed obligation, except securities in sale and repurchase agreement transactions, must be conducted on an accrued interest basis until maturity or a default in such payment either occurs or is announced by the debtor, whichever is the earlier event. The *Corporation* may set aside this requirement in specific cases where common practice and expediency prompt such action and will give due notice to all *Dealer Members* in such cases. (2) Prior to actual default or announcement by the debtor as specified in subsection (1), sales made of securities but undelivered at the time of default or such announcement, must be conducted on an accrued interest basis under the terms of the original transaction. (3) Subsequent to default or announcement by the debtor as specified in subsection (1), the securities must be handled on a flat basis with all matured and unpaid coupons attached, until such time as all arrears of interest have been paid and one current coupon has been paid when due. (4) Transactions in bonds having coupons payable out of income, if and when earned, must take place on a flat basis. Any matured and unpaid income coupons must be attached. Income bonds that have been called for redemption must continue to be traded on a flat basis even after the call date has been published. (5) Transactions in bonds where an issuer has been subject to reorganization or capital adjustment that results in the bondholders receiving as a bonus or otherwise, certain stock or scrip, such transactions must be ex stock or scrip, unless otherwise stated at the time the trade is made. Such bonds must be traded on a flat basis until such time as all arrears have been paid and one current coupon has been paid when due, except where the *Corporation* has determined otherwise.

Repealed current rule	Proposed plain language rule
	(6) Accrued interest on trades in interest paying instruments that pay interest monthly and compound interest monthly must be zero, if the value date of the trade is an interest payment date. Otherwise, the accrued interest on such trades must be calculated by multiplying the face amount of the instrument by the interest rate of the instrument and the number of days between the value date of the trade and the last interest payment date prior to the value date of the trade and dividing the result by twelve multiplied by the number of days between the next interest payment date after the value date of the trade and the last interest payment date prior to the value date of the trade. (7) For bonds or debentures that are only available in registered form, transactions made two days before a regular interest payment and up to three days before the closing of the transfer agent's books for the next interest payment, both days inclusive, will be on an "and interest" basis. The full amount of such interest payment must be deducted by the seller after the calculation of interest on the regular delivery basis, unless delivery is completed to the buyer by twelve o'clock noon (12 p.m.) at a transfer point on the date of the closing of the transfer agent's books for a regular interest payment. (8) For bonds or debentures that are only available in registered form, transactions from two days before the closing of the transfer agent's books up to and including three days before a regular interest payment must be "less interest" from settlement date to the regular interest payment date. (9) Where interest on a transaction involves an amount greater than that represented by the half-yearly coupon, interest is to be calculated on the basis of the full amount of the coupon less one or two days, as the case may be.
Rules 800.19, 800.20, 800.21 (a) through (f), 800.22 and 800.23	**4760. Fixed income trading units** (1) This section applies to transactions between *Dealer Members* in or between certain Districts only and applies as follows: (i) All transactions between *Dealer Members* in Ontario and Quebec Districts (ii) All transactions between *Dealer Members* between the Ontario and Quebec Districts (iii) All transactions between *Dealer Members* between the Ontario District and any other District (iv) All transactions between *Dealer Members* between the Quebec District and any other District. (2) A *Dealer Member* calling a market must trade *Trading Units* (defined in subsection (5)) if called upon to trade, unless prefixed by some qualifying phrase. Any amount less than one *Trading Unit* will be considered as an odd lot. (3) Any *Dealer Member* asking the size of a stated market must be prepared to buy or sell at least a *Trading Unit* at the price quoted if immediately requested to do so by the *Dealer Member* calling the market. (4) Any *Dealer Member* who has been requested to call a market has the option to trade an odd lot at the called market (if so requested) or to adjust his market to compensate for the smaller amount involved. (5) *Trading Units* are defined as follows:

Repealed current rule	Proposed plain language rule
	(i) Government of Canada (a) $250,000 par value for Government of Canada direct obligations and Government of Canada guaranteed obligations having an unexpired term of less than one year to maturity (or to the earliest call date, where the transaction is completed at a premium) (b) $100,000 par value for Government of Canada direct obligations and Government of Canada guaranteed obligations having an unexpired term of one year or longer but three years or less to maturity (or to the earliest call date, where the transaction is completed at a premium) (c) $100,000 par value for Government of Canada direct obligations and Government of Canada guaranteed obligations having an unexpired term to maturity of longer than three years (where the bond is traded at a premium, the earliest call date shall be treated as the maturity date). (ii) Province of Canada (a) $25,000 par value for bonds, debentures and other obligations of or guaranteed by a province in Canada. (iii) Other Bonds and Debentures (a) $25,000 par value for bonds and non-convertible debentures (other than Government of Canada direct obligations and Government of Canada guaranteed obligations and bonds, debentures and other obligations of or guaranteed by a province in Canada) that were not issued with attached stock warrants, rights or other attachments (b) $5,000 par value for bonds, convertible debentures or debentures (other than Government of Canada direct obligations and Government of Canada guaranteed obligations and bonds, debentures and other obligations of or guaranteed by a province in Canada) that were issued with attached stock warrants, rights or other appendages.
Rules 800.24, 800.25, 800.26, 800.27, 800.28, 800.29, 800.30, 800.32, 800.36 and 800.37	**4761. Fixed income delivery** (1) All trades are to be considered for *regular delivery* (defined in subsection (3)), unless otherwise agreed to in writing by the parties to a transaction at the time of the transaction. (2) For a deal involving the sale or purchase of more than one maturity, each maturity must be treated as a separate transaction. No contingent (all or none) dealings are permitted. (3) Regular delivery is defined as: (i) Government of Canada (a) The same day as the transaction date for Government of Canada Treasury Bills (b) The second business day after the transaction date for Government of Canada Bonds and Government of Canada Guaranteed Bonds (except Treasury Bills) having an unexpired term to maturity of

Repealed current rule	Proposed plain language rule
	three years or less (or to the earliest call date where a transaction is completed at a premium). Any accrued interest must be stopped on the second business day after the transaction date. (c) The third business day after the transaction date for Government of Canada Bonds and Government of Canada Guaranteed Bonds having an unexpired term to maturity of longer than three years (where such a bond is traded at a premium the earliest call date shall be treated as the maturity date). Any accrued interest must be stopped on the third business day after the transaction date. (ii) Province of Canada (a) The third business day after the transaction date for all provincial bonds or debentures. Any accrued interest must be stopped on the third business day after the transaction date. (iii) Other Bonds and Debentures (a) The third business day after the transaction date for all municipal, corporation and other bonds or debentures (other than Government of Canada and Province of Canada treasury bills, bonds or debentures), other certificates of indebtedness including mortgage-backed securities. Any accrued interest must be stopped on the third business day after the transaction date. (4) New Issues delivery (i) The regular delivery requirements above is not intended to interfere in any way with the common practice of transactions between *Dealer Members* in new issues during the period of primary distribution on an "accrued interest to delivery" basis. However, the regular delivery requirements will come into effect on the appropriate number of business days prior to the new issue being first available for physical delivery. (ii) Where a new issue delivery is made against payment outside of the points fixed for the initial syndicate delivery of the issue, additional accrued interest must be charged from the delivery date at the initial syndicate delivery point(s) of the new issue, according to the length of time normally required for delivery to the locality in which the delivery is made. (iii) For a mortgage-backed security transaction made during a commitment period, delivery must take place on or after the fifteenth calendar day of the month. For the purposes of this clause (iii), "*commitment period*" means the period from the third business day before month-end to the first business day on or before the eleventh calendar day of the following month, inclusive. (5) Location (i) For any transaction between *Dealer Members* in the same municipality where physical delivery is to be made, the seller must complete the delivery before 4:30 p.m. on a business day. (ii) For any transaction between *Dealer Members* in different municipalities, the seller must complete the delivery on the buyer's terms, i.e. delivery is to be made by the seller free of banking and/or shipping charges to the

Repealed current rule	Proposed plain language rule
	buyer. Where bank drafts are drawn to arrive at their destination on a day that is not a business day, the seller is entitled to have charges paid up to the next business after the expected arrival of the bank drafts. (6) Good delivery (i) Securities traded by *Dealer Members* must be good delivery securities. Therefore, they must be in the proper form so that their titles can be transferred by delivery to the buyer on settlement date. Proper form means the securities have the necessary endorsements, guarantees or both, and meet all legal and regulatory requirements for title transfer. The seller must obtain them and include them with the delivery. (ii) Good delivery securities may consist of bearer bonds or debentures or registered bonds or debentures (iii) For good delivery, securities that can be traded as actual certificates or as certificates of deposit, delivery must be made in the form of actual certificates, unless stated otherwise at the time of the transaction (iv) For good delivery, the bonds or debentures are to be of a maximum denomination of $100,000 par value, unless agreed to otherwise by the buyer (v) For good delivery, if a Power of Attorney is necessary for the certificates, one Power of Attorney for each certificate is required, unless the buyer has agreed otherwise to accept an amalgamated Power of Attorney (vi) For good delivery, if definitive certificates are not available interim certificates may be used. However, once definitive certificates are available interim certificates may not be used, unless the *Dealer Members* agree otherwise. (vii) Good delivery securities may consist of the following, provided that is it acceptable to the transfer agent: (a) Bonds or debentures registered in the name of an individual, properly endorsed and with endorsement guaranteed by a *Dealer Member* in good standing of the *Corporation* or a *recognized stock exchange*, or by a chartered bank or *qualified Canadian trust company* (b) Bonds or debentures registered in the name of a *Dealer Member* or nominee of a *Dealer Member* and properly endorsed (c) Bonds or debentures registered in the name of a member of a recognized stock exchange and properly endorsed (d) Bonds or debentures registered in the name of a chartered bank or *qualified Canadian trust company* or the nominee of a chartered bank or qualified trust company and properly endorsed. (7) Not good delivery (i) A mutilated or torn certificate or coupon unless acceptable to the receiving *Dealer Member* (ii) A certificate registered in the name of a firm or corporation that has made an assignment for the benefit of creditors or has been declared bankrupt

Repealed current rule	Proposed plain language rule
	(iii) A certificate signed by a Trustee or Administrator unless accompanied by sufficient evidence of authority to sign (iv) A certificate with documents attached other than a registered bond of an issue available in registered form only, with completed Power of Attorney to transfer attached. (One Power of Attorney for each certificate or an amalgamated Power of Attorney if acceptable to receiving broker or dealer) (v) A certificate which has been altered or erased (other than by the Transfer Agent) whether or not such alteration or erasure has been guaranteed (vi) A certificate on which the assignment and/or substitute attorney has been altered or erased (vii) A certificate with the next maturing coupon or subsequent coupons detached unless where so traded or where a certificate cheque (if for $1,000 or more) payable to the receiving *Dealer Member*, dated no later than the date of delivery and for the amount of the coupon(s) missing, is attached to the certificate in question (viii) A bond or debenture, registered as to principal only, which after being transferred to Bearer, does not bear the stamp and signature of the Trustee (ix) A registered bond or debenture unless it bears a certificate that provincial tax has been paid where applicable (x) A certificate that has a stop transfer placed against it, the stop having been placed prior to delivery being made to the receiving dealer or broker. (8) Prior to Notice of Call (i) Sales or purchases of securities prior to notice of call in part but not in full and undelivered on date of such notice, must be completed on the basis of the original transaction. (Date of notice means the date of the notice of call irrespective of the date of publication of such notice.) Called securities do not constitute good delivery unless the transaction is so designated at its inception. (ii) Sales or purchases of securities prior to notice of call in full and undelivered at time of such notice shall be completed on the terms of the original transaction.
Rule 800.46	**4762. Fixed income redemption payment** (1) A *Dealer Member* must not pay to a client regarding any maturity the redemption price or other amount due on redemption of such securities where the price or amount exceeds $100,000, unless: (i) The *Dealer Member* has first received an amount equal to such price or other amount from the issuer or its agent by cheque certified by or accepted without qualification by a *chartered bank* or (ii) The *Dealer Member* has first received or is credited an amount equal to such price or other amount through the facilities of *CDS Clearing and Depository Services Inc.* or Depository Trust Company.

Repealed current rule	Proposed plain language rule
New	**Part B.3 – Stocks**
Rule 800.19, 800.20, 800.21(g), 800.22 and 800.23	**4763. Stock trading units** (1) This section applies to transactions between *Dealer Members* in or between certain Districts only and applies as follows: (i) All transactions between *Dealer Members* in Ontario and Quebec Districts (ii) All transactions between *Dealer Members* between the Ontario and Quebec Districts (iii) All transactions between *Dealer Members* between the Ontario District and any other District (iv) All transactions between *Dealer Members* between the Quebec District and any other District. (2) A *Dealer Member* calling a market shall be obliged to trade *Trading Units* (defined in subsection (5)) if called upon to trade, unless prefixed by some qualifying phrase. Any amount less than one *Trading Unit* will be considered as an odd lot. (3) Any *Dealer Member* asking the size of a stated market must be prepared to buy or sell at least a *Trading Unit* (defined in subsection (5)) at the price quoted if immediately requested to do so by the *Dealer Member* calling the market. (4) Any *Dealer Member* who has been requested to call a market has the option to trade an odd lot at the called market (if so requested) or to adjust his market to compensate for the smaller amount involved. (5) *Trading Units* are defined as follows: (i) Common and preferred shares not listed on a *recognized exchange* (a) In lots of 500 shares, if market price per share is below $1 (b) In lots of 100 shares, if market price per share is at $1 and below $100 (c) In lots of 50 shares, if market price per share is at $100 or above.
Rule 800.24, 800.27(d), 1st sentence, 800.30 1st paragraph and (b), 800.32, 800.34, 800.36, 800.37, 800.40, 1st part of 1st sentence, 800.41, 1st part of 1st sentence and some new provisions	**4764. Stock delivery** (1) All trades are to be considered for *regular delivery* (defined in subsection (2)), unless otherwise agreed to in writing by the parties to a transaction at the time of the transaction. (2) *Regular delivery* is defined as: (i) Exchange-listed shares (a) The settlement date generally accepted according to industry practice for the shares in the market in which the transaction occurs, including foreign jurisdictions. (ii) Unlisted registered shares (a) The settlement date generally accepted according to industry

Repealed current rule	Proposed plain language rule
	practice for the shares in the market in which the transaction occurs, including foreign jurisdictions. (b) For transactions between *Dealer Members* in shares that occur two full business days prior to the record date, the shares must be traded, ex dividend, ex rights, or ex payments. (c) For transactions between *Dealer Members* in shares that are not ex dividend, ex rights, or ex payments at the time the transaction occurs and delivery is not completed prior to twelve o'clock noon (12 p.m.) at a transfer point on the date of the closing of the transfer agent's books, the seller is responsible to the buyer for the payment of such dividends or payments, and delivery of such rights, as may be involved, on their due dates. For the purposes of this sub-clause (c), where the record date falls on a Saturday or other non-business day, the business day prior to the record date is to be treated as the effective record date. (3) New issues delivery (i) The regular delivery requirements above are not intended to interfere in any way with the common practice of dealing in new issues during the period of primary distribution. However, the regular delivery requirements will come into effect on the appropriate number of business days prior to the new issue being first available for physical delivery. (4) Location (i) For any transaction between *Dealer Members* in the same Municipality, delivery should be advised by 11:30 a.m. on the fourth business day after a transaction takes place. (ii) For any transaction between *Dealer Members* located in different municipalities, delivery should be received by the buyer by the expiration of the fourth business day after the transaction takes. (5) Good delivery (i) Securities traded by *Dealer Members* must be good delivery securities. Therefore, they must be in the proper form so that their titles can be transferred by delivery to the buyer on settlement date. Proper form means the securities have the necessary endorsements, guarantees or both, and meet all legal and regulatory requirements for title transfer. The seller must obtain them and include them with the delivery. (ii) Certificates registered in the name of: (a) An individual, must be endorsed by the registered holder in exactly the same manner as registered and the endorsement guaranteed by a *Dealer Member* or by a member of a *recognized stock exchange* or by a *chartered bank* or *qualified Canadian trust company*. Where the endorsement does not exactly correspond to the registration shown on the face of the certificate, a certification by a *Dealer Member*, a member of a *recognized stock exchange*, a chartered bank or a *qualified Canadian trust company* that the two signatures are the same person's is required;

Repealed current rule	Proposed plain language rule
	(b) A *Dealer Member* or a member of a *recognized stock exchange* or a nominee of either and duly endorsed; (c) A *chartered bank* or *qualified Canadian trust company* or the nominee of a *chartered bank* or *qualified Canadian trust company* and duly endorsed by a *Dealer Member*; (d) Any other manner providing it is properly endorsed and the endorsement is guaranteed by a *Dealer Member* or by a member of a *recognized stock exchange* or by a *chartered bank* or *qualified Canadian trust company*; and (iii) Certificates in board lot denominations (or less) as required by the exchange on which the stock is traded. Unlisted stocks should also be in denominations similar to listed stocks in the same category and price range. (6) Not good delivery (i) A mutilated or torn certificate or coupon unless acceptable to receiving broker or dealer; (ii) A certificate registered in the name of a firm or corporation that has made an assignment for the benefit of creditors or has been declared bankrupt; (iii) A certificate signed by a Trustee or Administrator unless accompanied by sufficient evidence of authority to sign; (iv) A certificate with documents attached other than a registered bond of an issue available in registered form only, with completed Power of Attorney to transfer attached. (One Power of Attorney for each certificate or an amalgamated Power of Attorney if acceptable to receiving broker or dealer); (v) A certificate that has been altered or erased (other than by the Transfer Agent) whether or not such alteration or erasure has been guaranteed; (vi) A certificate on which the assignment and/or substitute attorney has been altered or erased; (vii) A registered stock unless it bears a certificate that provincial tax has been paid where applicable; (viii) A certificate that has a stop transfer placed against it, the stop having been placed prior to delivery being made to the receiving dealer or broker. (7) Prior to Notice of Call (i) Sales or purchases of securities prior to notice of call in part but not in full and undelivered on date of such notice, must be completed on the basis of the original transaction. (Date of notice means the date of the notice of call irrespective of the date of publication of such notice.) Called securities do not constitute good delivery unless the transaction is so designated at its inception. (ii) Sales or purchases of securities prior to notice of call in full and undelivered at time of such notice must be completed on the terms of the original transaction.

Repealed current rule	Proposed plain language rule
Rule 800.45	**4765. Stock dividend claims** (1) No *Dealer Member* shall make a certificate claim for dividends against another *Dealer Member* if the amount of such claim would be $5.00 or less.
New	**Part B.4 – Buy-ins**
Rules 800.39, 800.40, 800.41, 800.42, 800.43 and 800.44	**4766. Buy-ins** (1) Buy-ins must be made within the times, using the notices prescribed, and according to the *Corporation's* requirements. For the purposes of these clauses (i) through (v) a "regular delivery transaction" is deemed to have taken place once the *Dealer Members* involved have agreed on a price. (i) For transactions between *Dealer Members* in the same municipality, where the seller does not advise the buyer about the delivery by 11:30 a.m. on the fourth business day after a regular delivery transaction: (a) The buyer may at his or her option buy-in the securities, where the buyer intends to buy-in the securities, the buyer must give written notice to the seller and to the *Corporation* on that day, or any subsequent business day, prior to 3:30 p.m., of his or her intention to buy-in for cash on the second business day after the original notice. (b) The notice is deemed to automatically renew itself from business day to business day from 11:30 a.m. until closing until the transaction is finally completed. (c) Where the buy-in is not executed on the second business day after the original notice, the seller has the privilege of advising the buyer each subsequent day before 11:30 a.m. of his or her ability, and intention, to make either whole or partial delivery on that day. (ii) For transactions between *Dealer Members* in different municipalities, where delivery has not been received by the buyer at the expiration of four business days after the transaction takes place, on or after the fourth business day: (a) The buyer may at his or her option buy-in the securities, where the buyer intends to buy-in the securities, the buyer must give written notice to the seller and to the *Corporation* on that day by 12 p.m. (the seller's time) his or her intention to buy-in for cash on the third business day after the original notice. (b) Where the seller has not advised the buyer in writing by 5 p.m. (the buyer's time) on the day after the original notice that the securities covered by the —buy-in have passed through his or her clearing and are in transit to the buyer, the buyer may proceed to execute the buy-in on the third business day after the original notice. (c) The notice is deemed to automatically renew itself from business day to business day and the seller forfeits all rights to complete delivery other than the portion of the transaction that is in transit by the day following the receipt of the original notice. The buyer may at his or her option allow the seller to complete delivery of any remaining portion of the transaction.

Repealed current rule	Proposed plain language rule
	(iii) Any *Dealer Member* who is bought-in may demand evidence that a bona fide transaction has taken place involving the delivery of the bought-in securities. The *Dealer Member* who is bought-in has the right, to deliver such part of his or her commitment according to clauses (i) and (ii) and must complete any such delivery to the nearest $1,000 par value, or stock *Trading Unit*. (iv) The *Corporation* has the authority to postpone the execution of a buy-in from day to day, and to combine buy-ins in the same security, and to decide any dispute arising from the execution of the buy-in, and its decision is final and binding. (v) When a buy-in has been completed the buyer must submit to the seller a statement of account showing: (a) As credits, the amount originally contracted for as payment for the securities, and (b) As debits, the amount paid on buy-in, the cost of the buyer's communication charges relative to the buy-in, and any bank or shipping charges incurred. Where there is a credit balance remaining, the buyer must pay this amount to the seller, and where there is a debit balance remaining, the seller must pay this amount to the buyer.
New	**4767. – 4799. – Reserved**
New	**Part C – Account transfers**
New	**4800. Introduction** (1) Part C of Rule 4800 describes the *Corporation's* requirements for transferring accounts between *Dealer Members* to ensure these transfers are completed promptly.
Rule 2300.1	**4801. Definitions** (1) In this Rule: (i) *"account transfer"* means a client-account transfer, at the request of or with the authority of the client, from one *Dealer Member* to another *Dealer Member*. (ii) "*delivering Dealer Member"* means the *Dealer Member* from which the client account is being transferred. (iii) "*partial account*" means less than the total assets and balances in a client account held by a *delivering Dealer Member.* (iv) "*receiving Dealer Member*" means the *Dealer Member* to which the client account is being transferred. (v) "*recognized clearing depository*" means a *Corporation*-recognized clearing corporation or depository.
Rule 2300.2, 1st paragraph, 2nd sentence	**4802. Transferring a full or *partial account*** (1) A *Dealer Member* transferring a full or *partial account* must comply with this Rule.

Repealed current rule	Proposed plain language rule
Rule 2300.2, 1st paragraph, 1st sentence	**4803. Transfer through a *recognized depository*** (1) Whenever possible, a *Dealer Member* transferring a client account must transfer that account through a *recognized depository*.
Rule 2300.2, 2nd and 3rd paragraphs	**4804. Communications between Dealer Members** (1) Communications between *Dealer Members* must take place by electronic delivery through *CDS*'s account transfer facility, unless both *Dealer Members* agree otherwise. (2) Each *Dealer Member* must pay its costs for delivering or receiving electronic communications done under Part C of Rule 4800. (3) A *Dealer Member* must select, implement, and maintain appropriate security measures to protect its electronically delivered communications. (4) Dealer Member acknowledgement and indemnification (i) a *Dealer Member* acknowledges that an electronically delivered communication it sends will be relied on by the *Dealer Member* receiving it. (ii) a *Dealer Member* must indemnify and save harmless other *Dealer Members* from any claims, losses, damages, liabilities or expenses the *other Dealer Members* suffer as a result of relying on its unauthorized, inaccurate, or incomplete electronic communication.
Rule 2300.3	**4805. Receiving Dealer Member - responsibilities for documents** (1) If a *receiving Dealer Member* receives a request from a client to accept an account, it must obtain written authorization from the client to transfer the account. (2) After the client gives written authorization to the *receiving Dealer Member,* the receiving *Dealer Member* must: (i) promptly send a request for transfer through CDS to the *delivering Dealer Member*, and (ii) keep the original written account transfer authorization form on file. (3) The *receiving Dealer Member* must ensure that the forms or documents required to transfer accounts are completed and available on the same day as the request for transfer is delivered.
Rule 2300.4	**4806. Delivering Dealer Member - response to request for transfer** (1) When it receives the request for transfer, the *delivering Dealer Member* must either: (i) deliver to the *receiving Dealer Member*, by the specified return date, the asset list for the client account being transferred; or (ii) reject the request for transfer if the client account information is unknown to the *delivering Dealer Member* or is incomplete or incorrect. (2) The return date in clause (1)(i) must be no later than two clearing days after the date of receipt of the request for transfer from the *delivering Dealer Member*.

Repealed current rule	Proposed plain language rule
Rule 2300.5	**4807. Asset transfer** (1) Within one clearing day after the specified return date the *delivering Dealer Member* must commence, or cause *CDS*'s account transfer facility to implement automatically, the transfer of the assets through *CDS*. (2) Any assets that cannot be transferred through a *recognized depository* must be settled: (i) over the counter; (ii) by other standard industry practices; or (iii) by other appropriate means agreed between the *receiving Dealer Member* and the *delivering Dealer Member*. The time limits in subsection (1) apply.
Rule 2300.4	**4808. Transfer impediment** (1) If there is an impediment to the requested transfer of an account asset, the *delivering Dealer Member* must promptly notify the *receiving Dealer Member*, identifying the asset and the reason for the inability to deliver. (2) The *receiving Dealer Member* must get client instructions or directions concerning the asset, and deliver them to the *delivering Dealer Member* (3) The balance of the client's assets must be transferred according to this Rule.
Rule 2300.6	**4809. Failure to settle** (1) If the *delivering Dealer Member* fails to settle an asset transfer in a client account within 10 clearing days of receipt of the request for transfer, the *receiving Dealer Member* may complete the account transfer, at its option, by: (i) buying-in the unsettled position in accordance with section 4767; (ii) lending the security to the *delivering Dealer Member* through a *recognized depository* and simultaneously transferring the same security into the client account; or (iii) making other mutually agreed arrangements with the *delivering Dealer Member* so that the *account transfer* can be considered completed. (2) Any loan in clause (1)(ii) must be marked to market and the assets will be considered delivered to the *receiving Dealer Member* to settle the account transfer.
Rule 2300.7	**4810. Non-certificated mutual funds** (1) Non-certificated mutual fund securities are considered transferred when the *delivering Dealer Member* delivers to the *receiving Dealer Member*: (i) a completed mutual fund transfer form; and (ii) a completed and signed power of attorney; or (iii) by entry of transfer instructions in the electronic account transfer facility of FundSERV Inc.

Repealed current rule	Proposed plain language rule
Rule 2300.8	**4811. Interest or dividend receipt balances** (1) Interest or dividend receivable balances must be settled promptly between a *delivering Dealer Member* and *receiving Dealer Member*. Despite any failure to settle these balances, a *Dealer Member* must comply with the *account transfer* procedures in Part C of Rule 4800.
Rule 2300.5, 2nd paragraph	**4812. Margin** (1) A *Dealer Member* must not accept an *account transfer* from another *Dealer Member* if the account has a margin deficiency. (2) Subsection (1) does not apply if at the *account transfer* time the *receiving Dealer Member* has sufficient funds or collateral to the client's credit available to cover the account's margin deficiency.
Rule 2300.9	**4813. Responsibility for margining account** (1) The *receiving Dealer Member* must assume the responsibility for margining all assets and money balances relating to the transferred account at the earlier of: (i) the date that the transfer of all assets and money balances is completed; and (ii) 20 clearing days after receipt by the delivering *Dealer Member* of the request for transfer.
Rule 2300.10	**4814. Fees and charges** (1) Before or at the time of *account transfer*, a *delivering Dealer Member* may deduct any fee or charge on the account in accordance with the *delivering Dealer Member*'s current published fee and charge schedule.
Rule 2300.11	**4815. Corporation exemption** (1) The *Corporation* may exempt a *Dealer Member* from the requirements of this Rule 4800 if the *Corporation* is satisfied that to do so would not prejudice the interests of the *Dealer Member*, its clients, or the public. (2) In granting an exemption under subsection (1), the *Corporation* may impose any terms and conditions it considers necessary.
New	**4816. – 4899. – Reserved.**

Repealed current rule	Proposed plain language rule
New	**Rule 4900 – Other Internal Control Requirements**
New	**4901. Introduction** (1) Rule 4900 sets out the following internal control requirements: (i) Derivative risk management ***[Part A, Sections 4910 through 4914]***;
New	**4902. - 4909. - Reserved**
New	**Part A – Derivative risk management**
New	**4910. Introduction** (1) A Dealer Member must have an independent risk management function to: (i) manage the risks resulting from its use of derivatives which include exchange and over-the-counter traded derivatives, (ii) ensure that the level of management that reports to the board (referred to as "senior management") understands all risks, and (iii) ensure that its risk adjusted capital is calculated properly.
Rule 2600, Statement 8 – Control Objective and Minimum required firm policies and procedures (4)(i)	**4911. Risk management process** (1) A Dealer Member must have a risk management function with clear independence and authority to ensure risk limit policies are developed and transactions and positions are monitored for adherence to these policies. (2) A Dealer Member must have a risk management process to identify, measure, manage, and monitor risks associated with the use of derivatives. (3) The risk management process has two parts: (i) Management must be knowledgeable of the nature and risks of all derivative products used in treasury, proprietary, institutional and retail activities; and (ii) The Dealer Member must create written policies and procedures that clearly outline risk management guidance for derivatives activities. (4) A Dealer Member's financial accounting department must measure the Dealer Member's revenue components regularly and in sufficient detail to understand risk sources.
Rule 2600, Statement 8 - Minimum required firm policies and procedures (1)	**4912. Role of board of directors** (1) A Dealer Member's board of directors or equivalent management level must approve all significant risk management policies to ensure they are consistent with the Dealer Member's overall broader business strategies and appropriate for market conditions. (2) Senior management must report at least annually to the Dealer Member's board on a Dealer Member's risk exposure.
Rule 2600, Statement 8 - Minimum required firm policies and procedures (2)	**4913. Role of senior management** (1) A Dealer Member's senior management must ensure that for derivative products:

Repealed current rule	Proposed plain language rule
	(i) there are adequate written policies and procedures for processing, trading, monitoring and reporting cycles including: (a) clear responsibility lines for risk management; (b) an adequate system for measuring risk; (c) appropriate risk position limits; (d) effective internal controls; and (e) a comprehensive reporting process; (ii) if risk position limits are exceeded, there is a system to ensure that these excesses are approved only by authorized personnel and communicated to senior management; (iii) all appropriate approvals are obtained and adequate operational procedures and risk control systems are in place; (iv) appropriate risk control systems address market, credit, legal, operational, and liquidity risks; (v) derivatives activities are undertaken by a sufficient number of professionals with appropriate experience, skill levels, and certification; (vi) risk management procedures are regularly evaluated for appropriateness and soundness; (vii) it approves all standard and non-standard derivative product programs; and (viii) there is an accurate, complete, informative, and timely management information system. (ix) the risk management function monitors and reports risk metrics to appropriate senior management and to the Dealer Member's board of directors or equivalent management level.
Rule 2600, Statement 8 - Minimum required firm policies and procedures (3)	**4914. Pricing** (1) In addition to Rule 4690's requirements, "Pricing Securities", a Dealer Member must comply with the requirements below in pricing derivatives. (2) Derivatives positions must be marked to market at least daily. (3) A Dealer Member's independent risk management function must: (i) validate all pricing models, including computing market data or model inputs; (ii) review and approve pricing models and valuation systems used by front- and back-office personnel; and (iii) review and approve reconciliation procedures if different systems are used. (4) Valuations derived from models must be independently reviewed at least monthly.
New	**4915. – 4999. – Reserved.**

ATTACHMENT B

GUIDANCE NOTE 4150-1
CICA ACCOUNTING STANDARDS FOR FINANCIAL INSTRUMENTS
[LINK Section 4151]

This Guidance Note 4150-1 helps Dealer Members apply Canadian Institute of Chartered Accountants (CICA) accounting standards for *financial instruments*. A Dealer Member or its auditor must apply these standards when preparing the financial filings required by Section 4151. Under the CICA accounting standards, a Dealer Member must identify all of its *financial instruments* to ensure the terms and conditions of financial and non-financial contracts are understood, appropriately classified, and documented. The financial instrument classification worksheet is attached to this Guidance Note at Appendix A.

A Dealer Member must classify each financial and non-financial contract into one of five categories in its internal accounting policies. For each of the categories, the CICA accounting standards also prescribe measurement methods for assets and obligations, and methods of income recognition for *financial instruments.* For further information on these CICA standards and definitions, a Dealer Member should review the CICA Handbook (HB).

Although Guidance Note 4150-1 gives guidance for a Dealer Member, it does not cover everything in the CICA accounting standards. For example, it does not cover accounting treatment for securities with embedded options and non-financial instruments with embedded options. Consequently, a *Dealer Member's auditor* can provide professional accounting advice to the Dealer Member on such matters.

APPENDIX A

CICA Section 3855 - Financial Instruments Classification Work Sheet for Dealer Members

Form 1 – Statement A
STATEMENT OF ASSETS

Reference		Categories	Initial measurement	Subsequent measurement	Gains and losses (Note 4)
LIQUID ASSETS:					
1	Cash on deposit with Acceptable Institutions	Held for trading	FMV	FMV	P&L
2	Funds deposited in trust for RRSP and other similar accounts	Held for trading	FMV	FMV	NA
3. Stmt. D	Cash, held in trust with Acceptable Institutions, due to free credit ratio calculation	Held for trading	FMV	FMV	NA
4	Variable base deposits and margin deposits with Acceptable Clearing Corporations *[cash balances only]*	Held for trading	FMV	FMV	P&L
5	Margin deposits with Regulated Entities *[cash balances only]*	Held for trading	FMV	FMV	P&L
6. Sch.1	Loans receivable, securities borrowed and resold	Held for trading	FMV	FMV[1]	P&L
7. Sch.2	Securities owned – at market value	Held for trading	FMV	FMV	P&L
	Securities owned – not reliably measurable	Available for sale	FMV	Cost	P&L
8. Sch.2	Securities owned and segregated due to free credit ratio calculation	Held for trading	FMV	FMV	P&L
9	Syndicate and joint trading accounts	Held for trading	FMV	FMV	P&L
10. Sch.4	Clients' accounts	Receivable	FMV	Amortized cost	P&L
11. Sch.5	Brokers and dealers trading balances	Receivable	FMV	Amortized cost	P&L
12	Receivable from carrying broker or mutual fund	Receivable	FMV	Amortized cost	P&L
13	TOTAL LIQUID ASSETS				
OTHER ALLOWABLE ASSETS (RECEIVABLES FROM ACCEPTABLE INSTITUTIONS):					
14. Sch.6	Recoverable and overpaid income taxes	Scope exception	-	-[2]	
15	Recoverable and overpaid taxes	Scope exception	-	-[3]	

[1] Default regulatory option
[2] CICA HB Section 2465
[3] CICA HB Section 3465

Reference		Categories	Initial measurement	Subsequent measurement	Gains and losses (Note 4)
16	Commissions and fees receivable	Receivable	FMV	Amortized cost	P&L
17	Interest and dividends receivable	Receivable	FMV	Amortized cost	P&L
18	Other receivables *[attach details]*	Receivable	FMV	Amortized cost	P&L
19	TOTAL OTHER ALLOWABLE ASSETS				
NON ALLOWABLE ASSETS					
20	Other deposits with Acceptable Clearing Corporations *[cash or market value of securities lodged]*	Held for trading	FMV	FMV	P&L
21	Deposits and other balances with non-acceptable clearing corporation *[cash or market value of securities lodged]*	Held for trading	FMV	FMV	P&L
22	Commissions and fees receivable	Receivable	FMV	Amortized cost	P&L
23	Interest and dividends receivable	Receivable	FMV	Amortized cost	P&L
24	Fixed assets – at depreciated value	Scope exception	-	-	
25	Stock exchange seats (for Bourse shares)	GAAP departure	Cost	Cost	P&L
26	Capitalized leases	Scope exception	-	-	-
27	Investments in subsidiaries and affiliates	GAAP departure	Cost or equity method	Cost or equity method	Note 2
	Advances to subsidiaries and affiliates	Receivable	FMV	Amortized cost	
28	Other assets *[attach details]*				P&L
	Prepaid expenses	Scope exception	-	-[4]	
	Future tax assets (FTA)	Scope exception	-	-[5]	
	Cash surrender value of life insurance	Receivable	FMV	Amortized cost	-
	Intangibles	Scope exception	-	-[6]	P&L
	Deferred charges	Scope exception	-	-[7]	-
	Advances to employees	Receivable	FMV	Amortized cost	-
	Other receivables from other than Acceptable Institutions	Receivable	FMV	Amortized cost	P&L

4 CICA HB Section 3040
5 CICA HB Section 3465
6 CICA HB Section 2063
7 CICA HB Section 1510

Reference		Categories	Initial measurement	Subsequent measurement	Gains and losses (Note 4)
	Cash on deposit with non- Acceptable Institutions	Held for trading	FMV	FMV	P&L
29	TOTAL NON ALLOWABLE ASSETS				
30	TOTAL ASSETS		$	$	$

STATEMENT OF LIABILITIES AND SHAREHOLDER/PARTNER CAPITAL

Reference		Categories	Initial measurement	Subsequent measurement	Gains and losses (Note 4)
CURRENT LIABILITIES:					
51. Sch.7	Overdrafts, loans, securities loaned and repurchases	Held for Trading	FMV	FMV[8]	P&L
52. Sch.2	Securities sold short – at market value	Held for Trading	FMV	FMV	P&L
	Securities sold short – not reliably measurable	Available for Sale	FMV	Cost	P&L
53	Syndicate and joint trading accounts	Held for Trading	FMV	FMV	P&L
54. Sch.4	Clients' accounts	Other Financial Liability	FMV	Amortized Cost	P&L
55. Sch.5	Brokers and dealers	Other Financial Liability	FMV	Amortized Cost	P&L
56. Sch.6	Income taxes payable	Scope Exception	-	-[9]	
57. Sch.6	Future Tax Liabilities – current portion	Scope Exception	-	-[10]	
58	Bonuses payable	Other Financial Liability	FMV	Amortized Cost	P&L
59	Accounts payable and accrued expenses	Other Financial Liability	FMV	Amortized Cost	P&L
60	Capital leases and lease-related liabilities – current portion	Scope Exception	-	-[11]	-
61	Other current liabilities *[attach details]*				
	Unclaimed dividends and interest	Other Financial Liability	FMV	Amortized Cost	P&L
	Due to carrying broker	Other Financial Liability	FMV	Amortized Cost	P&L
	Corporate finance liabilities	Other Financial Liability	FMV	Amortized Cost	P&L
	Principal and agent liabilities	Other Financial	FMV	Amortized Cost	P&L

[8] Default regulatory option
[9] CICA HB Section 3465
[10] CICA HB Section 3465
[11] CICA HB Section 3065

Reference		Categories	Initial measurement	Subsequent measurement	Gains and losses (Note 4)
		Liability			
62	TOTAL CURRENT LIABILITIES				
LONG TERM LIABILITIES					
63. Sch.6	Non-current future tax liability	Scope Exception	-	-[12]	-
64	Non-current portion of capitalized leases and lease-related liabilities	Scope Exception	-	-[13]	-
65	Other long-term liabilities *[attach details]*	Other Financial Liability	FMV	Amortized Cost	P&L
66	TOTAL LONG-TERM LIABILITIES				
67	TOTAL LIABILITIES*[line 62 plus line 66]*				
FINANCIAL STATEMENT CAPITAL:					
68	Non-current portion of capitalized leases qualifying as capital *[see note]*	Line item not applicable	-	-	-
69. G-6	Subordinated loans – approved non-industry investors	GAAP departure	-	Note 1	-
70. G-6	Subordinated loans – industry investors	GAAP departure	-	Note 1	-
71. F-A-3	Capital	Scope Exception	-	-[14]	
72. F-C-3	Retained earnings or undivided profits	GAAP departure	-	Note 1	Note 3
73	TOTAL FINANCIAL STATEMENT CAPITAL				
74	TOTAL LIABILITIES AND CAPITAL		$	$	$

Notes

Note 1: *Default regulatory requirement – GAAP departure which requires disclosed basis of accounting policy in note 2 of the financial statements.*

Note 2: *Accounting for equity pick-up or the unrealized gain or loss on the foreign exchange translation of self-sustaining subsidiaries.*

Note 3: *In reference to GAAP departure relating to equity pick-up or self-sustaining foreign entity translation to be reported on Statement E, Line 30 and Statement F line C2(c).*

Note 4: *Timing for items denoted as P&L are as follows: a) immediately for HFT; b) immediately for impairments on AFS, or else when realized; c) immediately for impairments and foreign translation on L&R and Other Liabilities, or else when realized.*

[12] CICA HB Section 3465
[13] CICA HB Section 3065
[14] CICA HB Section 3420

INSTRUCTION 4150-1
REGULATORY FINANCIAL REPORT FILING REQUIREMENTS
[LINK Sections 4151 and 4153]

The following instructions apply to Dealer Member *MFR* and audited *Form 1* filings.

Questions on filings	Document to file	
	Monthly Financial Report (MFR)	**Audited Form 1**
1. How often must it be filed?	Monthly, as at the end of each calendar month, unless otherwise agreed by the IIROC and the Dealer Member	Annually, as at fiscal year end, unless otherwise agreed by the IIROC and the Dealer Member
2. How must it be filed?	Electronically	Electronically and hard copy
3. When must it be filed?	Within 20 business days of the end of the month	Within 7 weeks of the audit date
4. What must it contain?	Statements A, B, C, D, and E Schedules 2, 4 (only margin account balance items 3.a and 3.d), 10, 13, 13A, 14 and 15 of *Form 1*	*Form 1*
5. Who must sign it?	CEO and CFO	Certificate of Partners or Directors (*Form 1*) - CEO/Partner - CFO - Chief accountant - At least 2 other directors or partners who are not the above Auditors' Report (*Form 1*) - Dealer Member's auditor
6. How is it signed and filed?	The CFO, using SIRFF, files it electronically with IIROC. Signed paper copy kept on file at Dealer Member's office.	The CFO, using SIRFF, files it electronically with the Dealer Member's auditor. The *Dealer Member's auditor*, using SIRFF and hand delivery, files it electronically and in paper copy form (2 copies) with the IIROC. Signed paper copy kept on file at Dealer Member's office
7. How long must paper copies be kept on file?	6 years, with the 3 most recent readily available for IIROC review.	6 years, with the 2 most recent readily available for IIROC review along with the related working papers.
8. What happens if filing is late?	A fee of $100/day is assessed, based on the date of the SIRFF filing	A fee of $250/day is assessed based on the later of the date of the SIRFF filing and the paper copy filing.

GUIDANCE NOTE 4310-1
SEGREGATION - INDICATIONS THAT INTERNAL CONTROL IS NOT ADEQUATE

This Guidance Note supplements Rule 4300, Part A, Sections 4327 through 4331, which set out minimum required internal control policies and procedures related to segregation. The following may indicate weak or inadequate internal controls for segregated securities.

1. Insufficient attention to preventing violations

A *Dealer Member* pays insufficient attention to preventing violations of legal and regulatory requirements for *segregated securities*, including preventing the hypothecation of *segregated securities*.
[Rule 2600, Statement 4, Indications that Internal Control is not Adequate, 1st bullet point]

2. Ill-informed staff

Dealer Member's staff persons responsible for segregation procedures are ill-informed of their duties or insufficiently trained.
[Rule 2600, Statement 4, Indications that Internal Control is not Adequate, 2nd bullet point]

3. No testing of report reliability

A Dealer Member takes no steps to establish the reliability of *segregation report*s produced by its service bureau.
[Rule 2600, Statement 4, Indications that Internal Control is not Adequate, 3rd bullet point]

4. Persistent segregation deficiencies

A Dealer Member's management does not give proper attention to segregation deficiencies that persist for an extended period of time.
[Rule 2600, Statement 4, Indications that Internal Control is not Adequate, 4th bullet point]

5. Custodians are not *acceptable securities locations*

A Dealer Member holds securities at locations that do not meet the criteria of an *acceptable securities location* either in general or because there is no written custodial agreement with the custodians that would otherwise meet the criteria of an acceptable securities location.
[Rule 2600, Statement 4, Indications that Internal Control is not Adequate, 5th bullet point]

GUIDANCE NOTE 4340-1
SECURITIES HELD IN CUSTODY –
SECURITIES HELD IN A FOREIGN JURISDICTION

This Guidance Note includes the following forms:

(1) Foreign Custodian Questionnaire and Certificate as Appendix 1;

(2) Client Consent and Waiver as Appendix 2.

This Guidance Note provides guidance on:

(1) the Dealer Member's approval of foreign institutions or securities dealers as acceptable securities locations under section 4348;

(2) the format of the client waiver that may be obtained under section 4351; and

(3) the Dealer Member's year-end audit requirements for securities held with foreign institutions or securities dealers as acceptable securities locations or for securities held in securities locations where client waivers have been obtained under section 4351.

Approval of foreign institutions or securities dealers as acceptable securities locations [LINK: Rule 4300, Part B, Sections 4343 through 4351]

A Dealer Member must hold securities that are not under its control or physical possession at prescribed *acceptable external securities locations*. A foreign institution or securities dealer may be an *acceptable external securities location* if it meets the applicable criteria and is approved by the Corporation as an acceptable securities location. To obtain the Corporation's approval of a foreign institution or securities dealer as an acceptable securities location, a Dealer Member must: perform due diligence; approve the foreign institution or securities dealer as an *acceptable external securities location*; and complete a certificate in the form prescribed in Appendix 1 evidencing its due diligence and approval.

Format of the client waiver [LINK: Rule 4300, Part B, Section 4351]

In some foreign jurisdictions, it may not be possible for a Dealer Member to hold securities in an *acceptable external securities location.* In these cases, the Dealer Member must obtain a waiver from the client under section 4351.

If a Dealer Member holds securities in a foreign jurisdiction that does not meet the criteria of an *acceptable external securities location* specified in the *Corporation's requirements*, and the Dealer Member has not obtained a client waiver, then these securities are considered to be held at a non-acceptable securities location. *[IDA Member Regulation Notice MR0033]*

Appendix 2 is a client consent and waiver form that may be used if a client agrees to waive the requirement for a Dealer Member to hold securities at an *acceptable external securities location. [IDA Member Regulation Notice MR0033, Q.4]*

Year-end audit requirements

Annual evidence of Dealer Member's approval of location

See requirements for "Annual approval of foreign institutions or securities dealers as acceptable securities locations in section 4350.

Positive confirmation of security positions

During the course of an annual audit, a *Dealer Member's auditor* must obtain 100% positive confirmation of all the Dealer Member's *security* positions as at year-end [LINK Rule 4100, Part D, Clause 4182(1)(ii)]. This includes positions held at:

(a) foreign institutions or securities dealers as acceptable securities locations approved by the Dealer Member; and

(b) securities locations where clients have provided a waiver for their securities under section 4351.

A Dealer Member must advise its clients of any securities held under a client waiver that are unconfirmed.

Form 1 filings

For year-end *Form 1* filings, a Dealer Member must provide as supplementary disclosure to the Corporation:

(a) a list of approved foreign institutions or securities dealers as acceptable securities locations where its securities are held;

(b) the market value of securities held at those locations;

(c) a list of those locations where the Dealer Member's auditor has not obtained a positive confirmation at the time of filing; and

(d) the amount of capital provided for the positions in (c).

[IDA Member Regulation Notice MR0033, Q.5]

Appendix 1

FOREIGN CUSTODIAN QUESTIONNAIRE AND CERTIFICATE

(Dealer Member Name) ("Dealer Member")

On behalf of the Board of Directors or duly constituted committee thereof, we certify that the following information is true and correct and after considering the criteria in this certificate have approved _____ ("custodian") located in _____ (country) as custodian of the Dealer Member securities holdings.

Please answer the following questionnaire:	**ANSWERS (YES/NO)**
1. The holding of Dealer Member assets in the country is consistent with the best interests of the Dealer Member's shareholders and clients after giving due regard to the following considerations: • whether applicable law would restrict access by the Dealer Member's external auditors to books and records kept by a custodian in that country; • whether applicable foreign law would restrict the Dealer Member's ability to recover assets in the event of the failure of the custodian in that country; • whether applicable foreign law would restrict the Dealer Member's ability to recover assets that are lost while under the control of the custodian in that country; • the likelihood of expropriation, nationalization, freezes or confiscation of Dealer Member assets in that country; • whether difficulties exist in converting Dealer Member assets to Canadian dollars are reasonably foreseeable.	_____
2. The holding of Dealer Member assets by this custodian is consistent with the best interests of Dealer Member shareholders and clients after giving due regard to the following considerations: • the financial strength of the custodian, its general reputation and standing in the country, its ability to efficiently provide the custodial services required and the relative costs for those services; • whether the custodian would provide a level of safeguards for maintaining Dealer Member assets not materially different from that provided by a Dealer Member's Canadian custodians in maintaining Dealer Member securities in Canada; • whether the custodian has branch offices in Canada to facilitate the assertion of jurisdiction over and enforcement of judgments against the custodian.	_____
3. The Dealer Member has executed a written custodial agreement with the custodian and is in compliance with the provisions of section 4443.	_____
4. The Dealer Member has established a system of monitoring the foreign custody arrangements to ensure that securities held at this custodian are limited to an amount reasonably necessary to effect the Dealer Member's foreign securities transactions.	_____
5. The Board of Directors or committee thereof, at least annually will review and approve the continuance of this custodial arrangement to ensure that it is consistent with the best interests of the Dealer Member and its shareholders and clients.	_____

6. If at any time it is determined that the continuance of the arrangement with the custodian is not consistent with the best interests of the Dealer Member and its shareholders and clients, or if the custodian is no longer approved by the IIROC, the Dealer Member undertakes to withdraw assets held for it from the custodianship of that particular custodian as soon as reasonably practical, and in any event no longer than 180 days of the date of determination.

Chief Executive Officer

Chief Financial Officer

Appendix 2

CONSENT AND WAIVER

Account name _____
Account number _____

[Dealer Member name]

Consent and Waiver

The undersigned hereby expressly authorize(s) you to deposit the following securities _____ [**insert type or category of securities**] (collectively, the "Foreign Securities") held for accounts of the undersigned by you with _____ [**insert name of foreign custodian**] (the "Foreign Custodian") in _____ [**insert address of Foreign Custodian**].

The undersigned acknowledges that conditions exist under governing laws of in _____ [**country**] that restrict the movement of securities in _____ [**country**] out of that country and that prevent compliance by the Foreign Custodian with criteria for custodial and client securities segregation arrangements required by Canadian regulatory standards. Therefore, the safety and recovery of securities held for the undersigned by you with the Foreign Custodian cannot be assured.

The undersigned hereby accept(s) all risks arising because the Foreign Custodian is the depository of the Foreign Securities and hereby waives any claim it may have against you and relieves you of any liability with respect to any loss of the Foreign Securities held for accounts of the undersigned with you by the Foreign Custodian. For greater certainty the undersigned acknowledges that no capital or margin is required to be maintained by you in respect of the Foreign Securities held by the Foreign Custodian. The undersigned further acknowledges that no claim may be made by the undersigned under the Canadian Investor Protection Fund in the event of a loss in accounts of the undersigned from the inability to recover or deliver the Foreign Securities.

The Consent and Waiver remain valid until the Foreign Securities are returned by the Foreign Custodian to you to be held in my accounts with you in accordance with Canadian securities segregation requirements.

Dated at _____ , _____ [**date**]

Signature(s):

_____

_____

_____
(**Dealer Member signature**)

GUIDANCE NOTE 4340-2
SECURITIES HELD IN CUSTODY –
CUSTODIAL AGREEMENT REQUIREMENT AND MARGIN REQUIREMENTS

This Guidance Note provides direction on a Dealer Member's custody obligations and interprets certain margin requirements in Rule 4300, Part B, Sections 4365 and 4366, that apply when a Dealer Member:

(1) does not have a written custodial agreement with an *external securities location*; and/or

(2) does not reconcile its mutual fund or evidence of deposit securities positions with the statements issued by its mutual fund or financial institution custodian.

Included as appendices to this Guidance Note are the following:

- Appendix 1 - the standard custodial agreement
- Appendix 2 - the standard custodial agreement for non-certificated debt
- Appendix 3 - the Bare Trustee Custodial Agreement for mutual fund securities
- Appendix 4 - a Custodial Agreement Decision Tree for determining capital charges
- Appendix 5 - a summary of the custody related margin requirements

WRITTEN CUSTODIAL AGREEMENT REQUIREMENT

AGREEMENTS BETWEEN A DEALER MEMBER AND AN EXTERNAL CUSTODIAN

A Dealer Member must execute a custodial agreement for securities held at external securities locations. This Guidance Note discusses two types of written custodial agreements. First, it covers those agreements between a Dealer Member and an external securities location that otherwise qualifies as an acceptable external securities location, as required by section 4352. Second, it covers those agreements with certain third party custodians in which the Corporation acts as a bare trustee for Dealer Members, as covered in section 4353.

Background

A Dealer Member has a custody obligation for all securities held in nominee name. A Dealer Member may also have a safekeeping obligation for securities held in client name, depending upon whether or not the client named securities are under the Dealer Member's control. If those nominee name and client name securities are under the Dealer Member's control, the Dealer Member has a custody obligation and a safekeeping obligation, respectively, and must hold them at an acceptable internal securities location or at an *acceptable external securities location*. [LINK: Rule 4300, Part B, Section 4341] For an external securities location to qualify as an *acceptable external securities location*, the location must meet the requirements in section 4347 and Form 1, which includes the requirement that the Dealer Member have a written custodial agreement with the external securities location.

If a Dealer Member does not have a written custodial agreement for an external securities location, the location is considered to be a non-acceptable securities location. Security positions held at such locations are subject to additional margin requirements. [LINK: Rule 4300, Part B, Section 4365 and Form 1, Statement B, Line 18]

Custody obligation and arrangements requiring custodial agreement

The Dealer Member has a custody obligation for all securities held in nominee name, whether held in book-based or physical form. This includes mutual fund positions and financial institution-issued evidences of deposit. Table 1 details situations when a custodial agreement, a safekeeping agreement, and when no agreement is required.

Table 1: Required use of custodial agreements and safekeeping agreements.

	Nominee name	Client name
Book-based certificate	Security "held" at location external to the Dealer Member in nominee name. ***External location*** - Dealer Member must verify that location otherwise qualifies as an acceptable external securities location and execute a *custodial agreement*	Security "held" at location external to the dealer in client name and outside of Dealer Member control. ***External location*** - Position is not reported on Dealer Member books and *no agreement is required*
Physical certificate	Security may be held at location either external to or within the Dealer Member in nominee name. ***External location*** - Dealer Member must verify that location otherwise qualifies as an acceptable external securities location and execute a *custodial agreement* ***Within the Dealer Member*** - Dealer Member must verify compliance with sections 4343, 4344, and 4345.	Security may be held at location either external to (either subject to dealer control or not) or within the Dealer Member in client name. ***External location and subject to Dealer Member control*** - Dealer Member must verify that location otherwise qualifies as an acceptable external securities location and execute a *safekeeping agreement* ***External location and not subject to Dealer Member control*** - Position is not reported on Dealer Member books and *no agreement is required* ***Within the Dealer Member*** - Dealer Member must verify compliance with sections 4343, 4344, and 4345.

Margin implications of not having a custodial agreement in place

If a Dealer Member does not have a written custodial agreement with a custodian, and that entity would otherwise qualify as an acceptable securities location, margin totaling up to 10% of the market value of the securities must be deducted on Statement C to account for "agreement risk".

Without a written custodial agreement in place, "set-off risk" is also a concern. A financial institution that is both a custodian and a securities issuer could set-off the amount owed by a Dealer Member to the custodian against the redemption value of a security redeemed by the Dealer Member on behalf of a client. For example, an evidence of deposit is generally held at a financial institution issuer in nominee name by a Dealer Member for its client. When the Dealer Member redeems the investment on behalf of its client, the financial institution could potentially set-off its redemption obligation to pay by any amounts owed by the Dealer Member to the financial institution. Table 2 summarizes the margin implications of having and not having a custodial agreement with an external custody location.

Table 2: Summary of margin requirements regarding custodial agreements and an external custody location.

External custody location situation	Margin requirements
1. Location is an entity meeting the "acceptable securities locations" definition in Form 1 AND *Dealer Member has executed an acceptable custodial agreement with the institution.*	No margin required unless there are unresolved differences pursuant to section 4366

External custody location situation	Margin requirements
2. Location is a non-acceptable securities location AND *Dealer Member has obtained client waivers for positions held. Dealer Member has executed an acceptable custodial agreement with the institution.*	No margin required pursuant to section 4362
3. Location is an entity meeting the "acceptable securities locations" definition in Form 1 AND *Dealer Member has not executed an acceptable custodial agreement with the institution.* OR 4. Location is a non-acceptable securities location AND *Dealer Member has obtained client waivers for positions held. Dealer Member has not executed an acceptable custodial agreement with the institution.*	*No set-off risk present:* Margin requirement in determining early warning excess and early warning reserve equal to 10% of the market value of securities held in custody pursuant to subsection 4365(2). *Set-off risk present:* Two margin requirements, one in determining early warning excess and early warning reserve, and the other in determining RAC, which on a combined basis may be up to a maximum of 100% of the market value of securities held in custody pursuant to subsection 4365(3).

Examples of calculations

The following examples illustrate how the calculations would work for specific situations.

Example #1

A Dealer Member enters into a custodial arrangement with ABC Custody Services, but does not sign a custodial agreement to document the arrangement. The market value of the securities held in custody is $10 million. The Dealer Member has no other business with ABC Custody Services. ABC Custody Services would otherwise qualify as an acceptable securities location except for the fact that a custodial agreement was not signed.

Margin requirements

- Setoff risk requirement - Nil

  The Dealer Member has no other business with ABC Custody Services so it has no other obligations.

- Agreement risk requirement - $1 million

  The requirement is 10% of the market value of the securities at ABC Custody Services which is $1 million. This amount is deducted on Line 2(c) of Statement C as part of the early warning excess and early warning reserve calculation.

Example #2

A Dealer Member enters into a custodial arrangement with DEF Custody Services, but does not sign a custodial agreement to document the arrangement. The value of the securities held in custody is $10 million. The Dealer Member also enters into a significant number of securities borrowing and lending transactions with DEF Custody Services on an ongoing basis, and as at the date of calculation has received a call from DEF Custody Services to provide additional collateral in the amount of $5 million. The Dealer Member has no other business with DEF Custody Services apart from the custodial arrangement and the securities borrowing and lending transactions activity. DEF Custody Services would otherwise qualify as an acceptable securities location except for the fact that a custodial agreement was not signed.

Margin requirements.

- Setoff risk - $5 million.

  The amount of the setoff risk requirement is the lesser of the setoff risk exposure ($5 million) and the value of the securities held in custody ($10 million). This amount is deducted on Line 18 of Statement B as part of the *RAC* calculation.

- Agreement risk requirement - $1 million

  The requirement is 10% of the market value of the securities at DEF Custody Services, which is $1.0 million. This amount is deducted on Line 2(c) of Statement C as part of the early warning excess and early warning reserve calculation.

Example #3

A Dealer Member enters into a custodial arrangement with GHI Custody Services, but does not sign a custodial agreement to document the arrangement. The value of the securities held in custody is $10 million. The Dealer Member also enters into a significant number of securities borrowing and lending transactions with GHI Custody Services on an ongoing basis, and as at the date of calculation has received a call from GHI Custody Services to provide additional collateral in the amount of $9.5 million. The Dealer Member has no other business with GHI Custody Services apart from the custodial arrangement and the securities borrowing and lending transactions activity. GHI Custody Services would otherwise qualify as an acceptable securities location except for the fact that a custodial agreement was not signed.

Margin requirements

- Setoff risk - $9.5 million.

  The amount of the setoff risk requirement is the lesser of the setoff risk exposure ($9.5 million) and the value of the securities held in custody ($10 million). This amount is deducted on Line 18 of Statement B as part of the *RAC* calculation.

- Agreement risk requirement - $0.5 million

  The requirement is normally 10% of the market value of the securities at GHI Custody Services which is $1.0 million. However because $9.5 million is already being provided above for setoff risk and the total losses are limited to the value of the securities held in custody ($10 million), the requirement in this case is reduced to $0.5 million. This amount is deducted on Line 2(c) of Statement C as part of the early warning excess and early warning reserve calculation.

Summary of examples

Example #1 illustrates that when a Dealer Member has no other business with an outside custodian that otherwise qualifies as an *acceptable securities location*, the margin requirement when the Dealer Member does not execute a written custodial agreement (in a form acceptable to the Corporation) is limited to a 10% charge as part of the early warning excess and early warning reserve calculation.

Example #2 illustrates that when a Dealer Member has other business with an outside custodian that otherwise qualifies as an *acceptable securities location*, the margin requirement when the Dealer Member does not execute a written custodial agreement (in a form acceptable to IIROC) has two parts:

- A charge for any setoff risk exposure to the custodian as part of the *RAC* calculation; and

- A 10% charge as part of the early warning excess and early warning reserve calculation.

Example #3 illustrates that in total, the charges provided for in the *RAC* and early warning excess and early warning reserve calculations do not exceed 100% of the market value of the securities held in custody.

Sub-custodial arrangements

If a Dealer Member has a master global custodial agreement with an *acceptable institution* and the Dealer Member's master global custodial agreement with the *acceptable institution* provides that securities are also held in sub-custodial locations, the custodial agreement must contain a legally enforceable indemnity of the *acceptable institution* in favour of the Dealer Member for all losses, claims, damages, costs and liabilities for securities and other property held for the Dealer Member and its clients

at all sub-custodial locations disclosed to the Dealer Member. If a Dealer Member is aware of its global custodian using sub-custodial locations but has not obtained this indemnity, the Dealer Member will be subject to capital charges.

To ensure that global custodial arrangements are in compliance with the requirements noted above, a Dealer Member should consult with the Corporation before finalizing any agreement.

AGREEMENTS BETWEEN THE CORPORATION, AS BARE TRUSTEE, AND AN EXTERNAL CUSTODIAN

Background –

The Corporation enters into custodial agreements, as bare trustee for the Dealer Members, with certain third party custodians for mutual funds, book-based Canada Savings Bonds and evidences of deposit. The bare trustee custodial agreement with a third party custodian fulfills the Dealer Member's obligation to enter into a written custodial agreement with that custodian. [LINK Rule 4300, Part B, Section 4353] Dealer Members thus avoid a multiplicity of custodial agreements with those third party custodians. *[IDA Bulletin #3618, IDA Compliance Interpretation Bulletin C–81, IDA Bulletin #2588, IDA Member Regulation Notice MR0080]*

The IDA and *CIPF* entered an agreement dated May 9, 2005 in which all existing custody agreements executed in the name of *CIPF* as bare trustee were assigned to the IDA for administration on a going forward basis. With the formation of IIROC on June 1, 2008, all existing custody agreements were assigned to IIROC. All references in this Guidance Note to current bare trustee custodial agreements describe IIROC as a signatory. IIROC now enters into bare trustee custodial agreements on behalf of Dealer Members. *[IDA Member Regulation Notice MR0475]*

A bare trustee custodial agreement must contain the minimum terms prescribed in Rule 4352. [LINK: Rule 4300, Part B, Section 4352]

Agreements with mutual funds and financial institutions

A Dealer Member satisfies the requirement to have a written custodial agreement with a mutual fund or a financial institution issuer of evidences of deposit if:

(a) the Dealer Member signs a prescribed custodial agreement directly with the mutual fund or financial institution; or

(b) The Corporation, acting as bare trustee for Dealer Members, has a written custodial agreement with that mutual fund or financial institution.

Custodial agreement between a Dealer Member and a mutual fund or financial institution custodian

The custodial agreement in Appendix 1 may be used by a Dealer Member and a mutual fund custodian for mutual fund securities, and the custodial agreement in Appendix 2 may be used by a Dealer Member and a financial institution for non-certificated evidences of deposit.

Bare trustee custodial agreement with a mutual fund or financial institution

A Dealer Member may arrange for a bare trustee custodial agreement with a mutual fund or a financial institution in two ways. First, a Dealer Member may ask the Corporation to request that a mutual fund or financial institution sign the prescribed custodial agreement and return it to the Corporation for signature.

(a) The Dealer Member must give the Corporation the name, address and name of the contact person for the mutual fund or financial institution.

(b) The Corporation will send the custodial agreement to the mutual fund or financial institution for signature.

Second, a Dealer Member may provide a blank copy of the prescribed custodial agreement directly to the mutual fund or financial institution and ensure that the signed agreement is forwarded to the Corporation for signature.

MARGIN IMPLICATIONS – RECONCILIATION OF SECURITIES POSITION

A basic principle of securities regulation is to safeguard securities and client assets. A Dealer Member that holds all securities that are not under its control or physical possession in an *acceptable external securities location* is subject to margin requirements resulting from unreconciled differences, if any.

General

(1) A Dealer Member must reconcile its mutual fund and evidence of deposit securities positions at least monthly with records, account statements, or electronic files provided by the mutual fund or financial institution custodian. [LINK: Rule 4300, Part B, Section 4360]

(2) A Dealer Member that has not reconciled its balances and securities positions with the records provided by the mutual fund or financial institution custodian must provide margin for unresolved differences [LINK: Rule 4300, Part B, Section 4366 and Form 1, Statement B, Line 20]

(3) If the custodian issues statements on a quarterly, semi-annual, or annual basis, a Dealer Member is unable to comply with the requirement for monthly reconciliation in the months it does not receive statements. The Dealer Member is subject to margin charges for those months in which it is unable to reconcile its securities positions.

Rules for reconciliation of mutual funds and "evidences of deposit"

For margin purposes, mutual fund securities issued by mutual funds and evidences of deposit issued by financial institutions that are not negotiable and/or transferable are classified into the following:

Type I

If the issuing mutual fund or financial institution provides monthly files or statements, margin is only required on any unresolved differences. [LINK Form 1, Statement B, Line 20]

Type II

If:

(a) a Dealer Member does not reconcile a mutual fund or evidence of deposit security position with monthly files or statements provided by the issuing mutual fund or financial institution monthly;

(b) there has been no loan value extended to positions held in client accounts; and

(c) there has been no activity in the security positions held with the issuing mutual fund or financial institution in the last six months, except for redemptions and transfers,

then the margin required on these security positions is 10% of the market value of each individual position, calculated as at the reporting date. [LINK Form 1, Statement B, Line 20]

In all other cases, the margin required on these security positions is 100% of the market value of each individual position calculated as at the reporting date.

Appendix 1

CUSTODIAL AGREEMENT

AGREEMENT made the day of , 20 .

B E T W E E N:

Name: _____

Address: _____

_____

_____

("Member")

OF THE FIRST PART

- and –

Name: _____

Address: _____

_____

_____

("Custodian")

OF THE SECOND PART

WHEREAS:

A. the Member is a member of a self-regulatory organization (the "SRO") which is a participating institution in the Canadian Investor Protection Fund;

B. the Custodian provides custodial and depository services and meets the criteria as an acceptable securities location set out in the by-laws, rules and regulations of the SRO;

C. the Custodian provides services, including custodial and/or depository services, to the Member in connection with the segregation obligations of members of the SRO;

D. the by-laws, rules and regulations of the SRO require that the terms upon which any securities are deposited with the Custodian for the Member or its customers include certain written provisions to the effect of subparagraphs 1(a), (b) and (c) hereof;

E. the parties hereto desire to comply with the by-laws, rules and regulations of the SRO;

IN CONSIDERATION of these premises and other good and valuable consideration received and acknowledged by each of the parties hereto, the parties agree as follows:

1. **Terms of Segregation**

The Custodian shall ensure, in respect of any securities deposited with and held by it for the Member or customers of the Member in accordance with the by-laws, rules and regulations of the SRO that, subject to securing the payment of the reasonable and agreed administration fees and charges in respect of the custodial and depositary services provided:

(a) no use or disposition of such securities shall be made without the prior written consent of the Member;

(b) certificates representing such securities shall be delivered to the Member promptly on demand or, when certificates are not available and the securities are represented by book entry by the Custodian, the securities shall be able to be transferred either from the Custodian or to the account of any other person maintaining an account at the Custodian promptly on demand; and

(c) securities shall be held in segregation for the Member or its customers free and clear of any charge, lien, claim or encumbrance of any kind in favour of the Custodian including, without limitation, such of the same as may otherwise arise in respect of margin account dealings.

2. **Records**

The Custodian shall maintain records in readily accessible form sufficient to identify the securities and other property held by it for the Member and its customers pursuant to this agreement separate and distinct from any other securities or property held by the Custodian. Accounts for securities and property held hereunder shall be in the name of the Member. The Custodian shall permit access to such records or provide confirmation of their contents to the auditors of the Member within seven business days of written request. The Member shall be entitled to receive a report from the Custodian not less frequently than monthly disclosing the state of any account of the Member held by the Custodian including the amount, value and identification of securities by issue held for such account, any deficiencies, and accrued and unpaid fees or charges.

3. **Indemnity**

The Custodian shall indemnify and save harmless the Member against and from any and all losses of the Member as a result of the failure of the Custodian to return to the Member any securities or property held by it in accordance with this agreement, provided that the liability of the Custodian under this paragraph shall be limited to the market value of the securities and property as at the time which it was required to deliver to the Member the securities and property.

4. **Terms**

This agreement shall remain in full force and effect as long as the Custodian holds any securities on behalf of the Member or its customers.

5. **Binding Effect**

This agreement shall extend to and enure to the benefit of and be binding upon the successors and assigns of the parties hereto but shall not be assigned by the Custodian without the prior written consent of the Member.

6. **English Language**

This agreement has been drawn up in the English language at the request of the parties. Les parties ont requis que la présente convention soir rédigée en anglais.

The parties have executed this agreement under the hands of their authorized officers as of the date set out above.

[CUSTODIAN]

Per: _____

Position: _____

[MEMBER]

Per: _____

Position: _____

June 21, 1994

Appendix 2

Custodial Agreement (NCI)

Re: Non-Certificated Debt Instruments

AGREEMENT made this day of , 199 .

BETWEEN:

Name: _____

Address: _____

_____

_____

("Member")

OF THE FIRST PART

- and -

Name: _____

Address: _____

_____

_____

("Issuer")

OF THE SECOND PART

[Note to Members: This sample Custodial Agreement contains the minimum terms that are required by your Canadian SRO (as defined) for external segregation location arrangements (or non-certificated debt instruments such as GICs). Additional terms may be necessary or desirable to protect your interests and you should consult your own advisors in that regard. The SROs and their employees and representatives are not responsible to the Members or their customers or any other person who relies on the provisions of this draft Agreement.]

