Carole Dagher
Counsel
Wealth Management, Canada
199 Bay Street
Commerce Court West, 11th Floor
Toronto, Ontario
M5L 1A2

Ph: (416) 980-6096
Fax: (416) 368-9826
Email: carole.dagher@cibc.com

June 19, 2007

TO: British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario
M5H 3S8
Via Email: jstevenson@osc.gov.on.ca

c/o Anne-Marie Beaudoin, Directrice du secrétariat
Autorité des marchés financiers
Tour de la Bourse
800, square Victoria
C.P. 246, 22 étage
Montreal, Québec
H4Z 1G3
Via Email: consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

RE: RESPONSE TO REQUEST FOR COMMENTS ON PROPOSED NATIONAL INSTRUMENT 31-103 AND COMPANION POLICY 31-103CP *REGISTRATION REQUIREMENTS*

This letter is submitted on behalf of the Canadian Imperial Bank of Commerce and its affiliates (collectively, "**CIBC**"), in response to the Notice (the "**Notice**") of Proposed National Instrument 31-103 *Registration Requirements* (the "**Instrument**") and Companion Policy 31-103CP (the "**Policy**") and related Request for Comments (the "**Request for Comments**") published by the Canadian Securities Administrators (the "**CSA**") on February 20, 2007.

We would like to thank the CSA for the opportunity to provide our comments on the Instrument and the Policy.

GENERAL COMMENTS

We have seen a draft of the Canadian Bankers Association comment letter with respect to the Instrument and the Policy and generally support the points made therein.

We would like the CSA to provide us with specific guidance on how the Instrument and the Policy will impact the various exemptive relief orders that have been granted in the past with respect to regulatory requirements that will be materially changed by the Instrument. In particular, we would like clarification on which exemptive relief orders will remain valid and which will be invalidated as a result of the Instrument.

The introduction of the Instrument creates uncertainty with respect to the delegation of registration duties to the Self-Regulatory Organizations (the "**SROs**"). We note that there are inconsistent approaches throughout the country with respect to SRO delegation. For instance, the securities commissions delegate certain registration responsibilities to the Investment Dealers Association (the "**IDA**") but not in all provinces. There are practical implications for such inconsistencies and we urge the CSA to consider this issue in the context of the Instrument and aim towards harmonization of delegation to SROs across Canada.

TRANSITION PERIODS

The initial reaction from our registrants is that while many of the registrants will be able to make some of the necessary changes shortly after the Instrument becomes effective (i.e., requirements that have not materially changed from the existing requirements), certain aspects of the Instrument will take much longer to fully implement. For example, new requirements such as proficiency, relationship disclosure, record-keeping, conflict management and referral arrangements, will take a longer time to implement.

Some of the proposed requirements will require registrants to carry out a system by system analysis; obtain funding; and implement projects to do things like update account agreements, create client disclosures and so forth. These tasks will take a considerable amount of time to achieve (i.e., at least 18 to 24 months, and at least 36 months for the record-keeping requirements). Formal planning for implementation cannot begin until the final Instrument is published

We are particularly concerned about the proficiency requirements and urge the CSA to provide sufficient implementation time to allow individuals to meet the proficiency requirements in their relevant category of registration, particularly if proficiency requirements are to be retroactive (which we do not think should be the case, as discussed under the proficiency requirements section below).

While we do not agree with imposing the referral arrangement requirements on existing arrangements (as discussed under the referral arrangement section below), we suggest that a transition period longer than the proposed 120 days be provided. Registrants will require sufficient time to canvass existing referral arrangements, amend existing referral arrangement agreements, prepare disclosures, update procedures, etc. and we do not think that 120 days will suffice to accomplish all the necessary steps. Accordingly, we suggest that, at a minimum, a 240 day transition period should be provided.

SPECIFIC COMMENTS

Business Trigger

We generally support the extension of the business trigger to both dealing in securities and advising in securities. However, we are concerned that the move to a business trigger for registration may create uncertainties with respect to the type of activities, individuals and firms that will require registration. The introduction of a business trigger brings with it excess regulatory discretion as to who should register, since deciding whether a person or an entity is “in the business” requires a case-by-case analysis.

Although it might be a clear determination to make, after applying the factors of the business trigger, we would still like the CSA to clarify that the following individuals and firms do not need to be registered as a result of the business trigger unless they are specifically dealing or advising in securities:

- Banks
- Bank employees
- Research analysts
- Investment bankers (engaged in corporate finance and mergers and acquisitions activities)
- Financial planners
- Wholesalers who market investment products to dealers.

In addition, we query whether investment funds or their managers are “in the business” of dealing in securities when the securities are offered on a continuous basis. We submit that they are not, and ask that you confirm this issue in section 1.4 of the Policy.

Furthermore, as part of the business trigger discussion in the Policy, the CSA sets out its view that principal traders for a dealer should be registered. We disagree that principal traders are unique from other principal traders such as day traders or pension funds. The Policy cites the fact that such entities routinely possess undisclosed information about issuers and client trading, and the fact that such traders can have an impact on a firm's financial viability, as support for treating such traders as being unique. These factors are already addressed by existing rules (the Universal Market Integrity Rules in the case of information and the gatekeeper function, and the regulatory capital rules of the IDA in the case of a firm's financial viability) and are not appropriate considerations for the registration regime. We fail to see how requiring principal traders to be registered will have any incremental impact on a firm's existing obligations in respect of financial viability or the use of undisclosed information.