WHEREAS:

A. the Member is a member of a self-regulatory organization (the "SRO") which is a participating institution in the Canadian Investor Protection Fund;

B. the Issuer sells and redeems securities of its own issue to the Member and the customers of the Member from time to time, which securities may be available in non-certificated form and represented by book entry by the Issuer ("NCF Securities");

C. the Issuer meets the criteria as an acceptable securities location set out in the by-laws, rules and regulations of the SRO ("Regulations");

D. the Regulations require that the terms upon which any NCF Securities are issued and held by the Issuer for the Member or its customers include certain written provisions to the effect of subparagraphs I (a), (b) and (c) hereof in connection with the segregation obligations of members of the SRO; and

E. the parties hereto desire to comply with the Regulations.

IN CONSIDERATION of these premises and other good and valuable consideration received and acknowledged by each of the parties hereto, the parties agree as follows:

1. **Terms of Segregation**

The Issuer shall ensure, in respect of any NCF Securities registered in the name of the Member and held by it for the Member in accordance with the Regulations that:

(a) no use or disposition of NCF Securities shall be made without the prior written consent of the Member (which consent may be given by electronic communication which is capable of being retrieved and confirmed);

(b) certificates representing NCF Securities shall be delivered to the Member promptly on demand or, when certificates are not available and the securities are represented by book entry only by the Issuer, the NCF Securities shall be able promptly on demand to be either (i) transferred from the Issuer or to the account of any other person maintaining an account at the Issuer or (ii) redeemed by the Issuer; and

(c) NCF Securities shall be held in segregation for the Member or its customers free and clear of any charge, lien, claim or encumbrance of any kind in favour of the Issuer including, without limitation, such of the same as may otherwise arise in respect of margin account dealings.

2. **Records**

The Issuer shall maintain records in readily accessible form sufficient to identify the NCF Securities and other property held by it for the Member and its customers pursuant to this agreement separate and distinct from any other securities or property of or held by the Issuer. Accounts for securities and property held hereunder shall be in the name of the Member. The Issuer shall permit access to such records or provide confirmation of their contents to the auditors of the Member within seven business days of written request. The Member shall be entitled to receive a report from the Issuer not less frequently than monthly disclosing the state of any account of the Member held by the Issuer including the amount, value and identification of NCF Securities held for such account, any deficiencies, and accrued and unpaid fees or charges.

3. **Indemnity**

The Issuer shall indemnify and save harmless the Member against and from any and all losses of the Member as a result of the failure of the Issuer to return or credit to the Member or its customers any NCF Securities or property held by it in accordance with this agreement, provided that the liability of the Issuer under this paragraph shall be limited to the market value of the NCF Securities and property as at the time which it was required to deliver to the Member the NCF Securities and property.

4. **Terms**

This agreement shall remain in full force and effect as long as the Issuer holds any NCF Securities on behalf of the Member or its customers.

5. **Binding Effect**

This agreement shall extend to and enure to the benefit of and be binding upon the successors and assigns of the parties hereto but shall not be assigned by the Issuer without the prior written consent of the Member.

6. **English Language**

This agreement has been drawn up in the English language at the request of the parties. Les parties ont requis que la présente convention soir rédigée en anglais.

The parties have executed this agreement under the hands of their authorized officers as of the date set out above.

[ISSUER]

Per: _____

Position: _____

[MEMBER]

Per: _____

Position: _____

January 30, 1996

Appendix 3

Mutual Fund Bare Trustee

AGREEMENT made the day of , 20 .

B E T W E E N:

Name: _____

Address:_____

_____

_____

("Fund/Manager")

OF THE FIRST PART

-and-

Investment Industry Regulatory Organization of Canada (IIROC)/Organisme canadien de réglementation du commerce des valeurs mobilières—OCRCVM

Suite 1600, 121 King Street West,
Toronto, Ontario, M5H 3T9, for and on behalf of its Dealer Members,
as trustee,

("IIROC")

OF THE SECOND PART

INTRODUCTION:

1. IIROC is a self-regulatory organization which regulates its Dealer Members in accordance with its rules, forms and other directives and notices (the "Rules").

2. The Fund/Manager (i) sells and redeems investment products (as defined below) of its own issue to, and/or (ii) provides management, administrative or other services to issuers or distributors of products who deal with, certain Dealer Members and the customers of such Dealer Members from time to time.

3. This Agreement is intended to apply to all investment products ("products"), which shall include (without limitation) securities of every type, mutual funds and investment funds, annuities and other types of insurance contracts, deposits and deposit liabilities of every type, precious metals and other commodities and other similar investments in whatever form (whether tangible or intangible and whether or not evidenced by any certificate or instrument or book entry).

4. In connection with the activities of the Fund/Manager described in paragraph 2, the Fund/ Manager is to be an acceptable segregation location for Dealer Members for the purposes of the Rules in respect of the segregation obligations of the Dealer Members with respect to all products (whether or not constituting securities).

5. The Rules require that the terms upon which any products are held by or deposited with the Fund/Manager for Dealer Members include written provisions to the effect of paragraphs 1(a), (b), (c) and (d) below.

6. As a matter of convenience and to reduce the need for the Fund/Manager to enter into individual written agreements with each Dealer Member with whom it deals, IIROC has agreed to enter into this Agreement as a bare trustee on behalf of such Dealer Members.

IN CONSIDERATION of these premises and other good and valuable consideration received by each of the parties from each of the others, the parties agree as follows:

1. **Terms of Segregation**. The Fund/Manager shall ensure, in respect of any products registered in the name of a Dealer Member and/or held by or deposited with it for the Dealer Member in accordance with the Rules, that, subject to paragraph 1(e),

(a) no use or disposition of such products shall be made (including any action that could result in the creation of an encumbrance) without the prior written consent of the Dealer Member (which consent may be given by electronic communication which is capable of being retrieved and confirmed);

(b) certificates or instruments representing such products shall be delivered to the Dealer Member promptly on demand or, when certificates or instruments are not available and the products are represented by book entry by the Fund/Manager, the products shall be able to be transferred either from the Fund/Manager or to the account of any other person maintaining an account at the Fund/Manager promptly on demand;

(c) the products of the Dealer Member or customers of a Dealer Member shall be held in segregation for the Dealer Member and shall be free and clear of any mortgage, charge, lien, trust, right of retention, claim or other encumbrance of any kind in favour of the Fund/Manager in any capacity, any such encumbrance that may exist or be created despite this prohibition being irrevocably waived; and

(d) the Fund/Manager shall not, in any capacity, assert any right of set off, consolidation of accounts, combination, compensation, retainer or netting, or assert any other right or counterclaim in any manner that could produce a like or analogous effect, any such right or manner of counterclaim that may exist or arise despite this prohibition being irrevocably waived; provided that

(e) the prohibition of the Fund/Manager in paragraph 1(a) and the requirements of the Fund /Manager in paragraphs 1 (b), (c) and (d) are each subject to the terms, conditions and provisions of:

(i) the products,

(ii) any contract between the Fund/Manager and the holder of the products in respect of the sale, issuance, transfer or redemption of the products, and

(iii) any applicable law or regulatory policy,

and any act or refusal to act by the Fund/Manager in accordance with or permitted by such terms, conditions or provisions shall not be considered to be in breach of this Agreement.

2. Notwithstanding any other agreement or course of dealing between the Dealer Member and the Fund/Manager either before or after the date of this Agreement, all products of the Dealer Member or customers of the Dealer Member that may be held by, recorded with or otherwise left or placed in the possession or under the control of the Fund/Manager from time to time (regardless of the form of holding or recording or any other circumstances, and whether in tangible or intangible form) shall be subject to this Agreement, except only to the extent that the application of this Agreement to a particular product or group of products is expressly excluded by the prior written consent of the Dealer Member (which consent to exclusion may be given by electronic communication which is capable of being retrieved and confirmed).

3. **Trust.** IIROC declares that it holds the benefit of the covenants of the Fund/Manager herein in trust for the Dealer Members and the Fund/Manager acknowledges that each Dealer Member for whom the Fund/Manager is an acceptable segregation location may enforce such covenants directly against the Fund/Manager as if entered into by such Dealer Member itself in connection with the services provided by the Fund/Manager to such Dealer Member. IIROC shall be under no obligation or responsibility of any kind or character to any Dealer Member or customer of a Dealer Member or any person claiming through either of them in respect of this Agreement and, in particular, shall have no obligation, responsibility or duty to see that any covenant herein is carried out and fulfilled or to take any action for the enforcement of this Agreement

4. **Indemnity**. The Fund/Manager shall indemnify and save harmless the Dealer Member against and from any and all losses of the Dealer Member as a result of the failure of the Fund/Manager to return to the Dealer Member any securities or property held by it in accordance with this Agreement, provided that the liability of the Fund/Manager under this paragraph shall be limited to the market value of the securities and property as at the time which it was required to deliver to the Dealer Member the securities and property.

5. **Term**. This Agreement shall remain in full force and effect with respect to any Dealer Member and the Fund/Manager as long as any products are held by or deposited with the Fund/Manager on behalf of such Dealer Member as an acceptable segregation location.

6. **Binding Effect**. This Agreement shall extend to and enure to the benefit of and be binding upon the successors and assigns of the parties hereto and the Dealer Members but shall not be assigned by the Fund/Manager without the prior written consent of IIROC.

7. **English Language**. This Agreement has been drawn up in the English language at the request of the parties. Les parties ont requis que la présente convention soit rédigée en anglais.

8. **Governing Law**. This Agreement shall be governed by the laws of the Province of Ontario.

THE PARTIES have executed this Agreement under the hands of their authorized officers as of the date set out above

_____
(Name of Fund/Manager)

By: _____

By: _____

Type(s) of Products Managed: (eg. Mutual Funds, Segregated Funds, Guaranteed Investment Certificates, Other, - with Description)

_____

Investment Industry Regulatory Organization of Canada / Organisme canadien de réglementation du commerce des valeurs mobilières

By: _____

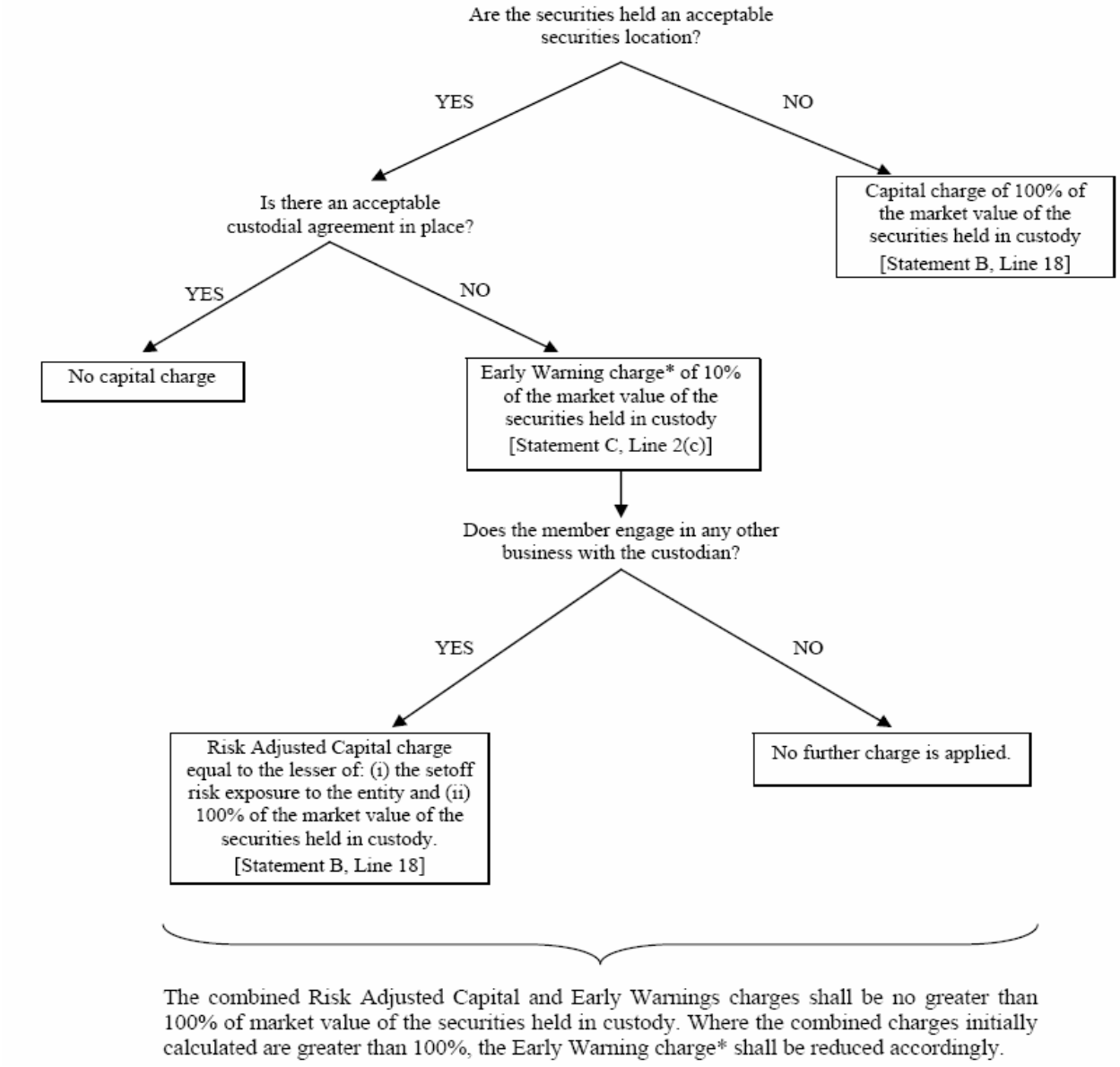
By: _____

June 2008

Appendix 4

Chart 1: Custodial Agreement Decision Tree

This decision tree details the considerations in determining whether, for a particular custodial arrangement, a capital charge needs to be calculated and provided for on either Line 18 of Statement B of Form 1, or Line 2(c) of Statement C of Form 1, or both lines. Members are reminded that a separate capital charge would apply where an unresolved difference is identified. In the case of unresolved differences, a capital charge would be calculated and provided on Line 20 of Statement B of Form 1 whether or not a valid custodial agreement has been entered into with the custodian.



The combined Risk Adjusted Capital and Early Warnings charges shall be no greater than 100% of market value of the securities held in custody. Where the combined charges initially calculated are greater than 100%, the Early Warning charge* shall be reduced accordingly.

[IDA Member Regulation Notice MR0529]

Appendix 5

Margin Requirements

The chart below summarizes the margin requirements in Rule 4300, Part B, sections 4363 through 4366.

Situation	Margin Requirements
1. Internal securities locations	
(a) Dealer Member holds securities in acceptable internal storage	Margin required on any unreconciled differences based on Form 1, Statement B, Line 20, Notes and Instructions pursuant to Rule 4300, Part B, Section 4366
(b) Securities are in transit between internal storage locations: (i) for which there are no adequate internal controls; OR (ii) for more than 5 business days	Non-acceptable securities location – Deduct 100% of market value of securities pursuant to Rule 4300, Part B, Section 4363
2. *External securities locations*	
(a) Dealer Member holds securities in *acceptable external securities location*	Margin required on any unreconciled differences pursuant to Form 1, Statement B, Line 20, Notes and Instructions and Rule 4300, Part B, Section 4366
(b) Dealer Member holds securities at *external securities location* not specified in *IIROC requirements*	Non-acceptable securities location – Deduct 100% of market value of securities pursuant to Rule 4300, Part B, Section 4363
(c) Dealer Member holds securities in foreign institution or securities dealer as an acceptable securities location but no annual written approval of location by Dealer Member's board or appropriate committee	Non-acceptable securities location – Deduct 100% of the market value of securities held in custody with the location pursuant to Rule 4300, Part B, Section 4363
(d) Dealer Member holds securities in *acceptable external securities location* but Dealer Member has not received annual positive confirmation from custodian	Transfer position to difference account and provide margin using a margin rate appropriate for inventory positions pursuant to Rule 4300, Part B, Section 4364
(e) Securities with a transfer agent in Canada and position remains unconfirmed after 45 business days of delivery	Transfer position to difference account and provide margin using a margin rate appropriate for inventory positions pursuant to Rule 4300, Part B, Section 4364
(f) Securities with a transfer agent in the US and position remains unconfirmed after 70 business days of delivery	Transfer position to difference account and provide margin using a margin rate appropriate for inventory positions pursuant to Rule 4300, Part B, Section 4364
(g) Securities with a transfer agent outside Canada and the US, and position remains unconfirmed after 100 business days of delivery	Transfer position to difference account and provide margin using a margin rate appropriate for inventory positions pursuant to Rule 4300, Part B, Section 4364
(h) Dealer Member does not receive securities from a declared stock dividend or stock split within 45 business days of date receivable, and position remains unconfirmed after the 45 business days	Transfer position to difference account and provide margin using a margin rate appropriate for inventory positions pursuant to Rule 4300, Part B, Section 4364
(i) For mutual fund positions and evidences of deposit where a Dealer Member reconciles its book and records at least monthly to the mutual fund's or financial institution's records	Margin required on any unreconciled differences pursuant to Form 1, Statement B, Line 20, Notes and Instructions and Rule 4300, Part B, Section 4366

Situation	Margin Requirements
(j) For mutual fund positions and evidences of deposit where a Dealer Member does not reconcile its books and records at least monthly to the mutual fund's or financial institution's records and there is: (i) no transactions, except for redemptions and transfers, in the securities for at least 6 months, and (ii) no loan value extended to positions held in client accounts.	Margin required on any unreconciled differences is 10% of the market value of the securities pursuant to Rule 4300, Part B, Section 4366
(k) For mutual fund positions and evidences of deposit where a Dealer Member does not reconcile its books and records at least monthly to the mutual fund's or financial institution's records and there is: (i) transactions, other than redemptions and transfers, in the securities within the last 6 months, or (ii) loan value extended to the securities held in client accounts.	Margin required on any unreconciled differences pursuant to Form 1, Statement B, Line 20, Notes and Instructions and Rule 4300, Part B, Section 4366
(l) Custodian would be *acceptable external securities location* except no written custodial agreement with Dealer Member; custodian has no right of set-off against Dealer Member	In determining early warning excess and early warning reserve, deduct 10% of market value of securities held in custody pursuant to Rule 4300, Part B, Subsection 4365(2)
(m) Custodian would be *acceptable external securities location* except no written custodial agreement with Dealer Member; Dealer Member has *set-off risk* with custodian	(i) Provide margin by the lesser of: (a) 100% of *set-off risk* exposure, and (b) 100% of market value of securities held in custody; plus (ii) in determining early warning excess and early warning reserve, deduct10% of market value of securities held in custody. The total of above requirements limited to 100% of market value of securities held in custody pursuant to Rule 4300, Part B, Subsection 4365(3)

ATTACHMENT C

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

TEXT OF THE CURRENT RELEVANT PROVISIONS OF DEALER MEMBER RULES 1, 16, 17, 100, 200, 300, 400, 800, 1100, 1200, 1400, 2000, 2200, 2300, 2600 AND 3000

RULE 1
INTERPRETATION AND EFFECT

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

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"**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;

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"**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;

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RULE 16
DEALER MEMBERS' AUDITORS AND FINANCIAL REPORTING

Panel of Dealer Members' Auditors

16.1 Each District Council shall select annually a panel of accounting firms. In addition, each District Council may at any time appoint one or more additional firms of accountants to or remove one or more firms of accountants from such panel. Except as otherwise provided by the **Error! Hyperlink reference not valid.**, each Dealer Member shall select from the panel its own auditor and the fees and expenses in respect of each audit or examination shall be paid by the Dealer Member concerned.

Dealer Member Filing Requirements

16.2. Dealer Members subject to the Corporation's audit jurisdiction shall:

(i) File monthly with the Corporation a copy of a financial report of the Dealer Member as at the end of each fiscal month or at such other date as may be agreed with the Corporation. Such monthly financial reports shall contain or be accompanied by such information as may be prescribed by the Corporation from time to time.

(ii) File annually with the Corporation, two copies of the Dealer Member's audited financial statements, as defined in subsection 16.2(iii), as at the end of the Dealer Member's fiscal year or as at such other fixed date as may be agreed upon with the Corporation.

(iii) The Dealer Member's financial statements shall be in such form, shall contain such information and shall be supplemented by such additional schedules as the Corporation may, from time to time, prescribe. The Dealer Member's financial statements shall be filed by the Dealer Member's Auditor within seven weeks of the date as of which the statements are required to be prepared, subject to the extension of time, if any, as the Corporation may grant, upon the request in writing of the Dealer Member's Auditor.

(iv) In calculating the risk adjusted capital of a Dealer Member, the financial position of the Dealer Member may, with the prior approval of the Corporation, be consolidated (in a manner as set out below) with that of any related company of a Dealer Member provided that:

(a) Such related company is subject to all of the Rules of either the Corporation or the Bourse de Montréal Inc.; and

(b) The Dealer Member has guaranteed the obligations of such related company and the related company has guaranteed the obligations of the Dealer Member (such guarantee to be in a form acceptable to the Corporation and unlimited in amount).

(v) The said consolidation permitted shall be carried out in accordance with the following rules or in such other manner as may be acceptable to the Corporation:

(a) Inter-company accounts between the Dealer Member and the related company shall be eliminated;

(b) Any minority interests in the related company shall be eliminated from the capital calculation; and

(c) Calculations with respect to the Dealer Member and the related company shall be as of the same date.

16.3. Repealed.

16.4. Repealed.

Dealer Members' Auditors

16.5. The Dealer Member's Auditor shall conduct his or her examination of the accounts of the Dealer Member in accordance with generally accepted auditing standards and the scope of his or her procedures shall be sufficiently extensive to permit him or her to express an opinion on the Dealer Member's financial statements in the form prescribed in subsection 16.2(iii). Without limiting the generality of the foregoing, the scope of the examination shall, where applicable, include at least the procedures set out in Rule 300.

16.6. Every Dealer Member's Auditor for the purpose of any such examination shall be entitled to free access to all books of account, securities, cash, documents, bank accounts, vouchers, correspondence and records of every description of the Dealer Member being examined, and no Dealer Member shall withhold, destroy or conceal any information, document or thing reasonably required by the Dealer Member's Auditor for the purpose of his examination.

Compliance

16.7. If at any time the District Council is of the opinion that the financial condition or conduct of the business of any Dealer Member has required excessive attention from the Corporation and that it would be in the interests of the Corporation that the Corporation be reimbursed by such Dealer Member, the District Council shall have the power to impose an assessment against such Dealer Member. Any decision of the District Council imposing an assessment shall be in writing and notice thereof shall be given promptly to the Dealer Member and the Corporation.

16.8. The Board of Directors may authorize the Corporation to enter into in its own name agreements or arrangements with any stock exchange, self-regulatory organization, securities enforcement or regulatory authority or other organization regulating or providing services in connection with securities trading located in Canada or any other country for the exchange of any information (including information obtained by the Corporation pursuant to the Rules or otherwise in its possession) and for other forms of mutual assistance for market surveillance, investigation, enforcement and other regulatory purposes relating to trading in securities in Canada or elsewhere.

16.9. The Corporation, its officers, a District Council, or any other committee of the Corporation authorized by the Board of Directors may provide to any stock exchange, self-regulatory organization, securities enforcement or regulatory authority or other organization regulating or providing services in connection with securities trading located in Canada or any other country any information obtained by the Corporation or any of the aforesaid persons or Councils pursuant to the Rules or otherwise in their possession and may provide other forms of assistance for surveillance, investigation, enforcement and other regulatory purposes relating to trading in securities in Canada or elsewhere.

16.10. 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, its auditors or any person acting on its behalf, to file any report, form, financial statement or other information required under this Rule 16 within the times prescribed by this Rule 16, the Board of Directors, the Corporation or the terms of such report, form, financial statement or other information, as the case may be.

RULE 17
DEALER MEMBER MINIMUM CAPITAL, CONDUCT OF BUSINESS AND INSURANCE

17.1. Every Dealer Member shall have and maintain at all times risk adjusted capital greater than zero calculated in accordance with Form 1 and with such requirements as the Board of Directors may from time to time prescribe. If at any time the risk adjusted capital of a Dealer Member is, to the knowledge of such Dealer Member, less than zero, such Dealer Member shall immediately notify the Corporation.

17.2. Every Dealer Member shall keep and maintain at all times a proper system of books and records.

17.2A. Every Dealer Member shall establish and maintain adequate internal controls in accordance with the internal control policy statements in Rule 2600.

17.3. All fully paid or excess margin securities held by a Dealer Member for a client shall be segregated and identified as being held in trust for such client in accordance with the Rules. For the purposes of Rules 17.3, 17.3A and 17.3B, a client means any person who maintains an account with a Dealer Member.

17.3A. The securities of all clients of a Dealer Member held in accordance with Rule 17.3 may be segregated in bulk for all such clients, other than those clients whose securities are held apart from all other securities pursuant to a written safekeeping agreement.

17.3B. The Board of Directors may prescribe by Rule the manner in which securities owned or held by a Dealer Member or held by a Dealer Member for the account of a client are to be segregated and held including, without limitation, the locations in which securities may be held and the manner in which the amount or value of securities to be segregated shall be calculated.

17.4. Every Dealer Member shall fulfil its contracts and any Dealer Member which in the ordinary course of business finds that any other Dealer Member refuses or is unable to fulfil its contracts shall immediately report such fact to the Corporation.

17.5. Every Dealer Member shall effect and keep in force insurance against such losses, and in such minimum amount or amounts in respect of such losses or any of them, as the Board of Directors may from time to time by Rule prescribe.

17.6. Every Dealer Member shall give to the Corporation written notice, with all available particulars, of any claim (other than client losses relating to lost document bonds) reported in writing by the Dealer Member to its insurers or their authorized representatives arising under the Financial Institution Bond or Bonds which such Dealer Member is required to effect and keep in force under Rule 400.2. Such notice shall be given within two business days of the Dealer Member so reporting to the insurer or its authorized representative.

17.7. Upon application by a Dealer Member, the applicable District Council on the recommendation of the Corporation may, in its discretion, reduce the minimum amount of insurance required to be maintained by a Dealer Member pursuant to Rule 400.4 if such Dealer Member can establish that the total exposure of such Dealer Member to the types of losses referred to in Rule 400.2 will not exceed the minimum amount of insurance required by Rule 400.4.

17.8. A reduction in the minimum amount of insurance required which is granted pursuant to Rule 17.7 shall be valid for a period of six months, after which it may be renewed upon application by the Dealer Member to the applicable District Council which shall only act after receiving the recommendation of the Corporation.

17.9. An application of a Dealer Member pursuant to 17.7 and 17.8 shall be made to the applicable District Council in care of the Corporation.

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17.16 Every Dealer Member shall establish and maintain a business continuity plan identifying the necessary procedures to be undertaken during an emergency or significant business disruption. Such procedures shall be reasonably designed to enable the Dealer Member to stay in business in the event of a future significant business disruption in order to meet obligations to its customers and capital markets counterparts and shall be derived from the Dealer Member's assessment of its critical business functions and required levels of operation during and following a disruption.
Every Dealer Member shall update its plan in the event of any material change to its operations, structure, business or location. Every Dealer Member must also conduct an annual review and test of its business continuity plan to determine whether any modifications are necessary in light of changes to the member's operations, structure, business, or location. The Corporation, in its discretion, may require this annual review to be performed by a qualified third party.

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RULE 30
EARLY WARNING SYSTEM

30.1. A Dealer Member shall be designated in early warning level 1 or level 2 according to its capital, profitability and liquidity position from time to time and frequency of designation or at the discretion of the Corporation as provided in this Rule 30. The terms and definitions used in this Rule shall have the same meanings as used in Statement C and Schedules 13 and 13A to Form 1 of the Corporation, unless otherwise defined in the Rules or the context requires, and reference shall be made to such Statement and Schedules in interpreting this Rule 30.

30.2 LEVEL 1.

A Dealer Member shall be designated in early warning level 1 if at any time:

Liquidity

Its early warning reserve is a negative number; or

Capital

Its risk adjusted capital is less than 5% of total margin required; or

Profitability

1. The quotients obtained by dividing each of

   (a) Risk adjusted capital as at the date of calculation; and

   (b) Risk adjusted capital as at the end of the preceding month.

   By the average of the net profit or loss (before interest on internal subordinated debt, bonuses, income taxes and extraordinary items) for the six month periods ending with (i) the current month and (ii) the preceding month, respectively, where such average is a loss, are both greater than or equal to three but less than six, or

   (c) The quotient obtained using the number in paragraph (a) as a divisor is greater than or equal to three but less than six and the quotient using the number in paragraph (b) as a divisor is less than three; or

2. The risk adjusted capital at the time of calculation is less than six times the net loss (as defined above) for the current month; or

Discretionary

The condition of the Dealer Member, in the sole discretion of the Corporation, is not satisfactory for any reason including, without limitation, financial or operating difficulties, problems arising from record keeping conversion or significant changes in clearing methods, the fact that the Dealer Member is a new Dealer Member or the Dealer Member has been late in any filing or reporting required pursuant to the Rules.

30.3. If a Dealer Member is designated in early warning level 1 then, notwithstanding the provisions of any Rule (other than Rule 30.5) or Ruling of the Corporation, the following provisions shall apply:

(i) The chief executive officer and chief financial officer of the Dealer Member shall immediately deliver to the Corporation a letter containing the following:

   (1) Advice of the fact that any of the circumstances in Rule 30.2 are applicable;

   (2) An outline of the problems associated with the circumstances referred to in (1);

   (3) An outline of the proposal of the Dealer Member to rectify the problems identified; and

   (4) An acknowledgement that the Dealer Member is in early warning category and that the restrictions contained in Rule 30.3(iv) apply;

A copy of which letter shall be provided to the Dealer Member's auditor and to the Canadian Investor Protection Fund;

(ii) The Corporation shall immediately designate the Dealer Member as being in an early warning category level 1 and shall deliver to the chief executive officer and chief financial officer a letter containing the following:

(1) Advice that the Dealer Member is designated as being in early warning category level 1;

(2) A request that the Dealer Member file its next monthly financial report required pursuant to Rule 16.2 no later than 15 business days or, in the discretion of the Corporation if he or she considers it to be practicable, such earlier time following the end of the relevant month;

(3) A request that the Dealer Member respond to the letter as required under paragraph (iii) and that such response, together with the notice received pursuant to paragraph (i), will be forwarded to the Canadian Investor Protection Fund and may be forwarded to any securities commission having jurisdiction over the Dealer Member;

(4) Advice that the restrictions referred to in paragraph (iv) shall apply to the Dealer Member;

(5) Such other information as the Corporation shall consider relevant;

(iii) The chief executive officer and the chief financial officer of the Dealer Member shall respond by letter signed by them both within five business days of receipt of the letter referred to in paragraph (ii), with a copy to be sent to the Dealer Member's auditor, containing the information and acknowledgement required pursuant to paragraphs (1)(2), (3) and (4), to the extent not previously provided, or an update of such information if any material circumstances or facts have changed.

(iv) If and so long as the Dealer Member remains designated as being in an early warning category, it shall not without the prior written consent of the Corporation:

(1) Reduce its capital in any manner including by redemption, re-purchase or cancellation of any of its shares;

(2) Reduce or repay any indebtedness which has been subordinated with the approval of the Corporation;

(3) Directly or indirectly make any payments by way of loan, advance, bonus, dividend, repayment of capital or other distribution of assets to any director, officer, partner, shareholder, related company, affiliate or associate; or

(4) Increase its non-allowable assets (as specified by the Corporation) unless a prior binding commitment to do so exists or enter into any new commitments which would have the effect of materially increasing the non-allowable assets of the Dealer Member;

(v) If and so long as the Dealer Member remains designated as being in an early warning category it shall continue to file its monthly financial reports within the time specified pursuant to clause (2) of Rule 30.3(ii);

(vi) As soon as practicable after the Dealer Member is designated as being in an early warning category, the Corporation shall conduct an on-site review of the Dealer Member's procedures for monitoring capital on a daily basis and prepare a report as to the results of the review.

The Corporation shall also report monthly to the applicable District Council of the Corporation of the fact that a Dealer Member has been designated as being in an early warning category level 1 without naming the Dealer Member.

No Dealer Member shall enter into any transaction or take any action, as described in any of sub-clauses (1), (2), (3) or (4) of clause (iv) of this Rule 30.3 which, when completed, would have or would reasonably be expected to have the effect on the Dealer Member as described in any of paragraphs (a), (b), (c) or (d), without first notifying the Corporation in writing of its intention to do so and receiving the written approval of the Corporation prior to implementing such transaction or action.

30.4 LEVEL 2.

A Dealer Member shall be designated in early warning level 2 if at any time:

Liquidity

Its early warning excess is a negative number; or

Capital

Its risk adjusted capital is less than 2% of total margin required; or

Profitability

1. The quotients obtained by dividing each of

   (a) Risk adjusted capital as at the date of calculation; and

   (b) Risk adjusted capital as at the end of the preceding month,

   By the average of the net profit or loss (before interest on internal subordinated debt, bonuses, income taxes and extraordinary items) for the six month periods ending with (i) the current month and (ii) the preceding month, respectively, where such average is a loss, are

   (c) Both less than three, or

   (d) The quotient obtained by using the number in paragraph (b) as a divisor is greater than or equal to three but less than six, and the quotient obtained by using the number in paragraph (a) is less than three, or

2. The risk adjusted capital at the date of calculation is less than three times the net loss (as defined above) for the current month; or

3. The risk adjusted capital at the time of calculation is less than the total net profit or loss (as defined above) for the three months ending with the current month; or

Discretionary

The condition of the Dealer Member, in the sole discretion of the Corporation, is not satisfactory for any reason including, without limitation, financial or operating difficulties, problems arising from record keeping conversion or significant changes in clearing methods, the fact that the Dealer Member is a new Dealer Member or the Dealer Member has been late in any filing or reporting required pursuant to the Rules.

Frequency

1. It has been designated in an early warning level (any combination of levels 1 and 2) three or more times in the preceding six months; or

2. It has been designated in early warning level 1 under the Profitability criteria and at the time has been designated in early warning level 1 under either the Liquidity or Capital criteria.

30.5 If the Dealer Member is designated as being in early warning level 2, the following provisions shall apply in addition to the provisions of Rule 30.3 which shall continue to apply except to the extent inconsistent with this Rule 30.5:

(a) The chief executive officer and the chief financial officer of the Dealer Member shall immediately deliver to the Corporation a letter advising that the circumstances of this Rule 30.5 are applicable to the Dealer Member;

(b) The Dealer Member shall file its monthly financial reports required pursuant to Rule 16.2 no later than 10 business days, or, in the discretion of the Corporation if considered to be practicable, such earlier time following the end of the relevant month;

(c) The chief executive officer and the chief financial officer of the Dealer Member shall attend at the offices of the Corporation to outline the proposals of the Dealer Member for rectifying the problems which account for the Dealer Member being designated as being in early warning category Level 2;

(d) The Dealer Member shall file a weekly capital report containing the same information required in a monthly financial report pursuant to Rule 16.2 no later than five business days or, in the discretion of the Corporation if considered to be practicable, such earlier time following the end of the relevant week;

(e) The Dealer Member shall file weekly on a form prescribed by the Corporation a report of its aged segregation deficiencies and an explanation of the actions proposed to be taken pursuant to Rule 2000.10 to correct such deficiencies;

(f) The Dealer Member shall prepare and file a business plan relating to the Dealer Member's business within such time, for such period and covering such matters as the Corporation may direct;

(g) The Corporation may request and the Dealer Member shall provide in such time as the Corporation considers practicable, such reports or information, on a daily or a less frequent basis, as may be necessary or desirable in the opinion of the Corporation to assess and monitor the financial condition or operations of the Dealer Member;

(h) The Corporation shall report monthly to the applicable District Council of the Corporation of the fact that a Dealer Member has been designated as being in an early warning category level 2 and any restrictions imposed in respect to Rule 30.6 without naming the Dealer Member;

(i) The Dealer Member shall pay, at the discretion of the Corporation, the reasonable costs and expenses of the Corporation incurred in connection with the administration of this Rule 30 in respect of the Dealer Member;

(j) The amount of client's free credit balances permitted to be used by a Dealer Member pursuant to Rule 1200 may be reduced to such amount as the Corporation may in his or her opinion consider desirable.

30.6 The Corporation may impose prohibitions upon a Dealer Member who is designated, as being in Early Warning Category Level 2 pursuant to Part 9 of Rule 20.

30.7 The Corporation shall promptly advise any other participating institution of the Canadian Investor Protection Fund of which a Dealer Member is also a member of the fact that the Dealer Member has been designated as being in early warning category level 2, the reasons for such designation and any sanctions or restrictions that have been imposed upon the Dealer Member pursuant to Part 9 Rule 20 or Rule 19.

30.8 A Dealer Member shall remain designated as being in early warning level 1 or level 2, as the case may be, and subject to the provisions in this Rule 30 as are applicable, until the latest filed monthly financial reports of the Dealer Member, or such other evidence or assurances as may be appropriate in the circumstances demonstrate, in the opinion of the Corporation, that the Dealer Member no longer is required to be designated as being in an early warning category and the Dealer Member has otherwise complied with this Rule 30.

RULE 100
MARGIN REQUIREMENTS

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100.17.

(a) For the purposes of this Rule 100.17 "repo" means an agreement to sell and repurchase securities, "reverse repo" means an agreement to purchase and resell securities and "securities loan" means a cash and securities loan agreement where cash is to be paid by or delivered to the Dealer Member as part of the transaction.

(b) Notwithstanding the requirements of Form 1 to make any provision out of a Dealer Member's capital in respect of a repo, reverse repo or securities loan, where (i) the date of repurchase, resale or termination of the loan, as the case may be, is determined at the time of entering into the transaction, and (ii) the amount of any compensation, price differential, fee, commission of other financing charge to be paid in connection with the repurchase, resale or loan is calculated according to a fixed rate (whether expressed as a price, a decimal or percentage per annum or any other manner that does not vary until termination), the margin in respect of the obligation of the Dealer Member thereunder shall be determined in accordance with Rule 100.2(a)(i), provided that this paragraph (b) shall not apply in the case of an overnight repo, reverse repo or securities loan which for the purposes of this Rule shall be an obligation to repurchase, resell or terminate the loan within five business days of the date the obligation is assumed. All calculations must be performed daily and shall make full provision for any principal and return of capital then payable, all accrued interest, dividends or other distributions on securities used as collateral.

(c) Where a Dealer Member (i) has entered into a repo, reverse repo or securities loan described in paragraph (b) and in respect of which the time to the date of repurchase, resale or termination of the loan, as the case may be, is over one

year, and (ii) has an offsetting reverse repo, repo or securities loan denominated in the same currency and within the same margin category based on maturity, the two positions may be offset and the required margin computed with respect to the net position only.

(d) Where a Dealer Member (i) has entered into a repo, reverse repo or securities loan described in paragraph (b) in respect of which the time to the date of repurchase, resale or termination of the loan is within one year, and (ii) has an offsetting reverse repo, repo or securities loan, as the case may be, denominated in the same currency and maturing within one year, the margin required shall be the difference between the margin on the two positions.

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RULE 200
MINIMUM RECORDS

200.1. As required under Rule 17.2 every Dealer Member shall make and keep current books and records necessary to record properly its business transactions and financial charts including, without limitation:

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(k) A record of the proof of money balances of all ledger accounts in the form of trial balances and a record of the computation of risk adjusted capital. Such trial balances and computations shall be prepared currently at least once a month;

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(m) a record of the proof of money balances of all ledger accounts in the form of trial balances and record of a reasonable calculation of minimum risk adjusted capital prepared for each month within a reasonable time after each month end; and

RULE 300
AUDIT REQUIREMENTS

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300.2. The scope of the audit shall include the following procedures, but nothing herein shall be construed as limiting the audit or permitting the omission of any additional audit procedure which any Dealer Member's Auditor would deem necessary under the circumstances. For purposes of this regulation tests fall into two basic categories (as described in CICA Handbook section 5300.11 to 5300.21):

(i) Specific item tests, whereby the auditor examines individual items which he or she considers should be examined because of their size, nature or method of recording (CICA Handbook Section 5300.13);

(ii) Representative item tests, whereby the auditor's objective is to examine an unbiased selection of items (Section 5300.13).

The determination of an appropriate sample on a representative basis may be made using either statistical or non-statistical methods (CICA Handbook Section 5300.15).

In determining the extent of the tests appropriate in sub-sections (i), (ii), (iii) and (iv) of (a) below, the Dealer Member's Auditor should consider the adequacy of the system of internal control and the level of materiality appropriate in the circumstances so that in the auditor's professional judgment the risk of not detecting a material misstatement, whether individually or in the aggregate is reduced to an appropriately low level (e.g. in relation to the estimated risk adjusted capital and early warning reserves).

The Dealer Member's Auditor shall:

(a) As of the audit date:

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(vii) Obtain written confirmation with respect to the following:

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(2) Money, security positions and open commodity and option contracts including deposits with clearing houses and like organizations and money and security positions with mutual fund companies;

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RULE 400
INSURANCE

400.1. Mail Insurance - Every Dealer Member shall have mail insurance that covers 100% of losses arising from any out-going shipments of securities, negotiable or non-negotiable, by registered mail. The Corporation may exempt a Dealer Member from the requirements of Rule 400.1 if the Dealer Member delivers a written undertaking to the Corporation that it will not use registered mail for out-going shipments of securities.

400.2. Financial Institution Bond - Every Dealer Member shall, by means of a Financial Institution Bond or Bonds (with Discovery Rider attached or Discovery Provisions incorporated in the Bond), effect and keep in force insurance against losses arising as follows:

Clause (A) - Fidelity - Any loss through any dishonest or fraudulent act of any of its employees, committed anywhere and whether committed alone or in collusion with others, including loss of property through any such act of any of the employees;

Clause (B) - On Premises - Any loss of money and securities or other property through robbery, burglary, theft, hold-up or other fraudulent means, mysterious disappearance, damage or destruction while within any of the insured's offices, the offices of any banking institution or clearing house or within any recognized place of safe-deposit, as more fully defined in the Standard Form of Financial Institution Bond (herein referred to as the "Standard Form");

Clause (C) - In Transit - Any loss of money and securities or other property (exceptions to be contained in a list to be approved by the Corporation); while in transit, whether negotiable or non-negotiable, shall be covered by insurance. The value of securities in transit in the custody of any employee or any person acting as a messenger shall not at any time exceed the protection provided under this clause;

Clause (D) - Forgery or Alterations - Any loss through forgery or alteration of any cheques, drafts, promissory notes or other written orders or directions to pay sums in money, excluding securities, as more fully defined in the Standard Form;

Clause (E) - Securities - Any loss through having purchased or acquired, sold or delivered, or extended any credit or acted upon securities or other written instruments which prove to have been forged, counterfeited, raised or altered, or lost or stolen, or through having guaranteed in writing or witnessed any signatures upon any transfers, assignments or other documents or written instruments, as more fully defined in the Standard Form.

400.3. Notice of Termination - Each Financial Institution Bond maintained by a Dealer Member shall contain a rider containing provisions to the following effect:

(i) The underwriter shall notify the Corporation at least 30 days prior to the termination or cancellation of the Bond, except in the event of termination of the Bond due to:

(A) The expiration of the Bond period specified;

(B) Cancellation of the Bond as a result of the receipt of written notice from the insured of its desire to cancel the Bond;

(C) The taking over of the insured by a receiver or other liquidator, or by provincial, federal or state officials, or

(D) Taking over of the insured by another institution or entity.

(ii) In the event of termination of the Bond as an entirety in accordance with clauses (i)(B), (i)(C) or (i)(D), the underwriter shall, upon becoming aware of such termination, give immediate written notice of the termination to the Corporation. Such notice shall not impair or delay the effectiveness of the termination.

400.3B. Termination or Cancellation - In the event of the take-over of a Dealer Member by another institution or entity as described in paragraph 400.3(a)(i)(D), the Dealer Member shall ensure that there is bond coverage which provides a period of twelve months from the date of such take-over within which to discover the losses, if any, sustained by the Dealer Member prior to the effective date of such take-over and the Dealer Member shall pay, or cause to be paid, any applicable additional premium.

400.4. Amounts Required - The minimum amount of insurance to be maintained for each Clause under Rule 400.2 shall be the greater of:

(a) $500,000, or, in the case of an Introducing Type 1 arrangement, $200,000; and

(b) 1% of the base amount (as defined herein), or in the case of Introducing Types 1 and 2 arrangements, ½% of the base amount;

provided that for each Clause such minimum amount need not exceed $25,000,000.

For the purposes of this Rule 400, the term "base amount" shall mean the greater of:

(i) The aggregate of net equity for each customer determined as the total value of cash, securities, and other acceptable property (as defined in Schedule 10 of Form 1) owed to the customers by the Dealer Member less the total value of cash, securities, and other acceptable property (as defined in Schedule 10 of Form 1) owed by the customers to the Dealer Member; and

(ii) The aggregate of total liquid assets and total other allowable assets of the Dealer Member determined in accordance with Statement A of Form 1.

400.5. Provisos with respect to Rules 400.2, 400.3 and 400.4:

(a) Repealed.

(b) The amount of insurance required to be maintained by a Dealer Member shall as a minimum be by way of a Financial Institution Bond with a double aggregate limit or a provision for full reinstatement;

(c) Should there be insufficient coverage, a Dealer Member shall be deemed to be complying with Rule 17.5 and this Rule 400 provided that any such deficiency does not exceed 10 percent of the insurance requirement and that evidence is furnished within two months of the dates of completion of the monthly financial report and the annual audit that the deficiency has been corrected. If the deficiency is 10% or more of the insurance requirement, action must be taken by the Dealer Member to correct the deficiency within 10 days of its determination and the Dealer Member shall immediately notify the Corporation;

(d) Insurance against Clause (E) of Rule 400.2 losses (Securities) may be incorporated in the Financial Institution Bond or may be carried by means of a Rider attached thereto or by a Separate Securities Forgery Bond;

(e) A Financial Institution Bond maintained pursuant to Rule 400.2 may contain a clause or rider stating that all claims made under the bond are subject to a deductible;

(f) For the purposes of calculating insurance requirements, no distinction is to be made between securities in non-negotiable form and those in negotiable form.

400.6. Qualified Carriers - Insurance required to be effected and kept in force by a Dealer Member pursuant to this Rule 400 may be underwritten directly by either (i) an insurer registered or licensed under the laws of Canada or any province of Canada or (ii) any foreign insurer approved by the Corporation. No foreign insurer shall be approved by the Corporation unless the insurer has the minimum net worth required of $75 million on the last audited balance sheet, provided acceptable financial information with respect to such corporation is available for inspection and the Corporation is satisfied that the insurer is subject to supervision by regulatory authorities in the jurisdiction of incorporation of the insurer which is substantially similar to the supervision of insurance companies in Canada.

400.7. Global Financial Institution Bonds - Where the insurance maintained by a Dealer Member in respect of any of the requirements under this Rule 400 names as the insured or benefits the Dealer Member, together with any other person or group of persons, whether within Canada or elsewhere, the following must apply:

(a) The Dealer Member shall have the right to claim directly against the insurer in respect of losses, and any payment or satisfaction of such losses shall be made directly to the Dealer Member; and

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

(i) The Dealer Member,

(ii) Any of the Dealer Member's subsidiaries whose financial results are consolidated with those of the Dealer Member, or

(iii) A holding company of the Dealer Member provided that the holding company does not carry on any business or own any investments other than its interest in the Member

without regard to the claims, experience or any other factor referable to any other person

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RULE 800
TRADING AND DELIVERY

General

800.1. Unless otherwise stated this Rule 800 shall apply to all Dealer Members and to members of other associations subscribing to the Corporation's Trading and Delivery Rules (hereinafter sometimes called "dealers").

800.2. Dealer Members will not become or continue as members of any trading organization or association formed as kindred to the bond business and domiciled in Canada unless such an association has as part of its constitution or regulations an agreement by all its members to concur in and observe the Rules for trading and delivery practices of the Corporation.

800.3. Clearing days are defined as being all business days, except Saturdays and statutory or other legal holidays.

800.4. In this Rule 800 "dealt in" and words of similar import refer to transactions in securities between dealers.

800.5. All securities having interest payable as a fixed obligation shall be dealt in on an "accrued interest" basis until maturity or a default in such payment either occurs or is announced by the debtor, whichever is the earlier event. This Rule 800.5 may be abrogated from time to time in specific cases where common practice and expediency prompt such action; due notice of such special instances to be given to all Dealer Members.

800.6. Sales made of securities prior to actual default or official announcement as specified in Rule 800.5, but undelivered at the time of default or such announcement, shall be dealt in on an "accrued interest" basis in accordance with the terms of the original transaction.

800.7. Subsequent to default or official announcement as specified in Rule 800.5, the securities shall be dealt in on a flat basis with all matured and unpaid coupons attached, until such time as all arrears of interest have been paid and one current coupon has been paid when due.

800.8. Transactions in bonds having coupons payable out of income, if, as and when earned, shall all take place upon a flat basis. Any matured and unpaid income coupons must be attached. Income bonds which have been called for redemption, should continue to be traded on a flat basis even after the call date has been published.

800.9. When transactions occur in bonds the issuers which have been subject to reorganization or capital adjustment with the result that holders have received as a bonus or otherwise, certain stock or scrip then such transactions shall be ex stock or scrip, unless otherwise stated at the time the trade is made. Such bonds shall be traded flat until such time as all arrears have been paid and one current coupon has been paid when due, except where the Board of Directors shall determine otherwise.

800.10. No security, with the exception of a new issue at take down date, shall be registered in the name of the customer or his or her nominee prior to the receipt of payment. The absorption by a Dealer Member of bank or other charges incurred by a customer or his or her nominee for the registration of a security will be considered an infraction of this Rule. A Dealer Member may absorb transfer fees incurred in the transfer of a security after payment according to a customer's instructions.

800.11. Dealer Members will not deal, either directly or indirectly, with or for the personal account of any employee of other Dealer Members without the written consent of a director or partner of the employee's firm.

800.12. Dealer Members, for the purpose of communication between themselves, will be responsible for the payment of their own telephone charges and send only prepaid telegrams.

800.13. No transaction with a client which involves an agreement to purchase or repurchase a security, an agreement to sell or resell a security or the granting of a put, call or similar option involving a security shall be entered into unless all terms relevant to the transaction are stated in writing on the face of the contract. (If necessary, part of such terms may be set forth on an additional page attached to the contract provided that they are referred to on the face of the contract.)

800.14. Should any Dealer Member be in doubt as to whether a specific type of transaction is forbidden under this Rule 800, it is recommended that he or she secure a ruling on a similar hypothetical case from the Chair of his or her District.

800.15. The purpose of these Rules is to spell out as far as practical what can be done under these Rules without breaking the letter or the spirit of them. It is common knowledge that there are innumerable ways of circumventing the purposes of the Rules, but any such method so adopted can only be considered a direct contravention of the letter and spirit of these Rules and contrary to fair business practice.

Trading

(Whether as Principal or Agent)

800.16. All transactions, except sale and repurchase agreements, involving bonds and debentures on which interest is a fixed obligation shall be treated on an accrued interest basis.

800.17. Repealed.

800.18. Repealed.

800.19. Unless prefixed by some qualifying phrase, a Dealer Member calling a market shall be obliged to trade Trading Units (as hereinafter defined) if called upon to trade.

800.20. Any Dealer Member asking the size of a stated market must be prepared to buy or sell at least a Trading Unit (as hereinafter defined) at the price quoted if immediately requested to do so by the Dealer Member calling the market.

800.21. Trading Units shall consist of the following:

(a) In the case of Government of Canada direct obligations and Government of Canada Guaranteed obligations having an unexpired term of less than one year to maturity (or to the earliest call date, where the transaction is completed at a premium): $250,000 par value;

(b) In the case of Government of Canada direct obligations and Government of Canada Guaranteed obligations having an unexpired term of one year or longer but three years or less to maturity (or to the earliest call date, where the transaction is completed at a premium): $100,000 par value;

(c) In the case of Government of Canada direct obligations and Government of Canada Guaranteed obligations having an unexpired term to maturity of longer than three years (where the bond is traded at a premium, the earliest call date shall be treated as the maturity date): $100,000 par value;

(d) In the case of bonds, debentures and other obligations of or guaranteed by a province in Canada: $25,000 par value;

(e) In the case of all other bonds and debentures other than Government of Canada direct obligations and Government of Canada Guaranteed obligations and bonds, debentures and other obligations of or guaranteed by a province in Canada: $25,000 par value;

(f) In the case of bonds, convertible debentures or debentures issued with attached stock warrants, rights or other appendages and traded in unit form: $5,000 par value of bonds or debentures, irrespective of the value of the appendages;

(g) In the case of common and preferred shares not listed on a recognized stock exchange:

- In lots of 500 shares, if market price is below $1
- In lots of 100 shares, if market price is at $1 and below $100
- In lots of 50 shares, if market price is at $100 or above.

For the purpose of this Rule 800 a recognized stock exchange means the American Stock Exchange, The TSX Venture Exchange, the Montreal Exchange, the New York Stock Exchange and The Toronto Stock Exchange.

800.22. Any amount less than one Trading Unit shall be considered as an odd lot and any Dealer Member who has been requested to call a market has the option to trade an odd lot at the called market (if so requested) or to adjust his market to compensate for the smaller amount involved.

800.23. Rules 800.19, 800.20, 800.21 and 800.22 shall not apply to dealings in the Pacific, Alberta, Saskatchewan, Manitoba or Atlantic Districts or to dealings between the said Districts. They shall apply to all dealings in the Ontario and Quebec Districts and to all dealings between the Ontario and/or Quebec Districts and any other District or Districts.

800.24. Unless otherwise stated at the time of the transaction, all trades are to be considered for regular delivery.

800.25. When a deal involves the sale of more than one maturity or the purchase or more than one maturity, the deal covering each maturity shall be treated as a separate transaction. No contingent (all or none) dealings are permitted.

800.26. In trading securities which are dealt in both as actual bonds, debentures, or other forms of securities and as certificates of deposit, and in the absence of an existing ruling making them interchangeable for delivery, delivery shall be made in the form of actual securities unless it is stipulated at the time of the transaction that they are (a) certificates of deposit, or (b) unspecified; in the latter case, either actual securities or certificates of deposit or mixed, shall be good delivery.

Delivery

800.27. All transactions are to be consummated upon the following regular delivery terms unless at the time each individual transaction takes place alternative terms are agreed upon and confirmed in writing:

(a) In the case of Government of Canada Treasury Bills regular delivery shall be for the same day as the transaction takes place;

(b) In the case of Government of Canada Bonds and Government of Canada Guaranteed Bonds except Treasury Bills) having an unexpired term of three years or less to maturity (or to the earliest call date where a transaction is completed at a premium) regular delivery shall involve the stopping of accrued interest on the second clearing day after the transaction takes place;

(c) In the case of Government of Canada Bonds and Government of Canada Guaranteed Bonds having an unexpired term to maturity of longer than three years (where such a bond is traded at a premium the earliest call date shall be treated as the maturity date) and all provincial, municipal, corporation and other bonds or debentures, stock, or other certificates of indebtedness including (subject to clause (f)) mortgage-backed securities, regular delivery shall involve the stopping of accrued interest, where applicable, on the third clearing day after the transaction takes place;

(d) Nothing herein contained shall in any way interfere with the common practice of dealing in new issues during the period of original distribution on an "accrued interest to delivery" basis with the exception that regular delivery Rules will come into effect the appropriate number of clearing days prior to the new issue securities being first available for physical delivery;

Where a new issue delivery is made against payment outside of the points fixed for the initial syndicate delivery of the issue, additional accrued interest shall be charged from the delivery date at the initial syndicate delivery point(s) of the new issue, according to the length of time normally required for delivery to the locality in which the delivery is made;

(e) Sellers and buyers are both obliged to mail or deliver contracts of confirmation to a transaction each to the other the same day or within a maximum of one working day after a transaction is made;

(f) A trade in a mortgage-backed security made during a commitment period shall be entered into for delivery on the first clearing day on or after the fifteenth calendar day of the month. For the purposes of this clause (g), "commitment period" means the period from the third clearing day before month-end to the first clearing day on or before the eleventh calendar day of the following month, inclusive.

800.28. All transactions between Dealer Members doing business in different municipalities are to be completed on buyers' terms, i.e. delivery to be made free of banking and/or shipping charges to the buyer. Where drafts are drawn to arrive at their destination on other than a clearing day, the seller is entitled to have charges paid up to the next clearing day after the expected arrival of such draft.

800.29. In the case of dealings between Dealer Members in the same municipality, physical delivery by the seller should be completed before 5:30 p.m. on a clearing day, except for dealings between Participants, as defined in Rule 800.30A, which shall be settled in accordance with the rules of the applicable Settlement Service.

800.30. For the purpose of this Rule 800 and subject to any other Rule or Ruling expressly providing otherwise, good delivery between Dealer Members shall consist of the following, provided it is acceptable to the relevant transfer agent:

(a) Bonds/Debentures

Good delivery may consist of bearer bonds/debentures or registered bonds/debentures.

Bonds and/or debentures that are dealt with in registered form shall be good delivery if:

(i) Registered in the name of an individual, duly endorsed and with endorsement guaranteed by a Dealer Member in good standing of the Corporation or a recognized stock exchange, or by a chartered bank or qualified Canadian trust company;

(ii) Registered in the name of a Dealer Member or nominee of a Dealer Member and duly endorsed;

(iii) Registered in the name of a member of a recognized stock exchange and duly endorsed;

(iv) Registered in the name of a chartered bank or qualified Canadian trust company or the nominee of a chartered bank or qualified trust company and duly endorsed;

(v) In denominations as indicated below duly endorsed or with completed Power of Attorney to transfer attached. (One Power of Attorney for each certificate in question or an amalgamated Power of Attorney if acceptable to receiving broker or dealer.)

In all cases, endorsement guarantees acceptable to the relevant registrars and transfer agents must be procured by the seller and accompany delivery.

Interim certificates shall be considered good delivery as long as definitive certificates are not available. Once definitives are available, interims shall not be considered good delivery, unless by mutual agreement.

Bonds and debentures up to a maximum denomination of $100,000 par value shall constitute good delivery.

Denominations other than those specified above constitute good delivery only if acceptable to the buyer.

(b) Stocks

(i) Certificates registered in the name of:

(1) An individual, endorsed by the registered holder in exactly the same manner as registered and the endorsement guaranteed by a Dealer Member or by a member of a recognized stock exchange or by a chartered bank or qualified Canadian trust company; Where the endorsement does not exactly correspond to the registration shown on the face of the certificate, a certification by a Dealer Member or by a member of a recognized stock exchange that the two signatures are those of one and the same person or by a chartered bank or qualified Canadian trust company;

(2) A Dealer Member or a member of a recognized stock exchange or a nominee of either and duly endorsed;

(3) A chartered bank or qualified Canadian trust company or the nominee of a chartered bank or qualified Canadian trust company and duly endorsed by a Dealer Member;

(4) Any other manner providing it is properly endorsed and the endorsement is guaranteed by a Dealer Member or by a member of a recognized stock exchange or by a chartered bank or qualified Canadian trust company; and

(ii) Certificates in board lot denominations (or less) as required by the exchange on which the stock is traded.

Unlisted stocks should also be in denominations similar to listed stocks in the same category and price range.

(c) For the purpose of this Rule 800 "qualified Canadian trust company" means a trust company licensed to do business in Canada with a minimum paid up capital and surplus of $5,000,000.

800.30A. For the purposes of Rule 800:

"**CDS**" means The Canadian Depository for Securities Limited/La Caisse Canadienne de Dépôt de Valeurs Limitée;

"**Participant**" means a participant in a Settlement Service;

"**Settlement Service**" means a securities settlement service made available by CDS.

800.30B. Dealer Members who are Participants shall report all trades between Participants of securities to which a Settlement Service applies in accordance with the procedures of the applicable Settlement Service.

Delivery through CDS

800.30C. Good delivery of securities between Dealer Members which are Participants and any other Participants may be made by entries in the records maintained by CDS.

All trades between Participants in securities to which a Settlement Service applies shall be settled through such Settlement Service unless both the deliverer and the receiver have agreed otherwise.

800.30D.

(a) For the purpose of this Rule 800.30D:

(i) "**Dealer Member User**" means a Dealer Member which is a party to a nominee facility agreement;

(ii) "**Dealer Member Non-user**" means a Dealer Member, which is not a party to a nominee facility agreement;

(iii) "**Non-member User**" means a corporation, firm, person or other entity, which is not a Dealer Member and is a party to a nominee facility agreement;

(iv) "**Non-member Non-user**" means a corporation, firm, person or other entity, which is not a Dealer Member and is not a party to a nominee facility agreement;

(v) "**Nominee Facility Agreement**" means an agreement in writing in a form satisfactory to the Corporation whereby The Canadian Depository for Securities Limited/La Caisse Canadienne de Dépôt de Valeurs Limitée, the TSX Venture Exchange or any other person approved by the Corporation provides for the issuing of a nominee certificate evidencing an eligible security of an issuer;

(vi) "**Issuer**" means an issuer of securities designated by the Corporation as an issuer for the purpose of this Rule 800.30D;

(vii) "**Eligible Security**" means a security of an issuer designated by the Corporation as an eligible security for the purpose of this Rule 800.30D;

(viii) "**Nominee Certificate**" means a certificate issued by or on behalf of an issuer in respect of an eligible security in the name of a facility nominee in a form and manner satisfactory to the Corporation;

(ix) "**Facility Nominee**" means a nominee appointed by The Canadian Depository for Securities Limited/La Caisse Canadienne de Dépôt de Valeurs Limitée or the TSX Venture Exchange or any other nominee, any of which nominees shall have been approved by the Corporation for the purposes and on the terms and conditions prescribed by the Corporation.

(b) Notwithstanding any other Rule relating to the delivery or good delivery of securities, but subject to Rule 800.30C, good delivery in eligible securities of an issuer,

(i) Between Dealer Member users and between Dealer Member users and non-Dealer Member users shall only be by nominee certificates except that, if a delivering non-Dealer Member user is a chartered bank or trust company licensed or registered to do business in Canada or a province thereof, good delivery may also be by certificates registered in the name of the delivering chartered bank or trust company or their respective nominees, clients or a nominee of their clients (provided that a Dealer Member or a non-Dealer Member user other than a chartered bank or trust company shall not be a nominee) and shall otherwise comply with Rule 800;

(ii) Between Dealer Member non-users and between delivering Dealer Member non-users and either non-Dealer Member users or non-Dealer Member non-users shall only be by certificates registered in the name of the receiving Dealer Member non-user, non-Dealer Member user or non-Dealer Member non-

user, as the case may be, its client or the client's nominee and shall otherwise comply with Rule 800, provided that, if the receiving non-Dealer Member user or non-Dealer Member non--user is the client of the delivering Dealer Member non-user, certificates shall be in the name of the beneficial owner or such owner's nominee (which nominee shall not be a Dealer Member);

(iii) Between a delivering Dealer Member user and either a Dealer Member non-user or a non-Dealer Member non-user shall only be by certificates registered in the name of the receiving Dealer Member non-user or non-Dealer Member non-user, as the case may be, or their respective clients or their clients' nominees and shall otherwise comply with Rule 800 provided that, if the receiving non-Dealer Member non-user is the client of the delivering Dealer Member user, certificates shall be in the name of the beneficial owner or such owner's nominee (which nominee shall not be a Dealer Member);

(iv) Between a delivering Dealer Member non-user and a Dealer Member user shall be by certificates registered in the name of the delivering Dealer Member non-user, its client or the client's nominee and shall otherwise comply with Rule 800.

(c) Notwithstanding Rule 800.10, an eligible security may be registered by a Dealer Member in the name of, or in the name of a nominee of, a self-administered registered retirement savings plan registered under the Income Tax Act (Canada) prior to the receipt of payment therefore provided that the Dealer Member obtains an unconditional guarantee of payment by the trust company administering the plan prior to such registration.

(d) Where delivery is made by certificates in the name of a receiving Dealer Member non-user, non-Dealer Member user, non-Dealer Member non-user or a client or the client's nominee in accordance with Rules 800.30D(b)(ii) or (iii), the delivering Dealer Member or Dealer Member non-user, as the case may be, shall be entitled to payment for such certificates immediately on its advising that the certificates are available for delivery, which advice may be subject to receipt of instructions as to registration and the effecting of registrations.

Delivery through WCDTC

800.30E. Repealed.

Uniform Settlement

800.31.

(a) No Dealer Member shall accept an order from a customer pursuant to an arrangement whereby payment of securities purchased or delivery of securities sold is to be made to or by a settlement agent of the customer unless all of the following procedures have been followed:

(i) The Dealer Member shall have received from the customer prior to or at the time of accepting the order the name and address of the settlement agent and account number of the customer on file with the agent. Where settlement is made through a depository offering an identification number system for the clients of settlement agents of the depository, the Dealer Member shall have the client identification number prior to or at the time of accepting the order and use the number in the settlement of the trade;

(ii) Each order accepted from the customer pursuant to such an arrangement is identified as either a delivery or receipt against payment trade;

(iii) The Dealer Member provides to the customer a confirmation by electronic, physical, facsimile or verbal means of all relevant data and information required to be contained in a confirmation made pursuant to Rule 200 with respect to the execution of the trade, in whole or in part, as early as possible on the next business day following such execution, provided that the Dealer Member shall comply with the requirements of Rule 200 to the extent it has not done so pursuant to this clause (iii);

(iv) The Dealer Member has obtained an agreement from the customer that the customer will furnish its settlement agent with instructions with respect to the receipt or delivery of the securities involved in the transaction promptly upon receipt by the customer of each such confirmation, or the relevant date and information as to each execution, relating to such order (even though such execution represents the purchase or sale of only a part of the order), and that in any event the customer will ensure that its settlement agent affirms the transaction no later than the next business day after the date of execution of the trade to which the confirmation relates;

(v) The customer and its settlement agent shall utilize the facilities or services of a recognized securities depository for the affirmation and settlement of all depository eligible transactions through such facilities or services including book based or certificated settlement.

(b) For the purposes of Rule 800.31(a)

(i) "**Recognized Securities Depositories**" shall be The Canadian Depository for Securities Limited;

(ii) "**Depository Eligible Transactions**" shall mean trades in securities in respect of which affirmation and settlement can be performed through the facilities or services of a recognized securities depository.

(c) The provisions of paragraph (v) of Rule 800.31(a) shall not apply to trades:

(i) To be settled outside Canada; or

(ii) Where both the Dealer Member and the settlement agent are not participants in the same recognized securities depository or the same facilities or services of such depository required in respect of the trade.

(d) The provisions of this Rule 800.31 including the exemptions referred to in paragraph (c) shall be the subject of periodic review by the Corporation on its own or in consultation with any stock exchange or other entity or association representing or having regulatory authority in the Canadian securities industry.

800.32. For the purpose of this Rule 800 delivery of a bond, debenture or stock certificate of the type described below shall not constitute good delivery:

(a) A mutilated or torn certificate or coupon unless acceptable to receiving broker or dealer;

(b) A certificate registered in the name of a firm or corporation that has made an assignment for the benefit of creditors or has been declared bankrupt;

(c) A certificate signed by a Trustee or Administrator unless accompanied by sufficient evidence of authority to sign;

(d) A certificate with documents attached other than a registered bond of an issue available in registered form only, with completed Power of Attorney to transfer attached. (One Power of Attorney for each certificate or an amalgamated Power of Attorney if acceptable to receiving broker or dealer);

(e) A certificate which has been altered or erased (other than by the Transfer Agent) whether or not such alteration or erasure has been guaranteed;

(f) A certificate on which the assignment and/or substitute attorney has been altered or erased;

(g) A certificate with the next maturing coupon or subsequent coupons detached unless where so traded or where a certificate cheque (if for $1,000 or more) payable to the receiving Dealer Member, dated no later than the date of delivery and for the amount of the coupon(s) missing, is attached to the certificate in question;

(h) A bond or debenture, registered as to principal only, which after being transferred to Bearer, does not bear the stamp and signature of the Trustee;

(i) A registered bond, debenture or stock unless it bears a certificate that provincial tax has been paid where applicable;

(j) A certificate that has a stop transfer placed against it, the stop having been placed prior to delivery being made to the receiving dealer or broker.

800.33. Where dealings take place in bonds and/or debentures, available only in registered form:

(a) Dealings made from two days prior to a regular interest payment up to three days prior to the closing of the transfer books for the next interest payment, both days inclusive, shall be on an "and interest" basis. Unless delivery is completed to the buyer by twelve o'clock noon at a transfer point on the date of the closing of the transfer books for a regular interest payment, then the full amount of such interest payment shall be deducted by the seller after the calculation of interest on the regular delivery basis;

(b) Dealings made from two days prior to the closing of the transfer books up to and including three days prior to a regular interest payment shall be "less interest" from settlement date to the regular interest payment date.

800.34. Where dealings take place in unlisted registered shares, the shares shall be traded, ex dividend, ex rights, or ex payments two full business days prior to the record date. Where dealings take place in such registered shares which are not ex dividend, ex rights, or ex payments at the time the transaction occurs, the seller shall be responsible to the buyer for the payment of such dividends or payments, and delivery of such rights, as may be involved, on their due dates, if delivery is not completed prior to twelve o'clock noon at a transfer point on the date of the closing of the transfer books. Should the record date fall on a Saturday or other non-business day, for the purposes of this Rule it shall be presumed to be effective the business day previous.

800.35. Where interest on a transaction involves an amount greater than that represented by the half-yearly coupon, interest is to be calculated on the basis of the full amount of the coupon less one or two days, as the case may be.

800.36. Sales or purchases of securities prior to notice of call in part but not in full and undelivered on date of such notice, shall be completed on the basis of the original transaction. (Date of notice means the date of the notice of call irrespective of the date of publication of such notice.) Called securities do not constitute good delivery unless the transaction is so designated at its inception.

800.37. Sales or purchases of securities prior to notice of call in full and undelivered at time of such notice shall be completed on the terms of the original transaction.

800.38. The seller shall, at all times, be required to pay, or certify that payment has been made of, all taxes relative to the transaction, sufficient to enable the buyer to have the securities transferred to his or her nominee without tax cost to him or her. This rule shall not apply as to provincial transfer taxes if the buyer, by choice, transfers the securities to a register outside his or her own province, if there is a register within his or her province.

800.39. For the purpose of Rules 800.40 to 800.44 a "regular delivery transaction" shall be deemed to have taken place once the dealers involved have agreed on a price.

800.40. In the case of dealings between Dealer Members in the same municipality, should delivery not be advised by 11:30 a.m. on the fourth clearing day after a regular delivery transaction takes place, the buyer may at his or her option, give written notice to the seller and to the Corporation on that day, or any subsequent clearing day, prior to 3:30 p.m., of his or her intention to buy in for cash on the second clearing day after the original notice. Such notice shall automatically renew itself from clearing day to clearing day from 11:30 a.m. until closing until the transaction is finally completed. If the buy-in is not executed on the second clearing day after the original notice, then the seller shall have the privilege of advising the buyer each subsequent day before 11:30 a.m. of his or her ability, and intention, to make either whole or partial delivery on that day.

800.41. Where transactions occur between Dealer Members located in different municipalities, should delivery not have been received by the buyer at the expiration of four clearing days after the transaction takes place, on or after the fourth clearing day, the buyer may serve the seller with a buy-in by forwarding notice thereof over a public telegraph wire system, such notice to be timed at the sender's point not later than noon to be effective the third clearing day following and also advise the Corporation. If, prior to 5 p.m. buyer's time the day following the wired notice, the seller has not advised the buyer by public telegraph wire that the securities covered by the buy--in have passed through his or her clearing and are in transit to the buyer, then the buyer may on the third clearing day following the wired notice, proceed to execute such buy-in. While such wired buy-ins shall automatically renew themselves from clearing day to clearing day, the seller shall, except with the consent of the buyer, forfeit all right to complete delivery of other than such portion of the transaction which is in transit by the day following the receipt of a wired buy-in.

800.42. Any Dealer Member who is bought in may demand evidence that a bona fide transaction has taken place involving delivery, and he or she shall have the right to deliver such part of his or her commitment as he or she is in a position to consummate to the nearest $1,000 par value, or stock Trading Unit as defined in Rule 800.21, coincidental with, the execution of the buy-in and as provided for in the preceding paragraphs.

800.43. The Corporation shall have the authority to postpone the execution of a buy-in from day to day, and to combine buy-ins in the same security and to decide any dispute arising from the execution of the buy-in and his or her decision shall be final and binding.

800.44. When a buy-in has been completed the buyer shall submit to the seller a statement of account showing as credits the amount originally contracted for as payment for the securities, and as debits, the amount paid on buy-in, the cost of the buyer's wire and telephone charges relative to the buy-in, and any bank or shipping charges incurred. Any credit

balance remaining shall be paid to the seller by the buyer, and the seller shall be responsible for payment to the buyer of any remaining debit.

Dividend Claims

800.45. No Dealer Member shall make a certificate claim for dividends against another Dealer Member if the amount of such claim would be $5.00 or less.

Redemption Agents

800.46. No Dealer Member shall in respect of debt securities of any maturity pay to a client the redemption price or other amount due on redemption of such securities which price or amount exceeds $100,000 unless it shall first have received an amount equal to such price or other amount from the borrower or its agent by cheque certified by or accepted without qualification by a chartered bank (as defined in Rule 1.1) or payment has been received by or to the credit of the Dealer Member through the facilities of The Canadian Depository for Securities Limited or Depository Trust Company.

800.47. When Issued Trading

Unless otherwise provided by the Corporation or the parties to the trade by mutual agreement:

(a) All when issued trades made prior to the second trading day before the anticipated date of issue of the security shall be settled on the anticipated date of issue of such security;

(b) When issued trades on or after the second trading day before the anticipated date of issue of the security shall settle on the third settlement day after the trade date; and

(c) If the security has not been issued on the date for settlement as set out in paragraph (a) or (b) above, such trades shall be settled on the date that the security is actually issued.

800.48. Accrued interest on trades in interest paying instruments which pay interest monthly shall be zero if the value date of the trade is an interest payment date. Otherwise, the accrued interest on such trades shall be calculated by multiplying the face amount of the instrument by the interest rate of the instrument and the number of days between the value date of the trade and the last interest payment date prior to the value date of the trade and dividing the result by twelve multiplied by the number of days between the next interest payment date after the value date of the trade and the last interest payment date prior to the value date of the trade.

800.49. Acceptable broker-to-broker trade matching utility

For each non-exchange trade, involving CDS eligible securities, executed by a Dealer Member with another Dealer Member, each Dealer Member must enter the trade into an Acceptable Trade Matching Utility or accept or reject any trade entered into an Acceptable Trade Matching Utility by another Dealer Member [within one hour of executing the trade.]

For purposes of this Rule 800.49, an "**Acceptable Trade Matching Utility**" shall be the Broker-To-Broker Trade Matching Utility developed as part of the CDSX development or any similar system approved by the Board of Directors of the Corporation.

RULE 1100
CALCULATING PRICE ON A YIELD BASIS

1100.1. Except as herein provided, where a transaction results from the submission of a bid or offer on a yield basis without stipulation as to price or method of calculating the unexpired term by the buyer or seller at the time the bid or offer is submitted, the price shall be determined as follows:

(a) Bonds Having Unexpired Term up to and Including 10 Years

The unexpired term shall be deemed to be the exact period expressed in years and/or years and months and/or in years, months and days from the regular delivery date to the maturity of a non-callable bond or a callable bond selling at a price lower than the call price, and to the first redemption date of a callable bond selling at the call price or at a premium over the call price. In calculating the price for the term so determined, one day shall be deemed to be 1/30th of one month;

(b) Bonds Having Unexpired Term Over 10 Years

The unexpired term shall be deemed to be the period expressed in years and/or years and months from the month in which the regular delivery date occurs to the month and year of the maturity of a non-callable bond or callable bond selling at a price lower than the call price, and to the first month and year that the bond is redeemable in the case of a callable bond selling at the call price or at a premium over the call price;

(c) Prices

In all transactions between dealers and customers determined in accordance with the foregoing, the prices shall be extended to three decimal places only. If the fourth figure after the decimal point is 5 or more the third figure after the decimal point shall be increased by one;

(d) New Issues

This Rule shall apply to dealing in new issues and the unexpired term shall be deemed to commence on the date to which accrued interest is charged to the customer.

1100.2. Rule 1100.1 shall not apply to transactions in the following securities, all dealings in which shall be subject to negotiation of the dollar price:

(a) Government of Canada Bonds and Bonds guaranteed by Canada;

(b) Short-term securities as noted hereunder:

(i) Securities which have an unexpired term of six months or less to maturity;

(ii) Securities which have an unexpired term of six months or less to the call date and are selling at the call price or at a premium over the call price;

(iii) Securities which have been called for redemption;

(c) Securities callable on future dates at varying prices;

(d) Securities callable at the option of the obligant where the call date is not stipulated and the securities are selling at a premium over the call price.

1100.3. Bond quotations furnished to the press by any Dealer Member must be under the name of the Corporation.

RULE 1200
CLIENTS' FREE CREDIT BALANCES

1200.1. For the purposes of this Rule 1200, "free credit balances" shall mean:

(a) For cash and margin accounts - the credit balance less an amount equal to the aggregate of (i) the market value of short positions, and (ii) margin as required pursuant to the Rules on those short positions; and

(b) For commodity accounts - the credit balance less an amount equal to the aggregate of (i) margin required to carry open futures contracts and/or futures contract option positions, (ii) less any equity in such contracts, (iii) plus any deficits in such contracts, provided that such aggregate amount may not exceed the dollar amount of the credit balance.

1200.2. Each Dealer Member which does not keep its clients' free credit balances segregated in trust for clients in an account with an acceptable institution separate from the other monies from time to time received by such Dealer Member shall legibly make a notation on all statements of account sent to its clients in substantially the following form:

Any free credit balances represent funds payable on demand which, although properly recorded in our books, are not segregated and may be used in the conduct of our business.

1200.3. No Dealer Member shall use in the conduct of its business clients' free credit balances in excess of the aggregate of the following amounts:

(a) Eight times the net allowable assets of the Dealer Member; plus

(b) Four times the early warning reserve of the Dealer Member.

Each Dealer Member shall hold an amount at least equal to the amount of clients' free credit balances in excess of the foregoing either (a) in cash segregated in trust for clients in a separate account or accounts with an acceptable institution; or (b) segregated and separate and apart as the Dealer Member's property in bonds, debentures, treasury bills and other securities with a maturity of less than one year of or guaranteed by the Government of Canada, a province of Canada, the United Kingdom, the United States of America and any other national foreign government (provided such other foreign government is a member of the Basle Accord).

1200.4. Dealer Members shall determine at least weekly the amounts required to be segregated in accordance with Rule 1200.3.

1200.5. Dealer Members shall review on a daily basis compliance with Rule 1200.3 against the latest determination under this Rule 1200 of amounts to be segregated with a view to identifying and correcting any deficiency in amounts of free credit balances to be segregated.

1200.6. In the event that a deficiency exists in amounts of free credit balances required to be segregated by a Dealer Member, the Dealer Member shall expeditiously take the most appropriate action to rectify the deficiency.

RULE 1400
DISCLOSURE TO CLIENTS OF MEMBERS' FINANCIAL CONDITION AND OTHER INFORMATION

1400.1. Each Dealer Member shall make available to its clients, on request, a statement of its financial condition as of the close of its latest financial year and based on the latest annual audited financial statements, provided that in order to prepare such statement, the Dealer Member shall have 75 days from the close of such financial year. The term "client", as used in this Rule 1400, shall mean any person who has had a transaction with a Dealer Member within one year of the day on which a request for a statement of financial condition is made.

1400.2. Any statement of financial condition published in a newspaper or other medium in Canada shall be in the same form and of the same substance as the statement made available to clients.

1400.3. The statement of financial condition shall contain information such as the following or similar headings for items which are material:

Current Assets
Cash
Receivables from brokers and dealers
Receivables from customers
Inventory of securities at the lower of cost or market value or at market value (state basis of valuation)

Miscellaneous Accounts Receivable

Other Assets (state basis of valuation)
Investment in subsidiary and affiliated companies
Fixed assets

Current Liabilities
Call loans and bank overdrafts
Payable to brokers and dealers
Payable to customers
Accounts payable, accrued expenses and income taxes
Securities sold short at the higher of cost or market value or at market value (state basis of valuation)

Capital in the Business
Shareholders' equity (including subordinated loans and retained earnings)
Partners' equity

1400.4. Where the accounts of a Dealer Member are included in the consolidated financial statements of any holding company or affiliate of the Dealer Member which are published in a newspaper or other medium in Canada and the holding company, related company or affiliate has a name similar to that of the Dealer Member, either

(a) The consolidated financial statement shall be accompanied by a note indicating that the entity to which the consolidated statements relate is neither a Dealer Member of the Corporation nor of any other recognized self-regulatory organization and that, while the statements include the accounts of the Dealer Member, the consolidated statements are not the financial statements of the Dealer Member; or

(b) The Dealer Member shall, contemporaneously with the publication, send to each of its clients the unconsolidated statement of financial condition of the Dealer Member together with a letter explaining why such statement is being sent.

1400.5. The statement of financial condition shall be accompanied by a report by the Dealer Member's auditor stating that it fairly summarizes the financial position of the Dealer Member.

1400.6. Each Dealer Member shall make available to its clients, on request, a current list of the names of its partners or its directors and senior officers made up as of a recent date.

1400.7. Each Dealer Member shall indicate to its clients on each statement of account or in such other manner as may be approved by the Corporation that the statement of financial condition and list of partners, directors and senior officers are available upon request.

RULE 2000
SEGREGATION REQUIREMENTS

Acceptable External Locations

2000.1. For the purposes of Rule 17.3 and Rule 17.3A, securities held beyond the physical possession of the Dealer Member may be segregated and held in trust for customers of a Dealer Member, or segregated and held by or for a Dealer Member, as the case may be, in acceptable securities locations, provided that the written terms upon which such securities are deposited and held beyond the physical possession of the Dealer Member include provisions to the effect that

(a) No use or disposition of the securities shall be made without the prior written consent of the Dealer Member;

(b) Certificates representing the securities can be delivered to the Dealer Member promptly on demand or, where certificates are not available and the securities are represented by book entry at the location, the securities can be transferred either from the location or to another person at the location promptly on demand; and

(c) The securities are held in segregation for the Dealer Member or its customers free and clear of any charge, lien, claim or encumbrance of any kind in favour of the depository or institution holding such securities.

Acceptable Internal Locations

2000.2. For the purposes of Rules 17.3 and 17.3A, the securities held within the physical possession or control of the Dealer Member may be segregated and held in trust for clients of the Dealer Member, or segregated and held by or for the Dealer Member, as the case may be, in the following prescribed locations:

(a) Internal Storage

All internal storage locations designated in the Dealer Member's ledger of accounts for which adequate internal accounting controls and systems for safeguarding of securities held for clients are maintained and which reflect unencumbered security positions in the possession and control of the Dealer Member.

All securities in transit between internal storage locations, for which adequate internal controls are maintained, provided that securities in transit for more than five (5) business days may not be considered as being in the possession and control of a Dealer Member for purposes of segregation.

(b) Transfer Locations

All securities which are in the process of being transferred by a registered or recognized transfer agent.

If such securities are with transfer agents in Canada and have not been received within twenty (20) business days of delivery, the Dealer Member shall obtain a confirmation of the position receivable from the transfer agent. If such position remains unconfirmed after forty-five (45) business days of delivery, the Dealer Member must transfer the position to its difference account.

If such securities are with transfer agents in the United States, the Dealer Member must confirm the receivable after forty-five (45) business days of delivery and transfer the position to its difference account after seventy (70) business days of delivery if the position has not been confirmed. If such securities are with transfer agents outside Canada and the United States, the Dealer Member must confirm the receivable after seventy (70) business days of delivery and transfer the position to its difference account after one hundred (100) business days of delivery if the position has not been confirmed.

If the positions represented by such securities are required to be transferred to the Dealer Member's difference account, such securities shall not be considered to be in the possession and control of the Dealer Member for the purposes of segregation.

Non-Negotiable Securities

2000.3. Securities which are restricted or which are non-negotiable or which cannot be made fully negotiable solely by signature or guarantee of the Dealer Member shall be deemed not to be segregated unless such securities are registered in the name of the client (or the name of a person required by the client) on whose behalf they are being held in an acceptable segregation location.

Bulk Segregation Calculation

2000.4.

(a) A Dealer Member, which holds securities of clients in bulk segregation in accordance with Rule 17.3, shall determine, for all accounts of each client, the following amounts:

(i) The quantity of all securities held for such accounts which are part of a qualifying hedge position;

(ii) The net loan value of all securities held for such accounts, other than securities referred to in subparagraph (i), minus (or plus in the case of a credit) the aggregate debit cash balance in the accounts; and

(iii) The market value of all securities, other than securities referred to in subparagraph (i), not eligible for margin under Rule 100 minus the aggregate amount, if any, by which such accounts are under-margined as calculated in subparagraph (ii).

Amounts defined in subparagraphs (ii) and (iii) shall represent the net loan value or market value, as the case may be, of securities required to be segregated by the Dealer Member in respect of such accounts. The amount of securities required to be segregated by a Dealer Member shall not, in any case, be greater than the market value of the securities held for such accounts.

(b) For the purposes of this Rule 2000.4, net loan value of a security means, in respect of:

(i) A long position, the market value of the security less any margin required;

(ii) A short position, the market value of the security plus any margin required expressed as a negative number; and

(iii) A short security option position, any margin required as a negative number.

(c) For the purposes of this Rule 2000.4, a qualifying hedge position means, for all the accounts of each client:

(i) A long position in a security; and

(ii) A short position in a security issued or guaranteed by the same issuer of the security referred to in subparagraph (i);

where

(iii) The long position is convertible or exchangeable to the securities of the same class and number of the securities held in the short position; and

(iv) The Dealer Member is using the long position as collateral to cover the short position.

2000.5. A Dealer Member may satisfy its obligations to segregate client securities under Rule 17.3 by segregating in bulk for all clients the number of securities determined as follows:

(a) Equity securities

The aggregate loan value and market value of each class or series of security required to be segregated for each client as determined under Rule 2000.4 divided by the loan or market value, as the case may be, of one unit of the security, shall be the number of such securities required to be segregated.

(b) Debt securities

The aggregate loan value and market value of each class or series of security required to be segregated for each client as determined under Rule 2000.4 divided by the loan or market value, as the case may be, of each $100 of principal amount of the security, multiplied by 100 and rounded to the lowest issuable denomination, shall be the principal amount of such securities required to be segregated.

In determining which securities shall be used to satisfy the segregation requirements in respect of each such client's positions, the Dealer Member may select among all of the securities carried for the client's accounts, subject to the

restrictions of any applicable securities legislation including, without limitation, a requirement that fully-paid securities in a cash account be segregated before unpaid securities.

Securities which are required to be segregated but which have been sold by the Dealer Member on behalf of a client shall remain segregated until one business day prior to settlement or value date. Securities which are required to be segregated for a client shall not be removed from segregation as a result of the purchase of any securities by such client until settlement or value date.

Frequency and Review of Calculation

2000.6. A Dealer Member shall determine at least twice weekly the securities required to be segregated according to the calculations set out in Rules 2000.4 and 2000.5.

2000.7. Each Dealer Member shall review on a daily basis compliance with its segregation requirements for its clients' securities according to the latest determination of such securities pursuant to Rule 2000.6 with a view to identifying any deficiency in securities required to be segregated and correcting any such deficiency.

General Restrictions

2000.8. In complying with its obligation to segregate client securities in accordance with Rules 17.3 and 2000, each Dealer Member shall ensure that:

(a) A segregation deficiency is not knowingly created or increased;

(b) No securities held by the Dealer Member are delivered against payment for the account of any client if such securities are required to satisfy the segregation requirements of the Dealer Member in respect of any client;

(c) All free securities (i.e. fully paid and unencumbered securities which have not been sold or are not required for margin) received by the Dealer Member shall be segregated.

Correction of Segregation Deficiencies

2000.9. In the event that a segregation deficiency exists, including (without limitation) deficiencies arising in the circumstances listed below, the Dealer Member shall expeditiously take the most appropriate action required to settle the segregation deficiency.

Call loans:

The Dealer Member shall take action to recall such securities within the business day following the determination of the deficiency.

Securities loans:

The Dealer Member shall call for the return of such securities from the borrower within the business day following the determination of the deficiency or shall borrow securities of the same issue to cover the deficiency and should such securities not have been received by the Dealer Member within five (5) business days following the determination of the deficiency, the Dealer Member shall undertake to buy-in the borrower.

Inventory or Trading Account Short Positions:

The Dealer Member shall borrow securities of the same issue to cover the deficiency within the business day following the determination of the deficiency or shall undertake to purchase the securities immediately.

Client Declared Short Sales:

The Dealer Member shall borrow securities of the same issue to cover the deficiency within the business day following the determination of the deficiency or shall undertake to buy-in the securities within five (5) business days.

Fails - Client, Dealer Members, Acceptable Institutions or Acceptable Counterparties:

If such securities have not been received by the Dealer Member within fifteen (15) business days of the settlement date, the Dealer Member shall borrow securities of the same issue to cover the deficiency or shall undertake to buy-in the securities.

Stock Dividends Receivable and Stock Splits:

If such securities have not been collected within forty-five (45) business days of the date receivable, the Dealer Member shall obtain a written confirmation of the position receivable. If such position remains unconfirmed after the aforementioned forty-five (45) business days, the Dealer Member must transfer the position to its difference account.

Difference Accounts:

Each Dealer Member shall maintain a difference or suspense account in which shall be recorded all securities which have not been received by reason of irreconcilable differences or errors in any accounts. If securities recorded in a difference account have not been obtained by the Dealer Member within thirty (30) business days of the deficiency being recorded, the Dealer Member shall borrow securities of the same class or series to cover the deficiency or shall undertake to purchase the securities immediately.

RULE 2200
CASH AND SECURITIES LOAN TRANSACTIONS

2200.1. For the purposes of this Rule 2200:

"Overnight Cash Loan Agreements" means oral or written agreements whereby a Dealer Member deposits cash with another Dealer Member for a period not exceeding two (2) business days.

"Schedule I Bank" means a Schedule I bank pursuant to the Bank Act (Canada) that has a capital and reserves position of one billion ($1,000,000,000) or more at the time of the securities loan transaction."

2200.2. Any cash and securities loan agreement, other than an overnight cash loan agreement, shall be in writing and, at minimum, shall provide:

(a) For the rights of either party, in addition to any other remedies provided in the agreement or which a party may have under any applicable law, to retain and realize on the securities delivered to it by the other party in respect of the loan on the occurrence of an event of default in respect of the other party;

(b) For events of default;

(c) For the treatment of the value of securities or collateral held by the non-defaulting party that is in excess of the amount owed by the defaulting party;

(d) Either:

(i) For provisions enabling the parties to set off their debts; or

(ii)

(A) For provisions enabling the parties to effect a secured loan and, in particular, for the continuous segregation by the lender of securities held by it as collateral for the loan; and

(B) If the parties intend to effect a secured loan, where there is available to the lender more than one method of perfecting its security interest in the collateral, the lender must perfect such interest in a manner that provides it with the higher priority in a default situation; and

(e) If the parties intend to rely on set off or effect a secured loan, for the securities borrowed and the securities loaned to be, pursuant to applicable legislation, free and clear of any trading restrictions and duly endorsed for transfer.

2200.3. Failure to fulfil the conditions of Rule 2200.2 will result in:

(a) The cash or market value of the collateral given by the borrower to the lender being deducted from net allowable assets of the borrower; and

(b) The cash or market value of the loan given by the lender to the borrower being deducted from the net allowable assets of the lender.

Except where the counter-party is an acceptable institution in which case no margin need be provided.

2200.4. Buy-ins (liquidating transactions) must be commenced within two (2) business days of the date notice for the buy-in is given.

2200.5. All cash and securities loan transactions shall be properly recorded in the books and records of the Dealer Member in compliance with Rule 200.

2200.6. Where a cash and securities loan transaction is between regulated entities, the following rules apply:

(a) The written agreement required by Rule 2200.2 shall also contain an acknowledgement by the parties that either has the right, upon notice, to call for any shortfall in the difference between the collateral and the borrowed securities at any time;

(b) Letters of credit issued by Schedule I Banks may be used as collateral; and

(c) Except where the cash and securities loan transaction is processed through an acceptable clearing corporation, confirmations and month-end statements shall be issued.

2200.7. Where the cash or securities loan transaction is between a Dealer Member and an acceptable institution or an acceptable counter-party, the following rules apply:

(a) Confirmations and month-end statements shall be issued; and

(b) Letters of credit issued by Schedule I Banks may be used as collateral.

2200.8. Where a Dealer Member enters into a cash and securities loan transaction with a party other than one to which Rule 2200.6 or 2200.7, the following rules apply:

(a) Marking to Market. Borrowed securities and collateral must be marked to market daily on a one-for-one basis.

(b) Loan Accounts. Loan accounts must be maintained separate from the securities trading accounts maintained by the Dealer Member.

(c) Collateral

(A) Securities pledged as collateral must be held by the Dealer Member on a fully segregated basis or must be held by an acceptable depository or a bank or trust company qualifying as either an acceptable institution or an acceptable counter-party pursuant to an escrow agreement, acceptable to the Corporation between the Dealer Member and the depository, institution or counter-party;

(B) Subject to clause (C), securities pledged as collateral must have a margin rate of 5 percent or less; and

(C) Preferred shares or debt securities convertible (in either case) into the common shares of the class which have been borrowed may be pledged against common stock of the issuer.

(d) Non-Compliance. Failure to fulfill the conditions of Rules 2200.8(b) or (c)(A) will result in a charge to net allowable assets of the Dealer Member as provided in Rule 100 for short securities balances in the accounts of customers.

(e) Confirmations and Month-end Statements. Confirmations and month-end statements shall be issued and, where the other party to a transaction is a retail client of the Dealer Member, such loan of securities shall be recorded in an account separate from the retail client's trading accounts.

2200.9. In a cash or securities loan transaction between an acceptable institution, acceptable counter-party, or a regulated entity, where a letter of credit issued by a Schedule I Bank is used as collateral for the cash or securities loan transaction pursuant to Rules 2200.6(b) or 2200.7(b), there shall be no charge to the Dealer Members capital for any excess of the value of the letter of credit pledged as collateral over the market value of the securities borrowed.

RULE 2300
ACCOUNT TRANSFERS

2300.1. Definitions. In this Rule 2300 the expression:

"**Account Transfer**" means the transfer in its entirety of an account of a client with a Dealer Member to another Dealer Member at the request or with the authority of the client;

"**CDS**" means The Canadian Depository for Securities Limited / La Caisse Canadienne de Dépôt de Valeurs Limitée;

"**Delivering Dealer Member**" means in respect of an account transfer the Dealer Member from which the account of the client is to be transferred;

"**Receiving Dealer Member**" means in respect of an account transfer the Dealer Member to which the account of the client is to be transferred;

"**Partial Account**" means in respect of an account transfer, any assets and balances in the account of a client to be transferred from a delivering Dealer Member to a receiving Dealer Member which comprise less than the total assets and balances held by the delivering Dealer Member for that account;

"**Recognized Depository**" means a clearing corporation or depository which has been recognized by the Board of Directors pursuant to Rule 2000.

2300.2. Account Transfers. Each account transfer shall be effected wherever possible through the facilities or services of a clearing organization or depository which has been recognized by the Board of Directors. The procedures to be followed for full or partial account transfers shall be as set out in this Rule 2300.

Written communications by Dealer Members with other Dealer Members required in connection with compliance with this Rule 2300 including, without limitation, delivery of Request for Transfer forms and Asset Listings shall be transmitted by electronic delivery through the Account Transfer Facility of CDS, unless both Dealer Members agree otherwise. Each Dealer Member shall bear its own costs in respect of the receipt or delivery of such communications. Each Dealer Member shall be responsible for the selection, implementation and maintenance of appropriate security products, tools and procedures sufficient to protect any communications sent by electronic delivery by such Dealer Member.

Each Dealer Member acknowledges that communications sent by it by electronic delivery pursuant to this Rule 2300 will be relied on by the other Dealer Members receiving them and such Dealer Members sending a communication shall indemnify and save harmless any such other Dealer Members against and from any claims, losses, damages, liabilities or expenses suffered by such Dealer Members and arising as a result of reliance on any such communication which is unauthorized, inaccurate or incomplete.

2300.3. Authorization. Each receiving Dealer Member which receives a request from a client to accept an account shall provide the client with an Authorization to Transfer Account form in a form approved by the Corporation.

On return of the Authorization to Transfer Account form to the office designated by the receiving Dealer Member, duly executed by the client, the receiving Dealer Member shall promptly send a Request for Transfer form (as approved by the Corporation) by electronic delivery through the Account Transfer Facility of CDS providing the prescribed information required by CDS. The original copy of the Authorization to Transfer Account form shall remain on file pursuant to Rule 200.1 with the receiving Dealer Member and will be made available at any time upon request.

In addition, the receiving Dealer Member shall ensure that such forms or documents as may be required in order to transfer trusteed accounts, provincial stock savings plan accounts or other accounts which cannot be transferred without such other forms or documents are duly completed and available on the same day as the electronic delivery of the Request for Transfer form.

2300.4. Response to Request for Transfer. On electronic receipt of the Request for Transfer, the delivering Dealer Member shall either deliver electronically to the receiving Dealer Member the Asset Listing of the client account being transferred by the return date as specified, or reject the Request for Transfer if the client account information is unknown to the delivering Dealer Member, or is incomplete or incorrect. The return date shall be no later than two clearing days after the date of electronic receipt at the delivering Dealer Member.

If for any reason, an impediment exists which prevents the requested transfer of an asset for an account from the delivering Dealer Member to the receiving Dealer Member, the delivering Dealer Member shall forthwith notify the receiving Dealer Member electronically, identifying such asset(s) and the reason for the inability to deliver. The receiving Dealer Member shall obtain instructions or directions from the client and deliver them electronically to the delivering Dealer Member with regard to that asset.

Transfer of the balance of assets belonging to the client shall be completed in accordance with this Rule 2300.

2300.5. Settlement. Within one clearing day after the return date specified on the Request for Transfer, the delivering Dealer Member shall input, or cause the Account Transfer facility at CDS to implement automatically, the set up for settlement

of those assets which are to be settled through CDS. All other assets shall be delivered using the standard industry practice for such assets.

No Dealer Member shall accept transfer of an account from another Dealer Member which is not margined in accordance with regulatory requirements, unless at the time of the transfer, the receiving Dealer Member has in its possession sufficient available funds or collateral for the credit of the client to cover the deficiency in the account.

Any assets which cannot be transferred through recognized depositories shall be settled over the counter or by such other appropriate means as may be agreed between the receiving Dealer Member and the delivering Dealer Member, with the same time limits specified above for assets which can be transferred through a depository.

2300.6. Failure to Settle. If the delivering Dealer Member fails to settle the transfer of any asset in the account of a client within 10 clearing days of the receipt of the Request for Transfer form by electronic delivery, the receiving Dealer Member may complete the account transfer by, at its option:

(a) Buying-in the unsettled position in accordance with Rules 800.39 to 800.44;

(b) Establishing a loan of the assets from the receiving Dealer Member to the delivering Dealer Member through a recognized depository, which loan shall be marked to market and the relevant assets shall be deemed to have been delivered to the receiving Dealer Member for the purpose of settling the account transfer; or

(c) Making such other mutually agreed arrangements with the delivering Dealer Member such that the account transfer can be deemed to have been completed for the client.

2300.7 Non-Certificated Mutual Funds. Assets in an account to be transferred in the form of non-certificated mutual fund securities shall be considered transferred upon delivery by the delivering Dealer Member to the receiving Dealer Member of a duly completed Dealer to Dealer Mutual Fund Transfer form as approved by the Corporation and a properly completed and endorsed power of attorney, or by entry of transfer instructions in the electronic account transfer facility of Mutual Funds Clearing and Settlement Services Inc.

2300.8. Miscellaneous Balances. Balances comprising interest or dividend receipts shall be settled promptly between a delivering Dealer Member and receiving Dealer Member and the failure to so settle such balances for any reason shall not constitute grounds for not complying with the account transfer procedures contained in this Rule 2300.

2300.9. Capital Charges. Delivering Dealer Members shall not be subject to capital or margin charges in respect of assets which are in the process of being transferred in accordance with this Rule 2300. The receiving Dealer Member shall be required to margin all assets or balances which are in the process of being transferred in accordance with this Rule 2300.

2300.10. Fees and Charges. The delivering Dealer Member shall be entitled to deduct any fees or charges on accounts to be transferred prior to or at the time of transfer in accordance with that Dealer Member's current published schedule for such fees and charges.

2300.11. Exemptions. The Corporation may exempt a Dealer Member from the requirements of this Rule 2300 where he or she is satisfied to do so would not be prejudicial to the interests of the Dealer Member, its clients or the public and in granting such exemption the Corporation may impose such terms and conditions, if any, as he or she may consider necessary.

RULE 2600
INTERNAL CONTROL POLICY STATEMENTS

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INTERNAL CONTROL POLICY STATEMENT 1
GENERAL MATTERS

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(iv) The balance struck between preventive and detective internal controls. "Preventive controls are those which prevent, or minimize the chance of occurrence of, fraud and error. Detective controls do not prevent fraud and error but rather detect them, or maximize the chance of their detection, so that corrective action may be promptly taken. The known existence of detective controls may have a deterrent effect, and be preventive in that sense". (CICA Handbook, 5205.13)

The extent of preventive controls implemented by a Dealer Member will depend on management's view of the risk of loss and the cost-benefit relationship of controlling such risk. Where the inherent risk is high (e.g., cash, negotiable securities), the cost of effective preventive controls will usually be warranted and expected by industry regulators. On the other hand, where the inherent risk is very low (e.g., prepaid expenses, stock exchange seats), the cost of preventive controls would usually not be warranted nor expected by industry regulators. Further, in a circumstance where a preventive control is warranted, a detective control should not be considered to be a suitable alternative unless it will result in prompt detection of fraud and error and provide near certainty of recovery of the property that is the subject of the fraud or error.

For example, the safeguarding of customers' segregated securities warrants the implementation of highly effective preventive controls. Accordingly, Dealer Members safeguard such securities by placing them in recognized depositories whenever possible or storing them in bank and/or in-house vaults of an appropriate class suitable to insurers. It would not be appropriate to keep such securities in standard filing cabinets even if such securities were counted monthly since the risk of loss would be high and the possibility of recovery could be very low.

(v) Industry practice.

Determining whether internal control is adequate is a matter of judgement. However, internal control is not adequate if it does not reduce to a relatively low level the risk of failing to meet control objectives stated in this series of Policy Statements and, as a consequence, one or more of the following conditions has occurred or could reasonably be expected to do so:

(i) A Dealer Member is inhibited from promptly completing securities transactions or promptly discharging the Dealer Member’s responsibilities to clients, to other brokers, or to the industry:

(ii) Material financial loss is suffered by the Dealer Member, clients or the industry;

(iii) Material misstatements occur in the Dealer Member’s financial statements;

(iv) Violations of regulations occur to the extent that could reasonably be expected to result in the conditions described in (i) to (iii) above.

Other Policy Statements in this series set out control objectives, required and recommended firm policies and procedures and indications that internal control is not adequate. While recommended firm policies and procedures will be appropriate in many cases to meet the stated objectives, they constitute merely one of a number of methods which Dealer Members may utilize. It is recognized that Dealer Member firms may conduct their business in compliance with legal and regulatory requirements although they may employ procedures which differ from the recommended firm policies and procedures contained in the Policy Statements. The information is designed to provide guidance to Dealer Member firms in the preparation of procedures tailored to the specific needs of their individual environment in meeting the stated control objectives.

Dealer Members must maintain a detailed written record which as a minimum should include the specific policies and procedures approved by senior management to comply with these Internal Control Policy Statements. These policies and procedures must be reviewed and approved in writing by senior management at least annually, or more frequently as the situation arises, for their adequacy and suitability. One method of documentation is to note on a copy of this Statement the recommended policies and procedures which have been selected, and details of their performance such as who performs them, when, and how performance is evidenced. Other forms of documentation, such as procedures manuals, flow charts and narrative descriptions are recommended.

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INTERNAL CONTROL POLICY STATEMENT 2
CAPITAL ADEQUACY

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Minimum Required Firm Policies and Procedures

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2. The firm's planning process recognizes the projected capital requirements resulting from current and planned business activities.

3. Activity limits for the major functional areas of the firm (such as capital markets, principal trading, borrowing/lending, etc.) are designed to ensure that the combined operations of the firm maintain at least the minimum required amount of risk adjusted capital.

4. Such activity limits are approved by senior management and communicated to the executives responsible for the various major functional areas. Actual performance is compared to such limits by the Chief Financial Officer or designated person assigned the task of monitoring the capital position, and breaches are reported promptly to senior management.

5. At least weekly, but more frequently if required (e.g. the firm is operating close to early warning levels or volatile market conditions exist), the Chief Financial Officer or designated person assigned the task for monitoring the capital position documents that he/she has:

   (a) Received management reports produced by the accounting system showing information relevant to estimation of the capital position;

   (b) Obtained other information concerning items that, while they may not yet be recorded in the accounting system, are likely to significantly affect the capital position (e.g. bad and doubtful debts, unreconciled positions, underwriting and inventory commitments and margin requirements);

   (c) Estimated the capital position, compared it to planned capital limits and the prior period and reported adverse trends or variances to senior management.

   (d) Estimated the application to the Dealer Member of the liquidity and capital tests under the early warning calculations for Level 1 and/or Level 2 of Rule 30. In addition, at least monthly estimate the application of the profitability tests under the early warning calculations for Level 1 and/or Level 2 of Rule 30.

6. Senior management takes prompt action to avert or remedy any projected or actual capital deficiency and reports any deficiencies, when required, immediately to the appropriate regulators. In addition, senior management promptly reports to the appropriate regulators any conditions or circumstances that are, or should be, apparent from the actions required to be performed under this Statement that could require the Dealer Member to be designated in early warning Level 1 or Level 2 in accordance with Rule 30 because of the application of the liquidity, capital or profitability tests.

7. The month-end estimate of required and risk adjusted capital is reconciled to the Monthly Financial Report submitted for regulatory filing. Material discrepancies are investigated and steps taken to preclude re-occurrence.

8. At least annually there is a documented supervisory review of the firm's management reporting system related to capital, to identify and implement changes required to reflect developments in the business or in regulatory requirements.

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INTERNAL CONTROL POLICY STATEMENT 4
SEGREGATION OF CLIENTS' SECURITIES

This policy statement is one in a series that prescribes requirements for and provides guidance on compliance with Rule 17.2A that states "every Dealer Member shall establish and maintain adequate internal controls in accordance with the internal control policy statements in Rule 2600." It should be read in the context of Policy Statement 1 dealing with General Matters.

Control Objective

To segregate clients' fully-paid and excess margin securities so that:

(a) The firm is in compliance with regulatory and legal requirements for segregation;

(b) Fully paid and excess margin securities are not improperly used.

Minimum Required Firm Policies and Procedures

1. At least twice weekly the information system produces a report of items requiring segregation (the "segregation report").

2. Items requiring segregation are placed in "acceptable securities locations" as defined by regulation on a timely basis.

3. Written custodial agreements with applicable regulatory provisions exist for securities held at acceptable securities locations.

4. Securities are moved into or out of segregation only by authorized personnel.

5. There is a daily supervisory review of compliance with segregation requirements for clients' securities according to the latest segregation report and of action taken to settle previously identified deficiencies.

6. If any segregation deficiency exists, the most appropriate action prescribed by regulation required to settle the deficiency is taken expeditiously.

7. There is supervisory review or other procedures in place to ensure the completeness and accuracy of segregation reports.

8. If any segregation deficiency is identified in such supervisory review, the most appropriate action required to settle the deficiency is taken expeditiously.

9. Management has set reasonable guidelines so that any material segregation deficiency is reported to senior management on a timely basis.

10. At least annually there is a documented supervisory review of firm policies and procedures to identify and correct any divergence from regulatory requirements.

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INTERNAL CONTROL POLICY STATEMENT 5
SAFEKEEPING OF CLIENTS' SECURITIES

This policy statement is one in a series that prescribes requirements for and provides guidance on compliance with Rule 17.2A that states "every Dealer Member shall establish and maintain adequate internal controls in accordance with the internal control policy statements in Rule 2600." It should be read in the context of Policy Statement 1 dealing with General Matters.

Control Objective

To provide safekeeping services to clients so that:

(a) The firm is in compliance with regulatory requirements for safekeeping;

(b) Securities in safekeeping are not improperly used.

Minimum Required Firm Policies and Procedures

1. Securities held in safekeeping are held pursuant to a written safekeeping agreement with the client.

2. There are procedures in place to ensure that safekeeping securities are kept apart from all other securities.

3. Securities held in safekeeping are recorded as such in the firm's securities position records, client's ledger and statement of account.

4. Securities held in safekeeping are released only on instruction from the client.

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INTERNAL CONTROL POLICY STATEMENT 6
SAFEGUARDING OF SECURITIES AND CASH

This Policy Statement is one in a series that prescribes requirements for and provides guidance on compliance with Rule 17.2A that states ***"every Dealer Member shall establish and maintain adequate internal controls in accordance with internal control policy statements in Rule 2600."*** It should be read in context of Policy Statement 1 dealing with General Matters.

Control Objective

To safeguard both firm and client securities and cash so that:

(a) Securities and cash are protected against material loss; and

(b) Potential losses are detected and reported (for regulatory, financial and insurance purposes) on a timely basis.

Minimum Required Firm Policies and Procedures

(It is recognized that Dealer Members with small operations may not be able to comply with the segregation of duties requirements due to the limitation inherent in the size of their firm and operations. To the extent that these minimum requirements are inappropriate in the operations of such Dealer Members, they would not be required to follow them and must implement compensating control procedures to meet the stated control objectives of this Policy Statement.)

1. Receipt and Delivery of Securities

(a) Personnel responsible for the receipt and delivery of securities do not have access to the record keeping of such securities.

(b) Securities handling is done in a restricted and secure area.

(c) Receipts and deliveries are promptly and accurately recorded (certificate numbers, registrations, coupon numbers, etc.).

(d) Negotiable certificates delivered through the mail are sent by means of registered mail.

(e) Signed receipts are obtained from the client or agent for all securities delivered free.

2. Restricted Access to Securities

(a) Only designated individuals are permitted to physically handle securities.

(b) Physical handling of securities is carried out in a restricted and secure area.

(c) Custody of securities is entrusted to individuals not involved in maintaining or balancing of stock records.

(d) Vault facilities are physically appropriate to the value and negotiability of the securities they contain.

3. Clearing

(a) Clearing reports containing the settlement activity from the previous day are compared and balanced to company records promptly.

(b) The reconciliation of the clearing or settlement of accounts should be performed by firm personnel independent of trading.

(c) Prompt action is taken to correct differences.

(d) Aged "fails" to deliver and receive are reviewed regularly to determine reason(s) for delay in settlement.

(e) Any fail that continues for an extended period of time is reported promptly to senior management.

(f) Client securities are not used in settling short "pro" sales unless the client's written permission has been obtained, appropriate collateral is provided to the client, and the use of such securities is not contrary to any laws.

(g) Clearing records are reconciled regularly to clearing house and depository records to ensure agreement of securities and cash on deposit.

4. Custody

(a) A risk assessment is performed on any securities location which holds securities on behalf of the firm and its clients.

(b) Limits are set on the value of securities or other assets (e.g. gold, letters of credit, dividends, interest, etc.) held at any securities location.

(c) The firm has a proper written agreement with each acceptable securities location used to hold securities as required by SRO regulation.

(d) Processing controls include an adequate division of duties over the recording of entries and over the initiation of transfers made on the records of the depositories (e.g. transfers between "free" and "seg").

(e) Security and other asset positions as per the company's records are reconciled on a regular basis (at least monthly) to the positions as per the custodian's records. Differences are investigated and appropriate adjustment entries are made.

5. Security Records

(a) Personnel responsible for maintaining and balancing stock records are not involved in custody of the physical securities.

(b) Stock records are promptly updated to reflect changes in the location and ownership of all securities under the firm's control.

(c) Journal entries made to stock records are clearly identified and adjustments are properly reviewed and approved before processing.

6. Security Counts

(a) Segregated and safekeeping securities are counted at least once a year in addition to the count conducted during the annual external audit as required by SRO regulation.

(b) Securities contained in current boxes are counted at least monthly.

(c) Interim surprise counts are conducted by individuals other than those who have custody of securities.

(d) Count procedures ensure that all physical securities are included and related positions such as transit and transfers are also verified simultaneously.

(e) During a security count, both the descriptions of the security and quantity should be compared to the records of the firm. Any discrepancies should be investigated and corrected promptly. Positions not reconciled within a reasonable period are reported promptly to senior management and accounted for promptly.

7. Branch Transits

(a) Separate transit accounts are used on the security position records to record the location of certificates in transit between each office of the firm. These accounts are reconciled on a monthly basis.

(b) Entries are made to book out securities to or from the branch to the transit account, and then upon physical receipt the securities are booked from the transit account to the receiving branch.

(c) The receiving branch checks securities received against the accompanying transit sheet.

(d) Methods of transportation selected for securities in transit comply with insurance policy terms and take into account value, negotiability, urgency, and cost factors.

8. Transfers

(a) A record is maintained showing all securities sent to and held by transfer agents.

(b) Authority to request transfers into a name other than the firm's name is restricted to designated individuals outside the transfer department and is permitted only in respect of fully-paid securities (new issues excepted).

(c) The transfer department executes transfers only upon receipt of a properly authorized request.

(d) Securities out for transfer are recorded as such in the firm's security position record.

(e) All positions for securities at transfer agents are supported by a receipt.

(f) An ageing of all transfer positions is prepared weekly and reviewed by management to verify the validity of the positions and the reasons for any undue delay in receiving securities from transfer agents.

(g) The duties of personnel handling transfers do not include other security cage functions such as deliveries, current box or segregation.

9. Re-Organization

(a) A formal procedure exists to identify and document the timing and terms of all forthcoming rights, offers, etc.

(b) There is a clear method of communicating forthcoming re-organization activity to the sales force, including deadlines for submitting special instructions in writing including any special handling procedures required around the key dates.

(c) Responsibilities for organizing and handling each offer are clearly assigned to a single person or department.

(d) Procedures to balance positions daily and to provide for the physical control of these securities are clearly defined.

(e) Suspense accounts involving offers and splits are reconciled and reviewed regularly.

10. Dividends and Interest

(a) A system is in place to record the total amounts of dividends and interest payable and receivable at due date.

(b) Individuals in charge of record keeping do not handle cash or authorize payments.

(c) Dividend and interest accounts are reconciled at least monthly and reviews performed of aged dividend receivables.

(d) Write-offs are authorized by the department manager or other senior personnel only.

(e) Journal entries to and from dividend and interest accounts are approved by the supervisor/manager.

(f) Other than as part of an automatic settlement system dividend claims are not paid unless accompanied by supporting documents, proof of registration, etc. Such supporting documents are compared to internal records for validity and approved by a senior member of the department.

(g) Non-resident tax is withheld where applicable by law.

(h) A system is in place to ensure appropriate reporting of client income for income tax purposes, as required by law.

11. Internal Accounts

(a) Internal accounts are reconciled at least monthly.

(b) The reconciliation is subject to a supervisory review.

12. Cash

(a) A senior official is responsible for reviewing and approving all bank reconciliations.

(b) Bank accounts are reconciled, in writing, at least monthly, with identification and dating of all reconciling items.

(c) Journal entries to clear reconciling items are made on a timely basis and approved by management.

(d) The reconciliation of bank accounts is performed by someone without incompatible functions, including access to funds (both receipts and disbursements), access to securities and record keeping responsibilities, including the authority to write or approve journal entries.

(e) Approval levels required to requisition a cheque are established by senior management.

(f) Cheques are pre-numbered and numerical continuity is accounted for.

(g) Cheques are signed by two authorized individuals.

(h) Cheques are only signed when the appropriate supporting documentation is provided. The supporting documentation is cancelled after the cheque is signed.

(i) Where facsimile signature is used, access to the machine is limited and supervised.

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INTERNAL CONTROL POLICY STATEMENT 7
PRICING OF SECURITIES

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Control Objective

To ensure that:

a) There is independent and timely verification of security prices designed to detect errors or omissions in the pricing of securities;

b) Security pricing discrepancies are identified and corrected on a timely basis and reviewed and approved by senior management.

c) There is consistency of procedures in the pricing of all types of securities.

d) There is accuracy and completeness of the pricing of securities and to ensure the reliability of prices.

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Minimum Required Firm Policies and Procedures

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2. Verification of security prices must take into consideration documented member policies as to criteria in determining the market value of securities consistent with SRO Rules.

3. There should be documented procedures in place to ensure appropriate pricing for all security records of the member for purposes of preparing management reports used to monitor profit and loss, and the regulatory capital position of the member. These functions should be performed by a knowledgeable, authorized individual who is properly supervised.

4. Personnel involved with trading of securities do not have access to back office security price records and should not be involved in the pricing process, recording and storage of pricing data; and if they are involved there should be compensating controls, appropriate review and approval.

5. Independent security pricing verification must be carried out for each month-end at a minimum. The results of the verification procedures must include quantification of all differences (distinguished between adjusted and unadjusted differences) and follow-up of any material differences to the Dealer Member including a review and approval by senior management.

6. Supporting documentation must be maintained evidencing verification of securities pricing and adjustments.

7. Procedures are in place to ensure daily mark to market of a Dealer Member's security positions "owned and sold short" for profit and loss reporting in accordance with SRO requirements.

8. Dealer Members inventory profit and loss information must be reviewed by knowledgeable and authorized staff who are adequately supervised and are independent of the Dealer Member's trading function.

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INTERNAL CONTROL POLICY STATEMENT 8
DERIVATIVE RISK MANAGEMENT

The policy statement is one in a series that prescribes requirements for and provides guidance on compliance with Rule 17.2A that states "every Dealer Member shall establish and maintain adequate internal controls in accordance with the internal control policy statement in Rule 2600." It should be read in the context of Policy Statement 1 dealing with General Matters.

Control Objective

Derivatives are financial instruments whose values are derived from, and reflect changes in, the prices of the underlying products. They are designed to facilitate the transfer and isolation of risk and may be used for both risk transference and investment purposes. This policy statement includes all types of derivatives i.e. exchange traded and over-the-counter derivatives.

The control objective is to ensure that:

a) There is a risk management process of identifying, measuring, managing and monitoring risks associated with the use of derivatives.

b) Management demonstrates their understanding of the nature and risks of all derivative products being used in treasury, trading and sales.

c) Written policies and procedures exist that clearly outline risk management guidance for derivatives activities.

Minimum Required Firm Policies and Procedures

1. ROLE OF BOARD OF DIRECTORS

(i) Approve all significant risk management policies to ensure that they are consistent with the broader business strategies of the firm.

(ii) These policies must be reviewed and amended as business and market circumstances change.

(iii) Senior management must report at least annually to the board on risk exposures taken by the firm except for exchange traded options.

2. ROLE OF SENIOR MANAGEMENT

(i) Senior management must be responsible for ensuring that there are adequate written policies and procedures for conducting derivatives operations on both a long-range and day-to-day basis. This includes:

- A clear delineation of the lines of responsibility for managing risk
- An adequate system for measuring risk
- Appropriate risk position limits
- An effective system of internal controls
- A comprehensive reporting process

(ii) Ensure that if limits are exceeded, there must be a system in place so that such occurrences are made known to senior management and approved only by authorized personnel.

(iii) Ensure that all appropriate approvals are obtained and that adequate operational procedures and risk control systems are in place.

(iv) Ensure risk control systems appropriate for the product are in place to address market, credit, legal, operations and liquidity risk.

(v) Ensure that their derivatives activities are undertaken by professionals in sufficient number and with the appropriate experience, skill levels, and degrees of specialization.

(vi) Ensure that management designates the appropriate officer to commit their institutions to derivatives transactions.

(vii) Ensure that there is a regular evaluation of the procedures in place to manage risk to ensure that those procedures are appropriate and sound.

(viii) Ensure that all standard and non-standard derivative product programs are approved.

(ix) Ensure that there is an accurate, complete, informative and timely management information system. The risk management function should monitor and report its measures of risks to appropriate levels of senior management and to the board of directors of the firm.

3. PRICING

(i) Refer to Internal Control Policy Statement 7, "Pricing of Securities."

(ii) Derivatives positions should be marked to market on at least a daily basis.

(iii) All pricing models used must be independently validated, including those models that compute market data or model inputs by an independent risk management function must review and approve the pricing models and valuation systems used by front- and back-office personnel and the development of reconciliation procedures if different systems are used.

(iv) Valuations derived from models must be independently scrutinized at least monthly.

4. INDEPENDENT RISK MANAGEMENT

(i) Dealer Members must have a risk management function, with clear independence and authority to ensure the development of risk limit policies and monitoring of transactions and positions for adherence to these policies.

(ii) The financial accounting departments of Dealer Member firms are required to measure the components of revenue regularly and in sufficient detail to understand the sources of risk.

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RULE 3000
CODE OF CONDUCT FOR DEALING IN REPO MARKETS

Introduction

This policy creates a standard set of trading practices that should not only increase the transparency of the Repo markets, but also help promote liquidity and efficiency.

Dealers and inter-dealer brokers should also refer to Rule 2800, Code of Conduct for Trading in Domestic Debt Markets, and specifically the provisions relating to confidentiality of dealings in the domestic debt market with customers and counterparties. Rule 2800 is intended to reinforce the integrity of the secondary markets, covering all domestic debt markets, including repo and security lending.

Definitions

For the purpose of this Rule 3000:

"**Best Efforts**" means a trade where the buyer assumes the risk that the seller will not be able to make the delivery within the time frame requested by the buyer;

"**Forward Repo**" means a trade that settles in a longer time frame than next day settlement;

"**Inter-dealer Broker**" means an organization, whether or not incorporated, that provides information, voice or non-electronic trading and communications services in connection with trading in wholesale financial markets among customers of the organization; and

"**Odd Lot**" means:

(a) A lot less than $25 million for overnight and term general collateral; or

(b) A lot less than $25 million for specials (terms and overnights).

A. Confidential Nature of Transactions

1. Confidentiality

(a) It is the responsibility of all dealers and inter-dealer brokers to maintain confidentiality of the names of parties to a trade. Dealers and inter-dealer brokers shall not ask or answer any questions aimed at discovering the identity of any party to a trade, such as any characteristics of the counterparty.

(b) Despite subparagraph (a), the identity of parties to a trade through an inter-dealer broker may be disclosed

(i) After the trade is completed, and

(ii) Only to the counterparties to that trade.

(c) An inter-dealer broker may inform a dealer that it does not have a line of credit with the other side before a market is made, provided that no other indication is given as to the identity of the party in question.

(d) Nothing in this Rule shall be construed as preventing dealers or inter-dealer brokers from asking and/or answering questions aimed at discovering the size of the offer/bid.

2. Name Give-Up

The full names of counterparties shall be disclosed immediately at the time of trade in order to ensure that proper credit procedures are followed.

B. Screen Guidelines

1. Life of Bid

Unless otherwise specified, all bids and offers are good until cancelled, or the end of the business day, whichever comes first.

2. Going "Subject"

At 11:30 a.m. (Toronto time) all cash settlements will go "subject" and the inter-dealer brokers will contact the dealers to renew them.

3. Off-Screen Trading

(a) Off-screen markets shall be cleared with on-screen accounts.

(b) All off-screen trades shall be flashed on-screen within 15 minutes of completion of the transaction.

(c) If an off-screen number is to be shown only to the bid/offer, the account should specify that it is a one-time ("on a call") show.

4. Open Trades

Upon request, inter-dealer brokers may notify the repo community of repo roll rates.

5. Backing Up Into First Place

(a) If a market trades at a different rate, then the aggressor is allowed to take priority on-screen provided they match the existing market.

(b) If the market is topped for a minimum of five minutes and subsequently backed off, without trading, the market maker that topped the bid shall assume market priority.

(c) If the market is topped for less than five minutes and subsequently backed off, without trading, the original market maker shall maintain priority.

6. Priority of Bids

(a) Once the market has been established on-screen joining of the bid/offer shall not be permitted.

(b) The first party to declare as second buyer/seller shall take over a priority once the original buyer/seller has been filled.

7. Minimum Increments

Markets may be topped in a *minimum* of one (1) basis point increments.

8. Interruptions

If one market participant is hitting a bid, a second participant cannot swing in and lift an offer, while the bid is being filled.

9. Declaring Intentions

The aggressor and the market maker shall declare their intentions within five seconds of the time of trade.

10. Board Lots & Trading in Odd Lots

(a) The need for odd lot trading before 10:00 a.m. (Toronto time) is recognized, but the handling of this matter is left with the business judgement of each inter-dealer broker.

(b) Inter-dealer brokers may consider the following suggestion in regards to odd lot trading before 10:00 a.m.:

(i) If, before 10:00 a.m., there is no market, meaning no bid or no offer, in a particular security, a dealer should be able to show an odd lot on the screens with the understanding that if a round lot comes in before the odd lot is traded, the round lot would take precedence over the odd lot regardless of rate.

11. "Line Full"/"No Line"

(a) When a market is made and "line full" or "no line" flashes on the screen, no trade has taken place and all bids and offers should be renewed by those interested in market making the particular security.

(b) If "no line" is flashed on screen three times, the market is then worked off-screen.

12. "Hit When"/"Lift When" Clear

A market maker who is informed during the clearing time period of being "hit when clear"/"lifted when clear" by a third party should treat that as a valid execution in the event that the market maker is cleared.

13. Screen Notations

(a) Markets incorporating unusual provisions shall be denoted on an inter-dealer broker's screen;

(b) Examples of elements that shall be denoted include:

(i) Non-payment of intervening coupons (NIC),

(ii) Anything other than price plus accrued interest for open and overnight trades,

(iii) Right of substitution, and

(iv) Trades done on a "best efforts" basis.

14. Items That Should Appear On Separate Lines

Markets with stipulations or 'all or nothing trades' should appear on separate lines on an inter-dealer broker's screen.

15. Partial Fills

If 'all or nothing' is not specified, dealers making markets in amounts greater than the standard board lot shall accept transactions in board lot increments.

16. Monitoring Screen

It is up to the individual inter-dealer broker to monitor their screen. An inter-dealer broker's screen shall clearly state whether they are 'live' or 'subject'. This is especially the case immediately following the release of new economic data.

C. Assumptions as to Manner of Settlement

1. General

(a) Unless the parties to a trade otherwise agree

(i) All trades, except overnight and open trades, done before 11:30 a.m. (Toronto time) are assumed to be cash trades, and

(ii) All trades, except overnight and open trades, done after 11:40 a.m. (Toronto time) are assumed to be next day settlement trades.

(b) Unless the parties to a trade otherwise agree, all overnight and open trades are assumed to be cash trades until the relevant cut-off time.

2. Assumption for "Best Efforts"

(a) It is assumed that

(i) The buyer in a trade done on a "best efforts" basis before the dealer-to-dealer cut-off time seeks delivery before the close of the dealer-to-dealer cut-off time, and

(ii) The buyer in a trade done on a "best efforts" basis before the dealer-to-customer cut-off time seeks delivery before the close of the dealer-to-customer cut-off time.

(b) It is generally understood that an inter-dealer broker's screen will flash "best efforts" five minutes and 59 seconds before the relevant cut-off time.

3. All other Trades Done for Regular Settlement

All other trades, including general collateral and mortgage securities term trades, general collateral and mortgage securities overnight trades, and off-the-run specials, settling "regular" shall be priced and descriptions of the collateral shall be given by 9:00 a.m. (Toronto time) of the following morning.

4. Cash Trades Up to 11:00 a.m.

Unless the parties to a trade otherwise agree, all term and overnight trades executed through inter-dealer brokers and settling "cash" done up to and including 11:00 a.m. (Toronto time) shall be priced and a description of the collateral shall be given by 12:00 p.m. (Toronto time).

5. Cash Trades After 11:00 a.m.

(a) Unless the parties otherwise agree, all term and overnight trades executed through inter-dealer brokers and settling "cash" done by 12:30 p.m. (Toronto time) shall be priced and a description of the collateral shall be given within 30 minutes of the time that the trade is done.

(b) Subparagraph (a) applies for both the Treasury bill and the bond markets.

6. General Collateral

General collateral consists of Government of Canada debt that is DCS eligible. Any non-standard conditions should be specified before completing the transaction.

7. Value Dates

All market participants shall adhere to standard day counts, as outlined in the chart below, for all trades, specifically term trades. Any participant that wishes to trade to an odd date must specify at the time the order is given to the inter-dealer broker.

8. Term Contracts

The Standard Day Count chart below provides the number of days in each standard contract. Contracts shall roll over a weekend or statutory holiday. Market participants shall specify prior to dealing if they wish to deal to a different date.

Standard Day Count

Contract	Number of Days
1 month	30
2 month	60
3 month	91
4 month	121
5 month	151
6 month	182
7 month	212
8 month	242
9 month	273
10 month	303
11 month	333
12 month	364

D. Marking to Market

1. Margin Calls

(a) Unless the parties to a trade otherwise agree, margin calls on all dealer-to-dealer repo transactions shall be met with transfers of collateral and/or cash.

(b) If the party being marked chooses to meet its margin call with cash, such cash shall not be used to change the economic substance of the trade, but will bear interest at a rate to be determined between the two parties.

(c) If the party being marked chooses to meet its margin call with collateral, the collateral shall have

(i) Characteristics similar to, or better than, the collateral being repoed,

(ii) Reasonably acceptable to the counter-party, and

(iii) Applied on a reasonable basis

(d) A maximum of one piece of collateral per one million should be delivered.

2. Notification of Marks

(a) A party wishing to mark-to-market its counterparties shall do so by 11:30 a.m. (Toronto time).

(b) The mark-to-market should be done on a net basis rather than marking on an issue specific basis.

3. Periodic Review

Unless the parties to a trade otherwise agree, margins shall be reviewed periodically to determine their appropriateness given the remaining term to maturity.

4. Mechanism for Meeting Margin Calls

Margins maintenance shall be achieved through margin calls. In particular, substitutions should not be the mechanism for margin maintenance.

5. Validation of Pricing

(a) If a dispute arises between counterparties, current mid-market prices shall be used to determine the mark-to-market price variance.

(b) Composite prices on an inter-dealer broker's screen shall be used to arrive at the mid-market price.

6. Substitution of Margin Collateral

A party wishing to substitute previously pledged margin collateral shall do so by 11:30 a.m. (Toronto time).

E. Confirmations of Forward Repos

1. Timing and Content

(a) Confirmations shall be sent on forward repos on the day on which the trade takes place.

(b) In addition to any applicable regulatory requirements, the confirmation shall specify at a minimum:

(i) The money or the par amount, as appropriate,

(ii) The start date,

(iii) The end date,

(iv) The rate of interest,

(v) The type of collateral, and

(vi) Whether there are any rights of substitution.

2. Confirming Transactions

All forward settlement transactions shall be confirmed on the "Eltra"/DCS system.

F. Obligation to Make Coupon Payment

1. Definition of "All in Price"

A repo seller is entitled to receive the income payment from the repo buyer to the same extent that it would have been entitled to receive income had it not entered into repurchase transactions on the securities.

2. Definition of "Clean Price"

A repo buyer is not obligated to transfer an income payment to the repo seller. The income payment is applied to reduce the amount to be transferred to the repo buyer upon termination of the transaction. This methodology is consistent with the definition found in Section 4 of the Corporation Repurchase/Reverse Repurchase Transaction Agreement. All transactions are priced using the "clean price" method unless otherwise agreed upon before dealing.

G. General Collateral Repo Allocations

The repo market allocates general collateral transactions based on the type of transactions executed. The following describes the allocation methods generally used for cash settlements, forward settlements, and replacement transactions when substitutions occur:

1. Money-Fill Transactions

It is common practise in Canada that all general collateral transactions be completed on a money-fill basis unless otherwise specified.

(a) Cash – When a transaction is executed on a money-fill basis, the loan or principal amount allocated shall be equal to the loan amount transacted. Collateral allocation on a money-fill basis will be no more than two issues to make $50 million.

(b) Forward Settlement – Same as cash.

(c) Substitutions – Same as cash.

2. Par Transactions

(a) Cash Settlement – When a transaction is executed on a par basis, the allocated amount shall equal the par amount transacted.

(b) Forward Settlement – Same as cash settlement.

(c) Substitutions – When a transaction is executed on a par basis, the replacement transaction shall be done on the basis of the par amount originally transacted.

H. Special Repo Trades

It is current market convention to allocate special repo trades on a par basis.

I. Substitution

1. "Best Efforts"

If collateral has been passed for an overnight or term trade, any substitutions shall be accepted on a "best efforts" basis only.

2. Specifying Substitution

Unless specified prior to initiation of the transaction, the purchaser is under no obligation to allow substitution of collateral.

3. Timing of Collateral Substitutions

(a) Unless the parties to a trade otherwise agree, counterparties to trades with rights of substitution shall be notified of the substitution by 10:00 a.m. (Toronto time) and provided with the description of the substituted collateral by 11:00 a.m. (Toronto time).

(b) If the trade was executed through an inter-dealer broker, the collateral seller is required to notify the executing inter-dealer broker of the substituted collateral within the time frame defined in subparagraph 3(a).

(c) The executing inter-dealer broker is then required to immediately notify the customer of the substituted collateral.

J. Application and Enforcement

(a) Dealer Members are expected to conduct their business to ensure compliance with this Rule.

(b) Failure to comply with this Rule may subject a Dealer Member to sanctions pursuant to the enforcement and disciplinary Rules of the Corporation.

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ATTACHMENT D

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

DEALER MEMBER FINANCIAL AND OPERATIONAL RULES
PLAIN LANGUAGE RULES 4100 THROUGH 4900

TABLE OF CONCORDANCE

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub-Section	Comments
Rules 4100 and 4200 - General Dealer Member Financial Standards						
New Provision			Rule 4100	R. 4101. - Introduction	{1}	[**New - Non-substantive** - Introduction section]
New Provision			Rule 4100	R. 4102. - 4109. Reserved		[**New - Non-substantive** - Reserved sections]
Part A - Minimum capital level and related requirements						
New Provision			Rule 4100	R. 4110. - Introduction	{1}	[**New - Non-substantive** - Introduction section]
Rule 17: Dealer Member Minimum Capital, Conduct of Business & Insurance	17.01		Rule 4100	R. 4111. - Maintain risk adjusted capital	{1}	
Rule 2600: Internal Control Policy Statements	2600, Statement 2	Procedure {6}	Rule 4100	R. 4112. - Capital deficiency and early warning situations	{1}{i} through {iii}	
Rule 17: Dealer Member Minimum Capital, Conduct of Business & Insurance	17.01		Rule 4100	R. 4112. - Capital deficiency and early warning situations	{1}{ii} and {iii}	
Rule 17: Dealer Member Minimum Capital, Conduct of Business & Insurance	17.01		Rule 4100	R. 4113. - Calculating current capital position - general requirements	{1} and {2}	
Rule 200: Minimum Records	200.01	{k} and {m}	Rule 4100	R. 4113. - Calculating current capital position - general requirements	{2}	
Rule 2600: Internal Control Policy Statements	2600, Statement 2	Procedure {5}	Rule 4100	R. 4114. - Calculating current capital position - weekly documentation	{1}	[**Amended - Substantive** – Amend requirements to require weekly monitoring {not reporting} of compliance with early warning system profitability tests.]
Rule 200: Minimum Records	200.01	{k} and {m}	Rule 4100	R. 4115. - Calculating current capital position - monthly documentation and reconciliation	{1} and {2}	
Rule 2600: Internal Control Policy Statements	2600, Statement 2	Procedure {7}	Rule 4100	R. 4115. - Calculating current capital position - monthly documentation and reconciliation	{1} and {2}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub-Section	Comments
Rule 200: Minimum Records	200.01	{k} and {m}	Rule 4100	R. 4116. - Dealer Member capital adequacy reporting system - adequate policies and procedures	{1}{i}	
Rule 2600: Internal Control Policy Statements	2600, Statement 2	General	Rule 4100	R. 4116. - Dealer Member capital adequacy reporting system - monitor and act on information	{1}{i} and {ii}	
Rule 200: Minimum Records	200.01		Rule 4100	R. 4116. - Dealer Member capital adequacy reporting system - maintain a capital adequacy reporting system	{1}{ii}	
Rule 2600: Internal Control Policy Statements	2600, Statement 2	Procedures{2}, {3} and {4}	Rule 4100	R. 4116. - Dealer Member capital adequacy reporting system - monitor and act on information	{1}{ii}	
Rule 2600: Internal Control Policy Statements	2600, Statement 2	General	Rule 4100	R. 4116. - Dealer Member capital adequacy reporting system - monitor and act on information	{1}{iii}	
Rule 2600: Internal Control Policy Statements	2600, Statement 2	Procedure {8}	Rule 4100	R. 4116. - Dealer Member capital adequacy reporting system - monitor and act on information	{1}{iv} and {v}	
Rule 16: Dealer Members' Auditors and Financial Reporting	16.02	{iv}	Rule 4100	R. 4117. - Consolidation of financial position with related companies	{1}	
Rule 16: Dealer Members' Auditors and Financial Reporting	16.02	{v}	Rule 4100	R. 4117. - Consolidation of financial position with related companies	{2}	
Rule 200: Minimum Records	200.01	{m}	Rule 4100	R. 4118. - Options for calculating risk adjusted capital available to well-capitalized Dealer Members	{1}	
New Provision			Rule 4100	R. 4119. - 4129. Reserved		[**New - Non-substantive** - Reserved sections]
Part B - Early warning tests and related requirements						
New Provision			Rule 4100	R. 4130. - Introduction	{1}	[**New - Non-substantive** - Introduction section]

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub-Section	Comments
New Provision			Rule 4100	R. 4131. - Definitions	{1}	[**New - Non-substantive** - Define "average monthly loss" as the term is used in describing the early warning system profitability tests]
Rule 30: Early Warning System	30.01	"early warning excess"	Rule 4100	R. 4131. - Definitions	{2}	
Rule 30: Early Warning System	30.01	"early warning reserve"	Rule 4100	R. 4131. - Definitions	{2}	
New Provision			Rule 4100	R. 4131. - Definitions	{3}	[**New - Non-substantive** - Define "early warning violation" as the term is used when one or more of the early warning system tests has been failed]
New Provision			Rule 4100	R. 4131. - Definitions	{4}	[**New - Non-substantive** - Define "loss" in order to specifically reference appropriate line item on the income statement in Statement E of Form 1 that is to be used in the early warning system profitability tests]
Form 1, Statement B	Statement B	"risk adjusted capital"	Rule 4100	R. 4131. - Definitions	{5}	
Form 1, Statement B	Statement B	"total margin required"	Rule 4100	R. 4131. - Definitions	{5}	
Rule 30: Early Warning System	30.02 and 30.04	preamble	Rule 4100	R. 4132. - Early warning designation, levels and tests	{1}	
Rule 30: Early Warning System	30.02 and 30.04	Liquidity test	Rule 4100	R. 4132. - Early warning designation, levels and tests	{1}	
Rule 30: Early Warning System	30.02 and 30.04	Capital test	Rule 4100	R. 4132. - Early warning designation, levels and tests	{1}	
Rule 30: Early Warning System	30.02 and 30.04	Profitability test #1	Rule 4100	R. 4132. - Early warning designation, levels and tests	{1}	
Rule 30: Early Warning System	30.02 and 30.04	Profitability test #2	Rule 4100	R. 4132. - Early warning designation, levels and tests	{1}	
Rule 30: Early Warning System	30.04	Profitability test #3	Rule 4100	R. 4132. - Early warning designation, levels and tests	{1}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub-Section	Comments
Rule 30: Early Warning System	30.04	Frequency test	Rule 4100	R. 4132. - Early warning designation, levels and tests	{1}	[**Amended - Substantive -** Exclude discretionary early warnings from level 2 frequency test]
Rule 30: Early Warning System	30.03{i} and 30.05	Notifying the Corp in writing	Rule 4100	R. 4133. - Early warning related requirements	{1}	
Rule 30: Early Warning System	30.05{c}	Meeting with the Corp	Rule 4100	R. 4133. - Early warning related requirements	{1}	
Rule 30: Early Warning System	30.03{ii}{2}, {4} and {5}; 30.03{iii}; 30.03{iv}; and 30.03{v}; 30.05 preamble; 30.05{b}; 30.05{d}; 30.05{e}; 30.05{f}; and 30.05{g}	Taking required actions	Rule 4100	R. 4133. - Early warning related requirements	{1}	
Rule 30: Early Warning System	30.03{ii} and {iii} and 30.05	Respond-ing to the Corp's letter	Rule 4100	R. 4133. - Early warning related requirements	{1}	
Rule 30: Early Warning System	30.03{vi}	On-site reviewing of the Dealer Member's procedures	Rule 4100	R. 4133. - Early warning related requirements	{1}	
Rule 30: Early Warning System	30.03 and 30.05{h}		Rule 4100	[Repealed]		[**Repealed - Substantive** - Remove the reporting of early warning situations to applicable District Council]
Rule 30: Early Warning System	30.05{i}	Reimburs-ing the Corp's costs	Rule 4100	R. 4133. - Early warning related requirements	{1}	[**Amended - Substantive -** Extend the requirement to reimburse the Corporation for costs it incurs relating to early warning level 1situations.]
Rule 30: Early Warning System	30.02		Rule 4100	R. 4134. - Discretion to designate a Dealer Member as being in early warning	{1}	
Rule 30: Early Warning System	30.04		Rule 4100	R. 4134. - Discretion to designate a Dealer Member as being in early warning	{1}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub-Section	Comments
Rule 30: Early Warning System	30.03	{iv}	Rule 4100	R. 4135. - Restrictions on a Dealer Member in early warning	{1}	
Rule 30: Early Warning System	30.05	{j}	Rule 4100	R. 4136. - Additional restrictions	{1}	
Rule 30: Early Warning System	30.06		Rule 4100	R. 4136. - Additional restrictions	{1}	
Rule 30: Early Warning System	30.03		Rule 4100	R. 4137. - Prohibited transactions	{1}	
Rule 30: Early Warning System	30.07		Rule 4100	[Repealed]		[**Repealed - Non-substantive** - Requirement to inform other CIPF participating organizations is redundant as IIROC is now the only CIPF participating organization.]
Rule 30: Early Warning System	30.08		Rule 4100	R. 4138. - Lifting an early warning designation	{1}	
New Provision			Rule 4100	R. 4139. - 4149. Reserved		[**New - Non-substantive** - Reserved sections]
Part C - Regulatory financial report filing requirements						
New Provision			Rule 4100	R. 4150. - Introduction	{1}	[**New - Non-substantive** - Introduction section]
Rule 16: Dealer Members' Auditors and Financial Reporting	16.02	{i}-{ii}	Rule 4100	R. 4151. - Dealer Member financial filings	{1}	
Rule 16: Dealer Members' Auditors and Financial Reporting	16.02	{iii}	Rule 4100	R. 4152. - Extending deadline for financial filings	{1} through {3}	[**Amended - Substantive** - Add ability for IIROC to grant an extension for the MFR filing.]
Rule 16: Dealer Members' Auditors and Financial Reporting	16.10		Rule 4100	R. 4153. - Late filing fee	{1}	
New Provision			Rule 4100	R. 4154. - 4169. Reserved		[**New - Non-substantive** - Reserved sections]
Part D - Appointment of auditors and audit requirements						
New Provision			Rule 4100	R. 4170. - Introduction	{1}	[**New - Non-substantive** - Introduction section]
Rule 16: Dealer Members' Auditors and Financial Reporting	16.01		Rule 4100	R. 4171. - Approved auditors	{1} and {2}	[**New - Substantive** - Change the authority for approving panel auditors from each District Council to IIROC]
Rule 16: Dealer Members' Auditors and Financial Reporting	16.01		Rule 4100	R. 4172. - Dealer Member's auditor	{1}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub-Section	Comments
Rule 16: Dealer Members' Auditors and Financial Reporting	16.05	Remainder of 1st sentence	Rule 4100	R. 4173. - Responsibilities of a Dealer Member's auditor	{1}	
Rule 300: Audit Requirements	300.02	End of 1st sentence	Rule 4100	R. 4174. - No limitation on scope or procedures	{1}	
Rule 16: Dealer Members' Auditors and Financial Reporting	16.05		Rule 4100	R. 4175. - Audit in accordance with Canadian Auditing Standards {CAS}	{1}	
Rule 300: Audit Requirements	300.01		Rule 4100	R. 4175. - Audit in accordance with Canadian Auditing Standards {CAS}	{1} and {2}	
Rule 300: Audit Requirements	300.01	2nd part of 1st sentence and 2nd sentence	Rule 4100	[Repealed]		[**Repealed - Non-substantive** - Delete because it is duplicative of the requirements of the CICA Handbook]
Rule 300: Audit Requirements	300.02	Preamble 2nd sentence	Rule 4100	[Repealed]		[**Repealed - Non-substantive** - Delete because it is duplicative of the requirements of the CICA Handbook]
Rule 300: Audit Requirements	300.02	{i}-{ii}	Rule 4100	[Repealed]		[**Repealed - Non-substantive** - Delete because it is duplicative of the requirements of the CICA Handbook]
Rule 300: Audit Requirements	300.02	1st sentence after 300.2{ii}	Rule 4100	[Repealed]		[**Repealed - Non-substantive** - Delete because it is duplicative of the requirements of the CICA Handbook]
Rule 300: Audit Requirements	300.02	2nd sentence after 300.2{ii}	Rule 4100	[Repealed]		[**Repealed - Non-substantive** - Delete because it is duplicative of the requirements of the CICA Handbook]
Rule 300: Audit Requirements	300.02	2nd paragraph after {ii}	Rule 4100	R. 4175. - Audit in accordance with Canadian Auditing Standards {CAS}	{3}	
Rule 300: Audit Requirements	300.02	Paragraph after {ii}	Rule 4100	R. 4176. - Test procedures as at the fiscal year-end date	{1}	
Rule 300: Audit Requirements	300.02	{a}{i}	Rule 4100	[Repealed]		[**Repealed - Non-substantive** - Delete because it is duplicative of the requirements of the CICA Handbook]
Rule 300: Audit Requirements	300.02	{a}{ii}	Rule 4100	R. 4177. - Account for all securities, currencies, and other like assets	{1} through {4}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub-Section	Comments
Rule 300: Audit Requirements	300.02	{a}{ii}	Rule 4100	R. 4178. - Verify securities in transfer and in transit	{1}	[**Amended - Non-substantive** - Remove language because it is duplicative of the requirements of the CICA Handbook]
Rule 300: Audit Requirements	300.02	{a}{iii}	Rule 4100	R. 4178. - Verify securities in transfer and in transit	{1}	
Rule 300: Audit Requirements	300.02	{a}{iv}	Rule 4100	R. 4179. - Review the Dealer Member's position balancing and account reconciliations	{1} and {2}	[**Amended - Substantive** - Amend the following: ▪ replace the term "commodity and option contracts" with the term "derivatives"; and ▪ replace the term "mutual funds" with the term "non-certificated instruments".]
Rule 300: Audit Requirements	300.02	{a}{v}	Rule 4100	R. 4180. - Review bank reconciliations	{1}	
Rule 300: Audit Requirements	300.02	{a}{vi}	Rule 4100	R. 4181. - Review custodial agreements and approvals	{1} and {2}	
Rule 300: Audit Requirements	300.02	{a}{vii}{1}-{9}	Rule 4100	R. 4182. - Obtain written positive confirmations	{1}	[**Amended - Substantive** - Amend the following: ▪ replace the term "commodity and option contracts" with the term "derivatives"; and ▪ replace the term "mutual funds" with the term "non-certificated instruments" **Amended - Non-substantive -** Remove the requirement for auditor to obtain written confirmations about lawsuits and other legal matters, as this is already a requirement of the CICA Handbook.]
Rule 300: Audit Requirements	300.02	{a}{vii}, last sentence	Rule 4100	R. 4183. - Review a sample of signed guarantee agreements	{1}	
Rule 300: Audit Requirements	300.02	{a}{viii}	Rule 4100	R. 4184. - Test and procedures on statements and schedules of Form 1	{1}	
Rule 300: Audit Requirements	300.02	{b}	Rule 4100	R. 4185. - Test statements for a description of securities held in safekeeping	{1}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub-Section	Comments
Rule 300: Audit Requirements	300.02	{a}{ix}	Rule 4100	R. 4186. - Dealer Member obligations to auditor	{1}	
Rule 16: Dealer Members' Auditors and Financial Reporting	16.06		Rule 4100	R. 4186. - Dealer Member obligations to auditor	{2} and {3}	
Rule 300: Audit Requirements	300.02	{a}{vii}, 3rd and 4th sentences following {9}	Rule 4100	R. 4187. - Selection of accounts for positive confirmation	{1}	
Rule 300: Audit Requirements	300.02	{a}{vii}, 5th sentence following {9}	Rule 4100	R. 4188. - Written confirmation of clients' accounts with no balance	{1}	
Rule 300: Audit Requirements	300.02	{a}{vii}, 6th and 7th sentences following {9}	Rule 4100	R. 4189. - Effect on capital if no position written confirmation received for a guarantee	{1} and {2}	[**Amended - Non-substantive** - Replace in subsection {1} the reference to those who sign a guarantee agreement from "customer" with "parties".]
Rule 300: Audit Requirements	300.02	{a}{vii}, 1st sentence following {9}	Rule 4100	[Repealed]		[**Repealed - Non-substantive** - Delete because it is duplicative of the requirements of the CICA Handbook]
Rule 300: Audit Requirements	300.02	{a}{vii}, 2nd sentence following {9}	Rule 4100	[Repealed]		[**Repealed - Non-substantive** - Delete because it is duplicative of the requirements of the CICA Handbook]
Rule 300: Audit Requirements	300.02	{c}	Rule 4100	R. 4190. - Calculations for Form 1 and other reporting	{1}	
Rule 300: Audit Requirements	300.03	{a}	Rule 4100	R. 4190. - Calculations for Form 1 and other reporting	{2}	
Rule 300: Audit Requirements	300.03	{b}	Rule 4100	[Repealed]		[**Repealed - Non-substantive** - Remove reference to "exchange seats" because it is no longer relevant due to exchange demutualization]
Rule 300: Audit Requirements	300.03	{c}	Rule 4100	[Repealed]		[**Repealed - Non-substantive** - Delete because it is duplicative of the requirements of the CICA Handbook]

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub-Section	Comments
Rule 300: Audit Requirements	300.04		Rule 4100	[Repealed]		[**Repealed - Non-substantive** - Delete because it is duplicative of the requirements of the CICA Handbook]
Rule 300: Audit Requirements	300.05		Rule 4100	R. 4191. - Auditor's records	{1} through {3}	
Rule 300: Audit Requirements	300.06		Rule 4100	R. 4192. - Reporting a material breach of Corporation requirements	{1}	
New Provision			Rule 4100	R. 4193. - 4199. Reserved		[**New - Non-substantive** - Reserved sections]
Part E - Financial disclosure to clients						
New Provision			Rule 4200	R. 4200. - Introduction	{1}	[**New - Non-substantive** - Introduction section]
Rule 1400: Disclosure to Clients of Member's Financial Condition	1400.01		Rule 4200	R. 4201. - Statement of financial condition available	{1} through {3}	
Rule 1400: Disclosure to Clients of Member's Financial Condition	1400.03		Rule 4200	R. 4202. - Statement of financial condition - contents	{1}	
Rule 1400: Disclosure to Clients of Member's Financial Condition	1400.01		Rule 4200	R. 4203. - Consolidated financial statements - similar named entity	{1}	
Rule 1400: Disclosure to Clients of Member's Financial Condition	1400.04	{b}	Rule 4200	R. 4203. - Consolidated financial statements - similar named entity	{1}	
Rule 1400: Disclosure to Clients of Member's Financial Condition	1400.04	Opening paragraph, {a} and {b}	Rule 4200	R. 4203. - Consolidated financial statements - similar named entity	{2}	
Rule 17: Dealer Member Minimum Capital, Conduct of Business & Insurance	17.10		Rule 4200	R. 4204. - Dealer Member's auditor's report	{1}	
Rule 1400: Disclosure to Clients of Member's Financial Condition	1400.05		Rule 4200	R. 4204. - Dealer Member's auditor's report	{2}	
Rule 1400: Disclosure to Clients of Member's Financial Condition	1400.02		Rule 4200	R. 4205. - Publishing a statement of financial condition	{1}	
Rule 1400: Disclosure to Clients of Member's Financial Condition	1400.06		Rule 4200	R. 4206. - List of current executives and directors	{1}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub-Section	Comments
Rule 1400: Disclosure to Clients of Member's Financial Condition	1400.07		Rule 4200	R. 4207. - Statement of financial condition available to clients	{1}	
New Provision			Rule 4100	R. 4208. - 4219. Reserved		[**New - Non-substantive** - Reserved sections]
Part F - General internal control requirements						
New Provision			Rule 4200	R. 4220. - Introduction	{1}	[**New - Non-substantive** - Introduction section]
Rule 2600: Internal Control Policy Statements	2600, Statement 1	General matters - {iv} 2nd, 3rd and 4th sentence	Rule 4200	R. 4221. - Definitions		
Rule 17: Dealer Member Minimum Capital, Conduct of Business & Insurance	17.02A		Rule 4200	R. 4222. - Adequate internal controls	{1}	
Rule 2600: Internal Control Policy Statements	2600, Statement 1	General matters - 2nd paragraph, 2nd sentence	Rule 4200	R. 4222. - Adequate internal controls	{2}	
Rule 2600: Internal Control Policy Statements	2600, Statement 1	General matters - {v}	Rule 4200	R. 4222. - Adequate internal controls	{3}	
Rule 2600: Internal Control Policy Statements	2600, Statement 1	General matters - 2nd paragraph after {iv}, 1st sentence	Rule 4200	R. 4223. - Preventive controls	{1}	
Rule 2600: Internal Control Policy Statements	2600, Statement 1	General matters - 2nd paragraph after {v}, 1st sentence	Rule 4200	R. 4224. - Written record	{1}	
Rule 2600: Internal Control Policy Statements	2600, Statement 1	General matters - 2nd paragraph after {iv}, 2nd sentence	Rule 4200	R. 4225. - Review and written approval of internal controls	{1}	
New Provision			Rule 4100	R. 4226. - 4239. Reserved		[**New - Non-substantive** - Reserved sections]
Part G - Pricing internal control requirements						
New Provision			Rule 4200	R. 4240. - Introduction	{1}	[**New - Non-substantive** - Introduction section]

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub-Section	Comments
Rule 2600: Internal Control Policy Statements	2600, Statement 7	Control objective {d}	Rule 4200	R. 4241. - Pricing Procedures	{1}	
Rule 2600: Internal Control Policy Statements	2600, Statement 7	Procedure {7}	Rule 4200	R. 4241. - Pricing Procedures	{2}	
Rule 2600: Internal Control Policy Statements	2600, Statement 7	Control objective {c}	Rule 4200	R. 4241. - Pricing Procedures	{3}	
Rule 2600: Internal Control Policy Statements	2600, Statement 7	Procedure {2}	Rule 4200	R. 4241. - Pricing Procedures	{3}	
Rule 2600: Internal Control Policy Statements	2600, Statement 7	Procedure {3}, 1st sentence	Rule 4200	R. 4241. - Pricing Procedures	{4}	
Rule 2600: Internal Control Policy Statements	2600, Statement 7	Procedure {8}	Rule 4200	R. 4241. - Pricing Procedures	{5}	
Rule 2600: Internal Control Policy Statements	2600, Statement 7	Procedure {3}, 2nd sentence	Rule 4200	R. 4241. - Pricing Procedures	{5}	
Rule 2600: Internal Control Policy Statements	2600, Statement 7	Control objective {a}	Rule 4200	R. 4242. - Independent price verification	{1}	
Rule 2600: Internal Control Policy Statements	2600, Statement 7	Procedure {5}, 1st sentence	Rule 4200	R. 4242. - Independent price verification	{1}	
Rule 2600: Internal Control Policy Statements	2600, Statement 7	Control objective {a}	Rule 4200	R. 4242. - Independent price verification	{2}	
Rule 2600: Internal Control Policy Statements	2600, Statement 7	Procedure {5}, 2nd sentence	Rule 4200	R. 4242. - Independent price verification	{2}	
Rule 2600: Internal Control Policy Statements	2600, Statement 7	Control objective {b}	Rule 4200	R. 4242. - Independent price verification	{3}	
Rule 2600: Internal Control Policy Statements	2600, Statement 7	Procedure {1}	Rule 4200	R. 4242. - Independent price verification	{3}	
Rule 2600: Internal Control Policy Statements	2600, Statement 7	Procedure {6}	Rule 4200	R. 4243. - Keep supporting documents	{1}	
Rule 2600: Internal Control Policy Statements	2600, Statement 7	Procedure {4}	Rule 4200	R. 4244. - Access to records	{1}	
New Provision			Rule 4100	R. 4245. - 4259. Reserved		[**New - Non-substantive** - Reserved sections]
Part H - Calculation of price on a yield basis						
New Provision			Rule 4200	R. 4260. - Introduction	{1}	[**New - Non-substantive** - Introduction section]

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub-Section	Comments
Rule 1100: Calculating Price on a Yield Basis	1100.01	1st paragraph	Rule 4200	R. 4261. - Calculating price if no method stated for calculating unexpired term	{1}	
Rule 1100: Calculating Price on a Yield Basis	1100.01	{a}	Rule 4200	R. 4262. - Bonds with unexpired term up to and including ten years	{1} and {2}	
Rule 1100: Calculating Price on a Yield Basis	1100.01	{b}	Rule 4200	R. 4263. - Bonds with unexpired terms over ten years	{1}	
Rule 1100: Calculating Price on a Yield Basis	1100.01	{c}	Rule 4200	R. 4264. - Prices	{1}	
Rule 1100: Calculating Price on a Yield Basis	1100.01	{d}	Rule 4200	R. 4265. - New Issues	{1}	
Rule 1100: Calculating Price on a Yield Basis	1100.02		Rule 4200	R. 4266. - Exceptions	{1}	
Rule 1100: Calculating Price on a Yield Basis	1100.03		Rule 4200	[Repealed]		[**Repealed - Substantive** – Remove provision requiring that bond quotations furnished to the press by any Dealer Member must be under the name of IIROC as IIROC no longer places a role in the pricing of bonds.]
New Provision			Rule 4200	R. 4267. - 4299. Reserved.		[**New - Non-substantive** - Reserved sections]
Rules 4300 and 4400 - Protection of client assets						
New Provision			Rule 4300	R. 4301. - Introduction	{1}	[**New - Non-substantive** - Introduction section]
New Provision			Rule 4300	R. 4302. - 4309. Reserved		[**New - Non-substantive** - Reserved sections]
Part A - Segregation and related internal control requirements						
Part A.1 - General segregation requirements						
New Provision			Rule 4300	R. 4310. - Introduction	{1}	[**New - Non-substantive** - Introduction section]
Rule 2000: Segregation Requirements	2000.04	{b} and {c}	Rule 4300	R. 4311. - Definitions	{1}	
Rule 0017: Dealer Member Minimum Capital, Conduct of Business & Insurance	17.03		Rule 4300	R. 4312. - Fully paid and excess margin securities	{1}	
Rule 2600: Internal Control Policy Statements	2600, Statement 4	Control objective {b}	Rule 4300	R. 4312. - Fully paid and excess margin securities	{1}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub-Section	Comments
New Provision			Rule 4300	R. 4312. - Fully paid and excess margin securities	{2}	[**New - Substantive** – Require the execution of a cash and securities loan agreement in order to borrow segregated securities]
Rule 0017: Dealer Member Minimum Capital, Conduct of Business & Insurance	17.03	B	Rule 4300	R. 4312. - Fully paid and excess margin securities	{3}	
Rule 2000: Segregation Requirements	2000.03		Rule 4300	R. 4313. - Restricted and non-negotiable securities	{1}	
Rule 0017: Dealer Member Minimum Capital, Conduct of Business & Insurance	17.03	A	Rule 4300	R. 4314. - Segregation of client securities	{1}{i} and {ii} and {2}	
Part A.2 - Bulk segregation calculation						
New Provision			Rule 4300	R. 4315. - Steps for bulk segregation calculation	{1}	[**New - Non-substantive** – Enact section to generally describe segregation requirements]
Rule 2000: Segregation Requirements	2000.04	{a} and paragraph after {a}	Rule 4300	R. 4316. - Net loan value and market value of securities in a client's account	{1} through {3}	
Rule 2000: Segregation Requirements	2000.05	1st sentence and {a} and {b}	Rule 4300	R. 4317. - Calculating the number of client securities to be segregated in bulk	{1}	
Rule 2000: Segregation Requirements	2000.05	para-graphs after 2000.5{b}	Rule 4300	R. 4318. - Determining securities to satisfy segregation requirements	{1} through {3}	
Rule 2000: Segregation Requirements	2000.06		Rule 4300	R. 4319. - Frequency and review of bulk segregation calculation	{1}	
Rule 2000: Segregation Requirements	2000.07		Rule 4300	R. 4319. - Frequency and review of bulk segregation calculation	{2}	
Part A.3 - Security usage restrictions and correcting segregation deficiencies						
Rule 2000: Segregation Requirements	2000.08	{a} and {b}	Rule 4300	R. 4320. - General restrictions	{1}	
Rule 2000: Segregation Requirements	2000.08	{c}				[**Repealed - Non-substantive** - Remove subsection that is duplicative of other Rule 2000 requirements.]

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub-Section	Comments
Rule 2000: Segregation Requirements	2000.09	1st paragraph	Rule 4300	R. 4321. - Correcting segregation deficiency	{1} and {2}	
Rule 2600: Internal Control Policy Statements	2600, Statement 4	Procedures {6} and {8}	Rule 4300	R. 4321. - Correcting segregation deficiencies	{1} and {2}	
Rule 2000: Segregation Requirements	2000.09	2nd paragraph	Rule 4300	R. 4322. - Call loan segregation deficiency	{1}	
Rule 2000: Segregation Requirements	2000.09	3rd paragraph	Rule 4300	R. 4323. - Securities loan segregation deficiency	{1} and {2}	
Rule 2000: Segregation Requirements	2000.09	4th paragraph	Rule 4300	R. 4324. - Inventory or trading account short position segregation deficiency	{1}	
Rule 2000: Segregation Requirements	2000.09	5th paragraph	Rule 4300	R. 4325. - Client declared short sales segregation deficiency	{1}	
Rule 2000: Segregation Requirements	2000.09	6th paragraph	Rule 4300	R. 4326. - Fails - client, Dealer Member, acceptable institutions or acceptable counterparties	{1}	
Part A.4 - Minimum segregation policies and procedures						
New Provision			Rule 4300	R. 4327. - General	{1}	[**New - Non-substantive** - Overview of new Part A.4]
Rule 0001: Interpretation & Effect	1.01	"Segregated Securities"	Rule 4300	R.4328. - Records of segregated securities	{1}	[**Amended - Substantive** – Amend to make requirements for maintenance of Dealer Member records more specific.]
Rule 2600: Internal Control Policy Statements	2600, Statement 4	Procedure {1}	Rule 4300	R. 4329. - Twice-weekly report of items requiring segregation	{1}	
Rule 2600: Internal Control Policy Statements	2600, Statement 4	Procedure {9}	Rule 4300	R. 4330. - Reporting segregation deficiency	{1}	
Rule 2600: Internal Control Policy Statements	2600, Statement 4	Procedure {4}	Rule 4300	R. 4331. - Authorized personnel move securities	{1}	
New Provision			Rule 4300	R. 4332. - 4339. Reserved		[**New - Non-substantive** - Reserved sections]
Part B - Custody and related internal control requirements						
Part B.1 - General custody requirements						
New Provision			Rule 4300	R. 4340. - Introduction	{1}	[**New - Non-substantive** - Introduction section]
Rule 2000: Segregation Requirements	2000.01		Rule 4300	R. 4341. - Hold securities in an acceptable securities location	{1}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub-Section	Comments
Rule 2000: Segregation Requirements	2000.02		Rule 4300	R. 4341. - Hold securities in an acceptable securities location	{1}	
Form 1, General Notes and Definitions	"acceptable securities locations"	{d}	Rule 4300	R. 4341. - Hold securities in an acceptable securities location	{1}	
Rule 2600: Internal Control Policy Statements	2600, Statement 4	Procedure {2}	Rule 4300	R. 4342. - Timely deposit	{1}	
Part B.2 - Acceptable securities locations						
Rule 2000: Segregation Requirements	2000.02	1st sentence	Rule 4300	R. 4343. - Acceptable internal storage	{1}	
Rule 2000: Segregation Requirements	2000.02	{a}	Rule 4300	R. 4344. - Acceptable internal storage requirements	{1}	
Rule 2000: Segregation Requirements	2000.02	{b}	Rule 4300	R. 4345. - Acceptable transfer locations	{1}	
Rule 2000: Segregation Requirements	2000.01	1st paragraph	Rule 4300	R. 4346. - Securities not under a Dealer Member's control or physical possession	{1}	
Form 1, General Notes and Definitions	General Notes and Definitions	{d} "acceptable securities locations"	Rule 4300	R. 4347. - Entities that may be acceptable external securities locations	{1}	
Form 1, General Notes and Definitions	General Notes and Definitions	{d} "acceptable securities locations"	Rule 4300	R. 4348. - Approval of foreign institutions or securities dealers	{1}	
Form 1, General Notes and Definitions	General Notes and Definitions	{d} "acceptable securities locations"	Rule 4300	R. 4349. - Application to the Corporation for approval of foreign institutions or securities dealers as acceptable securities locations	{1} and {2}	
Form 1, General Notes and Definitions	General Notes and Definitions	{d} "acceptable securities locations"	Rule 4300	R. 4350. - Annual approval of foreign institutions or securities dealers as acceptable securities locations	{1} through {3}	[**Amended - Substantive** – Amend to include requirements for the approval of foreign institutions/dealer as "acceptable securities locations. Requirements are consistent with previously issued guidance in IDA Member Regulation Notice MR-033]

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub-Section	Comments
Form 1, Statement B, Notes and Instructions	Statement B, Notes and Instructions	Note to Line 18	Rule 4300	R. 4351. - Obtaining a client waiver when an acceptable external securities location is unavailable	{1} through {4}	
Part B.3 - Written custodial agreement requirement						
Rule 2000: Segregation Requirements	2000.01	1st sentence, {a}, {b} and {c}	Rule 4300	R. 4352. - Agreement with each acceptable external securities location	{1}	[**Amended - Substantive –** Amend to include indemnification clause requirement, a clause already included in IIROC's standard agreement custody agreement.]
Rule 2600: Internal Control Policy Statements	2600, Statement 4	Procedure {3}	Rule 4300	R. 4352. - Agreement with each acceptable external securities location	{2}	
New Provision			Rule 4300	R. 4353. - Bare trustee custodial agreement	{1}	[**New - Substantive –** Enact section to specify that a Dealer Member has complied with the requirement to execute a custodial agreement if IIROC executes a bare trustee custodial agreement with the custodian. Requirements are consistent with previously issued guidance in IDA Member Regulation Notice MR-080]
Part B.4 - Confirmation and reconciliation requirements						
Rule 2000: Segregation Requirements	2000.02	{a}	Rule 4300	R. 4354. - Securities in transit	{1}{i} and {ii}	
Rule 0300: Audit Requirements	300.02	{a}{vii}{2}	Rule 4300	R. 4355. - Confirmations from external securities locations	{1}	
New Provision			Rule 4300	R. 4355. - Confirmations from external securities locations	{2}	[**New - Substantive** – Enact subsection to specify action to be taken by a Dealer Member when a custodian does not respond to an annual positive confirmation request.]
Rule 2000: Segregation Requirements	2000.02	{b}, 2nd paragraph	Rule 4300	R. 4356. - Confirmations from transfer locations in Canada	{1} through {3}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub-Section	Comments
Rule 2000: Segregation Requirements	2000.02	{b}, 3rd paragraph, 1st sentence	Rule 4300	R. 4357. - Confirmations from transfer locations in the United States	{1} through {3}	
Rule 2000: Segregation Requirements	2000.02	{b}, 3rd paragraph, 2nd sentence	Rule 4300	R. 4358. - Confirmations from transfer locations outside Canada and the United States	{1} through {3}	
Rule 2000: Segregation Requirements	2000.09	7th paragraph	Rule 4300	R. 4359. - Confirmations of stock dividends receivable and stock splits	{1} and {2}	
New Provision			Rule 4300	R. 4360. - Reconcile books and records for mutual funds and deposit investment contracts	{1}	[**New - Substantive** - Enact subsection to specify reconciliation process for deposit investment contracts. Requirements are consistent with previously issued guidance in IDA Member Regulation Notice MR-080]
Part B.5 - Margin requirements						
Form 1, Statement B, Notes and Instructions	Statement B, Notes and Instructions	Notes to Lines 18 and 20	Rule 4300	R. 4361. - Acceptable securities location	{1}	
Form 1, Statement B, Notes and Instructions	Statement B, Notes and Instructions	Notes to Lines 18 and 20	Rule 4300	R. 4362. - Margin charges - non-acceptable securities location	{1}	
Form 1, Statement B, Notes and Instructions	Statement B, Notes and Instructions	Notes to Lines 18 and 20	Rule 4300	R. 4363. - Non-acceptable internal storage and non-acceptable securities location	{1}	
New Provision			Rule 4300	R. 4364. - No confirmation from securities location	{1}{i}	[**Amended – Non-substantive** – Enacted to specify capital effect where a custodian fails to respond to a positive audit confirmation request {relates to new subsection 4355{2}.]
Rule 2000: Segregation Requirements	2000.02	{b} 4th paragraph	Rule 4300	R. 4364. - No Confirmation from securities location	{1}{ii}	
Rule 2000: Segregation Requirements	2000.09	7th paragraph	Rule 4300	R. 4364. - No Confirmation from securities location	{1}{iii}	
Rule 2000: Segregation Requirements	2000.09	8th paragraph	Rule 4300	R. 4364. - No Confirmation from securities location	{2}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub-Section	Comments
Form 1, Statement B, Notes and Instructions	Statement B	Line 20	Rule 4300	R. 4364. - No Confirmation from securities location	{2}{i}	
New Provision			Rule 4300	R. 4365. - No written custodial agreement	{1}	[**New - Non-substantive** - Introduction to section on custodial agreement related margin requirements]
Form 1, Statement C, Notes and Instructions	Statement C	Line 2{c}	Rule 4300	R. 4365. - No written custodial agreement	{2}	
Form 1, Statement B, Notes and Instructions	Statement B	Lines 18 and 20	Rule 4300	R. 4365. - No written custodial agreement	{3}	
Form 1, Statement B, Notes and Instructions	Statement B	Line 20	Rule 4300	R. 4366. - Books and records - reconciliation	{1} and {2}{i}	
Rule 2000: Segregation Requirements	2000.09	8th paragraph	Rule 4300	R. 4366. - Books and records - reconciliation	{2}{ii}	
Rule 2000: Segregation Requirements	2000.09	8th paragraph	Rule 4300	R. 4367. - Difference accounts	{1} and {2}	
New Provision			Rule 4300	R. 4368. - 4379. Reserved		[**New - Non-substantive** - Reserved sections]
Part C - Client free credit requirements						
New Provision			Rule 4300	R. 4380. - Introduction	{1}	[**New - Non-substantive** - Introduction section]
Rule 1200: Clients' Free Credit Balances	1200.01	{a}	Rule 4300	R. 4381. - Definitions	{1}{i}{a}	
Rule 1200: Clients' Free Credit Balances	1200.01	{b}	Rule 4300	R. 4381. - Definitions	{1}{i}{b}	
New Provision			Rule 4300	R. 4381. - Definitions	{1}{ii}	[**New - Non Substantive** – Add definition of "net allowable assets" to refer back to Form 1 calculation under same name.]
Form 1, Statement D	Statement D		Rule 4300	R. 4382. - Dealer Member's use of client free credit balances	{1}	
Rule 1200: Clients' Free Credit Balances	1200.02		Rule 4300	R. 4383. - Notation on client account statements	{1}	
Rule 1200: Clients' Free Credit Balances	1200.03		Rule 4300	R. 4384 Calculating useable free credit balances	{1} and {2}	
Rule 1200: Clients' Free Credit Balances	1200.04		Rule 4300	R. 4385 Weekly calculation	{1}	
Rule 1200: Clients' Free Credit Balances	1200.05		Rule 4300	R. 4386 Daily compliance review	{1} and {2}	
Rule 1200: Clients' Free Credit Balances	1200.06		Rule 4300	R. 4386 Daily compliance review	{2}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub-Section	Comments
New Provision			Rule 4300	R. 4387. - 4399. Reserved		[**New - Non-substantive** - Reserved sections]
Part D - Safekeeping requirements						
New Provision			Rule 4400	R. 4400. - Introduction	{1}	[**New - Non-substantive** - Introduction section]
Rule 2600: Internal Control Policy Statements	2600, Statement 5	Procedure {1}	Rule 4400	R. 4401. - Written safekeeping agreement	{1}	
Rule 0001: Interpretation and Effect	1.1	"Securities Held for Safekeep-ing"	Rule 4400	R. 4402. - Securities free from encumbrance	{1}	
Rule 2600: Internal Control Policy Statements	2600, Statement 5	Procedure {2}	Rule 4400	R. 4403. - Procedures to keep securities apart	{1}	
Rule 2600: Internal Control Policy Statements	2600, Statement 5	Procedure {3}	Rule 4400	R. 4404. - Identifying securities held for safekeeping in records	{1}	
Rule 2600: Internal Control Policy Statements	2600, Statement 5	Procedure {4}	Rule 4400	R. 4405. - Release of securities held in safekeeping	{1}	
Rule 0001: Interpretation and Effect	1.1	"Securities Held for Safekeep-ing"	Rule 4400	R. 4405. - Release of securities held in safekeeping	{2}	
New Provision			Rule 4400	R. 4406. - 4419. Reserved		[**New - Non-substantive** - Reserved sections]
Part E - Internal controls requirements for safeguarding cash and securities						
New Provision			Rule 4400	R. 4420. - Introduction	{1}	[**New - Non-substantive** - Introduction section]
Rule 2600: Internal Control Policy Statements	2600, Statement 6	Control Objective {a}	Rule 4400	R. 4421. - Safeguarding client and Dealer Member cash and securities	{1}{i}	
Rule 2600: Internal Control Policy Statements	2600, Statement 6	Control Objective {b}	Rule 4400	R. 4421. - Safeguarding client and Dealer Member cash and securities	{1}{ii}	
Rule 2600: Internal Control Policy Statements	2600, Statement 6		Rule 4400	R. 4421. - Safeguarding client and Dealer Member cash and securities	{2}	
Rule 2600: Internal Control Policy Statements	2600, Statement 6	parenthe-tical	Rule 4400	R. 4421. - Safeguarding client and Dealer Member cash and securities	{3}	[**Amended - Non-substantive** - Revise wording to create positive obligation on Dealer Member to have appropriate control procedures to safeguard client and Dealer Member cash and securities]

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub-Section	Comments
Rule 2600: Internal Control Policy Statements	2600, Statement 6	Procedure {1}	Rule 4400	R. 4422. - Receipt and delivery of securities	{1} through {5}	
Rule 2600: Internal Control Policy Statements	2600, Statement 6	Procedure {2}	Rule 4400	R. 4423. - Restricted access to securities	{1} through {3}	[**Amended - Non-substantive** - Remove reference to vault facilities as requirement is outdated.]
Rule 2600: Internal Control Policy Statements	2600, Statement 6	Procedure {3}	Rule 4400	R. 4424. - Clearing	{1} through {7}	[**Amended - Non-substantive** – Remove current rule procedure 3{f} which to use of securities "not contrary to any laws" as not acting contrary to legislation is already covered generally.]
Rule 2600: Internal Control Policy Statements	2600, Statement 6	Procedure {4}	Rule 4400	R. 4425. - Protecting securities	{1} through {4}	[**Amended - Non-substantive** – Remove redundant requirement in current procedure {4}{b} to limit the value of securities or other assets held at an individual securities location due to dematerialization]
Rule 2600: Internal Control Policy Statements	2600, Statement 6	Procedure {5}	Rule 4400	R. 4426. - How to handle security records	{1} through {3}	
Rule 2600: Internal Control Policy Statements	2600, Statement 6	Procedure {6}	Rule 4400	R. 4427. - Rules for counting securities	{1} through {5}	
Rule 2600: Internal Control Policy Statements	2600, Statement 6	Procedure {7}	Rule 4400	R. 4428. - Moving certificates and securities between branches	{1} through {4}	
Rule 2600: Internal Control Policy Statements	2600, Statement 6	Procedure {8}	Rule 4400	R. 4429. - Transferring securities	{1} through {7}	
Rule 2600: Internal Control Policy Statements	2600, Statement 6	Procedure {9}	Rule 4400	R. 4430. - Re-organization	{1} through {5}	
Rule 2600: Internal Control Policy Statements	2600, Statement 6	Procedure {10}	Rule 4400	R. 4431. - Handling dividends and interest	{1} through {8}	
Rule 2600: Internal Control Policy Statements	2600, Statement 6	Procedure {11}	Rule 4400	R. 4432. - Reconciling internal accounts	{1} and {2}	
Rule 2600: Internal Control Policy Statements	2600, Statement 6	Procedure {12}	Rule 4400	R. 4433. - Cash	{1} through {9}	
New Provision			Rule 4400	R. 4434. - 4449. Reserved		[**New - Non-substantive** - Reserved sections]

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub-Section	Comments
Part F - Insurance requirements						
New Provision			Rule 4400	R. 4450. - Introduction	{1}	[**New - Non-substantive** - Introduction section]
Rule 0400: Insurance	400.04	base amount	Rule 4400	R. 4451. - Definitions	{1}{i}	
New Provision			Rule 4400	R. 4451. - Definitions	{1}{ii}	[**New - Non-substantive** – Define "standard form FIB" in order to collectively refer to required insurance coverage elements.]
Rule 0017: Dealer Member Minimum Capital, Conduct of Business & Insurance	17.05		Rule 4400	R. 4452. - Dealer Member must have insurance	{1}	
Rule 0017: Dealer Member Minimum Capital, Conduct of Business & Insurance	17.07		Rule 4400			[**Repealed - Substantive -** Remove the applicable District Council's discretionary power to reduce the required minimum amount of insurance that is to be maintained by the Dealer Member that has applied for the insurance reduction.]
Rule 0017: Dealer Member Minimum Capital, Conduct of Business & Insurance	17.08		Rule 4400			[**Repealed - Substantive -** Remove the applicable District Council's discretionary power to renew the insurance reduction that it granted in 17.07 to the Dealer Member.]
Rule 0017: Dealer Member Minimum Capital, Conduct of Business & Insurance	17.09		Rule 4400			[**Repealed - Substantive -** Remove the requirement that the insurance reduction application to the applicable District Council by the Dealer Member under 17.07 and 17.08 be done through the Corporation.]
Rule 0400: Insurance	400.06	1st sentence	Rule 4400	R. 4453. - Qualified insurance carriers	{1}	
Rule 0400: Insurance	400.06	2nd sentence	Rule 4400	R. 4454. - Foreign insurers	{1}	
Rule 0400: Insurance	400.01		Rule 4400	R. 4455. - Mail insurance	{1} and {2}	
Rule 0400: Insurance	400.02		Rule 4400	R. 4456. - Financial Institution Bond	{1}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub-Section	Comments
Rule 0400: Insurance	400.04		Rule 4400	R. 4457. - General minimum insurance requirement	{1}	
Rule 0400: Insurance	400.04		Rule 4400	R. 4458. - Minimum insurance requirement for certain introducing brokers	{1}	
Rule 0400: Insurance	400.05	{b}	Rule 4400	R. 4459. - Double aggregate limit	{1}	
Form 1, Schedule 10	Schedule 10		Rule 4400	R. 4460. - Calculating minimum insurance requirement and RAC provisions	{1} and {3}	
Rule 0400: Insurance	400.05	{f}	Rule 4400	R. 4460. - Calculating minimum insurance requirement and RAC provisions	{2}	
Rule 0400: Insurance	400.05	{c}	Rule 4400	R. 4461. - Correction of insufficient coverage	{1}	
Rule 0400: Insurance	400.07		Rule 4400	R. 4462. - Global Financial Institution Bonds	{1}	
Rule 0400: Insurance	400.03		Rule 4400	R. 4463. - Notify the Corporation of underwriter insurance termination	{1}	
Rule 0400: Insurance	400.03	{B} 1st 3.5 lines	Rule 4400	R. 4464. - When insurance ends due to take over	{1}	
Rule 0400: Insurance	400.03	{B} end of section	Rule 4400	R. 4464. - When insurance ends due to take over	{2}	
Rule 0017: Dealer Member Minimum Capital, Conduct of Business & Insurance	17.06		Rule 4400	R. 4465. - Notify the Corporation of claims	{1}	
Rule 0400: Insurance	400.05	{d} and {e}	Rule 4400			[**Repealed - Non-substantive** - Move the insurance coverage options available to the Dealer Member to guidance.]
New Provision			Rule 4400	R. 4466. - 4499. Reserved		[**New - Non-substantive** - Reserved sections]
Rules 4500 and 4600 - Financing Arrangements						
New Provision			Rule 4500	R. 4501. - Introduction	{1}	[**New - Non-substantive** - Introduction section]
New Provision			Rule 4500	R. 4502. - 4509. Reserved		[**New - Non-substantive** - Reserved sections]
Part A - Repurchase market trading practices						

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub-Section	Comments
Rule 3000: Code of Conduct for Dealing in Repo Markets	3000	Intro	Rule 4500	R. 4510. - Introduction	{1}	
Rule 3000: Code of Conduct for Dealing in Repo Markets	3000	Definitions	Rule 4500	R. 4511. - Definitions	{1}{i},{ii}, and {iv}-{vi}	
Rule 3000: Code of Conduct for Dealing in Repo Markets	3000C	{6}	Rule 4500	R. 4511. - Definitions	{1}{iii}	[**Amended - Substantive** – Expand "general collateral" to include Government of Canada real return bonds, strips and coupons]
New Provision			Rule 4500	R. 4512. - General	{1}	[**New - Non-substantive** - General section]
Rule 3000: Code of Conduct for Dealing in Repo Markets	3000D	{1} through {6}	Rule 4500	R. 4513. - Marking to market	{1} through {6}	[**Amended - Substantive** - Add text "unless otherwise agreed by the parties" to clause {2}]
Rule 3000: Code of Conduct for Dealing in Repo Markets	3000E	{1} and {2}	Rule 4500	R. 4514. - Forward repo confirmation	{1} and {2}	
Rule 3000: Code of Conduct for Dealing in Repo Markets	3000F	{1} and {2}	Rule 4500	R. 4515. - Obligation to make coupon payments	{1} and {2}	
Rule 3000: Code of Conduct for Dealing in Repo Markets	3000I	{1} and {2}	Rule 4500	R. 4516. - Substitutions	{1} and {2}	
Rule 3000: Code of Conduct for Dealing in Repo Markets	3000G		Rule 4500	R. 4517. - General collateral repo allocations	{1} through {3}	
Rule 3000: Code of Conduct for Dealing in Repo Markets	3000H		Rule 4500	R. 4517. - General collateral repo allocations	{4}	
Rule 3000: Code of Conduct for Dealing in Repo Markets	3000A		Rule 4500	R. 4518. - Confidentiality	{1} through {3}	
Rule 3000: Code of Conduct for Dealing in Repo Markets	3000B	{1} through {16}				[**Repealed – Non-substantive** - Delete screen guidelines which are not requirements.]
Rule 3000: Code of Conduct for Dealing in Repo Markets	3000C	{1} through {5}, {7} and {8}				[**Repealed – Non-substantive** – Remove settlement assumptions which were effectively guidance, since they could be varied with the agreement of both parties]

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub-Section	Comments
Rule 3000: Code of Conduct for Dealing in Repo Markets	3000I	{3}				[**Repealed – Non-substantive** - Remove timing of collateral substitution requirements which were effectively guidance, since they could be varied with the agreement of both parties]
Rule 3000: Code of Conduct for Dealing in Repo Markets	3000J					[**Repealed - Non-substantive** - Remove redundant compliance and enforcement provisions]
New Provision			Rule 4500	R. 4519. - 4599. Reserved		[**New - Non-substantive** - Reserved sections]
Part B - Cash and securities loan, repurchase, and reverse repurchase transactions						
New Provision			Rule 4600	R. 4600. - Introduction	{1}	[**New - Non-substantive** - Introduction section]
Form 1, Schedules 1 and 7	Schedules 1 and 7	Notes 1 and 2	Rule 4600	R. 4601. - Definitions	{1}{i}	
Rule 0100: Margin Requirements	100.17	{b}{ii} parenthe-tical	Rule 4600	R. 4601. - Definitions	{1}{ii}	
Rule 2200: Cash & Securities Loan Transactions	2200.01	overnight cash loan agree-ments	Rule 4600	R. 4601. - Definitions	{1}{iii}	
Rule 0100: Margin Requirements	100.17	{b} 2nd to last sentence	Rule 4600	R. 4601. - Definitions	{1}{iv}	
Form 1, Schedules 1 and 7	Schedules 1 and 7	Notes 1 and 5	Rule 4600	R. 4601. - Definitions	{1}{v}	
New Provision			Rule 4600	R. 4601. - Definitions	{1}{vi}	[**New - Non-substantive** - Definition of “repurchase agreement”]
Rule 0100: Margin Requirements	100.17	{a}	Rule 4600	R. 4601. - Definitions	{1}{vii}	
Rule 2200: Cash & Securities Loan Transactions	2200.01	Schedule I Bank	Rule 4600	R. 4601. - Definitions	{1}{viii}	
New Provision				R. 4601. - Definitions	{1}{ix}	[**New - Non-substantive** - Definition of “written cash and securities loan agreement’]
Rule 2200: Cash & Securities Loan Transactions	2200.08	{a}	Rule 4600	R. 4602. - General requirements	{1}	
Rule 2200: Cash & Securities Loan Transactions	2200.05		Rule 4600	R. 4602. - General requirements	{2}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub-Section	Comments
Rule 2200: Cash & Securities Loan Transactions	2200.08	{b}	Rule 4600	R. 4602. - General requirements	{3}{i}	
Rule 2200: Cash & Securities Loan Transactions	2200.08	{e} last 2 lines	Rule 4600	R. 4602. - General requirements	{3}{ii}	
Rule 2200: Cash & Securities Loan Transactions	2200.06	{c}	Rule 4600	R. 4602. - General requirements	{4}	
Rule 2200: Cash & Securities Loan Transactions	2200.07	{a}	Rule 4600	R. 4602. - General requirements	{4}	
Rule 2200: Cash & Securities Loan Transactions	2200.08	{e}	Rule 4600	R. 4602. - General requirements	{4}	
Rule 2200: Cash & Securities Loan Transactions	2200.04		Rule 4600	R. 4602. - General requirements	{5}	
Rule 2200: Cash & Securities Loan Transactions	2200.02	First sentence	Rule 4600	R. 4603. - Written Agreement requirement	{1}	
Form 1, Schedules 1 and 7	Schedules 1 and 7	Note 5, 2nd to last and last sentence	Rule 4600	R. 4603. - Written agreement requirement	{2}	
Form 1, Schedules 1 and 7	Schedules 1 and 7	Note 5, 2nd paragraph	Rule 4600	R. 4603. - Written agreement requirement	{3}	
Rule 2200: Cash & Securities Loan Transactions	2200.03		Rule 4600	R. 4603. - Written Agreement requirement	{3}	
Form 1, Schedules 1 and 7	Schedules 1 and 7	Note 5, 2nd paragraph	Rule 4600	R. 4604. - Margin requirements for cash and securities loans	{1}	
Rule 2200: Cash & Securities Loan Transactions	2200.07	{a} and {b}	Rule 4600	R. 4605. - Cash or securities loans between a Dealer Member and an acceptable institution or acceptable counterparty	{1}	
Rule 2200: Cash & Securities Loan Transactions	2200.06	{a} and {b}	Rule 4600	R. 4606. - Cash or securities loans between regulated entities	{1}	
New Provision			Rule 4600	R. 4607. - Cash or securities loans with other counterparties	{1}	[**New - Non-substantive** - Preamble]
Rule 2200: Cash & Securities Loan Transactions	2200.08	{c}{A}, {B} and {C}	Rule 4600	R. 4607. - Cash or securities loans with other counterparties	{2}	
Rule 2200: Cash & Securities Loan Transactions	2200.08	{d}	Rule 4600	R. 4607. - Cash or securities loans with other counterparties	{3}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub-Section	Comments
Form 1, Schedules 1 and 7	Schedules 1 and 7	Note 5	Rule 4600	R. 4608. - Margin requirements for repurchase and reverse repurchase agreement transactions	{1}	
Rule 0100: Margin Requirements	100.17	{b}, {c} and {d}	Rule 4600	R. 4609. - Margin requirements for cash and securities loan, repurchase, and reverse repurchase transactions with term risk	{1}	
New Provision			Rule 4600	R. 4610. - 4699. Reserved.		[**New - Non-substantive** - Reserved sections]
Rules 4700 and 4800 - Operations						
New Provision			Rule 4700	R. 4701. - Introduction	{1}	[**New - Non-substantive** - Introduction section]
New Provision			Rule 4700	R. 4702. - 4709. Reserved		[**New - Non-substantive** - Reserved sections]
Part A - Business continuity plan						
New Provision			Rule 4700	R. 4710. - Introduction	{1}	[**New - Non-substantive** - Introduction section]
Rule 0017: Dealer Member Minimum Capital, Conduct of Business & Insurance	17.16	1st sentence, 1st clause	Rule 4700	R. 4711. - Creating a business continuity plan	{1}	
Rule 0017: Dealer Member Minimum Capital, Conduct of Business & Insurance	17.16	1st sentence, 2nd clause	Rule 4700	R. 4712. - Business continuity plan procedures	{1}	
Rule 0017: Dealer Member Minimum Capital, Conduct of Business & Insurance	17.16	2nd sentence	Rule 4700	R. 4712. - Business continuity plan procedures	{2} and {3}	
Rule 0017: Dealer Member Minimum Capital, Conduct of Business & Insurance	17.16	2nd paragraph, 1st sentence	Rule 4700	R. 4713. - Update business continuity plan	{1}	
Rule 0017: Dealer Member Minimum Capital, Conduct of Business & Insurance	17.16	2nd paragraph, 2nd sentence,	Rule 4700	R. 4714. - Annual review and test	{1} and {2}	[**New - Substantive** - Add to subsection {1} a requirement for senior management annual approval of business continuity plan - previously set out as an expectation in IDA Bulletin 3442]

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub-Section	Comments
Rule 0017: Dealer Member Minimum Capital, Conduct of Business & Insurance	17.16	2nd paragraph, 3rd sentence	Rule 4700	R. 4714. - Annual review and test	{3}	
New Provision			Rule 4700	R. 4715. - 4749. Reserved		[**New - Non-substantive** - Reserved sections]
Part B - Trading and Delivery						
New Provision			Rule 4700	R. 4750. - Introduction	{1}	[**New - Non-substantive** - Introduction section]
Rule 0800: Trading & Delivery	800.01		Rule 4700	[Repealed]		[**Repealed - Non-substantive** - Redundant provision]
Rule 0800: Trading & Delivery	800.02		Rule 4700	[Repealed]		[**Repealed - Substantive** - Remove the prohibition of a Dealer Member from joining other trading organizations or associations]
Part B.1 - General						
Rule 0800: Trading & Delivery	800.49		Rule 4700	R. 4751. - Definitions	{1}{i}	
Rule 0800: Trading & Delivery	800.03		Rule 4700	[Repealed]		[**Repealed - Non-substantive** - Remove the definition of “clearing days”]
Rule 0800: Trading & Delivery	800.04		Rule 4700	[Repealed]		[**Repealed - Non-substantive** - Remove definition of “dealt in”]
Rule 0800: Trading & Delivery	800.30D	{a}{vii}	Rule 4700	R. 4751. - Definitions	{1}{ii}	
Rule 0800: Trading & Delivery	800.30A	“participant”	Rule 4700	R. 4751. - Definitions	{1}{iii}	
Rule 0800: Trading & Delivery	800.30	{c}	Rule 4700	R. 4751. - Definitions	{1}{iv}	
Rule 0800: Trading & Delivery	800.30A	“settlement service”	Rule 4700	R. 4751. - Definitions	{1}{v}	
Rule 0800: Trading & Delivery	800.31	{b}{i}	Rule 4700	R. 4752. - Definitions	{1}{vi}	
Rule 0800: Trading & Delivery	800.31	{b}{ii}	Rule 4700	R. 4751. - Definitions	{1}{vii}	
Rule 0800: Trading & Delivery	800.11		Rule 4700	[Repealed]		[**Repealed - Non-substantive** - Remove requirement already covered in account opening requirements section {PLR Section 3222{5}}]

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub-Section	Comments
Rule 0800: Trading & Delivery	800.12		Rule 4700	[Repealed]		[**Repealed - Non-substantive** - Remove redundant provision relating to communication costs]
Rule 0800: Trading & Delivery	800.14		Rule 4700	[Repealed]		[**Repealed - Substantive** - Remove the Chair of the District Council's rule interpretation authority on forbidden transactions. Dealer Members are already required to ensure their transactions are in compliance with IIROC's rules and securities legislation.]
Rule 0800: Trading & Delivery	800.15		Rule 4700	[Repealed]		[**Repealed - Non-substantive** - Remove provision relating to the spirit and letter of the rules; will be covered off in section detailing principles of conduct]
Rule 0800: Trading & Delivery	800.27	{e}	Rule 4700	[Repealed]		[**Repealed - Non-substantive** - Duplicative of trade confirmation requirements]
Rule 0800: Trading & Delivery	800.30D		Rule 4700	[Repealed]		[**Repealed - Substantive** - Remove provision specifying how securities must be delivered through the clearing corporation. Delivery requirements are addressed within the clearing corporation rules.]
Rule 0800: Trading & Delivery	800.31	{d}	Rule 4700	[Repealed]		[**Repealed - Non-substantive** - Provision stating that IIROC has the authority to review and amend its rules and allow exemptions from them is redundant.]
Rule 0800: Trading & Delivery	800.30C	2nd sentence	Rule 4700	R. 4752. - Use of a clearing corporation	{1}	
Rule 0800: Trading & Delivery	800.30B		Rule 4700	R. 4752. - Use of a clearing corporation	{2}	
New Provision			Rule 4700	R. 4752. - Use of a clearing corporation	{3}	[**New - Substantive** - Clarifies that IIROC's settlement requirements apply when a trade is to be settled without using a clearing corporation.]
Rule 0800: Trading & Delivery	800.49	1st sentence	Rule 4700	R. 4753. - Use of a trade matching utility	{1}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub-Section	Comments
Rule 0800: Trading & Delivery	800.31	{a}	Rule 4700	R. 4754. - Payment or delivery through client settlement agent	{1}{i} through {v}	
Rule 0800: Trading & Delivery	800.31	{c}	Rule 4700	R. 4754. - Payment or delivery through client settlement agent	{1}{v}	
Rule 0800: Trading & Delivery	800.10		Rule 4700	R. 4755. - Early registration of securities	{1}	
Rule 0800: Trading & Delivery	800.13		Rule 4700	R. 4756. - Repo and option granting transactions with clients	{1}	
Rule 0800: Trading & Delivery	800.47		Rule 4700	R. 4757. - When issued trading	{1}	
Rule 0800: Trading & Delivery	800.38		Rule 4700	R. 4758. - Tax payments	{1}	
Part B.2 - Fixed income						
Rule 0800: Trading & Delivery	800.05		Rule 4700	R. 4759. - Fixed income accrued interest	{1}	
Rule 0800: Trading & Delivery	800.16		Rule 4700	R. 4759. - Fixed income accrued interest	{1}	
Rule 0800: Trading & Delivery	800.06		Rule 4700	R. 4759. - Fixed income accrued interest	{2}	
Rule 0800: Trading & Delivery	800.07		Rule 4700	R. 4759. - Fixed income accrued interest	{3}	
Rule 0800: Trading & Delivery	800.08		Rule 4700	R. 4759. - Fixed income accrued interest	{4}	
Rule 0800: Trading & Delivery	800.09		Rule 4700	R. 4759. - Fixed income accrued interest	{5}	
Rule 0800: Trading & Delivery	800.48		Rule 4700	R. 4759. - Fixed income accrued interest	{6}	
Rule 0800: Trading & Delivery	800.33	{a}	Rule 4700	R. 4759. - Fixed income accrued interest	{7}	
Rule 0800: Trading & Delivery	800.33	{b}	Rule 4700	R. 4759. - Fixed income accrued interest	{8}	
Rule 0800: Trading & Delivery	800.35		Rule 4700	R. 4759. - Fixed income accrued interest	{9}	
Rule 0800: Trading & Delivery	800.23		Rule 4700	R. 4760. - Fixed income trading units	{1}	
Rule 0800: Trading & Delivery	800.19		Rule 4700	R. 4760. - Fixed income trading units	{2}	
Rule 0800: Trading & Delivery	800.22		Rule 4700	R. 4760. - Fixed income trading units	{2}	
Rule 0800: Trading & Delivery	800.20		Rule 4700	R. 4760. - Fixed income trading units	{3}	
Rule 0800: Trading & Delivery	800.22		Rule 4700	R. 4760. - Fixed income trading units	{4}	
Rule 0800: Trading & Delivery	800.21	{a} through {f}	Rule 4700	R. 4760. - Fixed income trading units	{5}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub-Section	Comments
Rule 0800: Trading & Delivery	800.24		Rule 4700	R. 4761. - Fixed income delivery	{1}	
Rule 0800: Trading & Delivery	800.27	1st sentence	Rule 4700	R. 4761. - Fixed income delivery	{1}	
Rule 0800: Trading & Delivery	800.25		Rule 4700	R. 4761. - Fixed income delivery	{2}	
Rule 0800: Trading & Delivery	800.27	{a} through {c}	Rule 4700	R. 4761. - Fixed income delivery	{3}	
Rule 0800: Trading & Delivery	800.27	{d} and {f}	Rule 4700	R. 4761. - Fixed income delivery	{4}	
Rule 0800: Trading & Delivery	800.29		Rule 4700	R. 4761. - Fixed income delivery	{5}{i}	[**Amended - Substantive** – Amend delivery time from before 5:30 p.m. to before 4:30 p.m. to reflect industry practice]
Rule 0800: Trading & Delivery	800.28		Rule 4700	R. 4761. - Fixed income delivery	{5}{ii}	
Rule 0800: Trading & Delivery	800.30	1st paragraph and {a} 3rd paragraph	Rule 4700	R. 4762. - Fixed income delivery	{6}{i}	
Rule 0800: Trading & Delivery	800.30	{a}, 1st paragraph	Rule 4700	R. 4761. - Fixed income delivery	{6}{ii}	
Rule 0800: Trading & Delivery	800.26		Rule 4700	R. 4761. - Fixed income delivery	{6}{iii}	
Rule 0800: Trading & Delivery	800.30	{a}, 5th and 6th paragraph	Rule 4700	R. 4761. - Fixed income delivery	{6}{iv}	
Rule 0800: Trading & Delivery	800.30	{a}{v}	Rule 4700	R. 4761. - Fixed income delivery	{6}{v}	
Rule 0800: Trading & Delivery	800.30	{a}, 4th paragraph	Rule 4700	R. 4761. - Fixed income delivery	{6}{vi}	
Rule 0800: Trading & Delivery	800.30	{a}{i} through {iv}	Rule 4700	R. 4761. - Fixed income delivery	{6}{vii}	
Rule 0800: Trading & Delivery	800.32		Rule 4700	R. 4761. - Fixed income delivery	{7}	
Rule 0800: Trading & Delivery	800.36		Rule 4700	R. 4761. - Fixed income delivery	{8}{i}	
Rule 0800: Trading & Delivery	800.37		Rule 4700	R. 4761. - Fixed income delivery	{8}{ii}	
Rule 0800: Trading & Delivery	800.46		Rule 4700	R. 4762. - Fixed income redemption payment	{1}	
Part B.3 - Stocks						
Rule 0800: Trading & Delivery	800.23		Rule 4700	R. 4763. - Stocks trading units	{1}	
Rule 0800: Trading & Delivery	800.19		Rule 4700	R. 4763. - Stocks trading units	{2}	
Rule 0800: Trading & Delivery	800.22	1st part of sentence	Rule 4700	R. 4763. - Stocks trading units	{2}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub-Section	Comments
Rule 0800: Trading & Delivery	800.20		Rule 4700	R. 4763. - Stocks trading units	{3}	
Rule 0800: Trading & Delivery	800.22	2nd part of sentence	Rule 4700	R. 4763. - Stocks trading units	{4}	
Rule 0800: Trading & Delivery	800.21	{g}	Rule 4700	R. 4763. - Stocks trading units	{5}{i}	
Rule 0800: Trading & Delivery	800.24		Rule 4700	R. 4764. - Stocks delivery	{1}	
New Provision			Rule 4700	R. 4764. - Stocks delivery	{2}{i}	[**New - Non-substantive** – Add general provision setting out what is considered to be "regular delivery" for exchange-listed shares']
New Provision			Rule 4700	R. 4764. - Stocks delivery	{2}{ii}{a}	[**New - Non-substantive** – Add general provision setting out what is considered to be "regular delivery" for unlisted shares']
Rule 0800: Trading & Delivery	800.34		Rule 4700	R. 4764. - Stocks delivery	{2}{ii}{b} and {c}	
Rule 0800: Trading & Delivery	800.27	{d}, 1st sentence	Rule 4700	R. 4764. - Stocks delivery	{3}{i}	
Rule 0800: Trading & Delivery	800.40	1st part of 1st sentence	Rule 4700	R. 4764. - Stocks delivery	{4}{i}	
Rule 0800: Trading & Delivery	800.41	1st part of 1st sentence	Rule 4700	R. 4764. - Stocks delivery	{4}{ii}	
Rule 0800: Trading & Delivery	800.30	{b}	Rule 4700	R. 4764. - Stocks delivery	{5}	
Rule 0800: Trading & Delivery	800.32		Rule 4700	R. 4764. - Stocks delivery	{6}	
Rule 0800: Trading & Delivery	800.36		Rule 4700	R. 4764. - Stocks delivery	{7}{i}	
Rule 0800: Trading & Delivery	800.37		Rule 4700	R. 4764. - Stocks delivery	{7}{ii}	
Rule 0800: Trading & Delivery	800.45		Rule 4700	R. 4765. - Stocks dividend claims	{1}	
Part B.4 - Buy-ins						
Rule 0800: Trading & Delivery	800.39		Rule 4700	R. 4766. - Buy-ins	{1}, 1st sent-ence	
Rule 0800: Trading & Delivery	800.40		Rule 4700	R. 4766. - Buy-ins	{1}{i}	
Rule 0800: Trading & Delivery	800.41		Rule 4700	R. 4766. - Buy-ins	{1}{ii}	
Rule 0800: Trading & Delivery	800.42		Rule 4700	R. 4766. - Buy-ins	{1}{iii}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub-Section	Comments
Rule 0800: Trading & Delivery	800.43		Rule 4700	R. 4766. - Buy-ins	{1}{iv}	
Rule 0800: Trading & Delivery	800.44		Rule 4700	R. 4766. - Buy-ins	{1}{v}	
New Provision			Rule 4700	R. 4767. - 4799. Reserved.		[**New - Non-substantive** - Reserved sections]
Part C - Account transfers						
New Provision			Rule 4800	R. 4800. - Introduction	{1}	[**New - Non-substantive** - Introduction section]
Rule 2300: Account Transfers	2300.01	"account transfer"	Rule 4800	R. 4801. - Definitions	{1}{i}	
Rule 2300: Account Transfers	2300.01	"delivering Dealer Member"	Rule 4800	R. 4801. - Definitions	{1}{ii}	
Rule 2300: Account Transfers	2300.01	"partial account"	Rule 4800	R. 4801. - Definitions	{1}{iii}	
Rule 2300: Account Transfers	2300.01	"receiving Dealer Member"	Rule 4800	R. 4801. - Definitions	{1}{iv}	
Rule 2300: Account Transfers	2300.01	"recognized clearing depository"	Rule 4800	R. 4801. - Definitions	{1}{v}	
Rule 2300: Account Transfers	2300.02	1st paragraph, 2nd sentence	Rule 4800	R. 4802. - Transferring a full or partial account	{1}	
Rule 2300: Account Transfers	2300.02	1st paragraph, 1st sentence	Rule 4800	R. 4803. - Transfer through recognized depository	{1}	
Rule 2300: Account Transfers	2300.02	2nd and 3rd paragraph	Rule 4800	R. 4804. - Communications between Dealer Members	{1} through {4}	
Rule 2300: Account Transfers	2300.03		Rule 4800	R. 4805. - Receiving Dealer Member responsibilities for documents	{1} though {3}	
Rule 2300: Account Transfers	2300.04	1st paragraph	Rule 4800	R. 4806. - Delivering Dealer Member - response to request for transfer	{1} and {2}	
Rule 2300: Account Transfers	2300.05	1st paragraph, 1st sentence	Rule 4800	R. 4807. - Asset transfer	{1}	
Rule 2300: Account Transfers	2300.05	3rd paragraph, 1st part	Rule 4800	R. 4807. - Asset transfer	{2}{i}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub-Section	Comments
Rule 2300: Account Transfers	2300.05	1st paragraph, 2nd sentence	Rule 4800	R. 4807. - Asset transfer	{2}{ii}	
Rule 2300: Account Transfers	2300.05	3rd paragraph, 2nd part	Rule 4800	R. 4807. - Asset transfer	{2}{iii}	
Rule 2300: Account Transfers	2300.05	3rd paragraph, 3rd part	Rule 4800	R. 4807. - Asset transfer	{2} last sent-ence	
Rule 2300: Account Transfers	2300.04	2nd and 3rd paragraph s	Rule 4800	R. 4808. - Transfer impediment	{1} through {3}	
Rule 2300: Account Transfers	2300.06		Rule 4800	R. 4809. - Failure to settle	{1} and {2}	
Rule 2300: Account Transfers	2300.07		Rule 4800	R. 4810. - Non-certificated mutual funds	{1}{i} through {iii}	
Rule 2300: Account Transfers	2300.08		Rule 4800	R. 4811. - Interest or dividend receipt balances	{1}	
Rule 2300: Account Transfers	2300.05	2nd paragraph	Rule 4800	R. 4812. - Margin	{1} and {2}	
Rule 2300: Account Transfers	2300.09		Rule 4800	R. 4813. – Responsibility for margining account	{1}{i} and {ii}	[**Amend – Substantive** - Current section 2300.9 is silent on when the receiving Member must assume responsibility for margining. We have added a start date of the earlier of {i} the date of transfer of all assets and money balances, and {ii} 20 clearing days after receipt by the delivering Dealer Member]
Rule 2300: Account Transfers	2300.10		Rule 4800	R. 4814. - Fees and charges	{1}	
Rule 2300: Account Transfers	2300.11		Rule 4800	R. 4815. - Corporation exemption	{1} and {2}	
New Provision			Rule 4800	R. 4816. - 4899. Reserved.		[**New - Non-substantive** - Reserved sections]
Rule 4900 - Other Internal Control Requirements						
New Provision			Rule 4900	R. 4901. - Introduction	{1}	[**New - Non-substantive** - Introduction section]
New Provision			Rule 4900	R. 4902. - 4909. Reserved		[**New - Non-substantive** - Reserved sections]

Part A - Derivative risk management						
New Provision			Rule 4900	R. 4910. - Introduction	{1}	[**New - Non-substantive** - Introduction section]
Rule 2600: Internal Control Policy Statements	2600, Statement 8	Procedure {4}{i}	Rule 4900	R. 4911. - Risk management process	{1}	
Rule 2600: Internal Control Policy Statements	2600, Statement 8	Control objective {a}	Rule 4900	R. 4911. - Risk management process	{2}	
Rule 2600: Internal Control Policy Statements	2600, Statement 8	Control objectives {b} and {c}	Rule 4900	R. 4911. - Risk management process	{3}	
Rule 2600: Internal Control Policy Statements	2600, Statement 8	Procedure {4}{ii}	Rule 4900	R. 4911. - Risk management process	{4}	
Rule 2600: Internal Control Policy Statements	2600, Statement 8	Procedures {1}{i} through {iii}	Rule 4900	R. 4912. - Role of board of directors	{1} and {2}	
Rule 2600: Internal Control Policy Statements	2600, Statement 8	Procedures {2}{i} through {ix}	Rule 4900	R. 4913. - Role of senior management	{1}{i} through {ix}	
Rule 2600: Internal Control Policy Statements	2600, Statement 8	Procedures {3}{i} through {iv}	Rule 4900	R. 4914. - Pricing	{1} though {4}	
New Provision			Rule 4900	R. 4915. - 4999. Reserved		[**New - Non-substantive** - Reserved sections]

13.1.2 IIROC Rules Notice – Request for Comments – Dealer Member Rules – Plain language rule re-write project – Dealing with clients, Proposed Rules 3400-3900

RULES NOTICE

REQUEST FOR COMMENTS

DEALER MEMBER RULES

10-0266
October 8, 2010

Plain language rule re-write project – Dealing with clients, Proposed Rules 3400-3900

Summary of the nature and purpose of the proposed Rule

On June 24, 2010, the Board of Directors ("the Board") of the Investment Industry Regulatory Organization of Canada ("IIROC") approved the publication for comment of proposed Dealer Member Rules 3400 relating to suitability requirements, 3500 relating to sales practices, 3600 relating to communications with the public, 3700 relating to handling and reporting complaints and internal investigations, 3800 relating to books and records, and 3900 relating to supervision (collectively referred to as the "proposed Rules").

IIROC has undertaken a project to rewrite its rules in plain language. The primary objective of this project is to develop a set of rules that is more clear, concise and organized, without changing the rules themselves. In addition we have identified a number of rules that also require substantive revisions.

The new rules will be submitted to the Board and issued for public comments in 8 tranches. This tranche submitted to the Board and issued for public comments includes the following six sets of substantive change rules:

(1) Rule 3400, *Suitability*;

(2) Rule 3500, *Sales practices;*

(3) Rule 3600, *Communication with the public;*

(4) Rule 3700, *Reporting and handling of Complaints, Internal Investigations and other reportable matters*

(5) Rule 3800, *Books and Records; and*

(6) Rule 3900, *Supervision*

The above noted rules have been identified as requiring substantive revisions in order to:

- eliminate unnecessary rule provisions;
- clarify IIROC's expectations with respect to certain rules;
- ensure that the rules reflect actual IIROC practices; and
- ensure consistency with other IIROC Dealer Member rules and applicable securities legislation.

Proposed Rule 3400 is a consolidation of the relevant requirements currently set out in IIROC Dealer Member Rules 1300, 2500, 2700, and 3200 that relate to suitability.

Proposed Rule 3500 contains relevant requirements currently set out in IIROC Dealer Member Rule 29 relating to sales practices.

Proposed Rule 3600 is a consolidation of the relevant requirements currently set out in IIROC Dealer Member Rules 29 and 3400 that relate to communications with the public.

Proposed Rule 3700 is a consolidation of the relevant requirements currently set out in IIROC Dealer Member Rules 2500, 2700, and 3100 that relate to complaints and internal investigations.

Proposed Rule 3800 is a consolidation of the relevant requirements currently set out in IIROC Dealer Member Rules 17 and 200 that relate to books and records.

Proposed Rule 3900 is a consolidation of the relevant requirements currently set out in IIROC Dealer Member Rules 18, 38, 1300, 1800, 1900, 2400, 2500, 2600, 2700, and 3200 that relate to supervision.

Issues and specific proposed amendments

Current rules

Other than the proposed substantive revisions set out below, the proposed Rules do not create any new obligations for Dealer Members and have been drafted to clarify the existing Rules with respect to dealings with clients.

Proposed rules

In addition to the plain language rewrite of the existing requirements to create proposed Rule 3400, *"Suitability",* the following substantive amendments are proposed:

- *Suitability of orders and recommendations*: Current IIROC Dealer Member Rules require that each Dealer Member use due diligence to ensure that any order accepted from a client and any recommendation made to a client is suitable for the client. The obligation to ensure that orders and recommendations are suitable includes not only an obligation to ensure that the specific security is suitable for the client but also that the order type, along with the trading strategy recommended and/or adopted, as well as the account type, are also suitable for the client. As an example, the risk profile of a client who fully pays for a position in a specific security as a core long term holding is significantly different from the risk profile of a client buying the same security on margin, as part of a day trading strategy. For consistency with current IIROC expectations and Dealer Member practices, proposed Rule 3400 will clarify that in order to ensure suitability of an order or recommendation, the Dealer Member must also consider the suitability of the account type, trading strategy, order type and the method of financing the trade. *[3402(2)]*

- *Suitability determination not required:* Current Dealer Member Rule 2700, Part I (4) requires written waivers from permitted clients as defined in National Instrument 31-103 for the suitability requirement to not apply. The proposed clause 3405(1)(iii) will not require a waiver for any client that is a regulated entity as defined in Corporation Rules. This change is proposed so foreign entities that are the equivalent of Dealer Members will not require written waivers. *[3405(1)(iii)]*

In addition to the plain language rewrite of the existing requirements to create proposed Rule 3500, *"Sale practices",* the following substantive amendments are proposed:

- *Service fees* - Current IIROC Dealer Member Rules require that each Dealer Member provide clients with a service fee schedule upon account opening and 60 days prior notice of any change to the service fee schedule. In order to codify current IIROC expectation and Dealer Member practices, proposed Rule 3500 will clarify that Dealer Members will not be subject to the above noted requirement when dealing with Institutional Clients. *[3506(3)]*

- *Commission fees and advisory fees* - Unlike the requirement for Dealer Members to provide a service fee schedule to their clients, the current Dealer Member Rules do not require Dealer Members to provide a commission fee schedule to their clients. For consistency with the requirement to provide a service fee schedule, proposed Rule 3500 will require Dealer Members to provide a commission fee schedule, or schedule of other advisory fees where applicable, to their clients upon account opening or 60 days prior notice of any change to the commission charge. An advisory fee schedule would include a notice of any fees applicable to fee based accounts. The requirement to provide a commission fee schedule will only be applicable where the Dealer Member charges a fixed (dollar or percentage) commission fee. Dealer Members will not be subject to the above noted requirement when dealing with Institutional Clients. [*3505*]

- *Inside information* - The current Dealer Member Rules state that any employee or Approved Person of a Dealer Member acting as a Director of a public issuer, in an underwriting or advisory capacity to a public issuer, has a fiduciary obligation not to reveal any privileged information to anyone not authorized to receive it until there has been full public disclosure of such information. For consistency with securities legislation, proposed Rule 3500 will be amended as follows:

    - *Fiduciary obligation*: The reference to fiduciary obligation has been omitted from the proposed rule. For consistency with securities legislation, the relationship has been categorized as a *special relationship* in the proposed Rule.

- *Privileged information:* The reference to privileged information has been omitted. For consistency with securities legislation, the information has been categorized as material non-public information in the proposed Rule; material non-public information refers to any material fact or material change that has not been generally disclosed.

- *Recipient of information*: The existing Dealer Member Rule prohibits the disclosure of privileged information to anyone not authorized to receive it. For consistency with securities legislation, the proposed Rule will state that the information can not be disclosed to anyone *unless in the necessary course of business*.

Based on the above noted changes, proposed Rule 3500 will clarify that any Approved Person, employee or agent of a Dealer Member who acts as a director to a public issuer, or in an underwriting or advisor capacity to a public issuer, is a person in a special relationship with the issuer and must not disclose any material non-public information about the issuer to any one, including any employees, agents or clients of the Dealer Member unless that disclosure is made in the necessary course of business. Proposed Rule 3500 will also clarify that when a Dealer Member, Approved Person, employee or agent of a Dealer Member has material non-public information about an issuer and discloses it to another Approved Person, employee or agent of the Dealer Member in the necessary course of business, then that person also becomes a person in a special relationship with the issuer and must not disclose any material non-public information about the issuer, unless in the necessary course of business. *[3507(1) through (3)]*

In addition to the plain language rewrite of the existing requirements to create proposed Rule 3600, *"Communication with the public"*, the following substantive amendments are proposed:

- *Scope of obligations* - Proposed section 3602 which deals with advertising requirements speaks only to the Dealer Member's minimum obligations and does not make reference to the obligations of Approved Persons in communicating with clients. The underlying expectation is that Dealer Members will ensure that their Approved Persons comply with the Rule. The proposed plain language Rules will include a separate introductory section which will clarify that Rules applicable to Dealer Members will also equally apply to Approved Persons, to the extent relevant. *[3602]*

- *Guideline* - The current IIROC Dealer Member Rule 3400 includes guidelines as to best practices in developing policies and procedures on research reports. The parts of Rule 3400 that are guidelines, rather than rules, have been removed and included in a Guidance Note accompanying the proposed new Rule 3600.

- *Approval of policies and procedures*- The proposed Rule will no longer require Dealer Member policies and procedures on client communications and analyst conflicts of interest to be approved by and filed with IIROC, however, Dealer Member policies and procedures will continue to be subject to the regular compliance review process.

- *Record retention period:* Current Dealer Member Rule 29.7(5) requires the retention of copies of all advertisements, sales literature, correspondence, and records of supervision for a period of 2 years from the date of creation in the case of advertisements, sales literature and related documents, and a period of 5 years from the date of creation in the case of all correspondence. Proposed Rule 3602(7) removes the retention periods specified in the current rule and refers instead to the retention periods set out in Rule 3800, Business Records and Client Communications. Specifically, section 3802 changes the retention period for advertising related materials to 7 years. *[3602(7)]*

In addition to the plain language rewrite of the existing requirements to create proposed Rule 3700, "*Reporting and handling of Complaints, Internal Investigations and other reportable matters*" the following substantive amendments are proposed:

- *Prohibition of release restrictions* - The proposed Rule relating to the prohibition of release restrictions has been extended to apply to releases entered into involving Institutional Clients. *[3711(1)]*

In addition to the plain language rewrite of the existing requirements to create proposed Rule 3800, "*Books and Records"*, the following substantive amendments are proposed:

- *References to specific derivatives in ledger accounts and client account statements*- Proposed Rule 3800 replaces the terms "commodity futures contracts" and "commodity futures contract options" with the term "derivatives", unless specific references to those terms are necessary to clarify reporting requirements such as in trade confirmations. This revision allows the ledger and client statement requirements to be extended to other derivatives and will create consistency in the books, records and reporting being maintained. *[throughout 3800]*

- *Replacement of the term "securities"*- Proposed Rule 3800 replaces the term "securities" with the term "investment products". The current language assumes that all account positions received into and /or delivered out of the accounts are securities. Since Dealer Members transact in investment products, including securities, derivatives and certain deposit instruments, the proposed Rule has been amended to refer to investment products instead of securities. This

revision allows the books, records and reporting requirements to be extended to all investment products. *[throughout 3800]*

- *Replacement of the term "exchange"* - Proposed Rule 3800 replaces the term "exchange" with the term "marketplace". This revision allows the requirements in Rule 3800 to be extended to all marketplaces, not only exchanges. *[throughout 3800]*

- *Record retention requirements* - The proposed Rule sets out the general requirements for retaining records under Corporation Rules and other relevant legislation. The provision is drafted to comply with NI 31-103 which requires records to be kept for a period of seven years from the date the record is created. Guidance Note 3800-2 *Content and retention of books and records* outlines the records that must be kept under NI 31-103. In addition, there are other relevant pieces of legislation relating to limitation periods, including securities legislation, provincial securities and commodities acts, federal and provincial corporations acts, etc., which may contain retention periods which differ from the seven year general limitation period. If Corporation Rules or securities legislation relating to the specific type of record requires a retention period other than the seven year limitation, then it is acceptable to conform to those specific requirements. The proposed Rule ensures consistency with other Dealer Member Rules as well as other applicable securities legislation. *[3802]*

- *Removal of the Board of Directors approval of the statistical information requested of a Dealer Member with respect to their business* - The proposed Rule relating to statistical information provided by Dealer Members has been rewritten to eliminate the approval of the Board of Directors. The Corporation will retain the ability to require Dealer Members to provide statistical information. *[3805(4)]*

- *Opening and closing transactions requirement for blotter, record of order received and trade confirmations* - The proposed Rule will specifically require opening or closing transactions (where required by the marketplace) to be shown on blotters, record orders and trade confirmations. Transactions that do not identify whether it is an opening or closing transaction can significantly complicate the risk management process of the clearing house since it becomes difficult to identify and match up positions. Proposed Rule 3800 will clarify this issue and improve market efficiency by explicitly stating that an opening or closing transaction must be shown if it is required by the marketplace in which the trade took *place. [3806(1)(xi)]*

- *Requirements for blotters (records of original entry)* - The current requirements for maintaining blotters and other records of original entry isolate prescriptive items for a few individual types of investment products. Proposed Rule 3800 includes minimum blotter requirements that Dealer Members will be required to maintain. This revision was made to ensure consistency in the books and records being maintained for all transactions. Moreover, the reporting items for blotters relating to trades in specific debt securities and derivatives are moved into Guidance Note 3800-2. *[3806]*

- *Record of orders received* - The current IIROC Dealer Member rules specify that each record of order or other instruction must show the time of execution or cancellation. However, the current rules do not explicitly require that time of modification be reported. The proposed Rule expands upon this requirement by including the time of modification. This revision is intended to provide greater transparency in the Dealer Member's reporting obligations. *[3812(2)(vi) and (vii)]*

- *Marketplace disclosure requirement* - Currently, Dealer Member Rule 200 requires written trade confirmations to disclose the exchange upon which a trade took place. This requirement does not capture trades executed outside of recognized exchange facilities such as quotation and trade reporting systems and alternative trading systems, as well as circumstances in which trades are executed on more than one marketplace. The proposed Rule will account for all marketplaces and for trades that are executed on more than one of these marketplaces. *[3831(1)(iii)]*

- *Requirements for client account statements* - Proposed Rule 3800 clarifies IIROC's expectation that a Dealer Member must provide certain minimum information on an account statement to clients. The current requirements do not explicitly list the information that must be listed on an account statement for all transactions involving investment product positions held by or controlled by the Dealer Member for the client. The proposed Rule has been written taking into consideration the requirements set out in Section 14.14, *"Client statements"*, of National Instrument 31-103. *[3841]*

- *Consolidated statements* - The current Dealer Member Rules specify the minimum disclosure to clients, such as requiring a Dealer Member to send out monthly or quarterly client statements; however the rules are not clear with respect to the reporting requirements when reporting on a consolidated basis. The proposed Rule adds a new section which incorporates the information set out in a guidance notice issued on August 2, 2001 (IDA MR-0087) regarding consolidated statements. Pursuant to the proposed Rule, a Dealer Member may provide consolidated statements to clients in addition to, but not in place of, the statements required under Corporation Rules. The proposed Rule requires that the consolidated statement clearly state: i) the positions covered by CIPF; ii) the legal entity to contact regarding

statement errors; and iii) that the legal entity statement is the statement that is subject to annual auditor confirmation. *[3842]*

In addition to the plain language rewrite of the existing requirements to create proposed Rule 3900 *Supervision*, the following substantive amendments are proposed:

- *Organization of Supervision Rules* - The Rules relating to supervision of a Dealer Member's business have been reorganized to clearly distinguish between supervision requirements that apply to all types of businesses and those that only apply to specific types of business, such as retail, institutional, managed accounts, or order-execution only. *[throughout 3900]*

- *Review Criteria and Trade Thresholds* - Existing Dealer Member Rule 2500 contains many provisions relating to the criteria for account review and trade thresholds that are intended as guidance only. These provisions have been removed from the proposed Rule, with the sections that continue to be relevant moved into guidance notes attached to proposed Rule 3900.

- *Alternate Designated Supervisors* - In the proposed Rule, the requirement for Dealer Members to appoint alternate designated Supervisors has been included in Part B General Requirements for Account Supervision, ensuring that this requirement is applied uniformly across all business activities. In addition, the requirement for alternate designated Supervisors to be specifically appointed for options accounts and for futures accounts has been included in this part of the proposed Rule. This clarifies the rule that alternate designated Supervisors are required for all options and futures business, both institutional and retail. The current Rules only state this requirement explicitly for retail accounts. *[3900, Part B]*

The full text of the proposed plain language Rules 3400 to 3900 are attached.

Rule-making process

IIROC Staff involved representatives of Dealer Members in the rule development process, through preliminary consultations.

Proposed Rules 3400, 3500, 3600, 3700, 3800 and 3900 were made available to all Dealer Members for their input through a Dealer Members' only website. A designated Compliance and Legal Section ("CLS") working group also reviewed and provided comments on proposed Rules 3400, 3500, 3600 and 3900. Copies of these proposed Rules were then made available to all CLS Members for their input and comments. A copy of the proposed Rule 3800 was made available to the Financial Administrators Section ("FAS"). Proposed Rule 3800 was also submitted to the FAS Executive committee and the FAS Operations Subcommittee for review and comments. A number of changes to the draft proposal were made in response to the comments IIROC received through these consultations.

The proposed Rules were approved for publication by the IIROC Board of Directors on June 24, 2010.

The text of proposed plain language Rules 3400 to 3900 is set out in Attachment A. The text of the existing Dealer Member Rules to be repealed is set out in Attachment B. A table of concordance is included as Attachment C. The text of the relevant Guidance Notes is set out in Attachment D. The attached Guidance Notes are based on previously issued guidance and/or notices.

Issues and alternatives considered

An alternative to the inclusion of the amendments being proposed was to leave the rules substantively as they were prior to the plain language rewrite. IIROC staff considered other pending projects and proposals as well as the extent of the potential, substantive changes identified in order to decide which of the substantive changes would be proposed as part of the plain language rule rewrite project. Those substantive changes which were originally identified as part of the plain language rule rewrite project, but which were ultimately excluded from the plain language rewrite project are being pursued as separate rulemaking projects.

With respect to proposed Rule 3600 (Communications with the Public), IIROC staff had received requests from Dealer Members to consider amending existing Dealer Member Rule 3400 (Research Restrictions and Disclosure Requirements) so that IIROC requirements are consistent with those in place in the United States. This issue has become more of a focal point recently with the publication of proposed amendments to the FINRA requirements on research analysts and research reports outlined in FINRA Regulatory Notice 08-55. IIROC staff intend to consider other potential amendments to the research rules as a separate project. We have consulted with FINRA on their proposed rule changes and have been advised that some aspects of their proposed amendments may be revised before they are finalized. In any case, we expect that any project involving significant changes to the research requirements will require considerable input and discussion. The amendments will be considered as part of a separate project.

Proposed Rule classification

Statements have been made elsewhere as to the nature and effects of the proposed Rules. The purposes of the proposed Rules are to:

- Ensure compliance with securities laws;
- Prevent fraudulent and manipulative acts and practices;
- Promote just and equitable principles of trade and emphasize the duty to act fairly, honestly and in good faith;
- Foster fair, equitable and ethical business standards and practices; and
- Promote the protection of investors.

IIROC staff propose that rules pertaining to dealing with clients should be rewritten to reflect actual IIROC expectations, to enhance the clarity of the rule and to ensure consistency with applicable securities legislation. These amendments are in addition to the plain language rewrite of the existing rule provisions. The Board has determined that the proposed amendments are not contrary to the public interest.

Due to the extent and substantive nature of these proposed amendments, they have been classified as Public Comment Rule proposals.

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

With proposed plain language Rules 3400 to 3900, Dealer Members will benefit from enhanced clarity and certainty in the proposed Rules.

The proposed Rules will not have any significant effects on Dealer Members or non-Dealer Members, market structure or competition. Furthermore, it is not expected that there will be any significant, increased costs of compliance as a result of the proposed Rules.

The proposed Rules do not impose any burden or constraint on competition or innovation that is not necessary or appropriate in the furtherance of IIROC's regulatory objectives. The proposed Rules do not impose costs or restrictions on the activities of market participants that are disproportionate to the goals of the regulatory objectives sought to be realized.

Technological implications and implementation plan

There should not be significant technological implications for Dealer Members as a result of the proposed amendments. Proposed plain language Rules 3400 to 3900 will be implemented at the same time as the rest of the plain language rules.

Request for public comment

Comments are sought on the proposed amendments. Comments should be made in writing. Two copies of each comment letter should be delivered within 90 days of the publication of this notice. One copy should be addressed to the attention of:

Brendan Hart
Policy Counsel, Member Regulation Policy
Investment Industry Regulatory Organization of Canada
Suite 1600, 121 King Street West
Toronto, Ontario
M5H 3T9
bhart@iiroc.ca

A second copy should be addressed to the attention of:

Manager of Market Regulation
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario
M5H 3S8
marketregulation@osc.gov.on.ca

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

Questions may be referred to:

Brendan Hart
Policy Counsel, Member Regulation Policy
Investment Industry Regulatory Organization of Canada
416-865-3047
bhart@iiroc.ca

Attachments

Attachment A - Proposed Rule 3400

Proposed Rule 3500

Proposed Rule 3600

Proposed Rule 3700

Proposed Rule 3800

Proposed Rule 3900

Attachment B - Text of the relevant provisions of existing Dealer Member Rules

Attachment C - Table of Concordance

Attachment D - Draft Guidance Note 3400-1

Draft Guidance Note 3500-1

Draft Guidance Note 3500-2

Draft Guidance Note 3500-3

Draft Guidance Note 3500-4

Draft Guidance Note 3600-1

Draft Guidance Note 3600-2

Draft Guidance Note 3600-3

Draft Guidance Note 3700-1

Draft Guidance Note 3700-2

Draft Guidance Note 3700-3

Draft Guidance Note 3800-1

Draft Guidance Note 3800-2

Draft Guidance Note 3800-3

Draft Guidance Note 3900-1

Draft Guidance Note 3900-2

Draft Guidance Note 3900-3

ATTACHMENT A

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

DEALINGS WITH CLIENTS
RULES 3400 THROUGH 3900
PROPOSED AMENDMENTS

1. As part of a project to rewrite IIROC Rules in plain language, the following current rules are repealed and replaced.

Repealed current rule	Proposed plain language rule
	RULE 3400 **SUITABILITY**
None	**3401. Introduction** (1) This Rule sets out each Dealer Member's suitability obligations in dealing with clients, which is complementary to the obligation to deal fairly, honestly and in good-faith with clients.
Rules 1300.01(p) and (q)	**3402. General suitability requirements** (1) Each Dealer Member must: (i) use due diligence to ensure that any order accepted from a client is suitable for the client; and (ii) use due diligence to ensure that any recommendation made to a client to buy, sell, exchange or hold a security is suitable for the client. (2) In order to comply with the requirements set out in 3402(1), each Dealer Member must consider: (i) the suitability of the account type; (ii) the suitability of the trading strategy; (iii) the suitability of the order type; and (iv) the method of financing the trade, whether or not the financing is provided by the Dealer Member.
Rules 1300.01(p) and (q) and 2500 Introduction (c)	**3403. Assessing suitability for retail clients** (1) In order to comply with the requirements set out in section 3402, the suitability of an order for a retail client or a recommendation made to a retail client must be assessed based on factors including the client's financial situation, investment knowledge, investment objectives and risk tolerance. (2) Compliance with the know-your-client rule and suitability requirements is primarily the responsibility of the Registered Representative.
Rules 2700I(1) and (2)	**3404. Determining suitability for institutional clients** (1) In order to comply with the requirements set out in section 3402, each Dealer Member must determine the level of suitability owed to an Institutional Client for each transaction.

Repealed current rule	Proposed plain language rule
	(2) A Dealer Member's suitability obligation is fulfilled when it has concluded, on reasonable grounds, that the Institutional Client has sufficient sophistication and capability to make its own investment decisions for that transaction. (3) Where reasonable grounds do not exist, a Dealer Member must take necessary steps to ensure that the Institutional Client understands the product including any potential risk. (4) In determining whether the Institutional Client has sufficient sophistication and capability to make its own decisions for a particular transaction, the Dealer Member must at a minimum consider the following: (i) any written or oral understanding that exists between a Dealer Member and its client regarding client's reliance on the Dealer Member; (ii) the presence or absence of a pattern of acceptance of the Dealer Member's recommendations; (iii) client's use of ideas, suggestions, market views and information obtained from other Dealer Members, market professionals, or others, particularly those relating to the same type of securities; (iv) client's use of one or more investment dealers, portfolio managers, investment counsel or other third party advisors; (v) the general level of experience of the client in financial markets; (vi) the specific experience of the client with the type of instrument (s) under consideration, including the client's ability to independently evaluate how market developments would affect the security and ancillary risks such as currency rate risk; and (vii) the complexity of the securities involved.
Rules 1300.01(r) and (s) and 2700I(3) and (4)	**3405. Suitability determination not required** (1) A Dealer Member is not subject to the suitability requirements set out in paragraph 3402(1)(i) if: (i) the Dealer Member was approved by the Corporation to provide order-execution only services and meets the requirements applicable to order-execution only accounts including those set out in sections 2155, 3240, 3406, 3980 and 3981; (ii) the Dealer Member accepts an order on the instructions of an Institutional Client who is another Dealer Member, Portfolio Manager, Exempt Market Dealer, bank, trust company or insurer; or (iii) the Dealer Member accepts an order on the instructions of a regulated entity.
Rules 3200A(5)(a) and (b), 3200B(1) and 3200B(5)(a) through (d)	**3406. Order execution-only services** (1) A Dealer Member approved by the Corporation to provide order-execution only services, as the Dealer Member's only business or separate business unit: (i) Must label all client account documentation, including monthly statements and confirmations, as "order-execution only account" or other similar phrase;

Repealed current rule	Proposed plain language rule
	(ii) Must not consolidate the client monthly statements of its order execution-only services with any other client monthly statements. (2) A Dealer Member allowing order-execution only trades in an advisory account must: (i) Ensure that all references to trades in procedures, documents and reports are marked "recommended" or "non-recommended" rather than "solicited" or "not solicited"; (ii) Be capable of recording whether each order that is entered, including on-line orders entered by a customer, are marked as recommended or non-recommended. Any default marking should be set as recommended; (iii) Disclose whether a trade is recommended or non-recommended on: (a) confirmations; and (b) the monthly activity portion of the monthly statements. The Dealer Member is not required to disclose on monthly statements which securities positions resulted from which type of trade (iv) Maintain records of complaints or requests from customers to change the designation of a trade as recommended or non-recommended. **3407. - 3499. – Reserved**
	RULE 3500 **SALES PRACTICES**
None	**3501. Introduction** (1) This Rule sets out minimum standards that Dealer Members must follow in their specific dealings with clients and when developing policies and procedures with respect to sales practices.
Rules 29.02 and 29.04	**3502. Distributions** (1) A Dealer Member cannot participate in the distribution of securities to the public at a price higher than the stated initial price of the securities; and (2) This obligation continues until the Dealer Member has notified the applicable securities commission that its role in the distribution has ended.
Rule 29.03	**3503. New issues** (1) A Dealer Member must make a bona fide offering of the total amount of its participation in a new issue to public investors. (2) Public investors do not include an officer or employee of a bank, insurance company, trust company, investment fund, pension fund or similar institutional body or the immediate families of an officer or employee of these institutions regularly engaged in the purchase or sale of securities for such institution unless: (i) the purchases are demonstrated to be for bona fide personal investment, and

Repealed current rule	Proposed plain language rule
	(ii) are made in accordance with the person's normal investment practice. (3) The term "normal investment practice" does not include an account that has regularly purchased "hot issues" based on its history of investments in the account with the Dealer Member.
Rule 29.03A	**3504. Client priority** (1) Each Dealer Member must give priority to client orders over all other orders for the same security at the same price. The phrase "client orders" does not include an order for an account in which the Dealer Member or an employee of the Dealer Member has a direct or indirect interest, other than the commission charged.
New	**3505. Commission fees and other advisory fees** (1) A Dealer Member who charges an advisory fee or a fixed dollar or percentage commission fee must not charge such fees to a client unless the client has been provided with a fee schedule upon the opening of the account or 60 days prior to the fee being charged. (2) A Dealer Member who charges an advisory fee or a fixed dollar or percentage commission fee may not charge a higher fee unless it has given 60 days notice of this change to its clients. (3) The requirements set out in subsections 3505(1) and (2) do not apply to accounts of Institutional Clients.
Rule 29.08	**3506. Service fees** (1) A Dealer Member must not charge a service fee or administrative fee to a client unless the client has been provided with a service fee schedule upon the opening of the account or 60 days prior to the service fee being charged. (2) A Dealer Member may not charge a new or higher service fee unless it has given 60 days notice of this change to its service fees. (3) The requirements set out in subsections 3506(1) and (2) do not apply to accounts of Institutional Clients.
Rule 29.05	**3507. Inside information** (1) An Approved Person, employee or agent of a Dealer Member acting as a director to a public issuer is a person in a special relationship with the issuer and must not disclose any material non-public information about the issuer to any one including any employees, agents, or clients of the Dealer Member unless in the necessary course of business. (2) An Approved Person, employee or agent of a Dealer Member acting in an underwriting or advisory capacity to a public issuer is a person in a special relationship with the issuer and must not disclose any material non-public information about the issuer to anyone including any employees, agents, or clients of the Dealer Member unless in the necessary course of business. (3) When a Dealer Member, Approved Person, employee or agent of the Dealer Member has material non-public information about the issuer and discloses it to other personnel of the Dealer Member in the necessary course of business, those persons also become persons in a special relationship with the issuer and must not disclose any material non-public information about the issuer to anyone including any employee, agents or clients of the Dealer Member unless in the necessary course of business.

Repealed current rule	Proposed plain language rule
	(4) For the purpose of subsections 3507(1), (2) and (3) "material non-public information" refers to material facts or material changes not generally disclosed as applied under the applicable securities rules and regulations. (5) A Dealer Member must ensure that it has appropriate policies and procedures to contain material non-public information.
Rules 29.13(b) through (e)	**3508. Premarketing** (1) A Person in subsection 3508(4) must not solicit expressions of interest from the public, in the type of securities subject to distribution discussions, from the time of a commencement of Distribution Discussions until the earliest of: (i) the issuance of a receipt for the preliminary prospectus; (ii) a press release issued and filed in accordance with regulatory requirements, announcing the signing of an enforceable agreement in respect of the potential distribution; and (iii) the Dealer Member deciding not to pursue the potential distribution. (2) For the purpose of paragraph 3508(1)(ii), a press release is deemed to have been issued when it is released to a news distribution service for distribution and is deemed to have been filed when delivered or sent to the relevant provincial securities regulatory authority, in accordance with applicable securities legislation. (3) A Person in subsection 3508(4) must not engage, direct, suggest or induce another person to engage in market making or other principal trading activities in securities that are the subject of Distribution Discussions. (4) For the purpose of subsections 3508(1), (3) and (5), a Person refers to a Director, Officer, employee or agent of a Dealer Member who: (i) participated in or had actual knowledge of the Distribution Discussions; or (ii) acts or is directed by, induced by, or otherwise receives suggestions from a person who directly or indirectly participated in or had actual knowledge of the Distribution Discussions. (5) Where a Dealer Member and issuer or selling security-holder can show a bona fide intention to distribute the equity securities pursuant to a prospectus exemption: (i) the Dealer Member including the Person in subsection 3508(4) will not be subject to the restrictions in subsection 3508(1). (ii) notwithstanding paragraph 3508(5)(i), the restrictions in subsection 3508(1) will apply from the time it is reasonable to expect that a decision to abandon an exempt offering of equity securities in favor of a prospectus offering will be taken. (6) A Dealer Member involved in a Distribution as an underwriter must file a Certificate (attached as Schedule A) verifying compliance with this section of the Rules. (7) The Certificate must meet the following requirements: (i) be filed with the Corporation, within 3 business days after the date of filing the preliminary short form prospectus (or equivalent document) with the

Repealed current rule	Proposed plain language rule
	principal jurisdiction; (ii) be signed by the chief executive officer of the Dealer Member, or the next most senior executive of the Dealer Member; and (iii) be in the form prescribed by the Corporation. **3509. - 3599. – Reserved**
Rule 29.13(e)	**SCHEDULE "A"** **CERTIFICATE** To: Investment Industry Regulatory Organization of Canada ("IIROC") RE: The distribution of securities of (issuer name); preliminary prospectus (or equivalent document dated (date) I (**name**), in my capacity as (**title**) of (**dealer** member **name**) hereby certify on behalf of (**dealer member name**), that 1. policies and procedures are in place designed to ensure compliance with IIROC requirements regarding pre-marketing activities, and 2. to the best of my knowledge, information and belief there have been no efforts by (dealer member name), or any of its executives, directors, employees or agents to solicit expressions of interest from the public to purchase securities of the type that were the subject of Distribution Discussions which would contravene IIROC requirements regarding pre-marketing activities. Dated at (**city**) this day of 20 . Signature Name and Title
	RULE 3600 **COMMUNICATIONS WITH THE PUBLIC**
None	**3601. Introduction** (1) A Dealer Member must establish policies and procedures and must monitor compliance with its policies and procedures to ensure that the Dealer Member and its partners, directors, officers, employees and agents comply with Corporation requirements when communicating with the public. **PART A – ADVERTISING**
Rule 29.07	**3602. Advertising** (1) A Dealer Member must not allow any advertisement, sales literature or correspondence to be issued that: (i) contains an untrue statement or omission of a material fact or is otherwise false or misleading; (ii) contains an unjustified promise of specific results;

Repealed current rule	Proposed plain language rule
	(iii) uses unrepresentative statistics to suggest unwarranted or exaggerated conclusions, or fails to identify the material assumptions made in arriving at these conclusions; (iv) contains any opinion or forecast of future events which is not clearly labeled as such; (v) fails to fairly present the potential risks to the client; (vi) is detrimental to the interests of the public, Corporation or its Dealer Members; or (vii) fails to comply with Corporation requirements or any applicable legislation, rules or policies. (2) A Dealer Member must have 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. (3) A Dealer Member must designate one or more partners, directors, officers or supervisors to approve advertising, sales literature and correspondence. (4) A Dealer Member must ensure that the following items are approved by the designated person before use or publication: (i) Research reports; (ii) Market letters; (iii) Telemarketing scripts; (iv) Promotional seminar texts (excluding educational seminar texts); (v) Original advertisements/original template advertisements; and (vi) Any material containing performance reports or summaries that is used to solicit clients. (5) A Dealer Member must ensure that all advertising, sales literature or correspondence not included in subsection 3602(4), receives approval appropriate to the type of material through: (i) pre-use approval; (ii) post use review; or (iii) post use sampling. (6) A Dealer Member must ensure that: (i) employees and agents of the Dealer Member are familiar with its policies and procedures on the approval of advertisements, sales literature and correspondence; and (ii) its policies and procedures include specific ongoing measures to ensure that its policies and procedures are being observed. (7) A Dealer Member must keep copies of all advertisements, sales literature and correspondence and all records of supervision for the period set out in Rule 3800. These items must be readily available for inspection by the Corporation.

Repealed current rule	Proposed plain language rule
	3603. - 3605. – Reserved
Rule 3400, Introduction and Requirement 1	**PART B – RESEARCH REPORTS**
	3606. Policies and procedures
	(1) A Dealer Member must have written policies and procedures governing:
	(i) research related conflicts of interest;
	(ii) the conduct of research analysts;
	(iii) the publishing of research reports; and
	(iv) the making of recommendations.
Rule 3400, Requirements 2(a)(i) through (vi)	**3607. Research report disclosure of potential conflicts of interest**
	(1) A research report prepared by the Dealer Member must disclose any matter which might reasonably indicate an existing or potential conflict of interest for the Dealer Member or the analyst, which includes, but is not limited to, the matters set out in this Rule.
	(2) A research report prepared by the Dealer Member must disclose:
	(i) whether the Dealer Member and its affiliates has a financial interest in the equity securities of the subject issuer that amounts to 1% or more of any class of such securities:
	(a) as of the end of the prior month; or
	(b) as of the end of the second most recent month if the report is dated less than 10 calendar days after the end of the prior month;
	(ii) whether:
	(a) the analyst;
	(b) an associate of the analyst; or
	(c) any person directly involved in the preparation of the report,
	has a financial interest in any equity securities of the subject issuer;
	(iii) whether a partner, director or officer of the Dealer Member or any analyst involved in the preparation of a report has provided paid services to the issuer in the preceding 12 months, other than normal course investment advisory or trade execution services;
	(iv) whether the Dealer Member has provided investment banking services for the issuer during the 12 months preceding the date a research report or recommendation was issued;
	(v) the name of any partner, director, officer or employee of the Dealer Member that is a partner, director, officer or employee of the issuer, or who serves in an equivalent advisory capacity to the issuer or any partner, director, officer or employee of the issuer; and
	(vi) whether it is making a market in any security of the subject issuer.

Repealed current rule	Proposed plain language rule
Rule 3400, Requirements 2(b), 2(c), 2 last paragraph and 6	**3608. Additional disclosures** (1) A research report must disclose or indicate where the following information is otherwise available: (i) the Dealer Member's system for rating investment opportunities and how each recommendation fits within the system; and (ii) its policies and procedures regarding the dissemination of its research. (2) A Dealer Member must, on a quarterly basis, disclose the percentage of its recommendations that fall into each category of its recommendation system.
Rule 3400, Introduction (second last sentence in first paragraph) and Requirement 2	**3609. Quality of disclosures in a research report** (1) A Dealer Member must make the research report disclosures required in sections 3607 and 3608 in a clear, comprehensive and prominent manner.
Rule 3400, Requirement 4	**3610. Independent third party research** (1) The disclosures required by sections 3607 and 3608 are applicable to research prepared by an independent third party distributed by a Dealer Member to its clients under the independent third party's name. (2) The disclosures in subsection 3610(1) are not required: (i) for independent third party research reports that are issued by other Dealer Members, members of FINRA (Financial Industry Regulatory Authority) or persons governed under other regulators approved by the Corporation, or (ii) when a Dealer Member is only giving clients access to independent third party research, or supplying independent third party research report at the request of a client, provided that, where applicable, the Dealer Member discloses that the research was not prepared according to Canadian disclosure requirements.
Rule 3400, Requirement 15	**3611. Multiple coverage** (1) When a Dealer Member distributes a research report that covers six or more issuers, the report may indicate where the disclosures required in sections 3607 and 3608 may be found.
Rule 3400, Requirement 13	**3612. Visiting an issuer** (1) A Dealer Member must disclose in its research reports: (i) whether and to what extent an analyst has viewed the issuer's material operations; and (ii) if the issuer has paid or reimbursed any of the analyst's travel expenses.
Rules 3400, Requirements 5 and 18	**3613. Relationship with the issuer** (1) A Dealer Member must not issue a research report on any issuer for which an analyst or an associate of the analyst: (i) serves as an officer, director or employee of the issuer; or (ii) serves in any advisory capacity to the issuer.

Repealed current rule	Proposed plain language rule
	(2) A Dealer Member must not issue a research report on any issuer for which a supervisory analyst of a Dealer Member serves as an officer or director of the issuer.
Rule 3400, Requirement 16	**3614. Notice to discontinue coverage** (1) A Dealer Member must issue notice of its intention to suspend or discontinue coverage of an issuer, unless the sole reason for the suspension is that the issuer has been placed on a Dealer Member's restricted list.
Rule 3400, Requirement 20	**3615. Setting price targets** (1) When a Dealer Member sets a price target, the Dealer Member must disclose the valuation methods used.
Rule 3400, Requirement 12	**3616. Inducement for favourable rating** (1) A Dealer Member must not directly or indirectly: (i) offer favourable research; (ii) offer a specific rating or a specific price target; (iii) delay in changing a rating or price target; or (iv) threaten to change research, a rating or a price target of an issuer; as consideration or inducement for the receipt of business or compensation from an issuer.
Rule 3400, Requirement 3	**3617. Public comments** (1) When giving an interview or otherwise making any public comment about the merits of an issuer or its securities, a partner, Director, Officer, employee or agent of a Dealer Member must disclose that: (i) the Dealer Member has issued a relevant research report; or (ii) that no research report has been prepared.
Rule 3400, Requirements 7 and 8	**3618. Policies and procedures on trading** (1) A Dealer Member must have policies and procedures reasonably designed to detect and restrict any trading in equity securities of a subject issuer that is done with knowledge of or in anticipation of the issuance of a research report, a new recommendation or a change in a recommendation related to the subject issuer. (2) A person directly involved in the preparation of a research report must not trade in equity securities of the subject issuer for a period 30 days prior to and 5 days after the issuance of the research report. (3) Notwithstanding subsection 3618(2), a person may trade with the written approval of a designated partner, director or officer of the Dealer Member. (4) Approval under subsection 3618(3) may only be granted for trades that are consistent with the analyst's current recommendation, unless special circumstances exist.

Repealed current rule	Proposed plain language rule
Rule 3400, Requirements 9 and 10	**3619. Prohibition on investment banking compensation** (1) A research report must disclose if the analyst responsible for the report received compensation within the prior 12 months based upon the Dealer Member's investment banking revenues. (2) A Dealer Member must not pay any bonus, salary or other compensation to an analyst that is based upon a specific investment banking transaction.
Rule 3400, Requirement 11	**3620. Relationship with investment banking** (1) A Dealer Member must have policies and procedures reasonably designed to prevent recommendations of the research department from being influenced by the investment banking department or the issuer. (2) The policies and procedures must, at a minimum: (i) prohibit the approval of research reports by the investment banking department; (ii) limit comments from the investment banking department on research reports to correction of factual errors; (iii) prevent the investment banking department from receiving advance notice of ratings or rating changes on covered companies; and (iv) establish systems to control and record the flow of information between analysts and investment banking departments regarding issuers that are the subject of current or prospective research reports.
Rule 3400, Requirements 14 and 14.1	**3621. Quiet periods** (1) A Dealer Member must not issue a research report on equity securities of a subject issuer for which the Dealer Member has acted as manager or co-manager: (i) for 40 days after the closing date of an initial public offering of equity securities of the subject issuer; (ii) for 10 days after the closing date of a secondary offering of equity securities of the subject issuer. (2) Notwithstanding subsection 3621(1), a Dealer Member may issue a research report on the effects of significant news about or a significant event affecting the issuer. (3) Subsection 3621(1) does not apply where the subject securities are exempted from restrictions under provisions relating to market stabilization in securities legislation or in the Universal Market Integrity Rules.
Rule 3400, Requirement 19	**3622. Outside business activities** (1) A Dealer Member must pre-approve an analyst's outside business activities.
Rule 3400, Requirement 17	**3623. Annual certification** (1) The head of research and the chief executive officer must annually certify that the Dealer Member's analysts are familiar with and have complied with the CFA Institute Code of Ethics and Standards of Professional Conduct, even if they are not members of the CFA Institute.

Repealed current rule	Proposed plain language rule
	3624. – 3699. – Reserved
	RULE 3700 **REPORTING AND HANDLING OF COMPLAINTS, INTERNAL INVESTIGATIONS AND OTHER REPORTABLE MATTERS**
None	**3701. Introduction** (1) A Dealer Member must report to the Corporation all matters described in this Rule. (2) A Dealer Member must investigate allegations of misconduct as described in this Rule. (3) A Dealer Member must handle all client complaints as described in this Rule.
	Part I - Reporting requirements
Rules 2500B(4), 2700V(2), 3100I(A.1) and 3100I(A.2)	**3702. Reporting by an Approved Person to the Dealer Member** (1) An Approved Person must inform the Dealer Member of any of the following matters within two business days: (i) if there is a change in the Approved Person's registration information or application; (ii) if the Approved Person has reason to believe that he or she may be contravening any requirements of the Corporation, an SRO, exchanges of any jurisdiction inside or outside of Canada, securities legislation, or any professional licensing or registration body; (iii) if the Approved Person is the subject a client complaint; or (iv) if the Approved Person becomes aware of a client complaint, in writing or other form, about another Approved Person involving allegations of theft, fraud, forgery, money laundering, market manipulation, insider trading, misrepresentation, or unauthorized trading. (2) An Approved Person must inform the Dealer Member of all pending legal actions against the Approved Person. (3) A Dealer Member must designate a person or department to receive the reports required by subsection 3702(1).
Rules 3100I(B.1) and 3100 Definitions	**3703. Reporting by a Dealer Member to the Corporation** (1) A Dealer Member must report to the Corporation any of the following matters, within the time and method prescribed by the Corporation: (i) Any changes in the registration information of an Approved Person; (ii) All customer complaints, in writing, against the Dealer Member or any Approved Person, except service complaints defined in subsection 3703(2); (iii) Whenever an internal investigation is commenced by the Dealer Member in accordance with section 3706;

Repealed current rule	Proposed plain language rule
	(iv) The results of the internal investigation under paragraph 3703(1)(iii); (v) Any time the Dealer Member, current or former Approved Person is subject to one of the following in any jurisdiction inside or outside of Canada, while in the employ of the Dealer Member or concerning matters that occurred while in the employ of the Dealer Member: (a) charged with, convicted of, plead guilty or no contest to, any criminal offence; (b) named as a defendant or respondent, or is subject of, any proceeding or disciplinary action alleging contravention of any securities laws or exchange contract laws; (c) named as a defendant or respondent, or subject of any proceeding or disciplinary action alleging contravention of the requirements or policies of any regulatory or self-regulatory organization, professional licensing or registration body; (d) denial of registration or license by any regulatory or self regulatory organization, professional licensing or registration body; or (e) subject to a securities related civil claim or arbitration notice. (vi) The resolution of any matters set out in paragraph 3703(1)(v); (vii) Any internal disciplinary action that is taken by a Dealer Member against an Approved Person as a result of: (a) a client complaint; (b) a securities-related civil claim or arbitration notice; (c) an internal investigation; (d) a Dealer Member initiated disciplinary action imposing suspension, termination, demotion, or trading restrictions on the Approved Person; or (e) a Dealer Member initiated disciplinary action not involving clauses 3703(1)(vii)(a) to (c) above which results in a monetary penalty: (1) over $5,000 for a single occurrence; (2) over $15,000 in total in a calendar year; or (3) imposed three times or more in a calendar year, (2) For the purpose of paragraph 3703(1)(ii), a service complaint by a client is one that is related to service issues and does not involve any violation of any requirements of a self-regulatory organization or securities or exchange contracts laws of any jurisdiction inside or outside of Canada.
Rule3100I(B.3)	**3704. Failure to report** (1) Failure to file reports as required by sections 3702 and 3703 may result in the Corporation imposing a penalty or commencing a disciplinary proceeding against the Dealer Member and/or Approved Person. **3705. – Reserved**

Repealed current rule	Proposed plain language rule
	Part II - Internal investigations and internal discipline
Rule 3100II.1	**3706. Requirement to commence an internal investigation** (1) A Dealer Member must conduct an internal investigation if it appears that the Dealer Member or a current or former Approved Person while employed by the Dealer Member engaged in any of the following types of activities in any jurisdiction inside or outside of Canada: (i) theft; (ii) fraud; (iii) misappropriation of funds or securities; (iv) forgery; (v) money laundering; (vi) market manipulation; (vii) insider trading; (viii) misrepresentation; or (ix) unauthorized trading. (2) For the purpose of paragraph 3706(1)(viii), a misrepresentation means: (i) an untrue statement of facts; or (ii) an omission to state a fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made.
Rule 3100II.2(a)	**3707. Records of an internal investigation** (1) The Dealer Member must keep records showing the cause of, steps taken, and result of each internal investigation.
Rules 2500B.7 and 2700V.5	**3708. Internal Discipline** (1) Each Dealer Member must establish procedures to ensure that any breach of the Rules of the Corporation or any applicable securities legislation are subject to appropriate disciplinary measures.
	3709. – Reserved
	Part III - Settlement Agreements
Rule 3100III	**3710. Entering into settlement agreements** (1) An approved person must obtain the Dealer Member's written consent before entering into any settlement agreement with a client, regardless of the form of the settlement and regardless of whether the settlement is the result of a customer complaint or a finding by the Approved Person or the Dealer Member. (2) A Dealer Member must keep a record of the prior written consent.

Repealed current rule	Proposed plain language rule
	(3) Subsection 3710(1) does not apply to settlement agreements entered into by an Approved Person who is authorized by the Dealer Member to negotiate or enter into settlement agreements in the normal course of his/her duties and does not arise out of the activities involving the Approved Person.
Rule 2500B.5	**3711. Release** (1) A release entered into between a Dealer Member and a client may not impose confidentiality or similar restrictions aimed at preventing a client from initiating a complaint to the securities regulatory authorities, self regulatory organizations or other enforcement authorities, or continuing with any pending complaint in progress, or participating in any further proceedings by such authorities.
	3712. – 3714. – Reserved
	Part IV - Client complaints - Institutional Clients
Rules 2700V.1(a) through (d), 2700V.3 and 2700V.6	**3715. Policies and procedures** (1) Each Dealer Member must establish policies and procedures to deal effectively with all Institutional Client complaints received. (2) The Dealer Member's policies and procedures must include the following: (i) The Dealer Member must acknowledge all written client complaints. (ii) The Dealer Member must convey the result of its investigation of a client complaint to the client in due course. (iii) The Dealer Member must ensure that the Approved Person and their Supervisor is aware of all client complaints filed against the Approved Person. (iv) The Dealer Member must ensure that all allegations of serious misconduct are reported to senior management. (v) Complaints are to be handled by sales Supervisors or compliance staff (or the equivalent) and a copy must be filed with the compliance department/function (or the equivalent) of the Dealer Member. (3) If the Dealer Member finds complaints to be a significant factor, internal policies and procedures should be reviewed, with recommendations.
	3716. – 3719. – Reserved
	Part V - Client complaints- Retail Clients
Rule 2500VIII	**3720. Retail Client Complaints** (1) Each Dealer Member must establish and maintain policies to deal effectively with both: (i) retail client complaints alleging misconduct under sections 3721 to 3728; and (ii) retail client complaints that do not allege misconduct. (2) A Dealer Member must provide a written response to any written retail client complaint.

Repealed current rule	Proposed plain language rule
Rule 2500B.2	**3721. Application** (1) The requirements set out in sections 3722 to 3728 apply to complaints submitted by a client or a person authorized to act on behalf of a client in the following form: (i) A recorded expression of dissatisfaction with a Dealer Member or employee or agent alleging misconduct; or (ii) A verbal expression of dissatisfaction with the Dealer Member or employee or agent alleging misconduct where a preliminary investigation indicates that the allegation may have merit. (2) For the purpose of subsection 3721(1), an alleged misconduct includes, but is not limited to: (i) allegations of breach of confidentiality; (ii) theft; (iii) fraud; (iv) misappropriation or misuse of funds or securities; (v) forgery; (vi) unsuitable investments; (vii) misrepresentation; (viii) unauthorized trading relating to the client's account(s), (ix) other inappropriate financial dealings with clients; or (x) engaging in unapproved securities related activities outside of the Dealer Member. (3) Any matter which is subject to a civil action or arbitration is not considered to be a complaint for the purpose of section 3721.
Rules 2500B.2 and 2500B.3	**3722. Handling client complaints** (1) Complaints are to be handled by sales Supervisors or compliance staff (or the equivalent) and a copy must be filed with the compliance department/function (or the equivalent) of the Dealer Member. (2) The Dealer Member must appoint an individual to act as the designated complaints officer. The individual must have the requisite experience and authority to oversee the complaint handling process and to act as a liaison with the Corporation.
Rule 2500B.4	**3723. Complaint policies and procedures** (1) Each Dealer Member must have written policies and procedures to ensure that complaints are dealt with effectively, fairly and expeditiously. (2) Each Dealer Member's policies and procedures must address the following: (i) Procedures for a fair and thorough investigation of complaints;

Repealed current rule	Proposed plain language rule
	(ii) The process by which an assessment is made regarding the merit of the complaint; (iii) Where the complaint is determined to have merit, the process to be followed in determining what offer should be made to the client; (iv) Remedial actions which may be appropriate to be taken within the firm; (v) Ensure that complaints are not dismissed without due consideration of the facts of each case; (vi) Include a balanced approach to dealing with complaints that objectively considers the interests of the complainant, the Dealer Member, the Registered Representative, employee or agent of the Dealer Member, and/or other relevant parties; (vii) Process to ensure that Registered Representatives and their Supervisors are made aware of all complaints filed by their clients; (viii) Procedures to inform senior management of serious misconduct; and (ix) Procedures to monitor the general nature of the complaints. (3) If a Dealer Member determines that the number and/or severity of complaints is significant, or when a Dealer Member detects frequent and repetitive complaints made with respect to the same matter which may on a cumulative basis indicate a serious problem, the Dealer Member must: (i) Review its internal procedures and practices; and (ii) Submit recommendations to the appropriate management level to remedy any such systematic and recurring matters.
Rule 2500B.4	**3724. Client access** (1) At the time of account opening, Dealer Member must provide new clients with: (i) A written summary of the Dealer Member's complaint handling procedures, which is clear and can be easily understood by the client; and (ii) A copy of the complaint handling brochure, approved by the Corporation. (2) Each Dealer Member must make available to their clients, on an ongoing basis, a written summary of the Dealer Member's complaint handling procedures which may be made available either on the Dealer Member's website or by other means.
Rule 2500B.4	**3725. Client Acknowledgement letter** (1) Each Dealer Member must send an acknowledgement letter to the complainant within five (5) business days of receipt of a complaint. (2) Each acknowledgement letter in subsection 3725(1) must include the following: (i) The name, job title and full contact information of the individual at the Dealer Member handling the complaint; (ii) A statement indicating that the client should contact the individual at the Dealer Member handling the complaint if he/she would like to inquire about the status of the complaint;

Repealed current rule	Proposed plain language rule
	(iii) An explanation of the Dealer Member's internal complaint handling process, including but not limited to the role of the designated complaints officer; (iv) A reference to an attached copy of a Corporation approved complaint handling process brochure and a reference to the statutes of limitations contained in the document; (v) The ninety (90) calendar days timeline to provide a substantive response to complainants; and (vi) A request for any information reasonably required to investigate the complaint.
Rule 2500B.4	**3726. Response to client complaints** (1) Each Dealer Member must send a substantive response letter to each complainant. (2) Each substantive response letter must be accompanied by a copy of a complaint handling process brochure approved by the Corporation. (3) Each substantive response letter must be presented in a manner that is fair, clear and not misleading to the client, and must include the following information: (i) A summary of the complaint; (ii) The result of the Dealer Member's investigation; (iii) The Dealer Member's final decision on the complaint, including an explanation; and (iv) A statement describing to the client the options available if the client is not satisfied with the Dealer Member's response, including the availability of: (a) arbitration; (b) litigation/civil action; (c) submitting a regulatory complaint to the Corporation for assessment of whether disciplinary action is warranted; (d) the ombudsman service, if a request is made within the period required by the ombudsman; and (e) an internal ombudsman service offered by an affiliated of the Dealer Member, if any, with an explanation that: (1) the use of the internal ombudsman process is voluntary; and (2) the estimated length of time the process is expected to take based on historical data. (f) any other applicable options. (4) A Dealer Member must respond to each client complaint as soon as possible and not later than ninety (90) calendar days from the date of receipt of the complaint subject to the following: (i) The 90 days time line must include all internal processes of the Dealer member that are made available to the client, but not include the internal ombudsman process offered by an affiliate of the Dealer Member.

Repealed current rule	Proposed plain language rule
	(ii) The Dealer Member must inform the client if the Dealer Member is unable to provide the client with a final response within the ninety (90) days time line and must include the reasons for the delay and the new estimated time of completion. (iii) The Dealer Member must inform the Corporation if the Dealer Member is unable to meet the ninety (90) days time line and must provide reasons for the delay.
Rule 2500B.4	**3727. Duty to assist in client complaint resolution** (1) Approved Persons must co-operate with the Dealer Member where they were employed or acted as an agent when moving to a different Dealer Member after events or activities that resulted in a client complaint. (2) Dealer Members must co-operate with each other if events relating to a complaint took place at more than one Dealer Member or if the Approved Person is an employee or agent of another Dealer Member.
Rule 2500B.6	**3728. Client Complaint file** (1) Each Dealer Member must retain the following information for each client complaint: (i) The complainant's name; (ii) The date of the complaint; (iii) The nature of the complaint; (iv) The name of the individual who is subject of the complaint; (v) The investment product or services which are the subject of the complaint; (vi) The materials reviewed in the investigation; (vii) The name, title, and date individuals were interviewed for the investigation; and (viii) The date and conclusion of the decision rendered in connection with the complaint.
	3729. – Reserved
	Part VI - Legal Actions
Rules 2500B.4 and 2700V.3	**3780. Reporting legal actions** (1) Each Dealer Member must report all legal actions against it to its senior management.
	3781. – 3784 – Reserved
	Part VII - Record retention requirements
Rule 3100IB.2	**3785. Events reported to the Corporation** (1) Each Dealer Member must maintain, and make available to the Corporation upon request, copies of all documents associated with events reported to the

Repealed current rule	Proposed plain language rule
	Corporation under section 3703 for a minimum of 2 years from the date of resolution of the matter.
Rules 2500B.6 and 2700V.4	**3786. Client complaints** (1) Each Dealer Member must keep an up-to-date record of all recorded submissions and follow-up documentation relating to the conduct, business and affairs of the Dealer member, or an employee or agent of the Dealer Member, in a central and readily accessible place, for a period of two (2) years from the date of receipt of a client complaint. (2) For each client complaint file, each Dealer Member must maintain a copy for seven (7) years in a location that is retrievable within a reasonable period of time. **3787. – 3799. – Reserved**
	RULE 3800 **BUSINESS RECORDS AND CLIENT COMMUNICATIONS**
None	**3801. Introduction** (1) Maintaining complete and accurate books, records, and other documents is a fundamental responsibility of a Dealer Member. A Dealer Member's business records provide an audit trail to support the Dealer Member's supervision of its business and are necessary to prepare regulatory financial reports and to report accurately to clients. (2) Rules 3800 set out the following Dealer Member books, records, and reporting requirements: (i) Record Retention [*Part A, section 3802*]; (ii) Business records [*Part B, sections 3805 through 3813*]; (iii) Client communication[*Part C, sections 3830 through 3833 and 3840 through 3842*];
New	**Part A- Record Retention** **3802. General requirements for record retention periods** (1) A Dealer Member must retain copies of business records, client communication records, and other documents required under Corporation Rules for a minimum of seven years from the date the record is created unless Corporation Rules or securities legislation relating to the specific type of record require a different retention period. **[3803-3804 Reserved]**
Rules 17.13 and 200.1, Introduction and 200.1 Guide to Interpretation – Introduction	**Part B - Business records** **3805. General requirements to maintain books and records** (1) A Dealer Member must maintain current books and records that properly record its business transactions, financial position and financial operating results.

Repealed current rule	Proposed plain language rule
	(2) A Dealer Member must maintain appropriate internal controls to ensure that its books and records:. (i) are correct; (ii) provide clear and accurate information; and (iii) remain current. (3) A Dealer Member must make its records available to the Corporation on request. (4) A Dealer Member must provide the Corporation with statistical or other information with respect to the Dealer Member's business that the Corporation may request from time to time, acting reasonably. Such information must be provided as soon as practicable following the Corporation's request.
Rule 200.1(a) and 200.1 Guide to Interpretation (a)	**3806. Blotters (records of original entry) [LINK GN 3800-2]** (1) A Dealer Member must maintain blotters or other records of original entry by itemizing daily, as a minimum, the following: (i) all purchases and sales of investment products; (ii) all receipts and deliveries of investment products (including certificate numbers); (iii) all receipts and disbursements of cash; (iv) all other debits and credits; (v) the name of the investment product; (vi) the date of the transaction; (vii) the applicable account for which each transaction was effected; (viii) the number or units of investment products; (ix) the unit and aggregate purchase or sale price (if any); (x) the name of any dealer (if any) that acted as the Dealer Member's agent for the trade; and (xi) whether the transactions are opening or closing transactions (where required by the marketplace) (2) The blotters may be produced as separate data files and daily reports, recording each type of transaction such as purchases versus sales, unlisted investment products, cash receipts, cash disbursements and stock record journals.
Rule 200.1(b) and 200.1 Guide to Interpretation (b)	**3807. General ledger** (1) A Dealer Member must maintain a general ledger (or other records) with an itemized account detail of all assets and liabilities, income, expense and capital accounts.
Rule 200.1(c) and 200.1 Guide to Interpretation (c)	**3808. Client and non-client ledger accounts** (1) A Dealer Member must maintain a ledger account for each client or non-client account, itemizing separately all transactions and all other debits and credits to the account.

Repealed current rule	Proposed plain language rule
	(2) When a Dealer Member receives investment products or property to margin, guarantee or secure a client's account, the ledger must contain as a minimum the following: (i) a description of the investment product or property received; (ii) the date of receipt; (iii) the deposit institution where the investment product or property is segregated; (iv) the dates of deposit and withdrawal from the institution; and (v) the date of the return of the investment product or property to the client, or other disposition, along with the circumstances of that disposition. (3) When a Dealer Member invests the funds segregated for the benefit of its clients, the ledger must contain as a minimum the following: (i) the date of the transaction; (ii) the person or company with whom the Dealer Member made the investment; (iii) the amount invested; (iv) a description of the investment; (v) the registered securities dealer with whom the Dealer Member deposited the investment; (vi) the date of liquidation or other disposition and the money received on the disposition; and (vii) the name of the counterparty on disposition.
Rule 200.1(d) and 200.1 Guide to Interpretation (d), (e), (f), and (i)	**3809. Other ledger accounts** (1) A Dealer Member must maintain ledgers (or other records) for investment products in transfer showing all investment products sent to, held by and received back from transfer agents. The records must be sufficient to track and identify all transfers. The transfer ledgers must contain as a minimum the following: (i) the number of securities or principal amount; (ii) the name of the investment product; (iii) the name in which it was registered; (iv) the new name; (v) the date sent out to transfer; (vi) the old certificate number; (vii) the date received back from transfer; (viii) the new certificate number; and (ix) the date on the new certificate.

Repealed current rule	Proposed plain language rule
	(2) A Dealer Member must maintain a record showing the dividend and interest payments received for nominee named security positions. These records may be maintained on a dividend or interest subledger. The dividend record must contain the following: (i) the security; (ii) the record date; (iii) the ex-dividend date; and (iv) the payable date. (3) A Dealer Member must record the following on all money borrow-and-lend transactions: (i) the name of the client; (ii) the date; (iii) the interest rate; (iv) the amount of the loan; (v) the terms of the loan; and (vi) the dates the loan is made and repaid. (4) A Dealer Member must record the following about the collateral provided, received, or substituted for a client loan: (i) the number of securities or principal amount of bonds; (ii) the name of the investment product; and (iii) the certificate numbers of the investment products pledged. (5) A Dealer Member must credit clients who are holding a long position with their appropriate share of the dividend or interest payment received by the Dealer Member. (6) A Dealer Member must receive a payment equal to the dividend or interest payable on the investment product from clients who are holding a short position. (7) A Dealer Member must examine all bearer investment products to determine against whom to make a claim for payment. (8) When borrowing investment products from or lending investment products to another dealer, a Dealer Member must note the transaction in an investment product borrowed or loaned account for each client. An additional column may also show the interest rate or premium on securities borrowed or loaned and any collateral provided or received. The account must record the following: (i) the date borrowed or loaned; (ii) the name of the firm from whom borrowed or to whom loaned; (iii) the quantity; (iv) the name of the security;

Repealed current rule	Proposed plain language rule
	(v) the certificate numbers; and (vi) the date returned. (9) A Dealer Member must maintain an investment product failed-to-receive-or-deliver subsidiary record which must agree with the fail-to-receive-and-deliver accounts in the Dealer Member's general ledger. (10) If a Dealer Member learns that a counterparty dealer will fail-to-deliver (Dealer Member fails-to-receive), a Dealer Member must keep a record of the settlement date showing the fail date, the name of the security, the purchase price and the counter party. (11) When a Dealer Member fails-to-deliver, it must keep a record showing the date on which delivery was due, the number of securities or principal amount of bonds, the name of the security, to whom it was sold, the sale price and the date on which delivery was made. (12) A Dealer Member must maintain a ledger (or other record) showing all money, investment products and property received to margin, guarantee or secure client accounts. (13) A Dealer Member must maintain a ledger (or other record) showing all funds accruing to clients that must legally be segregated for their benefit. (14) A Dealer Member must post investment product records to show all positions no later than the settlement date (the trade or execution date may be used). A Dealer Member must review this record frequently to ensure that it balances with the total long and short positions for each investment product. The record must show the following: (i) the name of the investment product; (ii) the client or other accounts that are long and short the investment product; (iii) the daily changes in their positions; and (iv) the total of the long or short position for client and non-client accounts.
Rule 200.1(e)	**3810. Ledger accounts - Investment products (excluding derivatives)** (1) A Dealer Member must maintain a ledger (or other records) for each investment product (excluding derivatives) as of trade or settlement date, showing all long and short positions (including investment products in safekeeping) that are held in a proprietary or client account. (2) The ledger must show: (i) the location of all long positions; (ii) the balancing position of all short positions; and (iii) the name or designation of the account in which the long and short positions are held.
Rule 200.1(f)	**3811. Ledger accounts – Derivatives** (1) A Dealer Member must maintain a ledger (or other records) for each type of derivative as of trade date, showing all long and short financial contract positions carried in a proprietary or client account. The ledger must include the name or

Repealed current rule	Proposed plain language rule
	designation of the account in which the position is carried.
Rules 200.1(g) and 200.1(l) and 200.1 Guide to Interpretation (g)	**3812. Record of orders received** (1) A Dealer Member must maintain an adequate record of each order or other instruction received for all investment products, whether or not carried out. (2) Each entry for an order or other instruction must contain as a minimum the following: (i) the applicable account; (ii) any exercise of discretionary authority; (iii) the execution price; (iv) the time of entry; (v) the time of the execution report; (vi) the time of execution, modification, or cancellation, if feasible; (vii) the order's terms and conditions and any modification or cancellation; and (viii) whether transactions are opening or closing transactions (where required by the marketplace). (3) A Dealer Member must record the name, sales number, or designation of the person placing the order or instruction, if the order or instruction is placed by a person other than: (i) the owner of the account; or (ii) a person authorized in writing to direct orders for the account. (4) A Dealer Member must maintain a record of all margin calls that it issues.
Rule 200.1(n) and 200.1 Guide to Interpretation (n)	**3813. Account transfers** (1) As required by Part C of Rule 4800 [LINK Rule 4800], a Dealer Member must maintain an electronic record of all communications about account transfers in an accurate, secure and readily accessible format.
	3814. – 3829. – Reserved
	Part C - Client communications
	Part C.1 – Confirmations
Rule 200.1(h) and 200.1 Guide to Interpretation (h)	**3830. Delivery of confirmations – Frequency** (1) A Dealer Member that has acted on behalf of a client must promptly send clients or, if the client consents, to an approved person acting for the client, a written confirmation of the transaction for all purchases and sales of investment products.
Rule 200.1(h) and 200.1 Guide to Interpretation (h)	**3831. Requirements for confirmations - General content** (1) A confirmation of the transaction sent to a client must contain as a minimum the following information:

Repealed current rule	Proposed plain language rule
	(i) the quantity and description of the investment product purchased or sold; (ii) the price per an investment product paid or received by the client; (iii) the marketplace on which the transaction took place, or if applicable, a statement that the transaction took place on more than one marketplace or over more than one day; (iv) the trade date and settlement date of the transaction; (v) total consideration for the transaction; (vi) the commission, sales charge, service charge and any other amount charged in respect of the transaction; (vii) any charges by a regulatory authority; (viii) the name of the Dealer Member's representative (if any) in the transaction; (ix) the name of any dealer that it used to complete the transaction; and (x) whether the Dealer Member acted as principal or agent. (2) A Dealer Member may identify its Registered Representative for a trade on a confirmation by a code or symbol if the confirmation states that the name of the sales representative is available upon request of the client. (3) A confirmation must show the relationship to a Dealer Member: (i) for each transaction of a Dealer Member or a related issuer of a Dealer Member, and (ii) for a transaction made during a distribution of the investment product of an issuer connected to a Dealer Member. (4) If a transaction under subsection 3831(1) involved more than one transaction or if the transaction took place on more than one marketplace, the information referred to in subsection 3831(1) may be set out in the aggregate if the confirmation also contains a statement that additional details concerning the transaction will be provided to the client upon request and without additional charge.
200.1(h)	**3832. Additional requirements for confirmations relating to specific investment products - Content** (1) Subject to section 3831, if a transaction involved derivatives, a confirmation must contain as a minimum the following additional information: (i) for trades in options, (a) the type of option (put or call); (b) the strike price; (c) the premium; (d) the underlying interest, (e) the expiry month and year;

Repealed current rule	Proposed plain language rule
	(f) the last date when the client can indicate their intent of exercising the option; (g) whether the transactions are opening or closing transactions; and (h) the marketplace upon which the transaction took place. (ii) for trades in futures contracts: (a) the commodity or other underlying interest and quantity bought or sold; (b) whether the transactions are opening or closing transactions (where required by the marketplace); (c) the expiry month and year; and (d) the contract price. (2) Subject to section 3831, if a transaction involved mortgage-backed securities, a confirmation must contain as a minimum the following additional information: (i) the original principal amount of the trade; (ii) a description of the security (including interest rate and maturity date); (iii) the remaining principal amount (RPA) factor; (iv) the price per $100 of original principal amount; (v) the accrued interest; (vi) the total settlement amount; and (vii) the settlement date. (3) Subject to section 3831, if a transaction involved mortgage-backed securities where a Dealer Member enters the trade from the third clearing day before a month end to the fourth clearing day of the following month, it must issue a preliminary confirmation containing the following: (i) the trade date; (ii) the original principal amount of the trade; (iii) a description of the security (including interest rate and maturity date); (iv) the price per $100 of original principal amount; (v) the settlement date; (vi) that items in paragraphs 3832(2) (iii), (v) and (vi) are not yet known; and (vi) that the Dealer Member will issue a final confirmation containing all of the information set out in subsection 3832(2) above, once it calculates the RPA factor. (4) Subject to section 3831, if a transaction involved stripped coupons or residual debt instruments, a confirmation must contain as a minimum the following additional information:

Repealed current rule	Proposed plain language rule
	(i) the yield calculated on a semi-annual basis consistent with the yield calculation for the debt instrument which has been stripped; and (ii) the yield calculated on an annual basis consistent with the yield calculation for other debt instruments competitive with coupons or residuals with fixed terms and interest rates. (5) Subject to section 3831, if a transaction involved a mutual fund sponsored by: (i) a financial institution that controls or is affiliated with a Dealer Member; or (ii) a corporation controlled by or affiliated with such a financial institution, the confirmation must show the relationship between the Dealer Member and the financial institution.
200.1(h)	**3833. Managed account confirmations** (1) A Dealer Member is not required to send a confirmation for a trade in a managed account if: (i) before the trade, the client has signed an authorization waiving the confirmation requirement; (ii) securities legislation does not require a confirmation, or the Dealer Member has obtained an exemption; and (iii) the Dealer Member has complied with either subsections 3833(3) or (4) below. (2) A client may cancel a waiver of the confirmation requirement by providing a written notice to the Dealer Member. The cancellation takes effect when the Dealer Member receives the notice. (3) A confirmation is not required to be sent for a trade in an account managed by a Dealer Member if: (i) the account is not charged commissions or fees based on the volume or value of transactions in the account; and (ii) the Dealer Member sends the client a monthly statement that contains all of the information required for confirmations, except: (a) the date and the marketplace where the trade took place; (b) any fee or other charge that any investment product regulatory authority levies; (c) the name of any salesperson; and (d) the name of any dealer that acted as the Dealer Member's agent; and (iii) the Dealer Member maintains the information in paragraph 3833 (3)(ii) and discloses on the monthly statement that the information is available on request. (4) For externally managed accounts, a Dealer Member need not send a confirmation to the client if the Dealer Member:

Repealed current rule	Proposed plain language rule
	(i) sends the confirmation to the account manager; and (ii) complies with sections 3830 through 3832 and subsection 3833(1); or (iii) complies with subsection 3833(3) above. **3834. – 3839. – Reserved** **Part C.2 - Client account statements**
Rule 200.1(c) and 200.1 Guide to Interpretation (c)	**3840. Delivery of client account statements – Frequency** (1) A Dealer Member must send a monthly statement to each client who, at the end of the month has (i) had a transaction during the month; (ii) experienced a cash or investment products modification other than dividend or interest payments; (iii) an unexpired and unexercised derivative position; or (iv) an open derivative position. (2) A Dealer Member must send a quarterly statement to each client who, at the end of the quarter, has (i) a debit or credit balance, or (ii) an investment product position in the account (including positions held in safekeeping or segregation).
Rule 200.1(c) and 200.1 Guide to Interpretation (c)	**3841. Requirements for client account statements – Content** (1) A statement delivered under section 3840 must include all of the following information about the client's account at the end of the period for which the statement is made: (i) the name and quantity of each investment product in the account; (ii) any cash balance in the account; (iii) the opening cash balance in the account; (iv) the market value of the investment product in the account; (v) the total market value of each investment product position in the account; and (vi) the total market value of all cash and investment products in the account. (2) A statement delivered under section 3840 must include all of the following information for each transaction made for the client during the period covered by the statement: (i) the date of the transaction; (ii) whether the transaction was a purchase, sale or transfer, dividend or interest payment received or reinvested, fee or charge or other account activity;

Repealed current rule	Proposed plain language rule
	(iii) the name of the investment product purchased, sold or transferred; (iv) the number or units of investment products purchased, sold or transferred; (v) the unit price per investment product paid or received by the client; and (vi) the total value of the transaction. (3) For a client with any unexpired and unexercised or open derivative positions, the monthly statement should contain as a minimum the following: (i) the opening and closing cash balance for the month; (ii) all deposits, credits, withdrawals and debits to the account; (iii) each unexpired and unexercised derivative product; (iv) the strike price of each unexpired and unexercised derivative product; (v) each open derivative contract; and (vi) the price at which each derivative product was entered into. (4) When a Dealer Member has carried out a liquidating trade in a derivative product as agent for a client, it must send to the client a statement of purchase and sale showing as a minimum the following: (i) the dates of the initial transaction and liquidating trade; (ii) the description and quantity bought and sold; (iii) the marketplace where the trade took place; (iv) the expiry month and year; (v) the prices on the initial and liquidating trades; (vi) the gross profit or loss on the transactions; (vii) the commission; and (viii) the net profit or loss on the transactions. (5) A statement delivered under section 3840 must include the information required in subsection 3841(1) for all account investment product positions held by or controlled by the Dealer Member for the client as at the end of the period for which the statement is made. (6) The statement must show the related issuer's relationship to a Dealer Member (i) for each investment product trade of a Dealer Member or a related issuer of a Dealer Member; and (ii) for a trade made during a distribution of the investment product of an issuer connected to a Dealer Member. Related issuer and connected issuer have the same meanings as in the Regulations to the Securities Act (Ontario).

Repealed current rule	Proposed plain language rule
	(7) If a Dealer Member does not deposit clients' free credit balances in a trust bank account, the client statement must include the following notation: *"Any free credit balances (except for RRSP funds held in trust) represent funds payable on demand that, although properly recorded in our books, are not segregated and may be used in the conduct of our business."*
IDA Notice MR-0087	**3842. Consolidated statements** (1) A Dealer Member that prepares consolidated statements in addition to the required statements for its clients showing client assets held at different entities must observe the following requirements: (i) the statement must clearly identify the legal entity for each transaction made and for each asset or money balance held; (ii) the format must be different from the Dealer Member's regular monthly statements; and (iii) if a rate of return is included in the statements or reports, the rates must be calculated on a fair and consistent basis using methods such as those approved by the CFA Institute. (2) The consolidated statements must include the following disclaimers: (i) it is not an official statement but supplemental to the legal entity statements issued by the Dealer Member; (ii) CIPF coverage does not necessarily apply to all positions shown; and (iii) the client should refer to the legal entity statements to determine the positions covered by CIPF and positions held in segregation. (3) No reference to the Canadian Investor Protection Fund (CIPF) or use of its logo may be made on the consolidated statements other than that in subsection 3842(2) above. (4) At the Dealer Member's year end, the consolidated statements must include a reference to the Dealer Member's legal entity statement mentioning the audit and asking clients to review the legal entity statement and report to the auditors any discrepancies that may exist. (5) If a Dealer Member permits Registered Representatives to prepare consolidated statements for clients, a Dealer Member must ensure that these statements are accurate and complete by implementing: (i) written policies; (ii) review procedures; and (iii) internal controls. **3843. – 3899. – Reserved**

Repealed current rule	Proposed plain language rule
	RULE 3900 **SUPERVISION**
None	**3901. Introduction** (1) This Rule sets out the Dealer Member's responsibilities to supervise its business and operations. (2) Appropriate supervision of all aspects of a Dealer Member's business is a fundamental responsibility of the Dealer Member. The Dealer Member's policies and procedures for its supervision system must be up-to-date based on current Corporation requirements and applicable laws. (3) The Dealer Member's board of directors is responsible for ensuring that an appropriate supervision system is in place. Senior management of the Dealer Member's business and management of each business unit are responsible for the performance of the supervisory function.
None	**3902. Contents** (1) This Rule is divided into six parts: A General supervision requirements B Supervision of accounts C Supervision of retail client accounts D Supervision of institutional accounts E Supervision of managed accounts F Supervision of order execution only services
	PART A - GENERAL SUPERVISION REQUIREMENTS
Rules 38.1, Introduction; 38.1(i); 38.1(ii); 38.1(iii); 2500(I)(E); 3200A(2)(a); 3200A(2)(b); 3200A(4); 3200B(2)(a); 3200B(2)(b) and 3200B(4)	**3903. Policies and procedures** (1) Each Dealer Member must establish and maintain policies and procedures describing the Dealer Member's system to supervise: (i) business conduct; and (ii) the securities related activities of its Partners, Directors, Officers, Registered Representatives, Investment Representatives, employees and agents. (2) The supervisory policies and procedures must be designed to achieve compliance with Corporation requirements, securities legislation and other applicable laws. (3) The supervisory policies and procedures must be in writing. (4) Each Dealer Member must ensure that each of its Partners, Directors, Officers, Registered Representatives, Investment Representatives, employees and agents are made aware of their responsibilities under the Dealer Member's supervisory policies and procedures.

Repealed current rule	Proposed plain language rule
	(5) Each Dealer Member must ensure that its supervisory policies and procedures are amended within a reasonable time after changes in Corporation requirements, securities legislation or other applicable laws are made. (6) Each Dealer Member must promptly communicate changes in its supervisory policies and procedures to all relevant personnel.
Rules 38.1(iv), 38.1(v), 38.1(vi) and 38.2	**3904. Supervisory personnel and resources** (1) Each Dealer Member must assign sufficient personnel and other resources to fully and properly apply its supervisory policies and procedures. (2) Each Dealer Member must designate Supervisors with the qualifications and authority to carry out the supervisory responsibilities assigned to them. (3) Each Dealer Member must have procedures to ensure that supervisory personnel are properly performing their supervisory functions.
Rule 38.4(a)	**3905. Individual supervisory responsibility** (1) Each Supervisor employed by a Dealer Member must fully and properly supervise each Partner, Director, Officer, Registered Representative, Investment Representative, employee, or agent under their authority: (i) in accordance with the Dealer Member's policies and procedures; and (ii) to ensure compliance with Corporation requirements, securities legislation and other applicable laws.
Rules 38.4(b) and 2500I.D	**3906. Delegation of supervisory tasks** (1) A Supervisor may delegate supervisory tasks and procedures, but not responsibility for their performance. (2) Any delegation of supervisory tasks must be permitted under Corporation requirements, securities legislation and applicable laws. (3) A delegate must be qualified to perform the assigned tasks by virtue of registration, training, or experience. (4) The Supervisor must: (i) inform the delegate in writing of what is expected when performing the delegated tasks; (ii) ensure that the delegate adequately performs the assigned tasks; and (iii) establish reporting mechanisms for exceptions.
Rules 38.1(v), 38.1(vi) and 38.1(vii)	**3907. Supervision records** (1) Each Dealer Member must maintain a record of the names of supervisory personnel, their supervision responsibilities and the date each Supervisor was designated. These records must be kept for the period set out in Rule 3800. (2) Each Dealer Member must maintain adequate records of supervisory activity, including on-site branch reviews, compliance issues identified and the resolution of such issues for the period required in section 3850.

Repealed current rule	Proposed plain language rule
	(3) Where supervision records are kept at a branch office, a Dealer Member must conduct periodic on-site reviews of branch office supervision and record keeping.
Rules 38.5(a), 38.5(b)(i), 38.5(b)(ii) and 38.5(b)(iii)	**3908. Appointment of Ultimate Designated Person (UDP)** (1) Each Dealer Member must designate a UDP who is approved under Corporation requirements. (2) A UDP must be: (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 securities-related activity of the Dealer Member occurs only within that division; or (iii) an individual acting in a capacity similar to paragraphs 3908(2)(i) or 3908(2)(ii).
Rule 38.5(c)	**3909. Responsibility of the UDP** (1) The UDP is responsible to the Corporation for the conduct of the Dealer Member and the supervision of its employees. (2) The UDP must promote compliance with Corporation requirements, securities legislation and applicable laws.
Rules 38.7(a), 38.7(b), 38.7(c), 38.7(d), 38.7(e) and 38.7(g)	**3910. Appointment of Chief Compliance Officer (CCO)** (1) Each Dealer Member must appoint a CCO who is approved under Corporation requirements. (2) A CCO must be: (i) an Officer or Partner of the Dealer Member; or (ii) the sole proprietor of the Dealer Member. (3) A Dealer Member may appoint the UDP to act as the CCO. (4) Dealer Members that are organized into two or more separate business units may designate a CCO for each separate business unit, with the Corporation's approval. (5) A Dealer Member's CCO must meet the qualifications prescribed by the Corporation, unless the Corporation grants an exemption. The Corporation may grant an exemption if it is satisfied that doing so would not be detrimental to the interests of the Dealer Member, its clients, the public, or the Corporation.
Rule 38.7(f)	**3911. Replacing a CCO** (1) If a Dealer Member's CCO ceases to be employed and the Dealer Member is unable to immediately appoint a new CCO, the Dealer Member may appoint an Acting Chief Compliance Officer, with the Corporation's approval. (2) The Dealer Member must appoint a new CCO within 90 days of the termination of the previous CCO's employment.

Repealed current rule	Proposed plain language rule
Rules 38.7(h)(i), 38.7(h)(ii), 38.7(h)(iii) and 38.7(i)	**3912. Responsibility of the CCO** (1) The CCO must: (i) establish and maintain policies and procedures to ensure 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; and (iii) report to the UDP as soon as possible if there is any indication that the Dealer Member 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. (2) The CCO must have access to the UDP and the Dealer Member's board of directors as necessary to carry out his or her responsibilities.
Rules 38.7(h)(iv) and 38.8	**3913. CCO report to Dealer Member's Board of Directors** (1) The CCO must provide written reports to the Dealer Member's board of directors on the status of the Dealer Member's compliance as necessary, and at least annually. (2) The Dealer Member's board of directors must review the CCO's reports and determine the appropriate action to be taken to remedy any compliance deficiencies that are identified and must ensure that such action is taken. (3) The Dealer Member's board of directors must maintain records of the actions it determines necessary to correct compliance problems and the monitoring done to ensure that the actions are carried out.
Rule 38.9	**3914. Governance Document** (1) Each Dealer Member must file with the Corporation: (i) a copy of a current governance document that sets out the organizational structure and reporting relationships required under this Rule; and (ii) notice of any material changes to the organizational structure and reporting relationships set out in the governance document.
Rule 38.6(a)	**3915. Appointment of Chief Financial Officer (CFO)** (1) Each Dealer Member must appoint one executive as CFO. (2) The CFO must be approved by and meet the qualifications prescribed by the Corporation. (3) The CFO does not need to be employed full-time in the Dealer Member's business.

Repealed current rule	Proposed plain language rule
Rule 38.6(c)	**3916. Responsibility of the CFO** (1) The CFO is responsible for establishing and maintaining policies and procedures appropriate for the Dealer Member's regulatory requirements relating to financial and applicable operational matters. (2) The CFO must monitor compliance with financial and applicable operational requirements set out in the Corporation Rules and the Dealer Member's policies and procedures.
Rule 38.6(b)	**3917. Replacing a CFO** (1) If a Dealer Member's CFO ceases to be employed and the Dealer Member is unable to immediately appoint a new CFO, the Dealer Member may appoint an Acting Chief Financial Officer, with the Corporation's approval. (2) The Dealer Member must appoint a new CFO within 90 days of the termination of the previous CFO's employment.
Rule 2600, Internal Control Policy Statement 1, General Matters (v), last paragraph	**3918. Annual supervisory review of financial and operational policies and procedures** (1) Each Dealer Member must ensure that a supervisory review of the financial and operational policies and procedures is completed at least annually and that any deficiencies regarding Corporation requirements are identified and corrected.
Rule 2400, Minimum Standards for Shared Office Premises 7(b)	**3919. Supervision of shared office premises** (1) Each Dealer Member must have written policies and procedures in place for the supervision of shared office premises that are reasonably designed to ensure: (i) compliance with Corporation requirements, securities legislation and other applicable laws; and (ii) that clients are not confused about which entity they are dealing with. (2) Each Dealer Member must have: (i) adequate supervisory resources to implement its supervision policies and procedures; (ii) a system for communicating relevant Corporation requirements to registered representatives and other individuals at the shared office premises; and (iii) a process to ensure that relevant Corporation requirements are understood and implemented.
None	**3920. – 3924. – Reserved** **PART B – GENERAL REQUIREMENTS FOR ACCOUNT SUPERVISION**
Rules 38.1(i), 1300.2(a) and 2700II(3)	**3925. Supervision by designated persons** (1) Each Dealer Member must effectively supervise account activity and must use due diligence to ensure compliance with the Corporation's requirements, securities legislation and other applicable laws. (2) Each Dealer Member must designate a Supervisor to be responsible for approving the opening of new accounts and supervising account activity. (3) The designated Supervisor must be familiar with applicable Corporation

Repealed current rule	Proposed plain language rule
	requirements, securities legislation and other applicable laws and the Dealer Member's policies and procedures. (4) Each Dealer Member must appoint one or more alternate Supervisors for the designated Supervisor in subsection 3925(2) as required to supervise the Dealer Member's business and to assume the responsibility of the designated Supervisor in his or her absence.
Rules 2500I.A(1), 2500I.A(2), 2500I.B, 2500I.C(1), 2500I.C(2), 2500I.C(3), 2500(II)Intro, 2700 Intro, 4th paragraph, 2700III.B(2), 2700III.C(3) and 2700IV.A	**3926. Account supervision policies and procedures** (1) Each Dealer Member must establish and maintain written policies and procedures for supervising accounts that set out its standards for the review and supervision of account activity. (2) Each Dealer Member must establish policies and procedures to satisfy the Dealer Member's obligations to: (i) identify clients that present a high risk to the Dealer Member; (ii) identify clients that present a high risk of conducting improper activities in the securities markets; and (iii) meet all requirements under anti-money laundering and terrorist financing legislation and regulations. (3) All policies and procedures on supervising the Dealer Member's accounts and any amendments to such policies and procedures must be approved by the Dealer Member's CCO. (4) Each Dealer Member must give written instructions to all supervisory staff that set out: (i) the procedures to be followed in reviewing account activity; and (ii) the Dealer Member's expectations of supervisory staff. (5) Each Dealer Member must ensure that its policies and procedures include controls for accessing and amending client records. (6) Each Dealer Member must periodically review the supervisory policies and procedures used at its head office and its branch offices to ensure the policies and procedures continue to be effective and reflect current industry practices.
Rule 38.1 Intro., 38.1(vii), 2500I.B, 2500I.F, 2500I.C(4), 2700 Intro. and 2700III.B(1)	**3927. Reviews of account activity** (1) Each Dealer Member must review account activity as required by Corporation requirements and must use due diligence to ensure that account activity complies with Corporation requirements, securities legislation and other applicable laws and the Dealer Member's policies and procedures. (2) Each Dealer Member must record and keep evidence of completed supervisory reviews, including details of queries about issues and their resolution, for the period required in section 3842. (3) Each Dealer Member must establish and follow procedures for the implementation of additional supervisory measures regarding approved persons with a history of questionable conduct.

Repealed current rule	Proposed plain language rule
Rules 1900.2(a) and 2500V Intro.	**3928. Supervision of Options Accounts** (1) Each Dealer Member that allows trading in options must appoint a designated Supervisor to supervise its options activity. (2) The designated Supervisor must have the qualifications and experience required to supervise the Dealer Member's options activity. (3) The Dealer Member must appoint one or more alternate supervisors if necessary to ensure continuous supervision of its options activity. (4) An alternate Supervisor must assume all or part of the designated Supervisor's responsibilities if: (i) the designated Supervisor is absent or unable to carry out his or her duties; or (ii) a Dealer Member's trading activity requires additional qualified persons to supervise the Dealer Member's option contract business.
Rules 1900.2(a) and 1900.2(c)	**3929. Responsibility of Designated Supervisors for Options Accounts** (1) The designated Supervisor is responsible for: (i) approving new options accounts; and (ii) ensuring that the handling of clients' options account trading meets all applicable Corporation requirements.
Rules 1800.2(a) and 2500VI Intro.	**3930. Supervision of Futures and Futures Options Accounts** (1) Each Dealer Member that trades or advises in respect of futures or futures options must appoint a designated Supervisor to supervise its futures and futures options activity. (2) The designated Supervisor must have the qualifications and experience required to supervise the Dealer Member's futures or futures options activity. (3) The Dealer Member must appoint one or more alternate supervisors if necessary to ensure continuous supervision of its futures and futures options activity. (4) An alternate must assume all or some of the designated Supervisor's responsibilities if: (i) the designated Supervisor is absent or unable to carry out his or her duties; or (ii) a Dealer Member's trading activity requires additional qualified persons to supervise the Dealer Member's futures contract business.
Rules 1800.2(a) and 1800.2(c)	**3931. Responsibility of Designated Supervisors for Futures and Futures Options Accounts** (1) For futures accounts and futures option accounts, the respective designated supervisors are responsible for: (i) approving new futures accounts and futures options accounts; and (ii) ensuring the handling of clients' futures and futures options account trading meets all applicable Corporation requirements.

Repealed current rule	Proposed plain language rule
Rules 1800.2(e)	**3932. Access to Approved Persons qualified in Futures and Futures Options** (1) The Dealer Member must have procedures to ensure that futures contract and futures contract options clients have access during normal business hours to an Approved Person qualified to deal in futures contracts and futures contract options. **3933. – 3944. – Reserved** **PART C - SUPERVISION OF RETAIL CLIENT ACCOUNTS**
Rules 2500II.C(3), 2500III.B(2), 2500IV Intro. and 2500IV.A	**3945. Daily and monthly trade supervision** (1) Each Dealer Member that has retail client accounts must implement policies and procedures for the daily and monthly supervision of trading activity in retail clients' accounts. These procedures must outline the action to be taken to deal with problems or issues identified from the review. (2) In addition to meeting the Dealer Member's general supervisory obligations and any relevant obligations relating to trading in debt securities, options, futures and futures options, the policies and procedures on the supervision of retail accounts must be designed to detect the following: (i) unsuitable trading; (ii) undue concentration of securities in a single account or across accounts; (iii) excessive trade activity; (iv) trading in restricted securities; (v) conflict of interest between registered representative and client trading activity; (vi) excessive trade transfers, trade cancellations etc. indicating possible unauthorized trading; (vii) inappropriate / high risk trading strategies; (viii) quality downgrading of client holdings; (ix) excessive / improper crosses of securities between clients; (x) improper employee trading; (xi) front running; (xii) account number changes; (xiii) late payment; (xiv) outstanding margin calls; (xv) undisclosed short sales; (xvi) excessive risk or loss to account guarantors. (xvii) manipulative or deceptive trading; and (xviii) insider trading.

Repealed current rule	Proposed plain language rule
	(3) The Dealer Member must develop specific policies and procedures for supervising retail accounts where a commission is not charged for trades placed by or for a client, such as fee-based accounts. These policies and procedures must: (i) address account activity review requirements; and (ii) use criteria other than commission levels. (4) The Dealer Member must specifically designate the following retail accounts for supervision purposes: (i) Non-client accounts; (ii) Discretionary accounts; (iii) Managed accounts; (iv) Registered accounts; and (v) Restricted accounts.
Rule 2500IV.E	**3946. Additional supervisory responsibilities** (1) In addition to transactional activity, Dealer Members must have systems and procedures designed to identify, deal with and keep supervisors informed about other client related matters such as: (i) client complaints; (ii) cash account violations; (iii) transfers of funds and securities between unrelated accounts or between non-client and client accounts or deposits from non-client to client accounts; and (iv) trading while under margin.
Rule 18.6	**3947. Supervision of new Registered Representatives and Investment Representatives** (1) Each Dealer Member must closely supervise registered representatives and investment representatives dealing with retail clients for six months after approval, as set out in the Registered Representative / Investment Representative Monthly Supervision Report. (2) Subsection 3947(1) does not apply if: (i) the registered representative was previously approved for six months or more to advise on trades for retail clients for a securities firm that is a member of a SRO or a recognized foreign SRO; or (ii) the investment representative was previously approved for six months or more to advise on trades or to trade for retail clients for a securities firm that is a member of a SRO or a recognized foreign SRO. (3) Each Dealer Member must complete and keep a copy of every Registered Representative / Investment Representative Monthly Supervision Report for Corporation inspection.

Repealed current rule	Proposed plain language rule
Rule 1300.1(p)	**3948. Suitability of client orders and recommendations** (1) Each Dealer Member must supervise compliance by each registered representative with his or her responsibilities for suitability of client orders and recommendations to clients under section 3402.
Rules 1300.6, 2500VII.B and 2500VII.C	**3949. Supervision for Discretionary Accounts** (1) A Supervisor conducting discretionary account reviews must: (i) review all discretionary accounts handled by registered representatives, branch supervisors, directors and executives; and (ii) have adequate "know-your-client" information readily available for each discretionary account. (2) The Supervisor conducting discretionary account reviews must review the financial performance of discretionary accounts approved under section 3402 at least monthly to determine if the person permitted to trade the account should continue to do so. (3) A Supervisor must review any discretionary order initiated for a discretionary client account by a registered representative prior to the order being entered unless: (i) the registered representative has been approved as a portfolio manager, or (ii) the registered representative is also an approved executive. (4) A Supervisor must review any discretionary order initiated for a discretionary client account by an approved executive no later than the day after the trade was made. (5) The requirements of this section are in addition to other Corporation requirements regarding account supervision, and may not be delegated.
Rules 1300.1(p), 1300.1(q), 2500V Intro., 2500V.A(3), 2500V.C, 2500V.D(1), 2500V.D(2), 2500V.D(3), 2500V.D(4), 2500V.D(5) and 2500V.D(7)	**3950. Responsibility of Designated Supervisors for retail Options Accounts** (1) The designated Supervisor is responsible for ensuring that policies and procedures are in place to confirm that all recommendations made for an account are and continue to be suitable for the client; and (2) The designated Supervisor must ensure that only options contract qualified persons trade in or advise on options contracts. (3) On a daily and monthly basis, the designated Supervisor must review all discretionary and managed options accounts. (4) The designated Supervisor is responsible for establishing procedures to notify clients of: (i) approaching expiry dates; (ii) significant changes in options contracts resulting from changes in the underlying security; (iii) any changes in the Dealer Member's business policy; and

Repealed current rule	Proposed plain language rule
	(iv) any new developments in trading and regulation of options contracts that may impact clients. (5) The designated Supervisor must approve the solicitation of clients to use options contract programs.
Rules 2500V.B and 2500V.C	**3951. Supervision of retail Options Account trading activity** (1) The Dealer Member's supervisory procedures must include reviews of option trading activity to detect the following: (i) exceeding position or exercise limits; and (ii) exposure of uncovered positions. (2) Accounts must be selected for reviews using criteria reasonably designed to detect improper trading activity.
Rule 2500VI.A(2), 2500VI.A(4), 2500VI.A(5), 2500VI.C(1), 2500VI.C(2), 2500VI.C(3), 2500VI.C(4) 2500VI.C(5), and 2500VI.C(7)	**3952. Responsibility of Designated Supervisors for Retail Futures and Futures Options Accounts** (1) The designated Supervisor is responsible for: (i) reviewing and approving client loss limits when they are set annually, taking into consideration previous losses; and (ii) ensuring that all recommendations made for an account are and continue to be suitable for the client; (2) The designated Supervisor must ensure that only qualified persons trade in or advise on futures contracts or futures contract options. (3) On a daily and monthly basis, the designated Supervisor must review all discretionary and managed futures and futures options accounts. (4) The designated Supervisor must establish procedures to ensure that positions with pending delivery months are handled properly. (5) The designated Supervisor must establish procedures to notify clients of: (i) any changes in the Dealer Member's business policy; and (ii) new developments in trading and regulation of futures and futures options that may impact clients. (6) The designated Supervisor must approve the solicitation of clients to use futures programs.
Rule 2500VI.B	**3953. Supervision of retail Futures and Futures Options trading activity** (1) The Dealer Member must review all futures and futures options trading to detect the following: (i) excessive day trading resulting in trading large numbers of contracts; (ii) trading while under margin; (iii) trading beyond margin or credit limits; (iv) cumulative losses exceeding risk limits;

Repealed current rule	Proposed plain language rule
	(v) position and exercise limits; (vi) speculative trading in hedge accounts; and (vii) exposure to delivery through holding contracts into delivery month. **3954. – 3959. – Reserved** **PART D - SUPERVISION OF INSTITUTIONAL ACCOUNTS**
Rules 2700IV.A and 2700IV.B	**3960. Supervisory policies and procedures for Institutional Accounts** (1) Each Dealer Member that offers institutional accounts must implement policies and procedures as required for the supervision and review of trading activity in institutional clients' accounts. These procedures must outline the action to be taken to deal with problems or issues identified from the review. (2) In addition to meeting the Dealer Member's general supervisory obligations and any relevant obligations relating to trading in debt securities, options, futures and futures options, the policies and procedures on the supervision of institutional accounts must be designed to detect improper account activity including: (i) manipulative or deceptive methods of trading; (ii) trading in securities on the Dealer Member's restricted list; (iii) employee or proprietary account frontrunning; (iv) trading in securities that have restrictions on their transfer.
Rule 1300.1(p)	**3961. Suitability of client orders and recommendations** (1) Each Dealer Member must supervise compliance by each registered representative with his or her responsibilities for suitability of client orders and recommendations to clients under Rule 3400. **3962. – 3969. – Reserved** **PART E - SUPERVISION OF MANAGED ACCOUNTS**
Rules 1300.15 Intro, 1300.15(a), 1300.15(b) and 1300.15(c)	**3970. Supervision of Managed Accounts** (1) Each Dealer Member that has managed accounts or futures contracts managed accounts must: (i) designate one or more directors or executives as specifically responsible for the supervision of managed accounts; and (ii) establish and maintain specific written policies and procedures to supervise the persons responsible for handling managed accounts and to ensure compliance with Corporation requirements. (2) In addition to meeting the Dealer Member's general supervisory obligations and any relevant obligations relating to trading in debt securities, options, futures and futures options, the Dealer Member's policies and procedures on the supervision of managed accounts must be designed to: (i) identify when a responsible person has contravened section 3283; and

Repealed current rule	Proposed plain language rule
	(ii) ensure fairness in the allocation of investment opportunities among its managed accounts. (3) The Dealer Member's policies and procedures on the supervision of managed accounts must provide for the direct supervision of any Registered Representative that provides 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. Such supervision must be conducted 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 (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.
Rule 1300.15(e)	**3971. Managed Account Committee** (1) Each Dealer Member that has managed accounts or futures contracts managed accounts must establish a managed account committee that includes at least one person responsible for the supervision of managed accounts. The committee must, at least annually: (i) review the Dealer Member's policies and procedures on the supervision of managed accounts; and (ii) recommend to senior management appropriate actions necessary to achieve compliance with Part E of Rule 3200.
Rule 1300.15(d)	**3972. Managed Account review** (1) The person designated under clause 3970(1)(i) must review each managed account quarterly to ensure that: (i) the client's investment objectives are being pursued; and (ii) the handling of the managed account complies with Corporation requirements. (2) If the investment decisions for a managed account are made centrally and apply to a number of managed accounts, the quarterly review may be done at an aggregate level, subject to minor variations to allow for client-directed investment restrictions and the timing of client cash flows into the managed account. **3973. - 3979. – Reserved** **PART F - SUPERVISION OF EXECUTION ONLY SERVICES**
Rule 3200A(2)(a)	**3980. Supervision by Order Execution Only service providers** (1) Each Dealer Member that is approved by the Corporation to provide order execution only services must have written policies and procedures in place to meet the Dealer Member's general supervisory obligations and any relevant obligations relating to trading in debt securities, options, futures and futures

Repealed current rule	Proposed plain language rule
	options, provided that such Dealer Member is not required to review for suitability of trading.
Rule 3200B(4)(a), 3200B(4)(b), 3200B(5)(a), 3200B(5)(f) and 3200 Appendix A(3)	**3981. Supervision of Execution Only trades in advisory accounts** (1) Each Dealer Member that operates an order execution only service in advisory accounts must comply with the supervision requirements in this section. (2) The Dealer Member's review of accounts must include an assessment of whether the overall composition of a client's account that contains positions resulting from non-recommended trades conforms to the documented objectives and risk tolerances. If it does not do so, the Dealer Member's procedures must specify the steps to be taken to address the disparity. (3) The Dealer Member's systems and records must record whether an order is recommended or non-recommended. (4) If a client can enter orders electronically, the order entry system must require the client to indicate whether the trade is recommended or non-recommended, with the default marking being "recommended". (5) The Dealer Member must have written procedures to supervise the marking of orders as recommended or non-recommended. (6) The Dealer Member must be able to generate reports enabling supervisors to determine the accuracy of marking orders as recommended or non-recommended. (7) The Dealer Member's system must select accounts for review under its policies and procedures without regard to whether an order is marked recommended or non-recommended. **3982. – 3999. – Reserved**

ATTACHMENT B

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

TEXT OF RELEVANT PROVISIONS OF EXISTING IIROC DEALER MEMBER RULES 17, 18, 29, 38, 200, 1300, 1800, 1900, 2400, 2500, 2600, 2700,3100 AND 3200

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RULE 17

DEALER MEMBER MINIMUM CAPITAL, CONDUCT OF BUSINESS AND INSURANCE

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17.13. Each Dealer Member shall from time to time furnish to an officer of the Corporation such statistical information with respect to such Dealer Member's business as, in the opinion of the Board of Directors, may be necessary in the interests of all the Dealer Members of the Corporation provided that no request for such information shall be made of any Dealer Member unless approved by the Board of Directors.

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RULE 18

REGISTERED REPRESENTATIVES AND INVESTMENT REPRESENTATIVES

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18.6. (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 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.

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RULE 29

BUSINESS CONDUCT

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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.

29.2. 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, 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 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 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.

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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 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 one or more Supervisors specifically designated to approve 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 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 in respect of the Dealer Member or an affiliated corporation of either of them.

(2) Approval of Trade Name

No 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 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 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.

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 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 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.

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29.13. Premarketing

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(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, 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.

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RULE 38

COMPLIANCE AND SUPERVISION

38.1 A Dealer Member must establish and maintain a system to supervise the activities of each partner, 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, 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, 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 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 Supervisors, the scope of their responsibility and the dates for which such responsibility and authority is or

was in effect. 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

(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.

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38.4

(a) A Supervisor must fully and properly supervise 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.

(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 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.

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38.5 Ultimate Designated Person

(a) A Dealer Member must designate an individual who is approved under the Corporation's rules in the category of Ultimate Designated Person and who shall be responsible to the Corporation for the conduct of the firm and the supervision of its employees and to perform the functions described in paragraph (c).

(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.

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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.

(f) Notwithstanding subsection (a), a Dealer Member may, with the Corporation's approval, designate an Officer as Acting Chief Compliance Officer if the Chief Compliance Officer terminates his or her employment with the Dealer Member and the Dealer Member is unable to immediately designate another qualified person as Chief Compliance Officer provided that, within 90 days of the termination of the previous Chief Compliance Officer:

(i) the Acting Chief Compliance Officer meets the requirement of subsection (e) and is designated by the Corporation as Chief Compliance Officer; or

(ii) another qualified person is designated Chief Compliance Officer by the Dealer Member and is approved by the Corporation.

(g) The Corporation may grant to a Dealer Member an exemption from 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.

(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.

38.8 The board of directors (or equivalent) of the Dealer Member must review the report of the Chief Compliance Officer and determine what actions are necessary 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.

38.9 A Dealer Member must file with the 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 subsection (a).

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RULE 200

MINIMUM RECORDS

200.1. As required under Rule 17.2 every Dealer Member shall make and keep current books and records necessary to record properly its business transactions and financial charts including, without limitation:

(a) Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all trades in commodity futures contracts and commodity futures contract options, all receipts and disbursements of cash and all other debits and credits. Such records shall show the account for which each such transaction was effected, the trade dates and

In the case of trades in securities,

(1) The name, class and designation of securities,

(2) The number, value or amount of securities and the unit and aggregate purchase or sale price (if any), and

(3) The name or other designation of the person from whom the securities were purchased or received or to whom they were sold or delivered;

In the case of trades in commodity futures contracts,

(4) The commodity and quantity bought or sold,

(5) The delivery month and year,

(6) The price at which the contract was entered into,

(7) The commodity futures exchange, and

(8) The name of the dealer if any, used by the Dealer Member as its agent to effect the trade; and

In the case of trades in commodity futures contract options,

(9) The type and number,

(10) The premium,

(11) The commodity futures contract that is the subject of the commodity futures contract option,

(12) The delivery month and year of the commodity futures contract that is the subject of the commodity futures option,

(13) The declaration date,

(14) The striking price,

(15) The commodity futures exchange, and

(16) The name of the dealer, if any, used by the Dealer Member as its agent to effect the trade;

(b) A general ledger (or other records) maintained in detail reflecting all assets and liabilities, income and expense and capital accounts;

(c) Ledger accounts (or other records) itemizing separately as to each cash and margin account of every customer, all purchases, sales, receipts, deliveries and other trades of securities, commodity futures contracts and commodity futures contract options for such account and all other debits and credits to such account, and with respect to all securities and property received to margin, guarantee or secure the trades or contracts of customers,

(1) A description of the securities or property received,

(2) The date when received,

(3) The identity of any deposit institution where such securities or property are segregated,

(4) The dates of deposit and withdrawal from such institutions, and

(5) The date of return of such securities or property to the customer or other disposition thereof, together with the facts and circumstances of such other disposition,

And with respect to any investments of such money, proceeds or funds segregated for the benefit of the customers,

(6) The date of which such investments were made,

(7) The identity of the person or company through or from whom such securities were purchased,

(8) The amount invested,

(9) A description of the securities invested in,

(10) The identity of the deposit institution, other dealer or dealer registered under any applicable securities legislation where such securities are deposited,

(11) The date of liquidation or other disposition and the money received on such disposition, and

(12) The identity of the person or company to or through whom such securities were disposed;

In addition, statements must be sent to customers on at least the following basis: monthly for all customers in whose account there was an unexpired and unexercised commodity futures contract option, open commodity futures contract, or exchange contract at the month end; monthly for all customers who have affected a transaction, or the Dealer Member has modified the balance of securities or cash in the customer's account, unless the entries refer to dividends or interest; quarterly for all customers having any debit or credit balance or securities held (including securities held in safekeeping or in segregation) at the end of the quarter. Such monthly statements shall set forth at least in the case of customers with any unexpired and unexercised commodity futures contract option, open commodity futures contract, or exchange contract,

(1) The opening cash balance for the month in the customer's account,

(2) All deposits, credits, withdrawals and debits to the customer's account,

(3) The cash balance in the customer's account,

(4) Each unexpired and unexercised commodity futures contract option,

(5) The striking price of each unexpired and unexercised commodity futures contract option,

(6) Each open commodity futures contract,

(7) The price at which each open commodity futures contract was entered into.

In addition, a Dealer Member which has acted as an agent in connection with a liquidating trade in a commodity futures contract shall promptly send to customers a statement of purchase and sale setting forth at least:

(1) The dates of the initial transaction and liquidating trade,

(2) The commodity and quantity bought and sold,

(3) The commodity futures exchange upon which the contracts were traded,

(4) The delivery month and year,

(5) The prices on the initial transaction and on the liquidating trade,

(6) The gross profit or loss on the transactions,

(7) The commission, and

(8) The net profit or loss on the transactions.

Each such statement shall, in respect of transactions involving securities of the Dealer Member or a related issuer of the Dealer Member, or in the course of a distribution to the public, securities of a connected issuer of the Dealer Member, state that the securities are securities of the Dealer Member, a related issuer of the Dealer Member or a connected issuer of the Dealer Member, as the case may be. For the purposes of this paragraph, the terms "related issuer" and "connected issuer" shall have the same meaning as ascribed to them in the Regulation made under the *Securities Act* (Ontario).

(d) Ledgers (or other records) reflecting the following:

(1) Securities in transfer;

(2) Dividends and interest received;

(3) Securities borrowed and securities loaned;

(4) Monies borrowed and monies loaned (together with a record of the collateral therefor and any substitutions in such collateral);

(5) Securities failed to receive and failed to deliver;

(6) Money, securities and property received to margin, guarantee or secure the trades or contracts of customers, and all funds accruing to customers, which must be segregated for the benefit of customers under any applicable legislation;

(e) A securities record or ledger reflecting separately for each security as of the trade or settlement dates all long and short positions (including securities in safekeeping) carried for the Dealer Member's account or for the account of customers, showing the location of all securities long and the offsetting position to all securities short and in all cases the name or designation of the account in which each position is carried;

(f) A commodity record or ledger showing separately for each commodity as of the trade date all long positions or short positions in commodity futures contracts carried for the Dealer Member's account or for the account of customers and, in all cases, the name or designation of the account in which each position is carried;

(g) An adequate record of each order, and of any other instruction, given or received for the purchase or sale of securities or with respect to a trade in a commodity futures contract or a commodity futures contract option, whether executed or unexecuted, showing:

(1) The terms and conditions of the order or instruction and of any modification or cancellation thereof,

(2) The account to which the order or instruction relates,

(3) The time of entry of the order or instruction and, where the order is entered pursuant to the exercise of discretionary power of a Dealer Member, a statement to that effect,

(4) Where the order relates to an omnibus account, the component accounts within the omnibus account on whose behalf the order is to be executed, and the allocation among the component accounts intended on execution,

(5) Where the order or instruction is placed by an individual other than,

A. The person in whose name the account is operated, or

B. An individual duly authorized to place orders or instructions on behalf of a customer that is a company,

The name, sales number or designation of the individual placing the order or instruction,

(6) To the extent feasible, the time of execution or cancellation,

(7) The price at which the order or instruction was executed, and

(8) The time of report of execution;

(h) Copies of confirmations of all purchases and sales of securities and of all trades in commodity futures contracts and commodity futures contract options and copies of notices of all other debits and credits of money, securities, property, proceeds of loans and other items for the account of customers. Such written confirmations are required to be sent promptly to customers and shall set forth at least the day and the stock exchange or commodity futures exchange upon which the trade took place; the commission, if any, charged in respect of the trade; the fee or other charge, if any, levied by any securities regulatory authority in connection with the trade; the name of the salesman, if any, in the transaction; the name of the dealer, if any, used by the Dealer Member as its agent to effect the trade; and,

In the case of a trade in securities:

(1) The quantity and description of the security,

(2) The consideration,

(3) Whether or not the person or company registered for trading acted as principal or agent,

(4) If acting as agent in a trade upon a stock exchange the name of the person or company from or to or through whom the security was bought or sold,

In the case of trades in commodity futures contracts:

(5) The commodity and quantity bought or sold,

(6) The price at which the contract was entered into,

(7) The delivery month and year,

In the case of trades in commodity futures contract options:

(8) The type and number of commodity futures contract options,

(9) The premium,

(10) The delivery month and year of the commodity futures contract that is the subject of the commodity futures contract option,

(11) The declaration date,

(12) The striking price;

And in the case of trades in mortgage-backed securities and subject to the proviso below:

(13) The original principal amount of the trade,

(14) The description of the security (including interest rate and maturity date),

(15) The remaining principal amount (RPA) factor,

(16) The purchase/sale price per $100 of original principal amount,

(17) The accrued interest,

(18) The total settlement amount,

(19) The settlement date,

Provided that in the case of trades entered into from the third clearing day before month end to the fourth clearing day of the following month, inclusive, a preliminary confirmation shall be issued showing the trade date and the information in clauses (13), (14), (16) and (19) and indicating that the information in clauses (15), (17) and (18) cannot yet be determined and that a final confirmation will be issued as soon as such information is available. After the remaining principal amount factor for the security is available from the central payor and transfer agent, a final confirmation shall be issued including all of the information required above;

And in the case of stripped coupons and residual debt instruments:

(20) The yield thereon calculated on a semi-annual basis in a manner consistent with the yield calculation for the debt instrument which has been stripped,

(21) The yield thereon calculated on an annual basis in a manner consistent with the yield calculation for other debt securities which are commonly regarded as being competitive in the market with such coupons or residuals such as guaranteed investment certificates, bank deposit receipts and other indebtedness for which the term and interest rate is fixed.

Each such confirmation shall, in respect of transactions involving securities of the Dealer Member or a related issuer of the Dealer Member, or in the course of a distribution to the public, securities of a connected issuer of the Dealer Member, state that the securities are securities of the Dealer Member, a related issuer of the Dealer Member or a connected issuer of the Dealer Member, as the case may be. For the purposes of this paragraph, the terms "related issuer" and "connected issuer" shall have the same meaning as ascribed to them in the Regulation made under the *Securities Act* (Ontario).

In the case of a Dealer Member controlled by or affiliated with a financial institution, the relationship between the Dealer Member and the financial institution shall be disclosed on each confirmation slip in connection with a trade in securities of a mutual fund sponsored by the financial institution or a corporation controlled by or affiliated with the financial institution.

The Corporation’s policies with respect to electronic delivery of documents are set out in the applicable guideline.

Notwithstanding the provisions of this Rule 200.1(h), a Dealer Member shall not be required to provide a confirmation to a client in respect of a trade in a managed account, provided that:

(i) Prior to the trade, the client has consented in writing to waive the trade confirmation requirement;

(ii) The client may terminate a waiver by notice in writing. The termination notice shall be effective upon receipt of the written notice by the Dealer Member, for trades following the date of receipt;

(iii) The provision of a confirmation is not required under any applicable securities law, regulation or policy of the jurisdiction in which the client resides or the Dealer Member has obtained an exemption from any such law, regulation or policy by the responsible securities regulatory authority; and

(iv)

(a) where a person other than the Dealer Member manages the account

(A) a trade confirmation has been sent to the manager of the account, and

(B) the Dealer Member complies with the requirements of Rule 200.1(c); or

(b) where the Dealer Member manages the account:

(A) the account is not charged any commissions or fees based on the volume or value of transactions in the account;

(B) the Dealer Member sends to the client a monthly statement that is in compliance with Rule 200.1(c) and contains all of the information required to be contained in a confirmation under this Rule 200.1(h) except:

(1) the day and the stock exchange or commodity futures exchange upon which the trade took place;

(2) the fee or other charge, if any, levied by any securities regulatory authority in connection with the trade;

(3) the name of the salesman, if any, in the transaction;

(4) the name of the dealer, if any, used by the Dealer Member as its agent to effect the trade; and,

(5) if acting as agent in a trade upon a stock exchange the name of the person or company from or to or through whom the security was bought or sold,

(C) the Dealer Member maintains the information not required to be in the monthly statement pursuant to paragraph (B) and discloses to the client on the monthly statement that such information will be provided to the client on request.

(i) A record in respect of each cash and margin account:

(1) The name and address of the beneficial owner (and guarantor, if any) of such account,

(2) In the case of a margin account a properly executed margin agreement containing the signature of such owner (and guarantor, if any), and

(3) Where trading instructions are accepted from a person or corporation other than the customer, written authorization or ratification from the customer naming the person or company,

But, in the case of a joint account or an account of a corporation, such records are required only in respect of the person or persons authorized to transact business for such account;

(j) A record of all puts, calls, spreads, straddles and other options in which the Dealer Member has any direct or indirect interest or which the Dealer Member has granted or guaranteed, containing at least an identification of the security and the number of units involved;

(k) A record of the proof of money balances of all ledger accounts in the form of trial balances and a record of the computation of risk adjusted capital. Such trial balances and computations shall be prepared currently at least once a month;

(l) A record of all margin calls whether such calls are made in writing, by telephone or other means of communication;

(m) a record of the proof of money balances of all ledger accounts in the form of trial balances and record of a reasonable calculation of minimum risk adjusted capital prepared for each month within a reasonable time after each month end; and

(n) A record of all communications required or made in respect of account transfers pursuant to Rule 2300.

Guide to interpretation of Rule 200.1

Rule 200.1 specifies the various items of information which must be reflected on the firm's books as required by the applicable provincial securities legislation. The Rule does not require the various books and records to be kept in any prescribed form. It is expected, however, that the means of recording the information will be complemented by appropriate internal controls to guard against the risk of falsification and will make available clear and accurate information to the Corporation within a reasonable length of time.

(a) "Blotters"

This term was historically used to describe a dealer's or broker's books of original entry of daily transactions as principals or on behalf of customers. Larger firms now maintain separate data files and daily reports to record each type of transaction such as purchases versus sales, unlisted securities, bonds, cash receipts, cash disbursements and stock record journals.

Blotters generally should record on purchases and sales the party on the other side, security description, quantity, price, accrued interest, commission, settlement amount, trade date, settlement date and the account for which the transaction was done.

(b) "General Ledger"

The general ledger is the primary financial record of the company in which all assets, liabilities, capital, income and expense accounts are summarized. The general ledger is the basis for preparing financial statements and regulatory reports as required by the self-regulatory organizations. Entries made to the general ledger are derived from the various blotters and sub ledgers referred to in section (a) of Rule 200.1.

(c) "Cash, Margin and Firm Accounts"

Accounts must show all trades, settlement dates, cash disbursements and receipts and deliveries or receipts of securities or commodities. This section requires that customer account sub ledgers be kept for each customer cash and margin account and firm inventory account. Monthly statements must be produced for each active account showing a date column, quantity of securities bought or sold, security description and cash debits or credits.

In addition, statements must show the dollar balance carried forward from the previous statement; all entries shown in the account since the previous statement date; and the final dollar balance and the security position as of the statement date. The statements must also indicate the items included in the final security position which are held in safekeeping.

For purposes of Rule 200.1 only, the definition of "customer" includes the investing public, financial institutions, other investment dealers and stock brokers, affiliates and partners, shareholders, directors, officers and employees of a Dealer Member firm and its affiliates.

Dealer Members not depositing customers' free credit balances in a trust bank account should refer to Rule 1200.1 for details of the special notation that must be affixed to all statements sent to customers.

(d) "Secondary or Subsidiary Records"

These records are made up from the blotters or other records of original entry. A brief description of such subsidiary records follows:

(i) "Securities in Transfer"

The purpose of this item of Rule 200.1 is to require the keeping of a record showing all securities "sent to and held by transfer agents". This record usually shows the number of shares or the par value, name of security, name in which it was registered, new name, date sent out to transfer, old certificate number, date received back from transfer, new certificate numbers and date on new certificate.

(ii) "Dividends and Interest Received"

For the purpose of this item of Rule 200.1 it is necessary that a record be maintained by the firm with respect to interest or dividends paid on bonds or stocks, held by the Dealer Member for the customers but registered in some name other than that of the customer. The general practice, which would represent compliance with the rule, is to record on a ledger the security, the record date, the ex-dividend date, the payable date and the entitlement rate. The information is then recorded on the dividend sub ledger. All customers who are "long" are credited with their share of the funds received by the firm on account of the dividend or interest. All customers who are "short" on the dividend record date or the interest payable date are charged with the amount payable on their short position. All bearer securities in the firm's possession or in hypothecation on the record or interest date must be examined to determine against whom the firm must claim for payment.

(iii) "Securities Borrowed and Securities Loaned"

In borrowing securities or in lending securities to other dealers or brokers, it is necessary to enter such transactions in borrowed or loaned accounts set up for each customer. The securities borrowed or loaned account records the date borrowed or date loaned, name of firm from whom borrowed or to whom loaned, quantity, name of security, certificate numbers and the date returned. In some cases, these records also provide an additional column showing the interest rate or premium on stock borrowed or loaned and any collateral provided or received.

(iv) "Monies Borrowed and Monies Loaned, Etc."

A record must be kept of all borrowings. This record should show the name of the customer, the date, the interest rate, the amount of the loan, terms of the loan, and the date when the loan is made and when repaid. The number of shares, or principal amount in the case of bonds, name of the security, and certificate numbers of securities pledged as collateral must be recorded.

(v) "Securities Failed to Receive or Deliver"

These are subsidiary records and are based on information contained on the blotters or other records of original entry. Upon learning that a dealer or broker will fail to deliver on the settlement day, either under the agreement between the buyer and the seller or under clearing house rules, this item requires that records must be kept which show the "fail date" (i.e. the date on which delivery was due but not made), name of security, purchase price, broker or dealer from whom delivery is due, and date received. Conversely, when the firm fails to deliver, it must record the date on which delivery was due, number of shares or principal amount of bonds), name of security, to whom sold, sales price and date on which delivery is made. The total dollar amount of open items on the "fail to receive" and "fail to deliver" records should agree with the "fail to receive" and "fail to deliver" accounts in the firm's general ledger kept pursuant to section (b) of Rule 200.1.

(e) & (f) "Securities and Commodity Record or Ledger"

These sections require that the securities and commodity record be posted currently to show all positions no later than the settlement date. The record may, of course, be posted on the "trade" or execution date or any other date prior to the settlement date. Dealer Members may keep separate "securities and commodity records" or "position records" as they are often called, for equities, debt, options and for commodities. The record should show the name of the security, the customers' and other accounts which are "long" and "short" that security, the daily changes in their position, the location of each security, and the total of the long or short position for the account of customers and the firm and partners. This record should be reviewed frequently to ensure it is "in balance" (i.e. for each security or commodity the total long positions should equal the total short positions).

(g) "Memoranda of Orders"

In this section the term "instruction" shall be deemed to include instructions between partners or directors and employees of a Dealer Member. The term "time of entry" is specified to mean the time when the Dealer Member transmits the order or instruction for execution, or if it is not so transmitted, the time when it is received.

(h) "Confirmations"

The provincial securities commissions require that every person or company registered for trading in securities who has acted as principal or agent in connection with any trade in a security shall promptly send or deliver to the customer a written confirmation of the transaction, setting forth the details required in this section of Rule 200.1. A person or company or a salesperson may be identified in a written confirmation by means of a code or symbols if the written confirmation also contains a statement that the name of the person, company or salesperson will be furnished to the customer on request.

(i) "Records of Cash and Margin Accounts"

A margin agreement between a Dealer Member and a customer shall define at least the following:

(i) The 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;

(ii) The obligation of the customer in respect of the payment of interest on debit balances in his or her account;

(iii) The rights of the Dealer Member in respect of raising money on and pledging securities and other assets held in the customer's account;

(iv) The extent of the right of the Dealer Member to make use of free credit balances in the customer's account;

(v) The rights of the Dealer Member in respect of the realization of securities and other assets held in the customer's account and in respect of purchases to cover short sales, and whether any prior notice is required, and if notice be required, the nature and extent of it and the obligations of the customer in respect of any deficiency;

(vi) The extent of the right of the Dealer Member to utilize a security in the customer's account for the purpose of making a delivery on account of a short sale;

(vii) The extent of the right of the Dealer Member to use a security in the customer's account for delivery on a sale by the Dealer Member for his or her or its own account or for any account in which the Dealer Member, any partner therein or any director thereof, is directly or indirectly interested;

(viii) 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; and

(ix) That all transactions entered into on behalf of the customer shall be subject to the Rules of the Investment Industry Regulatory Organization of Canada and/or any securities exchange if executed thereon.

(j) "Puts, Calls, and Other Options"

Such a record may be kept in any suitable form which shows the date, details regarding the option, name of security, number of shares, and the expiration date; letters pertaining to such options, including those received from and addressed to customers, should be kept together with the record.

(k) & (m) "Monthly Trial Balances and Capital Computations"

Such trial balances and computations will serve as a check upon the current status and accuracy of the ledger accounts which Dealer Members are required to maintain and keep current and will also help to keep Dealer Members currently informed of their capital positions as required under Rule 17.1.

A Dealer Member must keep currently informed as to the excess capital position and make a computation as often as necessary to ensure that there is adequate capital at all times; but Dealer Members must preserve only the monthly computation mentioned above. On the other hand, Dealer Members whose capital position is substantially in excess of

that required, may omit detailed schedules and analyses in support of the computation if they apply a more stringent application of the Rule governing the computation.

For example, when calculating risk adjusted capital, inventories can be grouped into broader margin categories and maximum margin rates applied; offsetting provisions such as those contained in Rule 100.4 can be ignored; and assets partly allowable or of questionable value can be excluded in their entirety.

When a Dealer Member cannot prove that adequate capital exists, the firm must notify the Corporation immediately.

(n) "Account Transfers"

Documentation required pursuant to Rule 2300 in respect of customer account transfers is expected to be by means of electronic communication. In order to protect Dealer Members and customers on account transfers and to ensure that such transfers are effected expeditiously, Dealer Members must ensure that copies of all communications sent or received in respect of account transfers are maintained in an accurate, secure and readily accessible format. .

RULE 1300

SUPERVISION OF ACCOUNTS

1300.1.

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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, 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).

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1300.2.

(a) A Dealer Member must designate a Supervisor to be responsible for the opening of new accounts and for 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. As part of this supervision each new account must be opened pursuant to a new account form which includes the applicable information required by Form No. 2 for Retail Customer accounts, Institutional Customer accounts and for accounts exempt from suitability reviews.

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1300.6.

In addition to any other account supervision requirements under the Rules, the Designated Supervisor must review at least monthly the financial performance of each discretionary account other than a managed account, including a review to determine whether any person permitted to effect discretionary trades for the account should continue to do so. The Designated Supervisor may not delegate the conduct of the review to any other person.

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1300.15.

A Dealer Member that has managed accounts or futures contracts managed accounts 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. The system must be reasonably designed to achieve compliance with the Rules and Forms of the Corporation. A Dealer Member firm's supervisory system 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 Supervisors specifically responsible for the supervision of managed accounts.

(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

(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 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.

(e) the establishment of a 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 for managed accounts and recommend to senior management any action necessary to achieve the Dealer Member's compliance with applicable securities legislation and with the Rules and Forms of the Corporation.

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RULE 1800

COMMODITY FUTURES CONTRACTS AND OPTIONS

1800.2.

(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.

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(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.

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(e) 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.

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RULE 1900

OPTIONS

1900.2.

(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, 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;

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(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;

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RULE 2400

RELATIONSHIPS BETWEEN DEALER MEMBERS AND FINANCIAL SERVICES ENTITIES:

SHARING OF OFFICE PREMISES

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Minimum Standards for Shared Premises

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7. Supervision

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(b) Adequate resources and appropriate systems – The Dealer Member must have written procedures and systems in place for the supervision of shared office premises reasonably designed to ensure that representatives adhere to the provisions contained in this Rule in order that clients are not confused as to with which entity they are dealing. The Dealer Member must have sufficient supervisory resources allocated at head office and at the shared office premises to effectively implement supervisory procedures required under this Rule. The Dealer Member must have a program for communicating the provisions in this Rule to the representatives at the shared office premises and ensuring that the provisions are understood and implemented.

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RULE 2500

MINIMUM STANDARDS FOR RETAIL CUSTOMER ACCOUNT SUPERVISION

Introduction

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(c) The compliance with the know-your-client rule and suitability of investment requirements is primarily the responsibility of the Registered Representative. The supervisory standards in this Rule relating to know-your-client and suitability are intended to provide Supervisors with guidelines on how to monitor the handling of these responsibilities by the 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 fosters the business objectives of the Dealer Member and enables the Dealer Member to meet regulatory 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 business conduct.

A. Establishing Procedures

1. A Dealer Member must:

   (a) appoint Supervisors and supervisory personnel who have the necessary knowledge of industry regulations and Dealer Member policy to properly perform their duties;

   (b) maintain written policies and procedures to document supervision requirements; and

   (c) supply written instructions to all Supervisors and alternates to advise them on what is expected of them.

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.

B. Maintaining Procedures

1. A Dealer Member must have a reasonable process to review the efficacy of its business conduct procedures and practices 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.

4. At a minimum, a Dealer Member must conduct enhanced supervision of trading by Approved Persons who have had a history of questionable conduct. 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.

D. Delegation

1. Supervisors may delegate tasks but not responsibility.

2. A Dealer Member must advise Supervisors of those specific functions that cannot be delegated.

3. The 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.

E. Education

1. A Dealer Member must provide all sales and supervisory personnel 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 read and understood the policies and procedures relevant to their responsibilities.

2. A Dealer Member must provide introductory and continuing education to all Approved Persons on the Dealer Member's policies and procedures and any relevant changes to them.

3. A Dealer Member must communicate information contained in compliance-related bulletins from the Corporation and other SROs and Regulatory Organizations to all sales and other 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.

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 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 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.

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III. Account Supervision Generally

Introduction

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:

- 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 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 ;
- undisclosed short sales;
- manipulative or deceptive trading;
- insider trading.

B. First-Tier Monthly Reviews

1. A first-tier monthly review should encompass the areas of concern as described in subsection IV.A for daily activity reviews.

2. It may not be possible to review each statement produced. 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. 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 unless precluded by unusual circumstances.

C. Second-Tier Daily Reviews

1. Daily reviews 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 Supervisor;

- all client accounts not reviewed by a 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 no later than the business day following the activity unless precluded by unusual circumstances.

D. Second-Tier Monthly Reviews

1. 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:

   - accounts of customers charged more than $3,000 in commission during the month;
   - accounts of, all customers and non-clients charged more than $1,500 in commission during the month that were not subject to a first level review by the normal first level Supervisor, including the customer accounts of producing first-tier Supervisors.

2. Monthly reviews should be completed within 21 business days of the period covered 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

A Dealer Member dealing in options or Exchange traded commodity or index warrants must 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 customer and in keeping with his or her investment objectives. In addition, 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 Designated Options Supervisor in his or her absence. All supervisory procedures regarding options must be conducted by options qualified Supervisors.

A. Account Opening and Approval

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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 any trading restrictions imposed. The Supervisor must ensure that the Registered Representative handling the account is aware of any restrictions.

B. Activity Reviews

1. A Dealer Member's supervisory procedures must include reviews of option 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;

   - Daily second-tier review of opening option trading activity in excess of ten contracts in any one account.

C. Monthly Reviews

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. Procedures to ensure clients are notified of impending expiry dates.

3. Procedures to ensure the dissemination of information on new developments in the trading and regulation of options in a prudent and appropriate manner; and the dissemination to all clients of any changes in a firm's business policy.

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

A Dealer Member dealing in futures 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. 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 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

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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.

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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. 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

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 without approval of the account;
- trading beyond margin or credit limits;
- cumulative losses exceeding risk limits;
- unsuitable trading;
- inappropriate trading strategies;
- position and exercise limits;
- front running;
- conflicts of interest;
- excessive commission activity;
- speculative trading in hedge accounts;
- exposure to delivery through holding contracts into delivery month;
- excessive risk or loss to account guarantors.

C. Other Futures Policies and Procedures

A Dealer Member's policies and procedures must include where applicable:

1. 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. 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.

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7. Procedures requiring the review and approval of the use and solicitation of clients to use futures programmes.

VII. Discretionary Account Supervision

Introduction

Simple discretionary accounts are accounts where the discretionary authority has not been solicited and which are designed to accommodate customers who are frequently or temporarily unavailable to authorize trades.

A Dealer Member must consent to accepting discretionary accounts and have the proper documentation and supervisory procedures in place to handle such accounts.

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B. Entry of Orders

1. 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.

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C. Account Supervision

1. 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.

VIII. Client Complaints

Each Dealer Member must establish policies and procedures to deal effectively with client complaints. Such policies and procedures must comply with Rule 2500B regarding client complaint handling, and also address complaints that may fall outside the scope of Rule 2500B. All complaints made in writing must be provided with a written response from Dealer Members.

RULE 2500B

CLIENT COMPLAINT HANDLING

1. Introduction

This rule establishes minimum requirements for the client complaint handling process including timely complaint resolution, record retention, and internal discipline. Clients who are considered to be institutional clients pursuant to Rule 2700 are not subject to this rule. There are additional requirements set out in Rule 3100 that are also applicable to the processes of handling client complaints.

2. General

A "complaint" subject to this rule must be submitted by a client or a person authorized to act on behalf of a client and includes:

- A recorded expression of dissatisfaction with a Dealer Member or employee or agent alleging misconduct; and
- A verbal expression of dissatisfaction with a Dealer Member or employee or agent alleging misconduct where a preliminary investigation indicates that the allegation may have merit.

Alleged misconduct includes, but is not limited to, allegations of breach of confidentiality, theft, fraud, misappropriation or misuse of funds or securities, forgery, unsuitable investments, misrepresentation, unauthorized trading relating to the client's account(s), other inappropriate financial dealings with clients and engaging in securities related activities outside of the Dealer Member.

Complaints are to be handled by sales supervisors or compliance staff (or the equivalent) and a copy must be filed with the compliance department / function (or the equivalent) of the Dealer Member.

A matter which is the subject of a civil claim or arbitration is not considered a "complaint" for the purposes of this rule.

3. Designated complaints officer

The Dealer Member must appoint an individual to act as the designated complaints officer. The individual must have the requisite experience and authority to oversee the complaint handling process and to act as a liaison with the Corporation.

4. Complaint procedures / standards

Establish written procedures for dealing with complaints

Dealer Members must have written policies and procedures to ensure that complaints are dealt with effectively, fairly and expeditiously. Such policies and procedures must address the following:

- the fair and thorough investigation of the complaint;
- the process by which an assessment is made regarding the merit of the complaint;
- where the complaint is determined to have merit, the process to be followed in determining what offer should be made to the client; and
- the remedial actions which may be appropriate to be taken within the firm.

Policies and procedures must not allow for complaints to be dismissed without due consideration of the facts of each case. There must be a balanced approach to dealing with complaints that objectively considers the interests of the complainant, the Dealer Member, the registered representative, employee or agent of the Dealer Member, and/or any other relevant parties. Each Dealer Member must ensure that registered representatives and their supervisors are made aware of all complaints filed by their clients.

Each Dealer Member must put procedures in place so that its senior management is made aware of complaints of serious alleged misconduct and of all legal actions.

Dealer Members must have policies and procedures in place to monitor the general nature of complaints. When a Dealer Member reasonably determines that the number and / or severity of complaints is significant, or when a Dealer Member detects frequent and repetitive complaints made with respect to the same matter which may on a cumulative basis indicate a serious problem, then internal procedures and practices must be reviewed, with recommendations to be submitted to the appropriate management level to remedy any such systemic or recurring matters.

Client access to complaint process

At time of account opening, Dealer Members must provide new clients with:

- a written summary of the Dealer Member's complaint handling procedures, which is clear and can be easily understood by clients; and
- a copy of a Corporation approved complaint handling process brochure.

On an ongoing basis, Dealer Members must make available to their clients (either on their website or by other means) a written summary of the Dealer Member's complaint handling procedures, so that clients can stay informed on how to submit a complaint.

Complaint acknowledgement letter

The Dealer Member must send an acknowledgement letter to the complainant within five (5) business days of receipt of a complaint.

The acknowledgement letter must include the following:

(a) The name, job title, and full contact information of the individual at the Dealer Member handling the complaint;

(b) A statement indicating that the client should contact the individual at the Dealer Member handling the complaint if he / she would like to inquire about the status of the complaint;

(c) An explanation of the Dealer Member's internal complaint handling process, including but not limited to the role of the designated complaints officer;

(d) A reference to an attached copy of a Corporation approved complaint handling process brochure and a reference to the statutes of limitations contained in the document;

(e) The ninety (90) calendar days timeline to provide a substantive response to complaints; and

(f) A request for any information reasonably required to investigate the complaint.

Complaint substantive response letter

The Dealer Member must send a substantive response letter to the complainant. The substantive response letter must be accompanied by a copy of a Corporation approved complaint handling process brochure.

Dealer Members must respond to client complaints as soon as possible and no later than ninety (90) calendar days from the date of receipt by the firm. The ninety (90) days timeline must include all internal processes (with the exception of any internal ombudsman processes offered by an affiliate of the firm) of the Dealer Member that are made available to the client. The client must be advised if he / she is not to receive a final response within the ninety (90) days time frame, including the reasons for the delay and the new estimated time of completion.

The Dealer Member is required to advise the Corporation if it is unable to meet the ninety (90) days timeline and must provide reasons for the delay.

The substantive response must be presented in a manner that is fair, clear and not misleading to the client, and must include the following information:

(a) A summary of the complaint;

(b) The results of the Dealer Member's investigation;

(c) The Dealer Member's final decision on the complaint, including an explanation; and

(d) A statement describing to the client the options available if the client is not satisfied with the Dealer Member's response, including:

(i) arbitration;

(ii) if a request is made within 180 days from the date of the Dealer Member's final response, the ombudsperson service (i.e. the Ombudsman for Banking Services and Investments);

(iii) submitting a regulatory complaint to the Corporation for an assessment of whether disciplinary action is warranted;

(iv) litigation / civil action; and

(v) other applicable options.

In addition, where an internal ombudsman process is offered by an affiliate of the Dealer Member, the Dealer Member must disclose in the substantive response letter:

(a) that the use of the internal ombudsman process is voluntary; and

(b) the estimated length of time the process is expected to take based on historical data..

Duty to assist in client complaint resolution

Approved Persons must co-operate with Dealer Members where they were employed or acted as agent when moving to a different firm after events or activities resulted in a client complaint.

Dealer Members must co-operate with each other if events relating to a complaint took place at more than one Dealer Member or the Approved Person is an employee or agent of another Dealer Member.

5. Settlement agreements

A release entered into between a Dealer Member and a client may not impose confidentiality or similar restrictions aimed at preventing a client from initiating a complaint to the securities regulatory authorities, self regulatory organizations or other enforcement authorities, or continuing with any pending complaint in progress, or participating in any further proceedings by such authorities.

6. Complaint record retention

The complaint file must be maintained for seven (7) years and retrievable within a reasonable period of time.

Each Dealer Member must keep an up-to-date record in a central, readily accessible place of all recorded submissions and follow-up documentation received by it relating to the conduct, business, and affairs of the Dealer Member, or an employee or agent of the Dealer Member for a period of two (2) years from the date of receipt of the complaint.

The following information must be retained for each complaint:

(a) The complainant's name;

(b) The date of the complaint;

(c) The nature of the complaint;

(d) The name of the individual who is the subject of the complaint;

(e) The security or services which are the subject of the complaint;

(f) The materials reviewed in the investigation;

(g) The name, title, and date individuals were interviewed for the investigation; and

(h) The date and conclusions of the decision rendered in connection with the complaint.

7. Internal Discipline

Each Dealer Member must establish procedures to ensure that breaches of the Rules of the Corporation as well as applicable securities legislation are subjected to appropriate internal disciplinary measures.

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RULE 2600

INTERNAL CONTROL POLICY STATEMENTS

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INTERNAL CONTROL POLICY STATEMENT 1

GENERAL MATTERS

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(v) Industry practice.

Determining whether internal control is adequate is a matter of judgement. However, internal control is not adequate if it does not reduce to a relatively low level the risk of failing to meet control objectives stated in this series of Policy Statements and, as a consequence, one or more of the following conditions has occurred or could reasonably be expected to do so:

(i) A Dealer Member is inhibited from promptly completing securities transactions or promptly discharging the Dealer Member's responsibilities to clients, to other brokers, or to the industry:

(ii) Material financial loss is suffered by the Dealer Member, clients or the industry;

(iii) Material misstatements occur in the Dealer Member's financial statements;

(iv) Violations of regulations occur to the extent that could reasonably be expected to result in the conditions described in (i) to (iii) above.

Other Policy Statements in this series set out control objectives, required and recommended firm policies and procedures and indications that internal control is not adequate. While recommended firm policies and procedures will be appropriate in many cases to meet the stated objectives, they constitute merely one of a number of methods which Dealer Members may utilize. It is recognized that Dealer Member firms may conduct their business in compliance with legal and regulatory requirements although they may employ procedures which differ from the recommended firm policies and procedures contained in the Policy Statements. The information is designed to provide guidance to Dealer Member firms in the preparation of procedures tailored to the specific needs of their individual environment in meeting the stated control objectives.

Dealer Members must maintain a detailed written record which as a minimum should include the specific policies and procedures approved by senior management to comply with these Internal Control Policy Statements. These policies and procedures must be reviewed and approved in writing by senior management at least annually, or more frequently as the situation arises, for their adequacy and suitability. One method of documentation is to note on a copy of this Statement the recommended policies and procedures which have been selected, and details of their performance such as who performs them, when, and how performance is evidenced. Other forms of documentation, such as procedures manuals, flow charts and narrative descriptions are recommended.

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RULE 2700

MINIMUM STANDARDS FOR INSTITUTIONAL CUSTOMER ACCOUNT OPENING, OPERATION AND SUPERVISION

Introduction

This Rule covers the opening, operation and supervision of 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 Customer accounts.

Pursuant to Rule 38, the Dealer Member must provide adequate resources and qualified 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 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 other than an Institutional Customer account governed by these standards will be governed by the Minimum Standards for Retail 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.

I. Customer Suitability

1. When dealing with an 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. Where a Dealer Member has reasonable grounds for concluding that the 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 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. A Dealer Member has no suitability obligation under Section I.1 and is not required to make a determination required under Section I.2 when the Dealer Member executes a trade on the instructions of another Dealer Member, a portfolio manager, investment counsel, 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.

II. New Account Documentation and Approval

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3. Each new account must be approved by a Supervisor who is Department Head or his or her designate prior to the initial trade or promptly thereafter. Such approval must be recorded in writing or auditable electronic form.

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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 Member must appoint a 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 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 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.

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. 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 front running;

4. Exceeding position or exercise limits on derivative products; and

5. Transactions raising a suspicion of money laundering or terrorist financing activity.

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 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 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.

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RULE 3100

REPORTING AND RECORDKEEPING REQUIREMENTS

Introduction

This Rule establishes minimum requirements concerning information that registrants are required to report to Dealer Members and information that Dealer Members are required to report to the designated self-regulatory organization ("SRO").

Dealer Members and registrants should also refer to the Uniform Application for Registration/Approval (or any form replacing the Uniform Application for Registration/Approval), which also sets out information that Dealer Members and registrants must report to their designated SRO.

Definitions

For the purposes of this Rule:

"business days" means a day other than Saturday, Sunday or any officially recognized Federal or Provincial statutory holiday.

"civil claim" includes civil claims pending before a court or tribunal.

"compensation" means the payment of a sum of money, securities, reversal of a securities transaction, inclusion of a securities transaction (whether either transaction has a realized or unrealized loss) or any other equivalent type of entry which is intended to offset or counterbalance an act of misconduct. A correction of a client account or position as a result of good faith trading errors and omissions is not considered to be "compensation" for the purposes of Rule 3100.

"designated SRO" means the self-regulatory organization that has been assigned the prime audit jurisdiction for the Dealer Member under the Canadian Investor Protection Fund Agreement.

"exchange contracts" include, but are not limited, to commodity futures contracts and commodity futures options.

"legislation or law" includes, but is not limited to, any rules, policies, regulations, rulings or directives of any securities commission.

"misrepresentation" means:

i) an untrue statement of fact; or

ii) an omission to state a fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made.

"registrant" means any partner, director, officer or registered or approved person of a Dealer Member.

"securities – related" means:

(i) any matter related to securities or exchange contracts; or

(ii) any matter related to the handling of client accounts or dealings with clients; or

(iii) any matter that is the subject of any legislation or law concerning securities or exchange contracts of any jurisdiction, inside or outside of Canada; or

(iv) any matter that is the subject of by-laws, rules, regulations, rulings or policies of any securities or financial services regulatory or self-regulatory organization in any jurisdiction, inside or outside of Canada.

"service complaints" means any complaint by a client which is founded on customer service issues and is not the subject of:

i) any legislation or law concerning securities or exchange contracts of any jurisdiction, inside or outside of Canada; or

ii) by-laws, rules, regulations, rulings or policies of any securities or financial services regulatory or self-regulatory organization in any jurisdiction, inside or outside of Canada.

I. REPORTING REQUIREMENTS

A. Reporting Requirements to Member

1. Each registrant shall report to the Dealer Member, within two business days, whenever:

   (a) there is any change to the information contained in his or her Uniform Application for Registration/Approval (or any form replacing the Uniform Application for Registration/Approval);

   (b) he or she has reason to believe that he or she is or may have been in contravention of:

      (i) any provision of any legislation or law concerning securities or exchange contracts of any jurisdiction, inside or outside of Canada; or

      (ii) any by-laws, regulations, rules, rulings or policies of any regulatory or self-regulatory organization, professional licensing or registration body in any jurisdiction, inside or outside of Canada.

   (c) he or she is the subject of any customer complaint in writing; or

   (d) he or she is aware of a customer complaint, whether in writing or any other form, with respect to any other registrant involving allegations of theft, fraud, misappropriation of funds or securities, forgery, money laundering, market manipulation, insider trading, misrepresentation or unauthorized trading.

2. Each Dealer Member shall designate a person or department with whom the reports and records required by Part I Section A shall be filed.

B. Reporting Requirements to Designated SRO

1. Each Dealer Member shall report to its designated SRO, in such detail and frequency as prescribed by the SRO:

   (a) Whenever there is any change to the information contained in the Uniform Application for Registration/Approval or Form 33-109F4 under Rule 40 or any registrant;

   (b) whenever the Dealer Member, or any current or former registrant is charged with, convicted of, pleads guilty or no contest to, any criminal offence, in any jurisdiction, inside or outside of Canada, while in the employ of the Dealer Member, or concerning matters that occurred while in the employ of the Dealer Member;

   (c) whenever the Dealer Member, or a current or former registrant, is:

      (i) named as a defendant or respondent in, or is the subject of, any proceeding or disciplinary action alleging contravention of any legislation or law concerning securities or exchange contracts, of any jurisdiction, inside or outside of Canada, while in the employ of the Dealer Member, or concerning matters that occurred while in the employ of the Dealer Member;

      (ii) named as a defendant or respondent in, or is the subject of, any proceeding or disciplinary action alleging contravention of the by-laws, regulations, rules, rulings or policies of any regulatory or self-regulatory organization, professional licensing or registration body in any jurisdiction, inside or outside of Canada, while in the employ of the Dealer Member, or concerning matters that occurred while in the employ of the Dealer Member; or

      (iii) denied registration or a license by any regulatory or self-regulatory organization, professional licensing or registration body, in any jurisdiction, inside or outside of Canada, while in the employ of the Dealer Member.

(d) all customer complaints in writing, except service complaints, against the Dealer Member or any current or former registrant;

(e) all securities-related civil claims and arbitration notices filed, against the Dealer Member, or against any current or former registrant, in any jurisdiction inside or outside Canada, while in the employ of the Dealer Member, or concerning matters that occurred while in the employ of the Dealer Member;

(f) all resolutions of any matters reportable pursuant to I.B.1(b),(c),(d) and (e) of this Rule, including, judgements, awards, private settlements and arbitrations, in any jurisdiction, inside or outside of Canada;

(g) whenever a registrant is the subject of any internal disciplinary action where:

(i) there is a customer complaint in writing pursuant to Part I B. 1(d) of this Rule;

(ii) there is a securities-related civil claim or arbitration notice pursuant to Part I B.1(e) of this Rule;

(iii) there is an internal investigation pursuant to Part I B. 1(h) and Part II of this Rule;

(iv) member initiated disciplinary action involves suspension, termination, demotion or the imposition of trading restrictions;

(v) member initiated disciplinary action, arising from any source other than (i)–(iii), involves the withholding of commissions or imposition of fines in excess of $5,000 for a single matter, $15,000 cumulatively for a one calendar year period or where commission has been withheld or fines imposed three or more times during one calendar year period.

(h) whenever an internal investigation, pursuant to Part II of this Rule, is commenced and the results of such internal investigation when completed.

2. Documentation associated with each item required to be reported under Part I Section B shall be maintained and available to the designated SRO, upon request, for a minimum of 2 years from the resolution of the matter.

3. Where the designated SRO is the Corporation, it shall have the power to impose a prescribed administrative fee for failure to comply with any of the reporting requirements set out in this policy. The Corporation may also impose any other penalties pursuant to Rule 20.

II. INTERNAL INVESTIGATIONS

1. The Dealer Member shall conduct an internal investigation where it appears that the Dealer Member, or any current or former registrant, while in the employ of the Dealer Member, has violated any provision of any legislation or law, or has violated any by-laws, rules, regulations, rulings or policies of any regulatory or self-regulatory organization relating to theft, fraud, misappropriation of funds or securities, forgery, money laundering, market manipulation, insider trading, misrepresentation or unauthorized trading, in any jurisdiction, inside or outside of Canada.

2. Records of investigations under Part II Section 1 shall be:

(a) in sufficient detail to show the cause, steps taken and result of each investigation; and

(b) maintained and available to the designated SRO upon request for a minimum of two years from the completion of the investigation.

III. SETTLEMENT AGREEMENTS

1. No registrant shall, without prior written consent of the Dealer Member, enter into any settlement with a customer, whether the settlement is in the form of monetary payment, delivery of securities, reduction of commissions or any other form, and whether the settlement is the result of a customer complaint or a finding by the individual or Dealer Member. Such prior written consent and the terms and conditions of such shall be kept on record by the Dealer Member.

2. Part III Section 1 shall not apply to any registrant authorized by the Dealer Member to negotiate or enter into settlement agreements in the normal course of his/her duties with respect to settlement agreements that do not arise out of activities involving the registrant.

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RULE 3200

MINIMUM REQUIREMENTS FOR DEALER MEMBERS SEEKING APPROVAL UNDER RULE 1300.1(T) FOR SUITABILITY RELIEF FOR TRADES NOT RECOMMENDED BY THE MEMBER

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A. Minimum requirements for Dealer Members offering solely an order-execution service, either as the Dealer Member's only business or through a separate business unit of the Dealer Member

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2. Written Policies and Procedures

(a) The Dealer Member or separate business unit of the Dealer Member must have written policies and procedures covering all of the matters outlined in this Rule.

(b) The Dealer Member or separate business unit of the Dealer Member must have a program for communicating those policies and procedures to all its registered representatives and investment representatives and ensuring that the policies and procedures are understood and implemented.

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5. Systems and Books and Records

(a) The order-entry systems and records of the Dealer Member or separate business unit of the Dealer Member must be capable of labeling all account documentation relating to customers, including monthly statements and confirmations, as "order-execution only accounts" or some variant thereof.

(b) The monthly statements of a separate business unit of a Dealer Member shall not be consolidated with the account statements of any other business unit of the Dealer Member or of the Dealer Member itself.

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B. Minimum requirements for Dealer Members offering both an advisory and an order-execution only service

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4. Supervision

(a) The Dealer Member or separate business unit of the Dealer Member must have written procedures for the supervision of trading reasonably designed to ensure that customers are not provided with recommendations as a result of the customer having an account with the separate business unit of the Dealer Member and with another separate business unit of the Dealer Member or with the Dealer Member itself.

(b) The Dealer Member or separate business unit of the Dealer Member must have written procedures and systems in place to review customer trading and accounts for those concerns listed in Rule 2500 other than those related solely to suitability.

(c) The Dealer Member or separate business unit of the Dealer Member must maintain an audit trail of supervisory reviews as required in Rule 2500.

(d) The Dealer Member or separate business unit of the Dealer Member must have sufficient supervisory resources allocated at head office and branch levels to effectively implement the supervisory procedures required under this Rule.

5. Systems and Books and Records

(a) The Dealer Member's order-entry systems and records must be capable of recording whether each order is being done on a recommended or non-recommended basis. If the Dealer Member permits customers to enter orders on-line for direct transmission to a trading system, the order entry system

must require the customer to indicate whether the trade was recommended or non-recommended. If there is default marking, it must be "recommended."

(b) The Dealer Member must disclose on the confirmation for each trade by an account whether the transaction was recommended or non-recommended.

(c) The Dealer Member must disclose on the monthly statement whether each trade was executed on a recommended or non-recommended basis, but is not required to disclose on monthly statements which securities positions resulted from which type of trade.

(d) The Dealer Member must maintain records of complaints or requests from customers to change the designation of a trade as recommended or non-recommended.

(e) The Dealer Member must be able to generate reports enabling supervisors to supervise the accuracy of recommended/non-recommended disclosure on orders. Possible methods of meeting this requirement are included as Appendix A to this Rule.

(f) The Dealer Member's systems must be able to select accounts or generate exception reports to show accounts requiring review as specified in its policies and procedures and Rule 2500 without regard to whether the trades were marked as recommended or non-recommended.

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RULE 3400

RESEARCH RESTRICTIONS AND DISCLOSURE REQUIREMENTS

Introduction

This Rule establishes requirements that analysts must follow when publishing research reports or making recommendations. These requirements represent the minimum procedural requirements that Dealer Members must have in place to minimize potential conflicts of interest. The Disclosure required under Rule 3400 must be clear, comprehensive and prominent. Boilerplate disclosure is not sufficient.

These requirements are based on the recommendations of the Securities Industry Committee on Analyst Standards with input from both industry and non-industry groups.

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Requirements

1. Each Dealer Member shall have written conflict of interest policies and procedures, in order to minimize conflicts faced by analysts. All such policies must be approved by and filed with the Corporation.

2. Each Dealer Member shall prominently disclose in any research report:

   (a) any information regarding its, or its analyst's business with or relationship with any issuer which is the subject of the report which might reasonably be expected to indicate a potential conflict of interest on the part of the Dealer Member or the analyst in making a recommendation with regard to the issuer. Such information includes, but is not limited to:

      (i) whether, as of the end of the month immediately preceding the date of issuance of the research report or the end of the second most recent month if the issue date is less than 10 calendar days after the end of the most recent month, the Dealer Member and its affiliates collectively beneficially own 1% or more of any class of the issuer's equity securities,

      (ii) whether the analyst or any associate of the analyst responsible for the report or recommendation or any individuals directly involved in the preparation of the report hold or are short any of the issuer's securities directly or through derivatives,

      (iii) whether any partner, director or officer of a Dealer Member or any analyst involved in the preparation of a report on the issuer has, during the preceding 12 months provided services to the issuer for remuneration other than normal course investment advisory or trade execution services,

(iv) whether the Dealer Member firm has provided investment banking services for the issuer during the 12 months preceding the date of issuance of the research report or recommendation,

(v) the name of any partner, director, officer, employee or agent of the Dealer Member who is an officer, director or employee of the issuer, or who serves in any advisory capacity to the issuer, and

(vi) whether the Dealer Member is making a market in an equity or equity related security of the subject issuer.

(b) the Dealer Member's system for rating investment opportunities and how each recommendation fits within the system and shall disclose on their websites or otherwise, quarterly, the percentage of its recommendations that fall into each category of their recommended terminology; and

(c) its policies and procedures regarding the dissemination of research.

A Dealer Member shall comply with subsections (b) and (c) by disclosing such information in the report or by disclosing in the report where such information can be obtained.

3. Where an employee of a Dealer Member makes a public comment (which shall include an interview) about the merits of an issuer or its securities, a reference must be made to the existence of any relevant research report issued by the Dealer Member containing the disclosure as required above, if one exists, or it must be disclosed that such a report does not exist.

4. Where a Dealer Member distributes a research report prepared by an independent third party to its clients under the third party name, the Dealer Member must disclose any items which would be required to be disclosed under requirement 2 of Rule 3400 had the report been issued in the Dealer Member's name. This requirement does not apply to research reports issued a dealer regulated by the Financial Industry Regulatory Authority or issued by persons governed by other regulators approved by the Corporation, and does not apply if the Dealer Member simply provides to clients access to the independent third party research reports or provides independent third party research at the request of clients. However, where this requirement does not apply, Dealer Members must disclose that such research is not prepared subject to Canadian disclosure requirements.

5. No Dealer Member shall issue a research report prepared by an analyst if the analyst or any associate of the analyst serves as an officer, director or employee of the issuer or serves in any advisory capacity to the issuer.

6. Any Dealer Member that distributes research reports to clients or prospective clients in its own name must disclose its research dissemination policies and procedures on its website or by other means.

7. Each Dealer Member who distributes research reports to clients or prospective clients shall have policies and procedures reasonably designed to prohibit any trading by its partners, directors, officers, employees or agents resulting in an increase, a decrease, or liquidation of a position in a listed security, or a derivative instrument based principally on a listed or quoted security, with knowledge of or in anticipation of the distribution of a research report, a new recommendation or a change in a recommendation relating to a security that could reasonably be expected to have an effect on the price of the security.

8. No individual directly involved in the preparation of the report can effect a trade in a security of an issuer, or a derivative instrument whose value depends principally on the value of a security of an issuer, regarding which the analyst has an outstanding recommendation for a period of 30 calendar days before and 5 calendar days after issuance of the research report, unless that individual receives the previous written approval of a designated partner, officer or director of the Dealer Member. No approval may be given to allow an analyst or any individual involved in the preparation of the report to make a trade that is contrary to the analyst's current recommendation, unless special circumstances exist.

9. Dealer Members must disclose in research reports if in the previous 12 months the analyst responsible for preparing the report received compensation based upon the Dealer Member's investment banking revenues.

10. No Dealer Member may pay any bonus, salary or other form of compensation to an analyst that is directly based upon one or more specific investment banking services transactions.

11. Each Dealer Member shall have policies and procedures in place reasonably to prevent recommendations in research reports from being influenced by the investment- banking department or the issuer. Such policies and procedures shall, at minimum:

(i) prohibit any requirement for approval of research reports by the investment banking department;

(ii) limit comments from the investment banking department on research reports to correction of factual errors;

(iii) prevent the investment banking department from receiving advance notice of ratings or rating changes on covered companies; and

(iv) establish systems to control and keep records of the flow of information between analysts and investment banking departments regarding issuers that are the subject of current or prospective research reports.

12. No Dealer Member may directly or indirectly offer favorable research, a specific rating or a specific price target, a delay in changing a rating or price target or threaten to change research, a rating or a price target of an issuer as consideration or inducement for the receipt of business or compensation from an issuer.

13. Dealer Members must disclose in research reports if and to what extent an analyst has viewed the material operations of an issuer. Dealer Members must also disclose where there has been a payment or reimbursement by the issuer of the analyst's travel expenses for such visit.

14. No Dealer Member may issue a research report for an equity or equity related security regarding an issuer for which the Dealer Member acted as manager or co-manager of

(i) an initial public offering of equity or equity related securities, for 40 calendar days following the date of the offering; or

(ii) a secondary offering of equity or equity related securities, for 10 calendar days following the date of the offering;

but requirement 14(i) and (ii) do not prevent a Dealer Member from issuing a research report concerning the effects of significant news about or a significant event affecting the issuer within the applicable 40 or 10 day period.

14.1. Requirement 14 does not apply where the subject securities are exempted from restrictions under provisions relating to market stabilization in securities legislation or in the Universal Market Integrity Rules.

15. When a Dealer Member distributes a research report covering six or more issuers, such a report may indicate where the disclosures required under Rule 3400 may be found.

16. Dealer Members must issue notice of their intention to suspend or discontinue coverage of an issuer. However, no issuance is required when the sole reason for the suspension is that an issuer has been placed on a Dealer Member's restricted list.

17. Dealer Members must obtain an annual certification from the head of the research department and chief executive officer which states that their analysts are familiar with and have complied with the CFA Institute Code of Ethics and Standards of Professional Conduct whether they are members of the CFA Institute or not.

18. Where a supervisory analyst of a Dealer Member serves as an officer or director of an issuer, then the Dealer Member must not provide research on the issuer.

19. Dealer Members must pre-approve analysts outside business activities.

20. Where Dealer Members set price targets as recommended under guideline 4, Dealer Members must disclose the valuation methods used.

Guidelines

In addition to the above requirements, when establishing policies and procedures as referred to under requirement 1 of Rule 3400, Dealer Members must comply with the following best practices, where practicable:

1. Dealer Members should distinguish clearly in each research report between information provided by the issuer or obtained elsewhere and the analyst's own assumptions and opinions.

2. Dealer Members should disclose in their research reports and recommendations reliance by the analyst upon any report or study by third party experts other than the analyst responsible for the report. Where there is such reliance, the name of the third party experts should be disclosed.

3. Dealer Members should adopt standards of research coverage that include, at a minimum, the obligation to maintain and publish current financial estimates and recommendations on securities followed, and to revisit such estimates and recommendations within a reasonable time following the release of material information by an issuer or the occurrence of other relevant events.

4. Dealer Members should set price targets for recommended transactions, where practicable, and with the appropriate disclosure.

5. Dealer Members should use specific securities terminology in research reports where required to do so by Securities Legislation. Where such terminology is not required, Dealer Members should use the specific technical terminology that is required by the relevant industry, professional association or regulatory authority or in the absence of required terminology use technical terminology that is customarily in use. Where necessary, for full understanding, a glossary should be included.

6. A Dealer Member should make its research reports widely available through its websites or by other means for all of its clients whom the Dealer Member has determined are entitled to receive such research reports at the same time.

7. Where feasible by virtue of the number of analysts, Dealer Members should appoint one or more supervisory analyst or head of research to be responsible for reviewing and approving research reports as required under Rule 29.7, who should be a partner, director or officer of the Dealer Member and should have the CFA designation or other appropriate qualifications. Dealer Members may have more than one supervisory analyst where necessary.

8. Dealer Members should require their analyst employees to obtain the Chartered Financial Analyst designation or other appropriate qualifications.

9. Dealer Members should require that the head of the research department, or in small firms where there is no head then the analyst or analysts report to a senior officer or partner who is not the head of the investment banking department. However, no policies or procedures will be approved under requirement 1 unless the Corporation is satisfied that they address the relationship between the investment- banking department and research department.

ATTACHMENT C

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

PLAIN LANGUAGE RULES 3400- 3900

TABLE OF CONCORDANCE

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub Section	Comments
New Provision			3300	R. 3301. – 3399. - Reserved		[**New - Non-substantive** - Reserved sections]
New Provision			3400	R. 3401. Introduction	{1}	[**New - Non-substantive** - Introduction section]
Rule 1300: Supervision of Accounts	1300.01	{p}	3400	R. 3402. General Suitability Requirements	{1} {i}	
Rule 1300: Supervision of Accounts	1300.01	{q}	3400	R. 3402. General Suitability Requirements	{1} {ii}	
New Provision			3400	R. 3402. General Suitability Requirements	{2}	[**New - Substantive** - to codify existing IIROC expectation]
Rule 1300: Supervision of Accounts	1300.01	{p} and {q}	3400	R. 3403. Assessing Suitability for retail clients	{1}	
Rule 2500: Minimum Standards for Retail Account Supervision (Policy 2)	2500, Introduction	{c}	3400	R. 3403. Assessing Suitability for retail clients	{2}	
Rule 2700: Minimum Standards for Institutional Account Opening, Operating & Supervision	2700I	{1}	3400	R. 3404. Determining Suitability for institutional clients	{1} through {3}	
Rule 2700: Minimum Standards for Institutional Account Opening, Operating & Supervision	2700I	{2}	3400	R. 3404. Determining Suitability for institutional clients	{4}	
Rule 2700: Minimum Standards for Institutional Account Opening, Operating & Supervision	2700I	{2} {a}	3400	R. 3404. Determining Suitability for institutional clients	{4} {i}	
Rule 2700: Minimum Standards for Institutional Account Opening, Operating & Supervision	2700I	{2} {b}	3400	R. 3404. Determining Suitability for institutional clients	{4} {ii}	
Rule 2700: Minimum Standards for Institutional Account Opening, Operating & Supervision	2700I	{2} {c}	3400	R. 3404. Determining Suitability for institutional clients	{4} {iii}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub Section	Comments
Rule 2700: Minimum Standards for Institutional Account Opening, Operating & Supervision	2700I	{2} {d}	3400	R. 3404. Determining Suitability for institutional clients	{4} {iv}	
Rule 2700: Minimum Standards for Institutional Account Opening, Operating & Supervision	2700I	{2} {e}	3400	R. 3404. Determining Suitability for institutional clients	{4} {v}	
Rule 2700: Minimum Standards for Institutional Account Opening, Operating & Supervision	2700I	{2} {f}	3400	R. 3404. Determining Suitability for institutional clients	{4} {vi}	
Rule 2700: Minimum Standards for Institutional Account Opening, Operating & Supervision	2700I	{2} {g}	3400	R. 3404. Determining Suitability for institutional clients	{4} {vii}	
Rule 1300: Supervision of Accounts	1300.01	{r}	3400	R. 3405. Suitability Determination not required	{1} {i}	
Rule 1300: Supervision of Accounts	1300.01	{s}	3400	R. 3405. Suitability Determination not required	{1} {ii}	
Rule 2700: Minimum Standards for Institutional Account Opening, Operating & Supervision	2700I	{3}	3400	R. 3405. Suitability Determination not required	{1} {ii}	
Rule 2700: Minimum Standards for Institutional Account Opening, Operating & Supervision	2700I	{4}	3400	R. 3405. Suitability Determination not required	{1} {iii}	
Rule 3200: Minimum Requirements for Dealer Members seeking approval under Rule 1300.1(T) for suitability relief for trades not recommended by the Member	3200A	{5} {a}	3400	R. 3406. Order execution-only services	{1} {i}	
Rule 3200: Minimum Requirements for Dealer Members seeking approval under Rule 1300.1(T) for suitability relief for trades not recommended by the Member	3200A	{5} {b}	3400	R. 3406. Order execution-only services	{1} {ii}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub Section	Comments
Rule 3200: Minimum Requirements for Dealer Members seeking approval under Rule 1300.1(T) for suitability relief for trades not recommended by the Member	3200B	{1}	3400	R. 3406. Order execution-only services	{2} {i}	
Rule 3200: Minimum Requirements for Dealer Members seeking approval under Rule 1300.1(T) for suitability relief for trades not recommended by the Member	3200B	{5} {a}	3400	R. 3406. Order execution-only services	{2} {ii}	
Rule 3200: Minimum Requirements for Dealer Members seeking approval under Rule 1300.1(T) for suitability relief for trades not recommended by the Member	3200B	{5} {b}	3400	R. 3406. Order execution-only services	{2} {iii} {a}	
Rule 3200: Minimum Requirements for Dealer Members seeking approval under Rule 1300.1(T) for suitability relief for trades not recommended by the Member	3200B	{5} {c}	3400	R. 3406. Order execution-only services	{2} {iii} {b}	
Rule 3200: Minimum Requirements for Dealer Members seeking approval under Rule 1300.1(T) for suitability relief for trades not recommended by the Member	3200	{5} {d}	3400	R. 3406. Order execution-only services	{2} {iv}	
New Provision			3400	R. 3407. – 3499. - Reserved		[**New - Non-substantive** - Reserved sections]
Rule 0029: Business Conduct			3500	R. 3501. Introduction	{1}	[**New - Non-substantive** - Introduction section]
Rule 0029: Business Conduct	29.02		3500	R. 3502. Distributions	{1}	
Rule 0029: Business Conduct	29.04		3500	R. 3502. Distributions	{2}	
Rule 0029: Business Conduct	29.03		3500	R. 3503. New issues	{1}, {2} and {3}	
Rule 0029: Business Conduct	29.03A		3500	R. 3504. Client priority	{1}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub Section	Comments
New Provision			3500	R. 3505. Commission Fees		[**New - Substantive** - New provision introduced for consistency with section 3506.]
Rule 0029: Business Conduct	29.08		3500	R. 3506. Service Fees	{1} and {2}	
New Provision			3500	R. 3506. Service Fees	{3}	[**New-Substantive** provision provides an exemption for institutional clients]
Rule 0029: Business Conduct	29.05		3500	R. 3507. Inside information	{1} {2} {3} {4} and {5}	[**Amended - Substantive**] Section now refers to: special relationship rather than fiduciary relationship, material non-public information rather than privileged information, in the necessary course of business rather than anyone not authorized to receive the information
Rule 0029: Business Conduct	29.13	[b} {i}	3500	R. 3508. pre-marketing	{1} {i}	
Rule 0029: Business Conduct	29.13	{b} {ii}	3500	R. 3508. pre-marketing	{1} {ii}	
Rule 0029: Business Conduct	29.13	{b} {iii}	3500	R. 3508. pre-marketing	{1} {iii}	
Rule 0029: Business Conduct	29.13	{b} {iii} last paragraph	3500	R. 3508. pre-marketing	{2}	
Rule 0029: Business Conduct	29.13	{d}	3500	R. 3508. pre-marketing	{3}	
Rule 0029: Business Conduct	29.13	{b} {iii} A	3500	R. 3508. pre-marketing	{4} {i}	
Rule 0029: Business Conduct	29.13	{b} {iii} B	3500	R. 3508. pre-marketing	{4} {ii}	
Rule 0029: Business Conduct	29.13	{c}	3500	R. 3508. pre-marketing	{5}	
Rule 0029: Business Conduct	29.13	{e}	3500	R. 3508. pre-marketing	{6}	
Rule 0029: Business Conduct	29.13	{e}	3500	R. 3508. pre-marketing	{7}	
New Provision			3500	R. 3509. - 3599. - Reserved		[**New - Non-substantive** - Reserved sections]
Rule 0029: Business Conduct	29.13	{e} Certificate	3500	Schedule A		
Rule 3400: Research Restrictions and Disclosure Requirements			3600	R. 3601. Introduction		[**New - Non-substantive** - Introduction section]
Rule 0029: Business Conduct	29.7	{1}	3600	R. 3602. Advertising	{1}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub Section	Comments
Rule 0029: Business Conduct	29.7	{2}	3600	R. 3602. Advertising	{2}	**Substantive** - Deleted requirement for policies and procedures to be approved by IIROC.
Rule 0029: Business Conduct	29.7	{3}	3600	R. 3602. Advertising	{4} and {5}	
Rule 0029: Business Conduct	29.7	{4}	3600	R. 3602. Advertising	{6}	
Rule 0029: Business Conduct	29.7	{5}	3600	R. 3602. Advertising	{7}	**Substantive** - change in the record retention period
Rule 3400: Research Restrictions and Disclosure Requirements			3600	R. 3603. - 3605. - Reserved		[**New - Non-substantive** - Reserved sections]
Rule 3400: Research Restrictions and Disclosure Requirements	Introduction		3600	R. 3606. Policies and procedures	{1}	
Rule 3400: Research Restrictions and Disclosure Requirements	Requirement 1		3600	R. 3606. Policies and procedures	{1}	**Substantive** - Deleted requirement for policies and procedures to be approved by and filed with IIROC.
Rule 3400: Research Restrictions and Disclosure Requirements	Requirement 2	{a} {i} - {vi}	3600	R. 3607. Research report disclosure of potential conflicts of interest	{1} and {2}	
Rule 3400: Research Restrictions and Disclosure Requirements	Requirement 2	{b}, {c} and last paragraph	3600	R. 3608. Additional disclosures	{1} and {2}	
Rule 3400: Research Restrictions and Disclosure Requirements	Requirement 6		3600	R. 3608. Additional disclosures	{1} {ii}	
Rule 3400: Research Restrictions and Disclosure Requirements	Introduction	(second last sentence in first paragraph)	3600	R. 3609. Quality of disclosures in a research report	{1}	
Rule 3400: Research Restrictions and Disclosure Requirements	Requirement 2		3600	R. 3609. Quality of disclosures in a research report	{1}	
Rule 3400: Research Restrictions and Disclosure Requirements	Requirement 4		3600	R. 3610. Independent third party research	{1} and {2}	
Rule 3400: Research Restrictions and Disclosure Requirements	Requirement 15		3600	R. 3611. Multiple coverage	{1}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub Section	Comments
Rule 3400: Research Restrictions and Disclosure Requirements	Requirement 13		3600	R. 3612. Visiting an issuer	{1}	
Rule 3400: Research Restrictions and Disclosure Requirements	Requirement 5		3600	R. 3613. Relationship with the issuer	{1}	
Rule 3400: Research Restrictions and Disclosure Requirements	Requirement 18		3600	R. 3613. Relationship with the issuer	{2}	
Rule 3400: Research Restrictions and Disclosure Requirements	Requirement 16		3600	R. 3614. Notice to discontinue coverage	{1}	
Rule 3400: Research Restrictions and Disclosure Requirements	Requirement 20		3600	R. 3615. Setting price targets	{1}	
Rule 3400: Research Restrictions and Disclosure Requirements	Requirement 12		3600	R. 3616. Inducement for favourable rating	{1}	
Rule 3400: Research Restrictions and Disclosure Requirements	Requirement 3		3600	R. 3617. Public comments	{1}	
Rule 3400: Research Restrictions and Disclosure Requirements	Requirement 7		3600	R. 3618. Policies and procedures on trading	{1}	
Rule 3400: Research Restrictions and Disclosure Requirements	Requirement 8		3600	R. 3618. Policies and procedures on trading	{2} {3} and {4}	
Rule 3400: Research Restrictions and Disclosure Requirements	Requirement 9		3600	R. 3619. Prohibition on investment banking compensation	{1}	
Rule 3400: Research Restrictions and Disclosure Requirements	Requirement 10		3600	R. 3619. Prohibition on investment banking compensation	{2}	
Rule 3400: Research Restrictions and Disclosure Requirements	Requirement 11		3600	R. 3620. Relationship with investment banking	{1} and {2}	
Rule 3400: Research Restrictions and Disclosure Requirements	Requirement 14		3600	R. 3621. Quiet periods	{1} and {2}	
Rule 3400: Research Restrictions and Disclosure Requirements	Requirement 14.1		3600	R. 3621. Quiet periods	{3}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub Section	Comments
Rule 3400: Research Restrictions and Disclosure Requirements	Requirement 19		3600	R. 3622. Outside business activities	{1}	
Rule 3400: Research Restrictions and Disclosure Requirements	Requirement 17		3600	R. 3623. Annual certification	{1}	
Rule 3400: Research Restrictions and Disclosure Requirements			3600	R. 3624. - 3699. - Reserved		[**New - Non-substantive** - Reserved sections]
Rule 3400: Research Restrictions and Disclosure Requirements	Guidelines 1 to 9		3600			[**Repealed - Non-substantive** - Guidelines as to best practices in developing policies and procedures on research reports have been moved to Guidance Note 3600-3.]
New Provision			3700	R. 3701. Introduction		[**New - Non-substantive** - Introduction section]
Rule 3100 Reporting and recordkeeping requirements	Definitions	"civil claim"				[**Repealed - Non-substantive** - Definition unnecessary]
Rule 3100 Reporting and recordkeeping requirements	Definitions	"Compensation"				[**Repealed - Non-substantive** - Term not used in the rule]
Rule 3100: Reporting and recordkeeping requirements	3100I	{A} {1} {a}	3700	R. R. 3702. Reporting by an Approved Person to the Dealer Member	{1} {i}	
Rule 3100: Reporting and recordkeeping requirements	3100I	{A} {1} {b}	3700	R. 3702. Reporting by an Approved Person to the Dealer Member	{1} {ii}	
Rule 3100: Reporting and recordkeeping requirements	3100I	{A} {1} {c}	3700	R. 3702. Reporting by an Approved Person to the Dealer Member	{1} {iii}	
Rule 3100: Reporting and recordkeeping requirements	3100I	{A} {1} {d}	3700	R. 3702. Reporting by an Approved Person to the Dealer Member	{1} {iv}	
Rule 2500B: Client Complaint Handling	2500B	{4}	3700	R. 3702. Reporting by an Approved Person to the Dealer Member	{2}	
Rule 2700: Minimum Standards for Institutional Account Opening, Operating & Supervision	2700V	{2}	3700	R. 3702. Reporting by an Approved Person to the Dealer Member	{2}	
Rule 3100: Reporting and recordkeeping requirements	3100I	{A} {2}	3700	R. 3702. Reporting by an Approved Person to the Dealer Member	{3}	
Rule 3100: Reporting and recordkeeping requirements	3100I	{B} {1} {a}	3700	R. 3703. Reporting by a Dealer Member to the Corporation	{1} {i}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub Section	Comments
Rule 3100: Reporting and recordkeeping requirements	3100I	{B} {1} {d}	3700	R. 3703. Reporting by a Dealer Member to the Corporation	{1} {ii}	
Rule 3100: Reporting and recordkeeping requirements	3100I	{B} {1} {h}	3700	R. 3703. Reporting by a Dealer Member to the Corporation	{1} {iii}	
Rule 3100: Reporting and recordkeeping requirements	3100I	{B} {1} {h}	3700	R. 3703. Reporting by a Dealer Member to the Corporation	{1} {iv}	
Rule 3100: Reporting and recordkeeping requirements	3100I	{B} {1} {b}	3700	R. 3703. Reporting by a Dealer Member to the Corporation	{1} {v} {a}	
Rule 3100: Reporting and recordkeeping requirements	3100I	{B} {1} {c} {i}	3700	R. 3703. Reporting by a Dealer Member to the Corporation	{1} {v} {b}	
Rule 3100: Reporting and recordkeeping requirements	3100I	{B} {1} {c} {ii}	3700	R. 3703. Reporting by a Dealer Member to the Corporation	{1} {v} {c}	
Rule 3100: Reporting and recordkeeping requirements	3100I	{B} {1} {c} {iii}	3700	R. 3703. Reporting by a Dealer Member to the Corporation	{1} {v} {d}	
Rule 3100: Reporting and recordkeeping requirements	3100I	{B} {1} {e}	3700	R. 3703. Reporting by a Dealer Member to the Corporation	{1} {v} {e}	
Rule 3100: Reporting and recordkeeping requirements	3100I	{B} {1} {f}	3700	R. 3703. Reporting by a Dealer Member to the Corporation	{1} {vi}	
Rule 3100: Reporting and recordkeeping requirements	3100I	{B} {1} {g} {i}	3700	R. 3703. Reporting by a Dealer Member to the Corporation	{1} {vii} {a}	
Rule 3100: Reporting and recordkeeping requirements	3100I	{B} {1} {g} {ii}	3700	R. 3703. Reporting by a Dealer Member to the Corporation	{1} {vii} {b}	
Rule 3100: Reporting and recordkeeping requirements	3100I	{B} {1} {g} {iii}	3700	R. 3703. Reporting by a Dealer Member to the Corporation	{1} {vii} {c}	
Rule 3100: Reporting and recordkeeping requirements	3100I	{B} {1} {g} {iv}	3700	R. 3703. Reporting by a Dealer Member to the Corporation	{1} {vii} {d}	
Rule 3100: Reporting and recordkeeping requirements	3100I	{B} {1} {g} {v}	3700	R. 3703. Reporting by a Dealer Member to the Corporation	{1} {vii} {e}	
Rule 3100: Reporting and recordkeeping requirements	3100I	Definitions	3700	R. 3703. Reporting by a Dealer Member to the Corporation	{2}	
Rule 3100: Reporting and recordkeeping requirements	3100I	{B} {2}	3700	R. 3704. Failure to report	{1}	
New Provision			3700	R. 3705. - Reserved		[**New - Non-substantive** - Reserved sections]
Rule 3100: Reporting and recordkeeping requirements	3100II	{1}	3700	R. 3706. Requirement to commence an internal investigation	{1}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub Section	Comments
Rule 3100: Reporting and recordkeeping requirements	3100	Definitions		R. 3706. Requirement to commence an internal investigation	{2}	
Rule 3100: Reporting and recordkeeping requirements	3100II	{2} {a}	3700	R. 3707. Records of an internal investigation	{1}	
Rule 2500B: Client Complaint Handling	2500B	{7}	3700	R. 3708. Internal Discipline	{1}	
Rule 2700: Minimum Standards for Institutional Account Opening, Operating & Supervision	2700V	{5}	3700	R. 3708. Internal Discipline	{1}	
New Provision			3700	R. 3709. Reserved		[**New - Non-substantive** - Reserved sections]
Rule 3100: Reporting and recordkeeping requirements	3100III	{1} and {2}	3700	R. 3710. Entering into settlement agreements	{1} and {2}	
Rule 2500B: Client Complaint Handling	2500B	{5}	3700	R. 3711. Release		
New Provision			3700	R. 3712. - 3714. - Reserved		[**New - Non-substantive** - Reserved sections]
Rule 2700: Minimum Standards for Institutional Account Opening, Operating & Supervision	2700V	{1}	3700	R. 3715. Policies and Procedures	{1}	
Rule 2700: Minimum Standards for Institutional Account Opening, Operating & Supervision	2700V	{1} {a}	3700	R. 3715. Policies and Procedures	{2} {i}	
Rule 2700: Minimum Standards for Institutional Account Opening, Operating & Supervision	2700V	{1} {b}	3700	R. 3715. Policies and Procedures	{2} {ii}	
Rule 2700: Minimum Standards for Institutional Account Opening, Operating & Supervision	2700V	{1} {d}	3700	R. 3715. Policies and Procedures	{2} {iii}	
Rule 2700: Minimum Standards for Institutional Account Opening, Operating & Supervision	2700V	{3}	3700	R. 3715. Policies and Procedures	{2} {iv}	
Rule 2700: Minimum Standards for Institutional Account Opening, Operating & Supervision	2700V	{1} {c}	3700	R. 3715. Policies and Procedures	{2} {v}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub Section	Comments
Rule 2700: Minimum Standards for Institutional Account Opening, Operating & Supervision	2700V	{6}	3700	R. 3715. Policies and Procedures	{3}	
New Provision			3700	R. 3716. - 3719. - Reserved		[**New - Non-substantive** - Reserved sections]
Rule 2500: Minimum Standards for Retail Customer Account Supervision	2500VIII		3700	R. 3720. Retail Client Complaints	{1} - {2}	
Rule 2500B: Client Complaint Handling	2500B	{2}	3700	R. 3721. Application	{1} through {3}	
Rule 2500B: Client Complaint Handling	2500B	{2}	3700	R. 3722. Handling client complaints	{2}	
Rule 2500B: Client Complaint Handling	2500B	{3}	3700	R. 3722. Handling client complaints	{3}	
Rule 2500B: Client Complaint Handling	2500B	{4}	3700	R. 3723. Complaint policies and procedures	{1} through {3}	
Rule 2500B: Client Complaint Handling	2500B	{4}	3700	R. 3724. Client access	{1} and {2}	
Rule 2500B: Client Complaint Handling	2500B	{4}	3700	R. 3725. Client Acknowledgement letter	{1} and {2}	
Rule 2500B: Client Complaint Handling	2500B	{4}	3700	R. 3726. Response to client complaints	{1} through {4}	
Rule 2500B: Client Complaint Handling	2500B	{4}	3700	R. 3727. Duty to assist in client complaint resolution	{1} and {2}	
Rule 2500B: Client Complaint Handling	2500B	{6}	3700	R. 3728. Client complaint file	{1}	
New Provision			3700	R. 3729-3779 Reserved		[**New - Non-substantive** - Reserved sections]
Rule 2500B: Client Complaint Handling	2500B	{4}	3700	R. 3780. Reporting legal actions	{1}	
Rule 2700: Minimum Standards for Institutional Account Opening, Operating & Supervision	2700V	{3}	3700	R. 3780. Reporting legal actions	{1}	
			3700	R. 3781-3784 Reserved		[**New - Non-substantive** - Reserved sections]
Rule 3100: Reporting and recordkeeping requirements	3100I	{B} {2}	3700	R. 3785. Events reported to the Corporation	{1}	
Rule 2500B: Client Complaint Handling	2500B	{6}	3700	R. 3786. Client Complaints	{1}	
Rule 2700: Minimum Standards for Institutional Account Opening, Operating & Supervision	2700V	{4}	3700	R. 3786. Client Complaints	{2}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub Section	Comments
New Provision			3700	R. 3787. - 3799. – Reserved		[**New - Non-substantive** - Reserved sections]
			3800	R. 3800. Business Records		[**Amended - Substantive** - Replacement of references to futures contracts, futures contract options, and options etc. with the term "derivatives" throughout]
New Provision			3800	R. 3801. Introduction	{1} and {2}	[**New - Non-substantive** - Introduction section]
New Provision			3800	R. 3802. General requirements for record retention	{1}	[**New - Substantive** - New section added. Section conforms to National Instrument 31-103 ("NI 31-103"), Division 2 Books and Records]
				R. 3803-3804- Reserved		[**New - Non-substantive** - Reserved sections]
Rule 0200: Minimum Records	200.01	{Introduction}	3800	R. 3805. General requirements to maintain books and records	{1}	
Rule 0200: Minimum Records	200.01	Guide to interpretation [Introduction]	3800	R. 3805. General requirements to maintain books and records	{2}	
Rule 0200: Minimum Records	200.01	Guide to interpretation [Introduction]	3800	R. 3805. General requirements to maintain books and records	{3}	
Rule 0017: Dealer Member Minimum Capital, Conduct of Business & Insurance	17.13		3800	R. 3805. General requirements to maintain books and records	{4}	[**Amended - Substantive** - Board approval requirement removed]
Rule 0200: Minimum Records	200.01	{a}	3800	R. 3806. Trade Blotters (records of original entry)	{1} and {2}	
Rule 0200: Minimum Records	200.01	Guide to Interpretation {a}	3800	R. 3806. Trade Blotters (records of original entry)	{1} and {2}	
Rule 0200: Minimum Records	200.01	{b}	3800	R. 3807. General ledger	{1}	
Rule 0200: Minimum Records	200.01	Guide to Interpretation {b}	3800	R. 3807. General ledger	{1}	
Rule 0200: Minimum Records	200.01	{c}	3800	R. 3808. Client and non-client ledger accounts	{1} through {3}	
Rule 0200: Minimum Records	200.01	Guide to Interpretation {c}	3800	R. 3808. Client and non-client ledger accounts	{1} through {3}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub Section	Comments
Rule 0200: Minimum Records	200.01	{d}	3800	R. 3809. Other ledger accounts	{1} through {14}	
Rule 0200: Minimum Records	200.01	Guide to interpretation {d} {i}	3800	R. 3809. Other ledger accounts	{1}	
Rule 0200: Minimum Records	200.01	Guide to interpretation {i}	3800	R. 3809. Other ledger accounts	{1}	
Rule 0200: Minimum Records	200.01	Guide to interpretation {d} {ii}	3800	R. 3809. Other ledger accounts	{2}	
Rule 0200: Minimum Records	200.01	Guide to Interpretation {d} {iv}	3800	R. 3809. Other ledger accounts	{3}	
Rule 0200: Minimum Records	200.01	Guide to Interpretation {d} {iv}	3800	R. 3809. Other ledger accounts	{4}	
Rule 0200: Minimum Records	200.01	Guide to interpretation {d} {ii}	3800	R. 3809. Other ledger accounts	{5}	
Rule 0200: Minimum Records	200.01	Guide to interpretation {d} {ii}	3800	R. 3809. Other ledger accounts	{6}	
Rule 0200: Minimum Records	200.01	Guide to interpretation {d} {ii}	3800	R. 3809. Other ledger accounts	{7}	
Rule 0200: Minimum Records	200.01	Guide to interpretation {d} {iii}	3800	R. 3809. Other ledger accounts	{8}	
Rule 0200: Minimum Records	200.01	Guide to interpretation {d} {v}	3800	R. 3809. Other ledger accounts	{9}	
Rule 0200: Minimum Records	200.01	Guide to interpretation {d} {v}	3800	R. 3809. Other ledger accounts	{10}	
Rule 0200: Minimum Records	200.01	Guide to interpretation {d} {v}	3800	R. 3809. Other ledger accounts	{11}	
Rule 0200: Minimum Records	200.01	Guide to interpretation {e} - {f}	3800	R. 3809. Other ledger accounts	{12} through {14}	
Rule 0200: Minimum Records	200.01	{e}	3800	R. 3810. Ledger accounts - Investment products (excluding derivatives)	{1} and {2}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub Section	Comments
Rule 0200: Minimum Records	200.01	{f}	3800	R. 3811. Ledger accounts – Derivatives	{1}	
Rule 0200: Minimum Records	200.01	{g} [Introduction]	3800	R. 3812. Record of orders received	{1}	
Rule 0200: Minimum Records	200.01	{g} [{1} - {8} except {5}]	3800	R. 3812. Record of orders received	{2}	[**Amended - Substantive** - Identifying opening and closing transactions added as a new requirement]
New Provision			3800	R. 3812. Record of orders received	{2}{vi}	[**New - Substantive** - The "time of modification" added as new a requirement]
Rule 0200: Minimum Records	200.01	{g} {5}	3800	R. 3812. Record of orders received	{3}	
Rule 0200: Minimum Records	200.01	{l}	3800	R. 3812. Record of orders received	{4}	
Rule 0200: Minimum Records	200.01	{n}	3800	R. 3813. Account transfers	{1}	
Rule 0200: Minimum Records	200.01	Guide to Interpretation {n}	3800	R. 3813. Account transfers	{1}	
New Provision			3800	R. 3814. - 3829. – Reserved.		[**New - Non-substantive** - Reserved sections]
Rule 0200: Minimum Records	200.01	{h}	3800	R. 3830. Delivery of confirmations – Frequency	{1}	
Rule 0200: Minimum Records	200.01	Guide to Interpretation {h}	3800	R. 3830. Delivery of confirmations – Frequency	{1}	
Rule 0200: Minimum Records	200.01	{h}	3800	R. 3831. Requirements for confirmations - General content	{1} through {4}	[**Amended - Substantive** – Confirmation content requirements have been conformed with requirements in National Instrument 31-103 ("NI 31-103"), section 14.12 Content and delivery of trade confirmation]
Rule 0200: Minimum Records	200.01	Guide to Interpretation {h}	3800	R. 3831. Requirements for confirmations - General content	{1} through {4}	
Rule 0200: Minimum Records	200.01	{h}	3800	R. 3832. Additional requirements for confirmations relating to specific investment products – Content	{1} through {5}	
Rule 0200: Minimum Records	200.01	{h}	3800	R. 3833. Managed account confirmations	{1} through {4}	
New Provision			3800	R. 3834. - 3839. – Reserved.		[**New - Non-substantive** - Reserved sections]

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub Section	Comments
Rule 0200: Minimum Records	200.01	{c} [paragraph after subsection {12}]	3800	R. 3840. Delivery of client account statements - Frequency	{1} and {2}	
Rule 0200: Minimum Records	200.01	{c} [paragraph after subsection {12}]	3800	R. 3841. Requirements for client account statements - Content	{1} through {7}	[**Amended - Substantive** - Statement content requirements have been conformed with requirements in National Instrument 31-103 ("NI 31-103"), section 14.14 Client Statements]
New Provision			3800	R. 3842. Consolidated statements	{1}	[**New - Substantive** - New section added for consolidated statements based on IDA Notice MR-0087]
New Provision			3800	R. 3843. - 3899. – Reserved.		[**New - Non-substantive** - Reserved sections]
Rule 0200: Minimum Records	200.01	Guide to interpretation {g}	3800			Removed
Rule 0200: Minimum Records	200.01	{j}	3800	N/A		**Substantive** - Moved to Guidance Note 3800-2
New Provision			3900	R. 3901. Introduction	{1} through {3}	[**New - Non-substantive** - Introduction section]
New Provision			3900	R. 3902. Contents	{1}	[**New - Non- substantive** - Added table of contents for clarity within the rule
Rule 0038: Compliance and Supervision	38.01	Introduction	3900	R. 3903. Policies and Procedures	{1} and {2}	
Rule 0038: Compliance and Supervision	38.01	{i}	3900	R. 3903. Policies and Procedures	{1} through {3}	
Rule 3200: Minimum Requirements for Dealer Members seeking approval under Rule 1300.1{T} for suitability relief for trades not recommended by the Member	Part A	{2} {a}	3900	R. 3903. Policies and Procedures	{1} through {3}	
Rule 3200: Minimum Requirements for Dealer Members seeking approval under Rule 1300.1{T} for suitability relief for trades not recommended by the Member	Part A	{2} {b}	3900	R. 3903. Policies and Procedures	{4}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub Section	Comments
Rule 3200: Minimum Requirements for Dealer Members seeking approval under Rule 1300.1{T} for suitability relief for trades not recommended by the Member	Part B	{2} {a}	3900	R. 3903. Policies and Procedures	{1} through {3}	
Rule 3200: Minimum Requirements for Dealer Members seeking approval under Rule 1300.1{T} for suitability relief for trades not recommended by the Member	Part B	{2} {b}	3900	R. 3903. Policies and Procedures	{4}	
Rule 0038: Compliance and Supervision	38.01	{ii}	3900	R. 3903. Policies and Procedures	{4}	
Rule 0038: Compliance and Supervision	38.01	{iii}	3900	R. 3903. Policies and Procedures	{5} and {6}	
Rule 3200: Minimum Requirements for Dealer Members seeking approval under Rule 1300.1{T} for suitability relief for trades not recommended by the Member	Part A	{4}	3900	R. 3903. Policies and Procedures	{1} - {6}	
Rule 3200: Minimum Requirements for Dealer Members seeking approval under Rule 1300.1{T} for suitability relief for trades not recommended by the Member	Part B	{4}	3900	R. 3903. Policies and Procedures	{1} through {6}	
Rule 2500: Minimum Standards for Retail Account Supervision	Part I	{E}	3900	R. 3903. Policies and Procedures	{4}, {5} and {6}	
Rule 0038: Compliance and Supervision	38.02		3900	R. 3904. Supervisory Personnel and Resources	{1} and {2}	
Rule 0038: Compliance and Supervision	38.03		3900			[**Non-Substantive** - Deleted. Redundant within registration provisions]
Rule 0038: Compliance and Supervision	38.01	{iv}	3900	R. 3904. Supervisory Personnel and Resources	{1}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub Section	Comments
Rule 0038: Compliance and Supervision	38.01	{v}	3900	R. 3904. Supervisory Personnel and Resources	{2}	
Rule 0038: Compliance and Supervision	38.01	{vi}	3900	R. 3904. Supervisory Personnel and Resources	{3}	
Rule 0038: Compliance and Supervision	38.04	{a}	3900	R. 3905. Individual Supervisory Responsibility	{1}	
Rule 0038: Compliance and Supervision	38.04	{b}	3900	R. 3906. Delegation of Supervisory Tasks	{1}	
Rule 0038: Compliance and Supervision	38.04	{b} {i}	3900	R. 3906. Delegation of Supervisory Tasks	{2}	
Rule 0038: Compliance and Supervision	38.04	{b} {ii}	3900	R. 3906. Delegation of Supervisory Tasks	{3}	
Rule 0038: Compliance and Supervision	38.04	{b} {iii}	3900	R. 3906. Delegation of Supervisory Tasks	{4} {ii}	
Rule 0038: Compliance and Supervision	38.04	{b} {iv}	3900	R. 3906. Delegation of Supervisory Tasks	{4} {i}	
Rule 2500: Minimum Standards for Retail Account Supervision	Part I	D {1}	3900	R. 3906. Delegation of Supervisory Tasks	{1}	
Rule 2500: Minimum Standards for Retail Account Supervision	Part I	D {2}	3900	R. 3906. Delegation of Supervisory Tasks	{4} {i} {iii}	
Rule 2500: Minimum Standards for Retail Account Supervision	Part I	D {3}	3900	R. 3906. Delegation of Supervisory Tasks	{4} {ii}	
Rule 2500: Minimum Standards for Retail Account Supervision	Part I	D {4}	3900	R. 3906. Delegation of Supervisory Tasks	{3}	
Rule 0038: Compliance and Supervision	38.01	{v}	3900	R. 3907. Supervision Records	{1}	
Rule 0038: Compliance and Supervision	38.01	{vi}	3900	R. 3907. Supervision Records	{3}	
Rule 0038: Compliance and Supervision	38.01	{vii}	3900	R. 3907. Supervision Records	{2}	
Rule 0038: Compliance and Supervision	38.05	{a}	3900	R. 3908. Appointment of Ultimate Designated Person (UDP)	{1}	
Rule 0038: Compliance and Supervision	38.05	{b}	3900	R. 3908. Appointment of Ultimate Designated Person (UDP)	{2}	
Rule 0038: Compliance and Supervision	38.05	{c}	3900	R. 3909. Responsibility of the UDP	{1} and {2}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub Section	Comments
Rule 0038: Compliance and Supervision	38.07	{a}	3900	R. 3910. Appointment of Chief Compliance Officer (CCO)	{1}	
Rule 0038: Compliance and Supervision	38.07	{b}	3900	R. 3910. Appointment of Chief Compliance Officer (CCO)	{2}	
Rule 0038: Compliance and Supervision	38.07	{c}	3900	R. 3910. Appointment of Chief Compliance Officer (CCO)	{3}	
Rule 0038: Compliance and Supervision	38.07	{d}	3900	R. 3910. Appointment of Chief Compliance Officer (CCO)	{4}	
Rule 0038: Compliance and Supervision	38.07	{e}	3900	R. 3910. Appointment of Chief Compliance Officer (CCO)	{5}	
Rule 0038: Compliance and Supervision	38.07	{g}	3900	R. 3910. Appointment of Chief Compliance Officer (CCO)	{5}	
Rule 0038: Compliance and Supervision	38.07	{f}	3900	R. 3911. Replacing a Chief Compliance Officer	{1} and {2}	
Rule 0038: Compliance and Supervision	38.07	{h} {i}	3900	R. 3912. Responsibility of the Chief Compliance Officer	{1} {i}	
Rule 0038: Compliance and Supervision	38.07	{h} {ii}	3900	R. 3912. Responsibility of the Chief Compliance Officer	{1} {ii}	
Rule 0038: Compliance and Supervision	38.07	{h} {iii}	3900	R. 3912. Responsibility of the Chief Compliance Officer	{1} {iii}	
Rule 0038: Compliance and Supervision	38.07	{i}	3900	R. 3912. Responsibility of the Chief Compliance Officer	{2}	
Rule 0038: Compliance and Supervision	38.07	{h} {iv}	3900	R. 3913. CCO Report to Dealer Member's board of directors	{1}	
Rule 0038: Compliance and Supervision	38.08		3900	R. 3913. CCO Report to Dealer Member's board of directors	{2} and {3}	
Rule 0038: Compliance and Supervision	38.09		3900	R. 3914. Governance Document	{1}	
Rule 0038: Compliance and Supervision	38.06	{a}	3900	R. 3915. Appointment of Chief Financial Officer (CFO)	{1} {2} and {3}	
Rule 0038: Compliance and Supervision	38.06	{c}	3900	R. 3916. Responsibility of Chief Financial Officer	{1} and {2}	
Rule 0038: Compliance and Supervision	38.06	{b}	3900	R. 3917. Replacing a Chief Financial Officer	{1} and {2}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub Section	Comments
Rule 2600: Internal Control Policy Statements	Statement 1 - General Matters	{v} last paragraph	3900	R. 3918. Annual Supervisory Review of Financial and Operational Policies and Procedures	{1}	
Rule 2400: Relationship between Dealer Member & Financial Service Entities	Minimum Standards for Shared Office Premises	7 {b}	3900	R. 3919. Supervision of Shared Office Premises	{1} - {2}	
			3900	R. 3920-3924 Reserved		[**New - Non substantive** - Reserved sections]
Rule 0038: Compliance and Supervision	38.01	{i}	3900	R. 3925. Supervision by Designated Persons	{1}	
Rule 1300: Supervision of Accounts	1300.02	{a}	3900	R. 3925. Supervision by Designated Persons	{2} and {3}	
Rule 2700: Minimum Standards for Institutional Account Opening, Operating & Supervision	Part II	{3}	3900	R. 3925. Supervision by Designated Persons	{2}	
New Provision			3900	R. 3925. Supervision by Designated Persons	{4}	[**Substantive** - Clarifies that alternate designated Supervisors must be appointed.]
Rule 2500: Minimum Standards for Retail Account Supervision	Establishing and Maintaining Procedures, Delegation and Education	{A} {1} {b}	3900	R. 3926. Account Supervision Policies and Procedures	{1}	
Rule 2500: Minimum Standards for Retail Account Supervision	Establishing and Maintaining Procedures, Delegation and Education	{A} {2}	3900	R. 3926. Account Supervision Policies and Procedures	{1}	
Rule 2700: Minimum Standards for Institutional Account Opening, Operating & Supervision	Introduction	4th paragraph	3900	R. 3926. Account Supervision Policies and Procedures	{1}	
Rule 2700: Minimum Standards for Institutional Account Opening, Operating & Supervision	Part IV	{A}	3900	R. 3926. Account Supervision Policies and Procedures	{1}	
Rule 2500: Minimum Standards for Retail Account Supervision	Part I	{C} {1}	3900	R. 3926. Account Supervision Policies and Procedures	{2}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub Section	Comments
Rule 2500: Minimum Standards for Retail Account Supervision	Part I	{C} {3}	3900	R. 3926. Account Supervision Policies and Procedures	{2}	
Rule 2500: Minimum Standards for Retail Account Supervision	Part II	Intro – last sentence	3900	R. 3926. Account Supervision Policies and Procedures	{2} {iii}	
Rule 2500: Minimum Standards for Retail Account Supervision	Part I	{A} {2}	3900	R. 3926. Account Supervision Policies and Procedures	{3}	
Rule 2500: Minimum Standards for Retail Account Supervision	Part I	{A} {1} {c}	3900	R. 3926. Account Supervision Policies and Procedures	{4}	
Rule 2700: Minimum Standards for Institutional Account Opening, Operating & Supervision	Part III	{C} {iii}	3900	R. 3926. Account Supervision Policies and Procedures	{4}	
New Provision			3900	R. 3926. Account Supervision Policies and Procedures	{5}	[**Non-substantive**: Clarifies that recordkeeping and access to records must be supervised and controlled. Implied under current Dealer Member Rules]
Rule 2500: Minimum Standards for Retail Account Supervision	Part I	{B}	3900	R. 3926. Account Supervision Policies and Procedures	{6}	
Rule 2700: Minimum Standards for Institutional Account Opening, Operating & Supervision	Part III	{B} {2}	3900	R. 3926. Account Supervision Policies and Procedures	{6}	
Rule 0038: Compliance and Supervision	38.01	Introduction	3900	R. 3927. Reviews of Account Activity	{1}	
Rule 2500: Minimum Standards for Retail Account Supervision	Part I	{B} first part	3900	R. 3927. Reviews of Account Activity	{1}	
Rule 2700: Minimum Standards for Institutional Account Opening, Operating & Supervision	Introduction		3900	R. 3927. Reviews of Account Activity	{1}	
Rule 0038: Compliance and Supervision	38.01	{vii}	3900	R. 3927. Reviews of Account Activity	{2}	
Rule 2500: Minimum Standards for Retail Account Supervision	Part I	{F}	3900	R. 3927. Reviews of Account Activity	{2}	
Rule 2700: Minimum Standards for Institutional Account Opening, Operating & Supervision	Part III	{B} {1}	3900	R. 3927. Reviews of Account Activity	{2}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub Section	Comments
Rule 2500: Minimum Standards for Retail Account Supervision	Part I	{C} {4}	3900	R. 3927. Reviews of Account Activity	{3}	
Rule 1900: Options	1900.02	{a}	3900	R. 3928. Supervision of Options Accounts	{1} and {2}	
Rule 2500: Minimum Standards for Retail Account Supervision	Part V Option Account Supervision	Introduction	3900	R. 3928. Supervision of Options Accounts	{1} - {4}	[**Substantive**: New as general supervisory requirements to clarify that alternate supervisors must be appointed for all option accounts, not only retail.]
Rule 2500: Minimum Standards for Retail Account Supervision	Part V Option Account Supervision	Introduction	3900	R. 3929. Responsibility of Designated Supervisor for Options Accounts	{1}	
Rule 2500: Minimum Standards for Retail Account Supervision	Part V Option Account Supervision	{A} {3}	3900	R. 3929. Responsibility of Designated Supervisor for Options Accounts	{1} {i}	
Rule 1900: Options	1900.02	{c}	3900	R. 3929. Responsibility of Designated Supervisor for Options Accounts	{1} {i}	
Rule 1900: Options	1900.02	{a}	3900	R. 3929. Responsibility of Designated Supervisor for Options Accounts	{1} {i} - {ii}	
Rule 2500: Minimum Standards for Retail Account Supervision	Part VI	Introduction	3900	R. 3930. Supervision of Futures and Futures Options Accounts	{1} - {4}	[**Substantive**: New as general supervisory requirements to clarify that alternate supervisors must be appointed for all futures and futures options accounts, not only retail.]
Rule 1800: Commodity Futures Contracts & Options	1800.02	{a}	3900	R. 3930. Supervision of Futures and Futures Options Accounts	{1} and {2}	
Rule 1800: Commodity Futures Contracts & Options	1800.02	{a}	3900	R. 3931. Responsibility of Designated Supervisors for Futures and Futures Options Accounts	{1} {i} - {ii}	
Rule 1800: Commodity Futures Contracts & Options	1800.02	{c}	3900	R. 3931. Responsibility of Designated Supervisors for Futures and Futures Options Accounts	{1} {i}	
Rule 1800: Commodity Futures Contracts & Options	1800.02	{e}	3900	R. 3932. Access to Approved Persons Qualified in Futures and Futures Options	{1}	
			3900	R. 3933-3944 Reserved		[**New - Non-substantive** - Reserved sections]

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub Section	Comments
Rule 2500: Minimum Standards for Retail Account Supervision	Part IV	Two-Tier Reviews	3900	R. 3945. Daily and Monthly Trade Supervision	{1}	
Rule 2500: Minimum Standards for Retail Account Supervision	Part IV	{A}	3900	R. 3945. Daily and Monthly Trade Supervision	{2}	
Rule 2500: Minimum Standards for Retail Account Supervision	Part III	{B} {2}	3900	R. 3945. Daily and Monthly Trade Supervision	{3}	
Rule 2500: Minimum Standards for Retail Account Supervision	Part II	{C} {3}	3900	R. 3945. Daily and Monthly Trade Supervision	{4}	
Rule 2500: Minimum Standards for Retail Account Supervision	Part IV	{E}	3900	R. 3946. Additional Supervisory Responsibilities	{1}	
Rule 0018: Registered Representatives & Investment Representatives	18.06		3900	R. 3947. Supervision of New Registered Representatives and Investment Representatives	{1} - {3}	
Rule 1300: Supervision of Accounts	1300.01	{p}	3900	R. 3948. Suitability of Client Orders and Recommendations	{1}	
Rule 1300: Supervision of Accounts	1300.06		3900	R. 3949. Supervision for Discretionary Accounts	{1} {2} and {5}	
Rule 2500: Minimum Standards for Retail Account Supervision	Part VII	{B}	3900	R. 3949. Supervision for Discretionary Accounts	{3}	
Rule 2500: Minimum Standards for Retail Account Supervision	Part VII	{C}	3900	R. 3949. Supervision for Discretionary Accounts	{4}	
Rule 1300: Supervision of Accounts	1300.01	{p}	3900	R. 3950. Responsibility of Designated Supervisor for Retail Options Accounts	{1}	
Rule 1300: Supervision of Accounts	1300.01	{q}	3900	R. 3950. Responsibility of Designated Supervisor for Retail Options Accounts	{1}	
Rule 2500: Minimum Standards for Retail Account Supervision	Part V Option Account Supervision	{D} {5}	3900	R. 3950. Responsibility of Designated Supervisor for Retail Options Accounts	{2}	
Rule 2500: Minimum Standards for Retail Account Supervision	Part V Option Account Supervision	{C}	3900	R. 3950. Responsibility of Designated Supervisor for Retail Options Accounts	{3}	
Rule 2500: Minimum Standards for Retail Account Supervision	Part V Option Account Supervision	{D} {1}	3900	R. 3950. Responsibility of Designated Supervisor for Retail Options Accounts	{3}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub Section	Comments
Rule 2500: Minimum Standards for Retail Account Supervision	Part V Option Account Supervision	{D} {2}	3900	R. 3950. Responsibility of Designated Supervisor for Retail Options Accounts	{4} {i}	
Rule 2500: Minimum Standards for Retail Account Supervision	Part V Option Account Supervision	{D} {4}	3900	R. 3950. Responsibility of Designated Supervisor for Retail Options Accounts	{4} {ii}	
Rule 2500: Minimum Standards for Retail Account Supervision	Part V Option Account Supervision	{D} {3}	3900	R. 3950. Responsibility of Designated Supervisor for Retail Options Accounts	{4} {iii} - {iv}	
Rule 2500: Minimum Standards for Retail Account Supervision	Part V Option Account Supervision	{D} {7}	3900	R. 3950. Responsibility of Designated Supervisor for Retail Options Accounts	{5}	
Rule 2500: Minimum Standards for Retail Account Supervision	Part V Option Account Supervision	{B}	3900	R. 3951. Supervision of Retail Options Account Trading Activity	{1} and {2}	
Rule 2500: Minimum Standards for Retail Account Supervision	Part V Option Account Supervision	{C}	3900	R. 3951. Supervision of Retail Options Account Trading Activity	{1} and {2}	
Rule 2500: Minimum Standards for Retail Account Supervision	Part VI	{A} {2}	3900	R. 3952. Responsibility of Designated Supervisors for Retail Futures and Futures Options Accounts	{1} {i}	
Rule 2500: Minimum Standards for Retail Account Supervision	Part VI	{A} {5}	3900	R. 3952. Responsibility of Designated Supervisors for Retail Futures and Futures Options Accounts	{1} {i}	
Rule 2500: Minimum Standards for Retail Account Supervision	Part VI	{A} {4}	3900	R. 3952. Responsibility of Designated Supervisors for Retail Futures and Futures Options Accounts	{1} {ii}	
Rule 2500: Minimum Standards for Retail Account Supervision	Part VI	{C} {5}	3900	R. 3952. Responsibility of Designated Supervisors for Retail Futures and Futures Options Accounts	{2}	
Rule 2500: Minimum Standards for Retail Account Supervision	Part VI	{C} {1}	3900	R. 3952. Responsibility of Designated Supervisors for Retail Futures and Futures Options Accounts	{3}	
Rule 2500: Minimum Standards for Retail Account Supervision	Part VI	{C} {2}	3900	R. 3952. Responsibility of Designated Supervisors for Retail Futures and Futures Options Accounts	{3}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub Section	Comments
Rule 2500: Minimum Standards for Retail Account Supervision	Part VI	{C} {3}	3900	R. 3952. Responsibility of Designated Supervisors for Retail Futures and Futures Options Accounts	{4}	
Rule 2500: Minimum Standards for Retail Account Supervision	Part VI	{C} {4}	3900	R. 3952. Responsibility of Designated Supervisors for Retail Futures and Futures Options Accounts	{5}	
Rule 2500: Minimum Standards for Retail Account Supervision	Part VI	{C} {7}	3900	R. 3952. Responsibility of Designated Supervisors for Retail Futures and Futures Options Accounts	{6}	
Rule 2500: Minimum Standards for Retail Account Supervision	Part VI	{B}	3900	R. 3953. Supervision of Retail Futures and Futures Options Trading Activity	{1}	
			3900	R. 3954-3959 Reserved		[**New - Non-substantive** - Reserved sections]
Rule 2700: Minimum Standards for Institutional Account Opening, Operating & Supervision	Part IV	{A}	3900	R. 3960. Supervisory Policies and Procedures for Institutional Accounts	{1}	
Rule 2700: Minimum Standards for Institutional Account Opening, Operating & Supervision	Part IV	{B}	3900	R. 3960. Supervisory Policies and Procedures for Institutional Accounts	{2}	
Rule 1300: Supervision of Accounts	1300.01	{p}	3900	R. 3961. Suitability of Client Orders and Recommendations	{1}	
			3900	R. 3962- 3969 Reserved		[**New - Non-substantive** - Reserved sections]
Rule 1300: Supervision of Accounts	1300.15	{b}	3900	R. 3970. Supervision of Managed Accounts	{1} {i}	
Rule 1300: Supervision of Accounts	1300.15	Introduction	3900	R. 3970. Supervision of Managed Accounts	{1} {ii}	
Rule 1300: Supervision of Accounts	1300.15	{a}	3900	R. 3970. Supervision of Managed Accounts	{2}	
Rule 1300: Supervision of Accounts	1300.15	{c}	3900	R. 3970. Supervision of Managed Accounts	{3}	
Rule 1300: Supervision of Accounts	1300.15	{e}	3900	R. 3971. Managed Account Committee	{1}	
Rule 1300: Supervision of Accounts	1300.15	{d}	3900	R. 3972. Managed account review	{1} and {2}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub Section	Comments
			3900	R. 3973-3979 Reserved		[**New - Non-substantive** - Reserved Sections]
Rule 3200: Minimum Requirements for Dealer Members seeking approval under Rule 1300.1{T} for suitability relief for trades not recommended by the Member	Part A	{2} {a}	3900	R. 3980. Supervision by Order Execution Only Service Providers	{1}	
New Provision			3900	R. 3981. Supervision of Execution Only Trades in Advisory Accounts	{1}	[**Non-substantive:** General provision requiring compliance by discount brokers with this section. Implied under existing rules]
Rule 3200: Minimum Requirements for Dealer Members seeking approval under Rule 1300.1{T} for suitability relief for trades not recommended by the Member	Part B	{4} {b}	3900	R. 3981. Supervision of Execution Only Trades in Advisory Accounts	{2}	
Rule 3200: Minimum Requirements for Dealer Members seeking approval under Rule 1300.1{T} for suitability relief for trades not recommended by the Member	Part B	{4} {a}	3900	R. 3981. Supervision of Execution Only Trades in Advisory Accounts	{3}	
Rule 3200: Minimum Requirements for Dealer Members seeking approval under Rule 1300.1{T} for suitability relief for trades not recommended by the Member	Part B	{5} {a}	3900	R. 3981. Supervision of Execution Only Trades in Advisory Accounts	{4} - {5}	
Rule 3200: Minimum Requirements for Dealer Members seeking approval under Rule 1300.1{T} for suitability relief for trades not recommended by the Member	Part B	{5} {e}	3900	R. 3981. Supervision of Execution Only Trades in Advisory Accounts	{5}	

Current rule number and title	Sub-section		New rule number	New section, title and description	Sub Section	Comments
Rule 3200: Minimum Requirements for Dealer Members seeking approval under Rule 1300.1{T} for suitability relief for trades not recommended by the Member	Appendix A	{3}	3900	R. 3981. Supervision of Execution Only Trades in Advisory Accounts	{6}	
Rule 3200: Minimum Requirements for Dealer Members seeking approval under Rule 1300.1{T} for suitability relief for trades not recommended by the Member	Part B	{5} {f}	3900	R. 3981. Supervision of Execution Only Trades in Advisory Accounts	{7}	
			3900	R. 3981-3999 Reserved		[**New - Non-substantive** - Reserved Sections]
Rule 2500: Minimum Standards for Retail Account Supervision	Part III		3900			[**Substantive:** Deleted. Not a requirement. Relevant provisions moved to guidance notes.]
Rule 2500: Minimum Standards for Retail Account Supervision	Part III		3900			[**Substantive:** Deleted. Not a requirement. Relevant provisions moved to guidance notes.
Rule 2500: Minimum Standards for Retail Account Supervision	Part III		3900			[**Substantive:** Deleted. Not a requirement. Relevant provisions moved to guidance notes.]
Rule 2500: Minimum Standards for Retail Account Supervision	Part III		3900			[**Substantive:** Deleted. Not a requirement. Relevant provisions moved to guidance notes.]
Rule 2500: Minimum Standards for Retail Account Supervision	Part IV		3900			[**Substantive:** Deleted. Not a requirement. Relevant provisions moved to guidance notes.]
Rule 2500: Minimum Standards for Retail Account Supervision	Part IV		3900			[**Substantive:** Deleted. Not a requirement. Relevant provisions moved to guidance notes.]
Rule 2500: Minimum Standards for Retail Account Supervision	Part IV		3900			[**Substantive:** Deleted. Not a requirement. Relevant provisions moved to guidance notes.]

ATTACHMENT D

GUIDANCE NOTE 3400-1

RECOMMENDATIONS

INTRODUCTION

This Guidance Note provides additional information about determining what constitutes a recommendation for the purpose of Rule 3400.

WHAT IS A RECOMMENDATION?

This Guidance Note does not define all situations that may be appropriately described as a recommendation. Whether or not a recommendation has been made will depend upon all of the relevant facts and circumstances surrounding a trade. These circumstances would include a "reasonable person" test, i.e. would a reasonable person in similar circumstances understand that a recommendation had been made.

The examples provided are not exhaustive or determinative. They are provided solely to assist Dealer Members, bearing in mind that each situation will be judged upon its own facts and circumstances.

ISSUES AND EXAMPLES TO CONSIDER IN DETERMINING WHETHER A RECOMMENDATION IS MADE

(1) A waiver or disclaimer given to a client stating that the information given to the client by the Dealer Member is not a recommendation is not determinative.

(2) Marking a trade "solicited" or "unsolicited" will not determine that a recommendation has been made.

(3) The medium or method of discussing a trade is not determinative. It is the substance of the communication that is the primary factor.

(4) A Dealer Member's calling itself a discount broker or an "order execution only service" is not determinative.

(5) A lower commission is not relevant to determining if a recommendation has been made.

(6) Whether a transaction is a "buy" or "sell" is not relevant.

(7) The lack of a prior relationship between the client and the Dealer Member does not imply that the Dealer Member is not making recommendations.

(8) A Dealer Member would usually be making a recommendation under the following circumstances:

- (i) providing information that is individually tailored to a specific client or class of clients;
- (ii) developing systems to "data mine" clients' habits and investment preferences and using this information to target specific clients;
- (iii) promoting a specific security or trading strategy to a client;
- (iv) the Dealer Member telling a client that it is taking into account the client's objectives and financial situations with respect to the transaction; and
- (v) when the client has entered an order on-line, pursuant to the Dealer Member's recommendation.

(9) A Dealer Member would not usually be making a recommendation under the following circumstances:

- (i) providing or making available investment information, unless the Dealer Member has made an individually tailored proposal;
- (ii) informing clients or prospective clients of the availability of general categories of investment information;
- (iii) making general advertisements or statements without a recommendation;

(iv) posting research on a website or another form of wide distribution;

(v) distributing a general list of securities for sale;

(vi) offering hyperlinks or portals to other investment-related web pages;

(vii) responding to a client's request for certain kinds of investment information; and

(viii) operating an "order-execution only" service, approved by the Corporation in accordance with the IIROC Dealer Member rules and the guidance provided here.

For purposes of this Guidance Note, the term "investment information" means information prepared by the Dealer Member (or a third party on behalf of the Dealer Member) which includes financial market information, news, research, opinions, charting and portfolio tracking information, asset allocation models, analyst consensus reports, stock quotes, public disclosure documents (including extracts) and information relating to offerings and sales material.

GUIDANCE NOTE 3500-1

CONFIDENTIAL INFORMATION CONTAINMENT

INTRODUCTION

Section 3507(5) requires that a Dealer Member have appropriate procedures to contain material non-public information to prevent its use for illegal insider trading. This Guidance Note draws upon the best practices of Dealer Members for monitoring and/or restricting transactions, including the use of "Grey" (or "Watch") and "Restricted" Lists. IIROC recognizes that procedures will vary from firm to firm depending upon the nature of the firm's business, its size, clientele and the markets in which it does business.

While some Dealer Members do not engage in corporate finance or investment banking activities, all Dealer Members should be mindful of the need to contain inside information which may come into the knowledge of the Dealer Member's employees. This knowledge may be acquired through trading by issuers, research or relationships between employees and corporate insiders. Dealer Members should develop procedures to bring to the attention of management, any instances of non-compliance with the requirements.

Dealer Members should also review their policies and procedures for confidential information containment on a regular basis, including the effectiveness of the Grey and Restricted Lists.

INFORMATION BARRIERS (FIREWALLS)

Dealer Members should ensure they have appropriate physical and procedural means of restricting access to confidential information to only those who need the information. A record of persons with access to the information should be maintained. The following are guidelines for the establishment and maintenance of these information barriers:

Responsible officer - Dealer Members should assign a qualified senior officer, or a sub-committee of the board, accountable to the Audit Committee of the board to oversee the design, implementation and maintenance of the Dealer Member's containment program. The program should be fully documented, including provisions for periodic reviews and timely updates, continuous improvement and continuing staff education.

Definition of confidential information - Dealer Members should have a clear definition of confidential information in the context of the Member and its employees' dealings with issuers.

Education of employees - Dealer Members should have a program to inform employees of the relevant policies and procedures involving the handling of confidential information. The program should include relevant extracts from the "red flags" noted in this Guidance Note. Dealer Members should also ensure that consistent answers are provided to questions for clarification. Dealer Members should also obtain clear, formal employee undertakings to abide by the policies and procedures.

Physical and technological barriers - Dealer Members should have effective physical and technological barriers limiting access to documents and records (both physical and electronic) containing confidential information to those authorized to view them. There should be effective and procedural deterrents supportive and complementary to these barriers. These deterrents should be tested and reviewed regularly.

Outside parties - Any outside parties involved in the implementation or testing of policies and procedures, including deterrents should be bound by solid confidentiality restrictions.

"Over the wall"- Dealer Members should have established processes by which outside individuals might be brought over the wall (information barrier). These processes should include keeping a record on who is brought over the wall and when. This would include both employees and outside consultants or advisors who have access to the confidential information.

Introducing/Carrying brokers – The parties should enter into a clear, non-conflicting agreement regarding respective responsibilities for information containment and leakage detection. The agreements should be reviewed annually.

GREY (OR "WATCH") LISTS

A Grey List is a list of issuers on which the Dealer Member or any of its employees has confidential information. The grey list has limited circulation for the purpose of watching any trading activity which might suggest that the information has been leaked or used inappropriately. The following guidelines assist members in the creation and use of the list.

Establish clear guidelines – Dealer Members should establish clear guidelines which set out the purpose of the Grey List. This would include the kinds of events that should see a security or family or securities added to or removed from the list and the process of adding or removing from the list. The guidelines should set out the information to be contained on the list including the dates and times of all additions and deletions. The person in charge of maintaining the list should be named, as well as the limited distribution of the list. The safe storage of the list and its data should be noted. The guidelines should specify the ways in which the list will be applied to the firm's continuous self-supervision activities.

Education of Employees – All persons who are likely to come in contact with confidential information should be trained on Grey List procedures.

List Preparation – The Dealer Member should ensure that access to corporate finance or research department meetings (or the minutes from the meetings) is part of the Grey List preparation

Insider Information on new account applications – Dealer Members should establish a process to capture and update the insider status information received on new account applications. This would include all accounts over which the insider has authority. This information should be available to all supervisory employees.

Trading reviews – Dealer Members should ensure that Grey List trading reviews cover all accounts at the Dealer Member, including:

- proprietary and inventory accounts
- accounts held by employees and their associates at other firms
- accounts of insiders of the issuer.

The review should include securities which are related or derivatives of the Grey List securities.

Questionable Trading – The Dealer Member's policies and procedures should include the clear process to be followed when questionable trading is detected.

Managing the List – The Dealer Member's policies and procedures should include an adjudication process for possible exceptions to the list. In addition, there should be a procedure for managing research on Grey List issuers.

RESTRICTED LISTS

Dealer Members should maintain a list of issuers with whom the Dealer Member has a current, publicly disclosed involvement which requires restrictions on the Dealer Member's trading or advising activities.

Establish Clear Guidelines - Dealer Members should establish clear guidelines which set out the purpose of the Restricted List. This would include the kinds of events that should see a security or family or securities added to or removed from the list and the process of adding or removing from the list. The guidelines should set out the information to be contained on the list including the dates and times of all additions and deletions. The person in charge of maintaining the list should be named, as well as the distribution of the list. The archiving of the list and its data should be noted. The guidelines should specify the ways in which the list will be applied to the firm's continuous self-supervision activities.

Education of Employees – Dealer Members should train all employees involved in taking orders and handling trades on the trading restrictions of issuers on the Restricted List. If there are categories of restriction, these should be clearly explained to affected employees and their supervisors.

List Preparation –Dealer Members should ensure that all updates to the list are authorized, recorded and disseminated to all employees affected on a reliable and timely basis.

Trading reviews – Dealer Members should ensure that Restricted List trading reviews cover all accounts at the Dealer Member, including:

- proprietary and inventory accounts
- accounts held by employees and their associates at other firms
- accounts of insiders of the issuer

The review should include securities which are related or derivatives of the Restricted List securities.

Questionable Trading – The Dealer Member's policies and procedures should include the clear process to be followed when questionable trading is detected.

Managing the List – The Dealer Member's policies and procedures should also include an adjudication process for possible exceptions to the list. In addition, there should be a procedure for managing research reports, sales literature, and investment recommendations on Restricted List issuers.

"RED FLAGS"

There are "red flags" that indicate possible insider trading activity. Dealer Members should have trading surveillance which would detect this kind of activity and train their employees to watch for and report any suspicious client activity to management.

Since an order for an insider must be so indicated upon entry, a Dealer Member's compliance department should have available a report of all insider trades. This may be obtained from an outside vendor or from the TSX. The report could provide a basis for trading reviews to identify the following:

- A change in the pattern of trading activity of an insider account from inactivity to trading, or from buying and selling to abruptly aggressively buying or selling a significant position in the security.
- Immediate buying or selling of a significant inside position by a new account.
- Orders placed by an insider outside of the recent trading range, for example, a buy order at $1.20 when the recent trading range was from $.90 to $1.00.
- An insider account making a significant profit on a quick flip in the security, or liquidating the security position and then re-establishing it at a more favorable price.
- New accounts that are not insiders that immediately take a substantial position in the security which is traded for a quick profit. The accounts may belong to a nominee or have received an insider tip.
- A pattern of consistent profitable trading by an insider or other account in the security prior to a news release.
- Trading activity by insider accounts and the accumulation of significant positions in the security by other accounts immediately prior to the security being placed on the Member's Grey List or during the time the security is on the Member's Grey List.

GUIDANCE NOTE 3500-2

CLIENT PRIORITY IN TSX VENTURE PRIVATE PLACEMENTS

INTRODUCTION

Section 3504 requires Dealer Members to give priority to client orders over all other orders for the same security at the same price. Furthermore, pursuant to the TSX Venture rules, a Dealer Member must observe client priority in private placements where the Member is acting as underwriter, agent, advisor or a member of a selling group or where non-clients at the Dealer Member hold 20% or more of the issued and outstanding securities of the issuer.

PROCEDURES

When a Dealer Member is involved in a small financing or has a small participation in a larger financing, it is impractical to solicit interest from all of the Dealer Member's advisers or from all of their clients. To assist Members in observing client priority, the following procedures are suggested:

General statement – The Dealer Member should send a general statement to clients inviting clients to express their interest in any private placements to their advisor. Possible methods of informing clients are by a general mailing, a note on monthly statements, a change to the account opening packages or other means. The communication to clients should include a general reference to the Dealer Member's procedures to be followed by clients in expressing an interest. The objective is to ensure that clients know and are occasionally reminded of the Dealer Member's procedures.

Specific private placement – For a specific private placement, the Dealer Member must confirm that the company has issued a news release as required by the TSX Venture announcing the amount and the price of the private placement. Non-client subscriptions can only be received after three clear days. Client orders received after the three days have passed still take priority if the final allocation of the securities by the Dealer Member has not been made and communicated to the issuer.

IIROC acknowledges that in non-brokered private placements, the issuer determines the final allocation of securities. However, the Dealer Member should ensure that the client interest is satisfied prior to any non-client participation.

Dealer Member's procedures should require that an RR immediately communicate any expressions of interest to a central location. Failure to do so should be seen as a serious breach of internal procedures likely leading to a disciplinary proceeding.

RECEIPT OF COMPENSATION

Dealer Members should note that receipt by the Dealer Member of a finder's fee or other form of compensation in connection with the distribution of securities, (excepting subsequent resale commissions), is evidence that the Dealer Member is acting as an adviser, agent or underwriter.

GUIDANCE NOTE 3500-3

PRE-MARKETING OF DISTRIBUTIONS

INTRODUCTION

This Guidance Note interprets Dealer Member Rule 3500. Dealer Members should also consult the CSA's notice "Pre-marketing activities in the context of Bought Deals" – CSA Staff Notice 47-704.

EQUITY SECURITIES

Distributions, commencement of distribution and equity securities as referenced in Rule 3500 are defined in Rule 1000 of the IIROC Rulebook. With respect to the definition of equity securities, for the purpose of Rule 3500, Dealer Members should note that when an issuer has the right to pay the redemption or the retraction price by issuing equity shares at a discount to market price rather than paying in cash, this feature is known as a soft redemption or retraction. These securities resemble debt securities and should be treated as such. Preferred shares that carry a soft redemption or retraction feature should not be considered equity securities for purposes of the Rule.

COMMENCEMENT OF DISTRIBUTION DISCUSSIONS

Commencement of distribution refers to the time when a Dealer Member has had distribution discussions with an issuer or selling security holder, or another underwriter that has had discussions with an issuer or selling security holder, that are of "sufficient specifity" that it is reasonable to expect that the Dealer Member (alone or with the other underwriter) will propose an underwriting of securities to the issuer or selling security holder.

The definition in the Rule is designed to ensure that confidential information concerning the issuer's intentions regarding a proposed financing is not communicated to potential purchasers. Private discussions would fall under the definition. However, a public announcement by an issuer of its financial intentions, for example at a public meeting, at which a Dealer Member is present, would not generally be considered distribution discussions, unless it is followed quickly with an offer from the Dealer Member. Where there is a significant time lag between the discussions and the offer, it would generally indicate that the discussions were not of "sufficient specificity" or that the Dealer Member declined to pursue the distribution. Therefore, such discussions would probably not fit under the definition. If there were no distribution discussions and the issuer simply accepts

an offer to underwrite a distribution from a Dealer Member, then the commencement of distribution discussions occurs immediately upon acceptance of the offer. In that case, it may end virtually immediately with the issuance of a news release.

The time period restrictions in Rule 3500 are the same with respect to both principal trading activities and with respect to restrictions on the communication of inside information.

Dealer Members should note that the commencement of the distribution discussions is not affected by the commencement of the restricted period under UMIR. Generally, the commencement of distribution discussions occur prior to the restrictions on principal trading activities and trading of solicited orders by underwriters as contemplated under UMIR.

Timing of commencement of distribution discussions - The commencement of distribution discussions will vary among Dealer Members according to their different underwriting processes. At the latest, it will have commenced at the time the offer to underwrite is made to the issuer.

Although a final decision to make the offer is to be made by an underwriting committee at the Dealer Member, for some Dealer Members, this committee's decision is only a formality. For example, when personnel believe that the committee will follow their recommendation, the decision to make the recommendation could constitute commencement of distribution discussions. As a result, the distribution will have commenced before the committee's decision is made. In these circumstances, there can be no further discussion with potential purchasers by anyone with knowledge of the distribution discussions or by anyone instructed by personnel with knowledge.

End of restrictions - The Rule sets out the three events that allow the Dealer Member to have communications with potential purchasers. One of the events is issuance and filing of a news release, in accordance with regulatory requirements, announcing the signing of the underwriting agreement. Section 7.1 of National Instrument 44-101 sets out conditions that must be met for issuance and filing of a news release. Since some of the conditions in section 7.1 relate to events that must happen after the news release is issued, this places a Dealer Member under some uncertainty that legitimate marketing may become illegitimate pre-marketing if a condition is not met. This problem is exacerbated by the fact that a condition may be outside of the Dealer Member's control. IIROC will not interpret this Rule adversely to the Member if the failure to meet the condition was out of the Member's control.

News release – Although three events define the starting point for communications with potential investors, a news release announcing the distribution ensures that there is equal access to information and meets concerns about tipping and trading on undisclosed material information. Section 7.1 of NI 44-101 requires that a news release be issued and filed when entering into an enforceable underwriting agreement. This would precede communications with potential investors and the filing of a preliminary prospectus.

For listed securities, new releases must be disseminated according to the timely disclosure Policies of The Toronto Stock Exchange or the TSX Venture Exchange, as applicable.

EXEMPT DISTRIBUTIONS AND SPECIAL WARRANTS

When a Dealer Member reasonably expects that an exempt distribution will be abandoned, any subsequent pre-marketing activities will be subject to the Rule.

This interpretation applies to conventional private placements of securities where securities are intended to be issued and held under the "closed system", including special warrant offerings by issuers not eligible to use the short form prospectus system. However, the pre-marketing restrictions of the Rule are applicable to special warrant offerings by issuers if it is intended that the underlying securities are to be qualified by a short form prospectus. IIROC may grant an exemption from this provision if it is expected that there will be a significant delay before the preliminary short form prospectus is filed. A delay for the purpose of filing a notice under section 2.8 of NI 44-101 and the translation of documents to be incorporated by reference will not generally be considered to be a significant delay.

CERTIFICATE

The signing of the certificate is not done personally, but "on behalf of the Dealer Member". However, there may be circumstances where the conduct of the person signing may be considered by IIROC to be conduct unbecoming, not in the public interest or a matter of continued fitness for registration under securities law. The certificate permits delegation of the enquiry function, but delegation should only be to a senior executive who is appropriate to perform the enquiry.

GUIDANCE NOTE – 3500-4

SOLICITATION FEES

A solicitation fee may be paid by offerors to soliciting agents in the course of offers, including cash offers, share exchanges and rights offerings. In some cases, the terms of the offer provide that a solicitation fee be paid to the agent for each of its client's shares tendered into the offer, with a maximum payment per beneficial owner.

There may be circumstances where a client's share position exceeds the number required to obtain the maximum solicitation fee. In such a case it is improper to engage in any adjustments as a means of increasing the fees otherwise payable. For example, it is improper to break down house positions or create additional client account names. This creates the impression that several clients have tendered into the offer where, in fact, the position belongs to only one beneficial owner.

Dealer Members should appreciate that this type of activity is dishonest and fraudulent and would constitute "conduct unbecoming".

GUIDANCE NOTE 3600-1

REVIEW OF ADVERTISEMENTS

INTRODUCTION

This Guidance Note provides Dealer Members assistance in complying with the requirements of Section 3602 for the review of advertising materials. Dealer Members should design policies and procedures appropriate for their size, structure, business and clientele, which may vary depending on the type of clients involved.

DEFINITIONS

A Dealer Member's policies and procedures should contain clear and comprehensive definitions of what constitutes advertising, sales literature and correspondence. This should include reference to all communications media, including print, broadcasting and electronic media. Whether materials are classified as correspondence, advertising or sales literature is determined by their content and purpose rather than by the means of dissemination.

COMPLIANCE WITH LAWS

A Dealer Member's policies and procedures should be designed to ensure that all advertisements, sales literature and correspondence comply with Rule 3600 and all other applicable requirements. For reference, these include the following:

- CIPF disclosure
- Disclosure of financial interest or underwriting liability
- Restricted share terms disclosure
- Related/connected issuer disclosure
- National Policy 47-201 – Trading Securities Using the Internet and Other Electronic Means
- Mutual fund advertising restrictions under National Instrument 81-102
- Requirements regarding the electronic delivery of documents

RESPONSIBILITIES OF THE DESIGNATED PERSON

Under sub-section 3602(3), each Dealer Members must designate a partner, director or officer to be responsible for compliance with the requirements relating to advertising, sales literature and correspondence. Where a Dealer Member is organized into separate business units, additional persons may be designated for each unit.

The designated person should ensure that the policies and procedures in place are:

- reviewed periodically for adequacy

- revised to incorporate relevant rule changes; and
- communicated to applicable personnel.

The designated person should also ensure that individuals assigned specific responsibilities under the policies and procedures are aware of their duties and are properly fulfilling them.

GUIDELINES

The following items are guidelines for Dealer Members for developing policies and procedures:

Prohibitions – The policies and procedures should clearly state any prohibition on specific types of advertising, sales literature or correspondence.

Reviews – The policies and procedures should set out the specific review requirements (pre-use approval, post-use review or post-use sampling) for each type of material used by the Dealer Member.

Record retention – Copies of the materials reviewed and records of the reviews and approvals must be maintained as required under Rule 3800. Should a post-use or sampling review disclose problems, a record should be kept of the corrective action.

Pre-use approval – Research reports, market letters, telemarketing scripts, promotional seminar texts, original advertising and any material that is used to solicit clients and contains performance reports or summaries must be subject to pre-use approval for both content and disclosure requirements. The approval record should include the final copy, not a preliminary copy on which changes have been requested.

Templates – Original advertising refers to the first instance of use of an advertising template, which requires pre-approval. Continuous approval is not required for minor changes to the template such as the name of the RR or the location of the branch.

Performance reports – Pre-approval is required for any advertising, sales literature or correspondence used to solicit clients containing performance reports or summaries. This includes advertisements containing performance reports on mutual funds or asset allocation services which should be reviewed for compliance with Section 3602 and NI 81-102. Software-generated portfolio reports to clients or material containing price and volume charts for specific equities or yields for specific fixed income securities do not require pre-approval, but must be subject to post-issuance review.

Post-use or sampling – Where post-use or sampling reviews are used, the policies and procedures should outline the type of review required, responsibility for conducting reviews and taking remedial action as required, the sampling frequency or techniques and records retention requirements. This type of review may be appropriate for specific instances of template advertisements, daily comments following up on published research or correspondence to single clients or small groups of similar clients.

Cross-supervision – An individual should not be responsible for approval or supervision of their own materials.

Research reports by RRs – Any research reports originating outside of the research department must be reviewed for disclosure of relevant conflicts of interest as required under Rule 3600.

Third party research – Dealer Members should satisfy themselves as to the bona fides or any third party research provider. Material that is provided by a party not at arm's length to the issuer, such as an investor relations firm, would constitute sales literature if distributed by the Dealer Member.

INTERNET ADVERTISING

Under Sub-section 3602(3), advertising on the internet requires prior approval from the person designated by the Dealer Member to approve advertising. This would include websites that originate from individuals at the firm.

A Dealer Member must ensure that its policies and procedures regarding advertising approvals include the use of the internet. The authorization for a web-site and the documents accessible on the web-site must be approved by the designated person. Printed copies of the documents must be kept on file by the Dealer Member as evidence of the written approval.

A password protected web-site, such as a site to enter orders, would not fall under the definition of advertising, but material on the web-site regarding specific securities or strategies may constitute sales literature.

A simple link at another entities' web-site, whether or not paid for is not an advertisement, unless it is accompanied by text or graphics promoting the Dealer Member's services.

Dealer Members are cautioned that electronic documents which are stored on the internet and therefore accessible by foreign residents could expose the Dealer Member to foreign jurisdiction regulatory requirements. An example is the rules in the U.S. Investment Advisors Act. Dealer Members may wish to consult their legal counsel on this matter.

In addition, Dealer Members are reminded that any internet advertising must include the required references to CIPF. It is suggested that the web-site include a link to the CIPF web-site address [http://www.cipf.ten.net/-fcp/]

GUIDANCE NOTE 3600-2

COMMUNICATIONS BY E-MAIL AND THE INTERNET

INTRODUCTION

Dealer Members should ensure that they have adequate policies and procedures relating to the use of e-mail and the internet, including training on anti-virus protection. Those policies may include the review of outgoing and incoming e-mail through the use of software or sampling techniques. Dealer Members should consult their counsel to ensure that their policies and procedures include proper notice to their employees that e-mails may be subject to supervisory review.

GUIDELINES

Outside origination – Dealer Members should have policies which ensure that all business-related e-mails to clients and prospective clients are logged on the Dealer Member's computer systems for future reference. This can be done by:

- providing secure remote access for employees and agents to the Dealer Member's systems;
- prohibiting the sending of all business-related e-mails through home; or
- requiring that all business-related e-mails are copied to the Dealer Member.

Review of advertising e-mails – Dealer Members should have appropriate record retention and sampling procedures to ensure that e-mails sent to clients that fall under Section 3602 are properly approved and comply with the Dealer Member's policies and procedures.

Client orders – Clients and RRs should be discouraged from using e-mails to communicate orders. If the practice is permitted by the Dealer Member, clients should be warned that communication of orders through an e-mail is subject to a number of risks such as delays in opening and executing instructions or inadequate instructions being given.

Anonymous communications – By making anonymous representations or recommendations in internet chat rooms or bulletin boards, registered representatives may violate conflict of interest or other business conduct rules. Members should therefore have policies and procedures in place to restrict their registered persons from engaging in such activities.

GUIDANCE NOTE 3600-3

RESEARCH REPORT DISCLOSURES AND BEST PRACTICES

This Guidance Note provides guidance on the interpretation of Rule 3600 relating to the preparation of research reports and advice on best practices for Dealer Members.

APPLICATION OF THE RULE

The definition of "analyst" under Rule 1000 includes individuals that are held out as analysts as well as individuals whose responsibilities to the Dealer Member include the preparation of research reports. The definition is meant to include individuals that are employed as analysts, whatever their title. The definition is not meant to include registered representatives who produce reports and written recommendations that may be similar to research reports. Such communications from registered representatives are not subject to the research report requirements under Rule 3600. However, a Dealer Member should ensure that its registered representatives are not held out as analysts and that the registered representative's communications are clear in that they present the registered representative's own conclusions and not those of the Dealer Member.

The definition of "research report" is broad and applies to any material distributed to clients or the general public which contains an analyst's recommendation concerning the purchase, sale or holding of a security. Sales and marketing material that do not

make reference to an analyst's recommendation are not considered research reports. The following are also not considered research reports:

- Reports relating to government debt or government-guaranteed debt; and
- Market analysis, market index, and sector reports.

Dealer Members may provide factual information about fixed income securities such as coupon rate, terms, par amount, weight in indices, and debt ratings from third party agencies. Providing such information is not considered equivalent to making a recommendation. However, statements that include implied recommendations, such as stating that an issue is under-priced, are considered recommendations and are subject to the research report requirements under Rule 3600.

In general, Dealer Members should ensure that individuals that prepare sales and marketing material are aware of the definition of "research report" so as not to inadvertently issue something that would be classified as research.

DISCLOSURES AND OTHER REQUIREMENTS

To meet the requirements under Rule 3600, Dealer Members must ensure that the required disclosure is fairly represented. The following points should be observed:

(i) research report disclosures should be in the same type size and legibility as that in the body of the report;

(ii) disclosures should be prominent and not in a mass of fine print or notes on the back pages of a lengthy report;

(iii) disclosures should be specific and consistent. For example, a disclosure indicating that the Dealer Member may have had "a relationship with an issuer" is too general.

Disclosure of financial interest (Paragraph 3607(2)(ii))

When disclosing ownership interests, a Dealer Member is not required to include information for administrative or clerical staff involved in preparing a research report, but only those who create content.

Disclosure of paid services (Paragraph 3607(2)(iii))

Disclosure must be provided for all fees received from a subject issuer within the preceding 12 months by the Dealer Member and any partner, director, or applicable analyst, whether acting for the Dealer Member, or in a personal capacity. The Rule does not require duplicate disclosure for the individuals when the Dealer Member discloses the services. The Rule excludes normal investment-advisory or trade-execution services, such as an investment account by the issuer.

System for rating investments and distributing research (Section 3608)

A Dealer Member must disclose the system it uses for rating investments and how its research is disseminated. The Dealer Member may have separate systems for assigning ratings to the different types of securities on which it provides research.

A Dealer Member's policies and procedures for distributing research should include:

(i) who its research is available to (for example, clients only);

(ii) how its research is distributed (for example, electronically or printed form, or both); and

(iii) whether all recipients receive the research at the same time.

Public comments (Section 3617)

For the purposes of Rule 3600, a public comment includes any comment made by a Dealer Member's employee about a security or issuer during any of the following:

(i) a seminar;

(ii) a public forum (including an interactive electronic forum);

(iii) a radio or television interview;

(iv) any other public speaking activity; or

(v) the writing of a print media article in which an employee comments about an issuer or security.

The Dealer Member meets the requirement by providing guidelines and training for any employee or agent making a public comment. The employee or agent of the Dealer Member meets the requirement by making reasonable efforts to disclose the existence of any relevant research report — or the fact that one does not exist.

Trading restrictions (Section 3618)

The trading restrictions on individuals who prepare research reports do not apply to fixed income research reports that only discuss classes of issuers or sectors of the market. The restrictions apply in the case of reports that contain security specific recommendations – not to sector or class recommendations.

Revenue-based compensation (Section 3619)

Disclosing an analyst's compensation from investment banking revenues does not include compensation based on the overall revenues or profits of the Dealer Member, which may include investment banking revenue or profits.

BEST PRACTICES – PREPARATION OF RESEARCH REPORTS

In each research report, Dealer Members should:

(i) clearly distinguish between the analysts' own assumptions and opinions and the information the issuer provided or obtained elsewhere;

(ii) disclose the name of the expert in the research report or recommendation when an analyst relies on a report or study by a third-party expert;

(iii) set price targets for recommended transactions along with the appropriate disclosure;

(iv) use the specific securities terminology that applicable securities laws require. If the laws do not require securities terminology, use the specific technical terminology relevant industry, professional association, or regulatory authority requires. If specific terminology is not mandated, a Dealer Member should use terminology that is customarily in use. A Dealer Member may also include a glossary of terms.

Dealer Members should adopt standards for research coverage to be followed in the preparation of all research reports. Current financial estimates and recommendations on securities followed by the Dealer Member should be maintained and published. The Dealer Member should review these estimates and recommendations within a reasonable time after an issuer's release of material information or other relevant occurrence.

Dealer Members should make research reports widely available, through websites or otherwise, to all clients at the same time.

BEST PRACTICES – RESEARCH DEPARTMENT

Rule 3600 requires each Dealer Member to supervise the activities and review the content of research reports that are provided to clients. When the number of research analysts requires it, a Dealer Member should appoint additional supervisory analysts to oversee research reviews. A Dealer Member should ensure that supervisors, and other analyst employees, have a Chartered Financial Analyst designation or other appropriate qualifications.

Section 3620 requires each Dealer Member to have policies and procedures in place to restrict the influence of the investment banking department on the activities of the research department. As a best practice, no one in the research department should report to the investment banking department.

GUIDANCE NOTE 3700-1

REPORTING TIME AND METHODS

Rule 3703 requires Dealer Members to report certain types of events to IIROC, within the time and method prescribed by IIROC. This Guidance Note sets out the time period and method by which each of the following events should be reported:

I. REPORTING TIME PERIOD AND METHOD:

Any changes in the registration information of an Approved Person -3703(1)(i)

- Within the time period and manner prescribed by National Instrument 33-109 *Registration Information*, by use of *Registration of Individuals and Review of Permitted Individuals* form (or by any instrument or form replacing it)

All customer complaints, in writing, against the Dealer Member or any Approved Person except service complaints -3703(1)(ii)

- Within twenty business days of receipt of a customer complaint against the Dealer Member or any current or former Approved Persons.
- Must be reported through ComSet

Whenever an internal investigation is commenced by the Dealer Member in accordance with 3706 and the results of such internal investigation-3703(1)(iii) and (iv)

- Within five business days of commencement of an internal investigation and within five business days of completion of such internal investigation
- Must be reported through ComSet

Any time the Dealer Member, current or former Approved Person is subject to one of the following:

(a) Charged with, convicted, plead guilty or no contest to any criminal offense

(b) named as a defendant or respondent, or is subject of, any proceeding or disciplinary action alleging contravention of any securities laws or exchange contract laws;

(c) named as a defendant or respondent, or subject of any proceeding or disciplinary action alleging contravention of the requirements or policies of any regulatory or self-regulatory organization, professional licensing or registration body;

(d) denial of registration or license by any regulatory or self regulatory organization, professional licensing or registration body; or

(e) subject to a securities related civil claim or arbitration notice.

-3703(1)(v)

- Within five business days of occurrence of any of the above
- Must be reported through ComSet

Resolution of any matters set out above-3703(1)(vi)

- Within five business days of the resolution
- Must be reported through ComSet

Any internal disciplinary action that is taken by a Dealer Member against an Approved Person as result of:

(a) a client complaint;

(b) a securities-related civil claim or arbitration notice;

(c) an internal investigation;

(d) a Dealer-Member-initiated disciplinary action imposing suspension, termination, demotion, or trading restrictions on the Approved Person; or

(e) a Dealer Member-initiated disciplinary action not involving clauses (a) to (c) above which results in a monetary penalty:

(1) over $5,000 for a single occurrence;

(2) over $15,000 in total in a calendar year; or

(3) imposed three times or more in a calendar year,

-3703(1)(vii)

- Within five business days of any internal disciplinary action being taken by the Dealer Member as a result of any of the above events
- Must be reported through ComSet

II. OVERLAP OF MATTERS REPORTABLE ON COMSET AND REGISTRATION INFORMATION FORM

Where there is an overlap of items that are reportable on ComSet pursuant to Section 3703 and those that must be reported through the Registrations Department, they must be reported through both.

GUIDANCE NOTE 3700-2

FREQUENTLY ASKED QUESTIONS-RULE 3700

What is a service complaint?

A service complaint is one which is founded on customer service issues and is not the subject of IIROC rules or standards. What is or is not a service complaint will depend on the context of the particular situation, however, a breach of IIROC rules cannot be said to be a service complaint.

Will the information be made public and who will have access to the information?

There is no current plan to make the information public. However, IIROC's position is subject to change based on decisions at the legislative and Securities Commission level.

The Securities Commissions, by virtue of their oversight role, and other Canadian securities regulatory bodies may have access to Rule 3700 information.

Is a Dealer Member required to report under Rule 3700 for persons other than a Partner, Director, Officer or Registered or Approved person of the Dealer Member?

Rule 3700 requires the reporting of matters pertaining to partners, directors, officers or registered or approved persons of the Dealer Member. Dealer Members are not required to report matters related to employees who do not fall within the above categories, however, Dealer Members may voluntarily report such matters should they choose to.

Do daily trade monitoring procedures fall under an internal investigation and require reporting?

Routine daily and other regulatory monitoring will not trigger Internal Investigation Reporting unless it appears that there is a violation related to "theft, fraud, misappropriation of funds or securities, forgery, money laundering, market manipulation, insider trading, misrepresentation or unauthorized trading" as per Section 3706.

If the inquiry by the Dealer Member reveals that there appears to be a violation related to the above serious set of offences, then Section 3706 requires a thorough internal investigation. The Internal Investigation must be reported when commenced and the results of the internal investigation must be reported upon conclusion of the investigation.

Will Termination Notices also have to be submitted through the Registrations Department and ComSet?

Information in a Termination Notice is not specifically required to be reported through ComSet unless the content of the notice falls within Rule 3700 reportable matters.

Are complaints about good faith trading errors reportable?

A complaint based on a “good faith trading error” would be reportable as a trading error as it is not a service complaint.

If Approved Persons are dually employed by the Dealer Member as well as the Dealer Member’s parent bank, is the Dealer Member required to report internal investigations surrounding the Approved Person’s bank related activities?

Internal investigations surrounding the Approved Persons’ "banking activities" are reportable if the internal investigations are related to theft, fraud, misappropriation of funds or securities, forgery, money laundering, market manipulation, insider trading or unauthorized trading.

Are denials of exemption applications reportable?

Rule 3700 does not require reporting of denials of exemption applications. Denial of an exemption application simply means that the Approved Person will have to follow the normal course of registration rules and would not raise a red flag and would not trigger a reporting requirement.

What consents will Dealer Members need to obtain from the Approved Person before submitting information pursuant to Rule 3700?

Approved Persons submit to the jurisdiction of the IIROC when they sign the Self Regulatory Organization Certification, therefore Dealer Members do not have to expressly solicit the consent of Approved Persons prior to submitting information pursuant to Rule 3700 as consent is implicit. Dealer Members may wish to consult the applicable privacy legislation.

Why is there no good will settlement category?

IIROC is aware that settlements are often reached as a goodwill gesture and will not assume wrongdoing by the mere fact of a settlement. A goodwill settlement category was not created as it could have lead to excessive and/or inconsistent use of the category.

Will the information provided be secure?

ComSet has been developed to ensure “bank-like” security of the information

Can a record be deleted or updated after it has been submitted in ComSet?

Once a report is submitted, it cannot be deleted. Users may view the records that they have entered into the ComSet system and, depending on the access level of the user, they may update a record.

If a record is updated, can the updates be tracked?

The ComSet system has a Document Audit trail whereby a complete edit history of the record is shown. This history includes the date stamp, time stamp and User Name of the person who edited the record.

What will the IIROC do with this information?

ComSet is a tool that is used by the IIROC in its risk-based approach to compliance and enforcement. ComSet assists IIROC in fulfilling its oversight function by improving its ability to identify areas for compliance review, areas where enforcement action is appropriate, industry problems, and regional issues. ComSet will promote higher standards of business conduct and ethics and will ultimately enhance investor protection.

GUIDANCE NOTE 3700-3

CLIENT COMPLAINT HANDLING

COMPLAINTS GENERALLY

The fair and timely handling of client complaints is vital to the overall integrity of the investment industry. Dealer Members should regard the handling of all client complaints as an essential element of the proper servicing of client accounts generally. Addressing client complaints fairly and on a timely basis demonstrates to clients that their issues are dealt with seriously and enhances investor confidence in the industry. An effective framework for dealing with client complaints is in keeping with appropriate standards of professionalism for the industry.

As a result, it is important that Dealer Members establish policies and procedures to deal effectively with client complaints. Such policies and procedures must address the general requirements of section 3720, and the specific requirements of sections 3721 to 3728 regarding client complaint handling. Section 3720 requires Dealer Members to provide a written response to all complaints made in writing. Further, where a written complaint does not relate to a matter within the scope of sections 3721 to 3728, section 3720 also requires that the Dealer Member resolve and respond to the complaint within a reasonable time frame.

COMPLAINTS SUBJECT TO THE REQUIREMENTS OF DEALER MEMBER RULE 2500B

GENERAL

Alleged misconduct

The types of allegations enumerated in the Rule are not an exhaustive list of all matters that may constitute alleged misconduct; other matters may constitute alleged misconduct. Alleged misconduct includes such other matters that relate to client accounts or client dealings with Dealer Members which are of a serious nature and warrant being dealt with through the formal complaint handling process.

Recorded expression of dissatisfaction

A recorded expression of dissatisfaction includes any written submission, electronic communication, or verbal recording.

Verbal expression of dissatisfaction

As set out in the Rule, verbal expressions of dissatisfaction alleging misconduct where a preliminary investigation indicates that the allegation may have merit are to be treated as a complaint subject to the Rule. Implicit in this requirement is the need for Dealer Members to expeditiously undertake a preliminary investigation in order to assess the merits of a verbal expression of dissatisfaction. It is expected that such a preliminary investigation will entail a summary assessment of the merits of a client complaint, and that it will not involve the type of investigation undertaken once a complaint is being dealt with under the formal complaint handling process.

Where a preliminary investigation of a verbal expression of dissatisfaction has been performed and the Dealer Member determines:

1. that there is evidence to indicate that the client complaint may have merit, the complaint should be treated in the same manner as a recorded expression of dissatisfaction. In accordance with its normal investigative process, the Dealer Member may request that the client document the complaint in a recorded form, however a substantive response must be sent within the required timeframe whether or not a client has provided a documented complaint in response to such a request.

2. that the nature of the client complaint is unclear or there is no evidence to indicate that the client complaint has merit, the Dealer Member shall request that the client document and submit the complaint in a recorded form. Where the client:

    (a) documents and submits the complaint in recorded form, the complaint should be treated in the same manner as if it had originally been submitted as a recorded expression of dissatisfaction; or

    (b) fails to document and submit the complaint in recorded form, the Dealer Member may exercise their professional judgment and terminate their investigation of the complaint.

Decision to not investigate a complaint or to terminate an investigation of a complaint

A sales supervisor / compliance staff or the equivalent may exercise their professional judgment in deciding whether a complaint requires an investigation. In assessing whether a complaint should be investigated, Dealers Members must consider whether the client would have a reasonable expectation that the complaint should be handled through the process outlined in the Rule. The decision and reason not to commence an investigation of a complaint must be fully documented and maintained in accordance with the complaint record retention requirements.

Complaints made by individuals who are not clients of the Dealer Member are not subject to the Rule, other than complaints submitted by a person authorized to act on behalf of a client. Written client authorizations, as well as formal legal documents, such as powers of attorney or court appointments, are acceptable forms of documentation for establishing a person's authority to act of behalf of a client.

DESIGNATED COMPLAINTS OFFICER

The designated complaints officer is not a registered individual position. The purpose of the position is to ensure that the Dealer Member has someone with the requisite knowledge, experience and authority in place to manage the proper handling of complaints.

Dealer Members may choose to name the Ultimate Designated Person or Chief Compliance Officer or an individual acting in a supervisory capacity over the complaints process for the position of designated complaints officer.

Dealer Members are encouraged to make available to the designated complaints officer and their staff specific training relating to dispute resolution.

COMPLAINT PROCEDURES / STANDARDS

Client access

The information provided to clients on an ongoing basis would include the first point of contact in submitting a complaint and the contact information for the designated complaints officer. The information provided may include the stipulation that the designated complaints officer should generally only be contacted when a complaint had been submitted and the client wishes to express concerns with the handling of the complaint. All client complaints must be handled by qualified sales supervisors/compliance staff or the equivalent. Under no circumstances should individuals who are the subject of a complaint handle complaints made against them.

Complaint substantive response letter – timelines

The ninety (90) calendar days timeline to provide a substantive response to clients must include all internal processes (with the exception of any internal ombudsman processes offered by an affiliate of the firm) of the Dealer Member that are made available to the client that involve but are not limited to the supervisory function / branch management, the compliance function, and legal review.

Complaint substantive response letter - OBSI information

Member firms must inform clients that OBSI will consider a client complaint at the earlier of:

(i) the date the complaint substantive response is provided to the client; or

(ii) ninety (90) days after the receipt of the complaint.

This can be done, depending upon the status of the complaint, either as part of the substantive response letter or as part of any letter informing the client that the complaint will not be resolved within ninety (90) days.

Duty to assist clients in documenting complaints

Dealer Members should be prepared to assist clients in submitting a complaint, in particular if the client is handicapped in any way, is a senior with special needs or a language or a literacy issue is involved.

COMPLAINT RECORD RETENTION

Records in a central, readily accessible place must be retrievable within two (2) business days and documents kept for an extended period of time must be retrievable within five (5) business days unless there are reasonable, extenuating circumstances.

GUIDANCE NOTE 3800-1

ELECTRONIC BUSINESS RECORDS

INTRODUCTION

This Guidance Note contains information about electronic communications by Dealer Members, specifically:

(i) electronic delivery of documents to clients under Rule 3800; and

(ii) the use of electronic or digital signatures for agreements, contracts or transactions.

ELECTRONIC DELIVERY OF DOCUMENTS

A Dealer Member may communicate electronically with a client if Corporation requirements refer to a "written acknowledgement" by the client or "notice" from the Dealer Member or client. All disclosures required on confirmations and statements, including the fine print on the back of the document, must be included if delivered electronically. A Dealer Member may not communicate electronically with a client if Corporation requirements refer to a client's "consent" or if the client's signature is required, unless such electronic signature is legally valid. This is discussed under "Use of Electronic or Digital Signatures" below.

Prerequisites for Electronic Delivery

A Dealer Member must notify the Corporation before implementing an electronic delivery system, setting out the degree of compliance with National Policy (NP) 11-201 and any deviations from it. This notice must include:

- the documents to be transmitted electronically and the information they contain;
- the method of electronic delivery;
- a copy of any electronic forms or website screens that the Dealer Member will use;
- the procedures to obtain client consent and the form of the consent;
- the procedures to ensure adequate record retention and audit trails;
- back-up procedures;
- time during which documents will be available electronically;
- procedures for allowing third-party access to client communication when authorized; and
- identification of situations when it is important that clients acknowledge notices and back-up procedures to ensure the notice is brought to the clients' attention.

A Dealer Member must take reasonable precautions to ensure the integrity, confidentiality and security of personal information sent electronically. Personal information includes confirmations, account statements and other documents specifically identifying the client. A Dealer Member must ensure that the information cannot be tampered with or altered.

In addition to this Guidance Note, Dealer Members should consult *National Policy 11-201, Delivery of Documents by Electronic Means* that has been adopted by all Securities Commissions as guidelines for electronic communication. The Policy does not mandate any particular procedure or rules, allowing Dealer Members to determine their own processes. The Policy sets out four components to electronic delivery that should be satisfied in order to constitute good delivery.

National Policy 11-201 applies to documents that are required to be delivered under applicable securities laws. It does not apply to the electronic delivery of documents that are provided voluntarily to clients, although Dealer Members may wish to conform to their procedures for both types of documents.

The rest of this Guidance Note summarizes the components of NP 11-201 applicable to electronic delivery.

Notice of delivery

The intended recipient should have notice of the electronic delivery of the document. Notice may be affected in any manner, electronic or non-electronic, such as electronic mail, telephone or communication in paper form.

Some forms of electronic delivery may not require a separate notice, such as delivery by electronic mail where the mail itself is sufficient notice. In cases where a document is available on a website for downloading, clients should be notified of its availability.

Access

The intended recipient of the document should have easy access to the document. The delivering Dealer Member should ensure that:

(i) Electronic access is not burdensome or overly complicated;

(ii) The document should remain available to recipients for an appropriate period of time;

(iii) The recipient should be able to retain a permanent record of the document; and

(iv) A paper version of every electronic document is available upon request.

While Dealer Members are entitled to operate in an electronic environment, we caution Dealer Members that they must comply with all applicable securities legislation in the conduct of their business. Failure to deliver a paper version of documents may constitute a breach of their obligations under securities legislation. We recommend that Dealer Members continue to make available, at no cost to clients, paper versions of documents if clients so request.

Evidence of delivery

Consent received from the recipient is evidence of delivery. In the absence of consent, a delivering Dealer Member may obtain other evidence of delivery; for example, the fact that a document was sent via e-mail and not returned may be sufficient.

Delivery of an unaltered document

A deliverer should ensure, to the extent possible, that no alteration or corruption of a document occurs during electronic delivery. Deficiencies in the completeness or integrity of an electronically delivered document will raise questions as to whether the document has been delivered.

Consent

A Dealer Member may satisfy the Notice of Delivery above, by obtaining the informed consent of the client and delivering the document in accordance with that consent. The consent will create the inference that:

(i) the recipient will receive notice of the electronic delivery of the document;

(ii) the recipient has the necessary technical ability and resources to access the document; and

(iii) the recipient will actually receive the document.

A Dealer Member may obtain a “blanket” consent that would be applicable to purchases of all new issues or mutual funds. The consent must indicate how notice will be given to clients of documents which are posted on a website. This may be satisfied by a client’s consent to monitor the website on a regular basis, thereby eliminating the need for the Dealer Member to give notice. Consent is not necessary; however, in the event of a dispute, a Dealer Member has the burden of proving that the recipient received notice and actually received the document. A client can revoke consent at any time. A client has the sole discretion to receive documents electronically or in paper form. A sample consent form can be found in Appendix A to National Policy 11-201.

National Policy 11-201 states that electronic and paper delivery should be made contemporaneously.

USE OF ELECTRONIC OR DIGITAL SIGNATURES

The Corporation will recognize electronic signatures in those jurisdictions where they are legally valid. Dealer Members are advised to refer to the applicable provincial legislation to ensure that they satisfy the requirements (see list of provincial legislation below). The Dealer Member must also have the appropriate technological capabilities. This will include a requirement that the technology guarantees non-repudiation of the signature by the signer.

Dealer Members must note that consent is required prior to the use of an electronic signature. This consent may be implied from the person’s conduct if there are reasonable grounds to believe that the consent is genuine and is relevant to the information or document.

Most provincial legislation clarifies that an electronic signature does not have to look like a “physical” signature in order to be valid. For example, the signature can be a code, sound or symbol of any kind and could be part of or separate from the document it signs, as long as the association with the document is clear.

There does not appear to be a restriction or limitation on the use of an electronic signature for electronic contracts. As long as the association of the electronic signature with the person and the document is established and the intent to sign is demonstrated, the electronic signature will be valid.

Some specific legislative requirements are:

- A document or information in electronic form must be accessible by the other person so as to be usable for subsequent reference;
- A document or information in electronic form must be capable of being retained by the other person;
- A document or information in electronic form must be organized in the same or substantially the same way as the specific non-electronic form;
- The electronic signature is reliable for the purpose of identifying the person; and
- The association of the electronic signature with the relevant electronic document is reliable.

In respect of these two latter points, the requirements will not be satisfied by the acceptance of an e-mail from a client nor by use of a Dealer Member's password protected web-site.

A Dealer Member must obtain a legal opinion that confirms that the Dealer Member's digital signature technology and system satisfied the legislative requirements in the jurisdictions it is intended to be applied. A Dealer Member may supply its own opinion or one from a certification authority that generates and assigns keys under a public key infrastructure (PKI) and issues certificates which serve to identify and authenticate the signer and his/her associates with the public key. FundSERV is an example of a PKI initiative by serving as a certification authority.

Examples of signature requirements under Corporation requirements

- Cross Guarantee Agreement
- Introducing Broker/Carrying Broker Disclosure
- Guarantee Agreement
- Guarantor Provision of Information
- Margin Account Agreement
- Waiver of Receipt of Client Confirmation Statements for Managed Account
- Accounts of Employees of Other Dealer Members
- Managed or Discretionary Account Agreement
- Managed Account Consent for Specific Transactions
- Futures Trading Agreement/Futures Options Trading Agreement
- Option trading Agreement
- Segregation Agreement
- Cash and Securities Loan Transaction Agreements
- Authorization to Transfer Account Form
- Suitability related disclosure for clients of suitability-exempt Dealer Members
- Form 1 – Joint Regulatory Financial Questionnaire and Report
- Form 2 – New Client Application Form

Provincial electronic commerce legislation

Alberta – *Electronic Transactions Act*

British Columbia – *Electronic Transactions Act*

Manitoba – *Electronic Commerce and Information Act*

New Brunswick – *Electronic Transactions Act*

Newfoundland – *Electronic Commerce Act*

Nova Scotia – *Electronic Commerce Act*

Ontario – *Electronic Commerce Act*

Prince Edward Island – *Electronic Commerce Act*

Quebec – *An Act to establish a legal framework for information technology (see also article 2827 of the Civil Code of Quebec)*

Saskatchewan – *Electronic Information and Documents Act*

Yukon – *Electronic Commerce Act*

GUIDANCE NOTE 3800-2

CONTENT AND RETENTION OF BOOKS AND RECORDS

INTRODUCTION

This Guidance Note addresses the content of records a Dealer Member is required to maintain under Rule 3800 and the retention of records relating to supplementary information used in the preparation of the Monthly Financial Reports (MFR).

CONTENT OF RECORDS

Rule 3800 requires a Dealer Member to maintain adequate books and records for audit trail, compliance and reporting purposes. This Guidance Note sets out what the Corporation considers “adequate” for certain of these records.

Blotters

The blotters a Dealer Member is required to maintain pursuant to section 3806 may be produced as separate data files and daily reports, recording each type of transaction such as purchases versus sales, unlisted investment products, bonds, cash receipts, cash disbursements and stock record journals.

(1) As a minimum, the blotter for trades in securities should show:

- (i) the name, class and designation of the securities;
- (ii) the number, value or amount of securities;
- (iii) the unit and total purchase or sale price (if any);
- (iv) the trade date;
- (v) the settlement date;
- (vi) the commission;
- (vii) the accrued interest, if applicable; and
- (viii) the name of the counterparty.

(2) As a minimum, the blotter for trades in options should show:

(i) the type of option (put or call);

(ii) the name of the underlying security;

(iii) whether the transactions are opening or closing transactions;

(iv) the premium

(v) the number of shares or underlying interest,

(vi) the expiry month and year;

(vii) the strike price; and

(viii) the marketplace upon which the transaction took place.

A Dealer Member must maintain a record of all puts, calls, spreads, straddles and other options in which it has a direct or indirect interest, or which it has granted or guaranteed.

This record must include any letters relevant to the options, including those sent to clients or received from them.

(3) As a minimum, the blotter for trades in futures contracts should show:

(i) the commodity and quantity bought or sold;

(ii) whether the transactions are opening or closing transactions;

(iii) the expiry month and year;

(iv) the contract price;

(v) the futures exchange; and

(vi) the name of any dealer (if any) that acted as the Dealer Member's agent for the trade.

(4) As a minimum, the blotter for trades in futures contract options should show:

(i) the type and number of the option;

(ii) whether the transactions are opening or closing transactions;

(iii) the premium;

(iv) the futures contract that is the subject of the option;

(v) the expiry month and year of the futures contract option;

(vi) the declaration date;

(vii) the strike price;

(viii) the futures exchange; and

(ix) the name of any dealer (if any) that acted as the Dealer Member's agent for the trade.

Position Records

A Dealer Member may keep separate position records for equities, debt and derivatives.

Record of Orders Received

In order to show an adequate record of the order, a record of an omnibus order must show a breakdown of individual accounts and quantities.

Monthly Calculation of Excess Capital

If a Dealer Member with substantial excess capital applies more stringent rules, the Dealer Member may omit detailed schedules and analyses that support the calculation. For example, a Dealer Member may group inventories into broader margin categories, apply maximum margin rates, ignore offsetting provisions and exclude assets that are partially allowable or of questionable value.

RECORD RETENTION FOR EXAMINATION PURPOSES

Records must be retained in a readily available location. After the prescribed time limits expire, the records may be placed in long-term off-premises storage subject to industry and statutory records retention guidelines.

Due to the fact that record retention requirements differ under different legislation and those retention periods may be changed from time to time, it is suggested that record retention periods for specific type of records should be reviewed from time to time to ensure its continued accuracy.

In addition to the filing document, a Dealer Member must retain supporting documentation in sufficient detail to enable Corporation Examiners to verify the accuracy of the reports and questionnaires. Included with these documents are items such as:

(1) The trial balance (general ledger, clients, brokers and inventory sub-ledgers)

(2) Status slips;

(3) Clearing reports;

(4) Exception and delinquency reports;

(5) Inventory and client margin reports;

(6) Interest and dividend reports;

(7) Security count and reconciliation sheets;

(8) Segregation control reports;

(9) Security position record; and

(10) Working papers required to substantiate the daily or weekly capital calculations and to monitor early warning.

The records required under Rule 3800 must be kept for a minimum of seven years and in accordance to National Instrument 31-103 ("NI 31-103") unless Corporation Rules allow for a different retention period. Under NI 31-103, records required to be kept include, but are not limited to, records that do the following:

(1) permit timely creation and audit of financial statements and other financial information required to be filed;

(2) permit determination of the Dealer Member’s capital position;

(3) demonstrate compliance with the Dealer Member's capital and insurance requirements;

(4) demonstrate compliance with internal control procedures;

(5) demonstrate compliance with the Dealer Member's policies and procedures;

(6) permit the identification and segregation of client cash, investment products, and other property;

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

(8) provide an audit trail for client instructions and orders, and each trade transmitted or executed for a client or by the Dealer Member firm on its own behalf;

(9) permit the generation of account activity reports for clients;

(10) provide pricing for investment products as may be required by securities legislation;

(11) document the opening of client accounts, including any agreements with clients;

(12) demonstrate compliance with Corporation Rules on know your client and suitability;

(13) demonstrate compliance with complaint-handling requirements;

(14) document correspondence with clients; and

(15) document compliance and supervision actions taken by the Dealer Member.

GUIDANCE NOTE 3800-3:

CONTENT AND RETENTION OF BOOKS AND RECORDS

This Guidance Note provides Dealer Members with additional information about:

(i) confirmations to clients of average price or accumulation accounts; and

(ii) the pledge of investment products by the client to outside financial institutions.

AVERAGE PRICE ACCOUNTS

This guidance covers accounts where a Dealer Member accumulates stock to provide a client with a single fill at an average price.

Printing the unwinding trade

If a Dealer Member has a firm, time-stamped, client order and accumulates stock in an inventory account for administrative purposes only, the transfer of the position to the client should not be "printed" on an Exchange. There is no change in beneficial ownership as the client is the beneficial owner of the stock at all times.

If a Dealer Member is accumulating stock based on an indication of interest from a client, or an order with a contingency that has not occurred (e.g. an all or none order), then the client is under no obligation to purchase the stock. In this case, an unwinding trade(s) to the client should be printed on an Exchange as the Dealer Member is at risk while taking on the position (since the client is not the beneficial owner of the stock while in inventory). A Dealer Member may not use an error account to unwind the position to the client if the market has moved.

Confirmation to the client

It is preferable to give clients a confirmation showing each individual trade. If a client requests a single confirmation, it is acceptable to show the date of the trades as the date of the transfer to the client, even though the trades at the average price may appear to be outside the then current market.

Regardless of the process, a Dealer Member must retain records of each individual trade and of the transfer to the client. These records must be available to the client or the regulators upon request.

Carried and non-carried accounts

Type 3 and 4 Introducing Brokers are permitted to show both carried and non-carried accounts in the same monthly statement. The statement should separate transactions for and positions held in, each type of account. An explanatory note should state which account(s) each Carrying Broker carries and which accounts are not carried.

Sample disclosure for consolidated portfolio reports

A Dealer Member may utilize this sample disclosure or prepare its own disclosure:

"This [portfolio summary] is prepared from information we believe to be reliable. It is not an official statement of your investment product positions at [name of Dealer Member]. Some of the positions shown in this statement may be held at other financial institutions where they are not covered by the Canadian Investor Protection Fund (CIPF).

Please consult the monthly statements you receive from [name of Dealer Member] to determine which positions are eligible for protection by CIPF, including information as to the investment products held in segregation.

If there are any discrepancies between the transactions or positions shown on the monthly statements you receive from [name of Dealer Member] and those shown in this [portfolio summary], please report them to [contact name or department]."

PLEDGE OF THE CLIENT'S INVESTMENT PRODUCTS

Dealer Members should carefully review any arrangements whereby investment products are pledged or guaranteed to a lending financial institution to ensure that the investment products are properly recorded on the client's statement and the Dealer Member's stock records.

Client purchases on margin

A Dealer Member may finance client purchases on margin by arranging for a call loan directly with a bank and using that portion of the client unpaid investment products as collateral or pledge for the call loan. Under Corporation requirements the client statement must show the security transaction, the money balance and the security holdings of the client in segregation or non-segregation. The Dealer Member's stock record must show the location of all investment products held on behalf of clients, including those pledged to the bank.

Personal client bank loans and guarantees

When a client directs that investment products be delivered out of the account to a bank as a pledge against a personal loan, mortgage, etc. and the Dealer Member does not retain custody over the investment product, the client's investment products are no longer in the Dealer Member's control and must not be shown as a security position in the client's account or on the Dealer Member's stock record.

Where a Dealer Member, the client and the bank enter into a tri-party loan agreement between the client and the bank and the agreement requires that the investment product (under control of the Dealer Member) cannot be withdrawn from the client's account without the prior written consent of the bank, these security positions must be recorded on behalf of the client on the Dealer Member's books and records. This arrangement is used primarily to simplify tax event reporting by the Dealer Member on the client's security position.

GUIDANCE NOTE 3900-1

SUPERVISION OF ACCOUNTS

INTRODUCTION

This Guidance Note sets out IIROC's expectations for Dealer Member supervision of client account activity. It provides guidance on meeting the requirements of Rule 3900.

Compliance with relevant business conduct requirements is primarily the responsibility of the registered representative. However, Rule 3900 requires each Dealer Member to effectively supervise all account activity to ensure compliance with IIROC requirements and securities legislation. The supervisory standards in Rule 3900 provide Supervisors with a checklist against which to monitor the handling of these responsibilities by the registered representative.

The Dealer Member's policies and procedures must provide for the screening of trading activity to detect issues for further enquiry or investigation. A Dealer Member is not required to enquire into or investigate every trade that meets the selection criteria in Rule 3900 or this Guidance Note, but must exercise reasonable judgment in selecting items for further investigation.

SUPERVISION OF RETAIL ACCOUNTS

Section 3926 requires a Dealer Member to establish and maintain written policies and procedures for supervising accounts that set out its standards of supervision and the steps to review account activity. This section provides guidance on meeting these requirements.

A. Supervisory Structure

An effective supervisory structure takes into consideration all factors necessary to ensure adequate supervision, including the products traded, type of trading, location of business and other functions of Supervisors. 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 conducting 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. The Supervisor must conduct periodic visits to the location as necessary to ensure that business is being conducted properly at the location.

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.

A Dealer Member must have in place an effective supervisory program to review trading in all accounts and to provide the needed supervision and compliance resources. In developing its program a Dealer Member should consider the following:

- A Supervisor who advises and trades for his or her own clients may not be able to devote sufficient time and attention to his or her supervisory role.
- If a Supervisor is not qualified to supervise trading activity in all products traded by those under his or her supervision and any other services that they provide to retain customers, a Dealer Member may divide the supervision between two or more Supervisors, provided 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.
- Supervisors need information 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.
- 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 of any ongoing issues or concerns as necessary to provide proper supervision.

Section 3926 requires a Dealer Member to have written policies and procedures for supervising accounts that set out its standards of supervision and the steps to review account activity. IIROC recommends a two-tiered system of first and second level reviews as described in this Guidance Note.

A Supervisor should 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

Effective policies and procedures will 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:

- 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.

- 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.

- Patterns of activity may not be 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.

- 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 in nature.

- The selection of activity for post-trade review may be done using a risk-based approach reasonably designed to detect improper activity, provided the reviewer has access to all relevant information necessary to properly make the risk assessment. 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 reviews of activity over a monthly period; in others they may consider shorter or longer periods. Similarly, some customers 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.

- All account activity of employees and agents must be subject to review.

- 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 matters requiring supervisory attention as quickly as possible.

Reviews of activity in institutional accounts may vary depending upon type of product or customer, activity or level of activity.

It is acceptable to use computer analysis to assist in selecting activity to be reviewed.

C. Two-Tier Reviews

In a Dealer Member with multiple business locations conducting retail account activity, a two-tier system of post-trade activity reviews as described in this section is an acceptable structure.

The first-tier 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 Dealer Member's procedures for first-tier daily review of the previous day's trading must be designed to detect the issues described in section 3945. The review should be completed on the business day following the activity unless precluded by unusual circumstances.

A first-tier monthly review should cover the same areas as daily activity reviews. It may not be possible to review every statement produced. A first-tier monthly review starts with the selection, on a basis reasonably designed to detect improper account activity, of retail client accounts to be reviewed. A Dealer Member can meet this obligation by reviewing activity of all customers charged gross commissions of $1,500 or more for the month for trading in equity and fixed income products.

A first-tier monthly review should also cover all non-client accounts with any activity other than receipt of dividends or interest, or payment of interest.

This review should be completed within 21 days of the period being reviewed unless precluded by unusual circumstances.

The second-tier review will normally be conducted by 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 be reasonably designed to

identify serious account problems that may have been missed by the first level supervision and to ensure that first level supervision is being adequately conducted. Where second-tier 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 by first-tier Supervisors to a higher level Supervisor who has the authority to resolve such issues.

The Dealer Member's policies and procedures should include criteria for trading activity subject to second-tier daily reviews. The following criteria would satisfy the requirements under Rule 3900:

- 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;
- all client accounts not reviewed by a branch manager;
- trade cancellations;
- trading in restricted accounts;
- trading in suspense accounts;
- account number changes;
- late payments;
- outstanding margin calls.

Second-tier daily reviews should be completed on the business day following the activity unless precluded by unusual circumstances.

The following criteria for second-tier monthly account reviews would satisfy the Dealer Member's obligations under Rule 3900:

- accounts of customers charged more than $3,000 in commission during the month;
- accounts of all client and non-clients charged more than $1,500 in commissions during the month that were not subject to a first level review by the normal first level Supervisor, including the client accounts of producing first level Supervisors.

Second-tier monthly reviews should be completed within 21 business days of the period being reviewed unless precluded by unusual circumstances.

GUIDANCE NOTE 3900-2

SUPERVISION OF ACCURACY

TRADES MARKED RECOMMENDED/NON-RECOMMENDED

Introduction

Section 3981 requires that a Dealer Member that provides order execution only service in advisory accounts must have procedures to supervise accuracy in the marking of orders as "recommended" or "non-recommended". A Dealer Member may design its own procedures and reports, but the Dealer Member's systems must be capable of generating reports necessary to properly supervise the accounts. The following are examples of reports and procedures that would be acceptable.

Report Indicating Trade Marked "Recommended/Non-Recommended"

The reports used for daily trading review should indicate whether a trade has been designated as recommended or non-recommended. Supervisors or employees reviewing the reports should be alert to patterns suggesting trades have been improperly marked as non-recommended. Examples of these patterns are:

(i) More than one client of an RR trades the same security on the same day (though note that such situations may be explained through wide-spread holdings or trading of the securities).

(ii) Trades in securities that were covered in the Dealer Member's research reports, or for which the Dealer Member has recently changed its research recommendation. While a research report is not determinative that an RR has made a recommendation, the RR should be questioned about use of research reports as a basis for recommendations.

(iii) Crosses between client accounts of the same RR.

Statistical or Exception Reports

A Dealer Member should be able to generate statistical or exception reports capable of revealing patterns of trade designation. For example:

(i) A report to show the percentages of trades designated as recommended and non-recommended by RR and branch office. High percentages of trades being marked as non-recommended may indicate inaccuracies; however, this depends upon the nature of the RR's or branch's business.

(ii) A report showing the percentages of trades in particular securities designated as recommended or non-recommended. If the percentages are high, especially for securities covered by the Dealer Member's research reports, this may indicate inaccurate marking. The report may be able to identify frequent trades by particular RRs or branches in one security over more than one day, all marked non-recommended.

Supervisor's Responsibilities

Dealer Member's procedures should provide instructions to supervisors on the requirement to review reports and the steps to take in investigating questionable patterns. Investigations should be documented as required by Rule 3200.

Where reviews are conducted at the branch level, head office must have review procedures to ensure the supervisory requirements are being met.

Frequency of Complaints

Supervisors should also review complaint reports to detect patterns of complaints of inaccurate marking of trades by a particular RR or branch.

GUIDANCE NOTE 3900-3

SUPERVISION OF OPTIONS, FUTURES, AND FUTURES OPTIONS ACCOUNTS ACTIVITY

INTRODUCTION

This Guidance Note sets out the Corporation's expectations for the supervisory review of options contract, futures contract and futures options contract trading accounts. Part B of Rule 3900 set out specific requirements for supervision of these accounts. General Corporation requirements, in particular Parts C and D of Rule 3900 on supervision of retail accounts and institutional accounts in general, apply to options contract, futures contract and futures option contract trading as long as they are consistent with the specific requirements of Part B of Rule 3900.

CONTENT OF TRADING ACTIVITY REVIEWS

At a minimum, the daily review of trading activity should include:

- Trading options, futures or futures options without approval
- Excessive trading activity resulting in trading large numbers of contracts

- Trading while under margin
- Trading beyond margin or credit limits
- Trading in options and futures that have an underlying restricted security
- Violation of any internal trading restrictions
- Cumulative losses exceeding stated risk capital
- Lack of suitability
- Inappropriate concentration
- Inappropriate or high risk trading strategies
- Exposure of uncovered positions
- Excessive trade transfers and trade cancellations indicating possible unauthorized trading
- Quality downgrading of client holdings
- Excessive or improper crosses of securities between clients
- Improper employee trading
- Account number changes
- Late payments
- Position and exercise limits
- Front running
- Conflicts of interest between an RR and client trading activity
- Excessive commission activity
- All guaranteed accounts
- At a minimum, the monthly review of trading activity should include:
- Speculative trading in hedge accounts
- Cumulative losses exceeding stated risk capital
- Trading beyond approved limits
- Continual awareness of pending delivery months
- Acceptability of a client as a hedger
- All guaranteed accounts

Chapter 25

Other Information

25.1 Consents

25.1.1 Creso Exploration Inc – s. 4(b) of the Regulation

Headnote

Consent given to an offering corporation under the Business Corporations Act (Ontario) to continue under the Canada Business Corporations Act.

Statutes Cited

Business Corporations Act, R.S.O. 1990, c. B.16, as am., s. 181.
Securities Act, R.S.O. 1990, c. S.5, as am.

Regulations Cited

Regulation made under the Business Corporations Act, Ont. Reg. 289/00, as am., s. 4(b).

IN THE MATTER OF
R.R.O. 1990, REGULATION 289/00,
AS AMENDED
(the "Regulation")
MADE UNDER THE
BUSINESS CORPORATIONS ACT (ONTARIO),
R.S.O. 1990 c. B.16, AS AMENDED
(the "OBCA")

AND

IN THE MATTER OF
CRESO EXPLORATION INC

CONSENT
(Subsection 4(b) of the Regulation)

UPON the application of Creso Exploration Inc. (the **"Applicant"**) to the Ontario Securities Commission (the **"Commission"**) requesting the consent from the Commission for the Applicant to continue in another jurisdiction as required by subsection 4(b) of the Regulation;

AND UPON considering the application and the recommendation of the staff to the Commission;

AND UPON the Applicant having represented to the Commission that:

1. The Applicant was incorporated pursuant to the OBCA on August 25, 2004 under the name of Willowstar Capital Inc. On June 1, 2010, the Applicant changed its name to Creso Exploration Inc./Exploration Creso Inc.

2. The Applicant's registered office is located at Heenan Blaikie LLP, 333 Bay Street, Bay-Adelaide Centre, Suite 2900, Toronto, Ontario M5H 2T4.

3. The Applicant's authorized capital consists of an unlimited number of common shares (the **"Common Shares"**) of which approximately 72,861,063 Common Shares are issued and outstanding as at the date hereof.

4. The Applicant is an offering corporation under the provisions of the OBCA and a reporting issuer under the *Securities Act* (Ontario) (the **"Act"**). The Applicant is also a reporting issuer or its equivalent under the securities legislation of the province of British Columbia and Alberta. The Applicant is not a reporting issuer in any other jurisdiction in Canada. The Common Shares of The Applicant are listed for trading on the TSX Venture Exchange (the **"Exchange"**) under the symbol "CXT".

5. The Applicant intends to apply (the **"Application for Continuance"**) to the Director under the OBCA for authorization to continue as a corporation under the *Canada Business Corporations Act* (the **"CBCA"**) pursuant to section 181 of the OBCA (the **"Continuance"**).

6. Pursuant to clause 4(b) of the Regulation, where a corporation is an offering corporation under the OBCA, the Application for Continuance must be accompanied by a consent from the Commission.

7. The Applicant is not in default under any provision of the Act or the regulations or rules made under the Act and is not in default under the securities legislation of any other jurisdiction where it is a reporting issuer or equivalent.

8. The Applicant is not in default of any of the rules, regulations or policies of the Exchange.

9. The Applicant is not a party to any proceeding nor, to the best of its knowledge, information and belief, any pending proceeding under the Act.

10. The Application for Continuance is being made in connection with a proposed transaction involving the amalgamation (the **"Amalgamation"**) of the Applicant with Creso Resources Inc., a non-distributing corporation incorporated pursuant to the CBCA. As part of the Amalgamation, the amalgamated entity (**"Amalco"**) will carry on business under the name Creso Exploration Inc./Exploration Creso Inc. Upon completion of the

Amalgamation, Amalco will be governed by the CBCA.

11. Amalco intends to remain a reporting issuer in Ontario and in the other jurisdiction where it is a reporting issuer and will file the required application to become a reporting issuer in the province of Quebec given that its registered office will be in Quebec.

12. The Application for Continuance is proposed to be made because the Applicant believes it to be in the best interest to conduct its affairs in accordance with the CBCA in order to effect the Amalgamation.

13. The holders of Common Shares of the Applicant (the **"Shareholders"**) authorized the Continuance of the Applicant at an annual and special meeting of shareholders held on September 22, 2010 (the **"Meeting"**). The special resolution authorizing the continuance was approved at the Meeting by 99% of the votes cast. 6,961,093 Common Shares representing 9.77% of the outstanding Common Shares were voted at the Meeting. The Applicant's quorum requirement for a shareholders' meeting is 2%.

14. The management information circular dated August 27, 2010 of the Applicant describing the Continuance provided to the Shareholders in connection with the Meeting, included full disclosure of the reasons for and the implication of the proposed Continuance and a summary of the material differences between the OBCA and the CBCA and advised the shareholders of their dissent rights in connection with the Continuance pursuant to section 185 of the OBCA.

15. The material rights, duties and obligations of a corporation governed by the CBCA are substantially similar to those of a corporation governed by the OBCA.

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

THE COMMISSION HEREBY CONSENTS to the Continuance of the Applicant as a corporation under the CBCA.

DATED at Toronto on this 28th day of September, 2010.

"Wesley Scott"
Commissioner
Ontario Securities Commission

"James Carnwath"
Commissioner
Ontario Securities Commission

25.2 Approvals

25.2.1 Waratah Capital Advisors Ltd. – s. 213(3)(b) of the LTCA

Headnote

Clause 213(3)(b) of the Loan and Trust Corporations Act – application by manager, with no prior track record acting as trustee, for approval to act as trustee of pooled funds and future pooled funds to be established and managed by the applicant and offered pursuant to a prospectus exemption.

Statutes Cited

Loan and Trust Corporations Act, R.S.O. 1990, c. L. 25, as am., s. 213(3)(b).

September 24, 2010

McMillan LLP
Brookfield Place
181 Bay Street
Suite 4400
Toronto, ON M5J 2T3

Attention: Jennifer Schwartz

Dear Sirs/Medames:

Re: Waratah Capital Advisors Ltd. (the "Applicant")
Application pursuant to clause 213(3)(b) of the Loan and Trust Corporations Act (Ontario) for approval to act as trustee
Application No. 2010/0501

Further to your application dated July 23, 2010 (the "Application") filed on behalf of the Applicant, and based on the facts set out in the Application and the representation by the Applicant that the assets of Waratah Income Fund Trust and any other future mutual fund trusts that the Applicant may establish and manage from time to time will be held in the custody of a trust company incorporated and licensed or registered under the laws of Canada or a jurisdiction, or a bank listed in Schedule I, II or III of the Bank Act (Canada), or an affiliate of such bank or trust company, the Ontario Securities Commission (the "Commission") makes the following order.

Pursuant to the authority conferred on the Commission in clause 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario), the Commission approves the proposal that the Applicant act as trustee of Waratah Income Fund Trust and any other future mutual fund trusts which may be established and managed by the Applicant from time to time, the securities of which will be offered pursuant to prospectus exemptions.

Yours truly,

"Margot C. Howard"

"Paulette Kennedy"

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