PART 1 – DEFINITIONS

We have the following comments with respect to the definition of "accredited investor":

- We submit that certain registrants may deal with institutional clients who do not fall squarely within the definition of accredited investors but who should nonetheless be included in that definition. We are specifically referring to large foundations, endowments, aboriginal groups and not-for-profit organizations. We urge the CSA to include such institutions in the definition of "accredited investor" and then prescribe that in order to qualify as an accredited investor those institutions would need to meet a minimum financial threshold that the CSA would set.

- In the alternative, the CSA should consider expanding the exemptions afforded to registrants with respect to accredited investors throughout the Instrument to institutional clients that do not meet the definition of accredited investor but that meet a minimum account balance threshold, which threshold would be set by the CSA. This alternative would remedy the odd and impractical result that arises in instances where institutional money managers may have to provide different disclosures to a client that happens to be an endowment that is just as large, if not larger, than a pension fund client, and that has a larger account than the pension fund.

PART 2 - CATEGORIES OF REGISTRATION AND PERMITTED ACTIVITIES

Investment Fund Manager

The CSA is proposing to introduce Investment Fund Manager as a new registration category that will apply to managers of all investment funds.

- We submit that the registration category of Investment Fund Manager should not apply to a bank listed in Schedule I or II to the *Bank Act* (Canada) or a trust corporation registered under the *Loan and Trust Corporations Act* that acts or may act as managers of investment funds. Such entities are regulated by the Office of the Superintendent of Financial Institutions ("**OSFI**") and are subject to OSFI's rules, which we think sufficiently address the risks associated with not having investment fund managers register identified by the CSA. Mandating such entities to also register as an Investment Fund Manager is tantamount to over-regulation of entities that are currently held to a high standard of regulatory and financial compliance. As such, we suggest that the registration category of Investment Fund Manager exempt the entities listed above.

- The CSA is proposing to require an Investment Fund Manager to register in the CSA jurisdiction in which the fund is located. We assume that where the fund is located means the jurisdiction of the fund or the fund manager's head office. However, we request clarification from the CSA on the meaning of "located".

2.1 Dealer categories

Mutual Fund Dealer & Exempt Market Dealer (Impact on Banking Industry)

In Quebec and Manitoba, the term "securities" is defined to include deposit products (i.e., Guaranteed Income Certificates ("**GICs**"), Index-Linked GICs and Principal Protected Notes, collectively referred to as "**Bank Deposit Products**"). Bank Deposit Products have been considered to be exempt securities in Quebec and Manitoba and may currently be sold by unregistered bank employees through the retail bank channel. However, pursuant to the Instrument, sale of such Bank Deposit Products may require an Exempt Market Dealer registration. We are concerned about this result for a few reasons. First, no other jurisdiction within Canada defines the term "securities" to include Bank Deposit Products. The inconsistency in the definition of "securities" will lead to an uneven playing field for individuals and firms in Quebec and Manitoba who will need to be registered in order to sell Bank Deposit Products whereas they will not need to be so registered in other jurisdictions. We do not advocate that the CSA require the other jurisdictions in Canada to adopt the Quebec and Manitoba approach of including Bank Deposit Products in the definition of "securities". Second, bank employees selling Bank Deposit Products will need to be registered as dealing representatives and consequently will need to satisfy the necessary proficiency requirements. We see no justification for imposing proficiency requirements in one jurisdiction, but not in another, in connection with the sale of the same product in both jurisdictions.

The Instrument also proposes to eliminate most exemptions currently found in sections 34 and 35 of the Ontario Securities Act. These exemptions permit bank employees to sell government debt products such as Canada Savings Bonds (“**Government Savings Bonds**”) without the need to be registered. We query whether bank employees selling Government Savings Bonds will need to be registered as a result of the proposed changes arising from the Instrument. If so, we ask the CSA to identify any benefit that will accrue from requiring bank employees to be registered to sell Government Savings Bonds that will justify the costs of either licensing thousands of bank employees, or exiting the business and making Government Savings Bonds unavailable to bank clients.

We hope that the potential result of requiring banks and bank employees to be registered to sell Bank Deposit Products and Government Savings Bonds is an unintended one. As the sale of such products is performed by employees in a bank, such activity falls within the federal jurisdiction over banking and ought not to be within the purview of provincial securities regulators.

Accordingly, we urge the CSA to carve out the sale of Bank Deposit Products and Government Savings Bonds by banks and bank employees from the Exempt Market Dealer registration category. We do not believe that banks and bank employees need to be registered to sell Bank Deposit Products and Government Savings Bonds. Banks operate under a robust regulatory framework which already addresses the key areas that are the subject of this Instrument.

Exempt Market Dealer

In an effort to ensure harmonization across Canada with respect to registration categories, we urge the British Columbia Securities Commission to consider adopting the Exempt Market Dealer registration category. Doing so will allow registrants to have a uniform registration system across all provinces which will create operational efficiency. Moreover, to opt out would be intellectually inconsistent with British Columbia’s vocal support of the Passport System and the goal of regulatory harmonization.

We assume that Investment Fund Managers who engage in “fund of fund” trading would not be required to be registered as dealers given that these firms are not generally in the business of trading in securities. Applying the “in the business” factors, such firms would not be (i) receiving remuneration for undertaking the activity; (ii) soliciting, directly or indirectly, others in connection with the activity; (iii) acting as an intermediary; or (iv) holding themselves out as being in the business of the activity. Please consider confirming this position in the Policy.

2.2 Exemption from dealer registration for advisers

We commend the CSA for introducing this exemption which will be valuable to many advisers. However, we do not believe that the exemption should be limited solely to an adviser's own pooled funds within the context of fully managed accounts. There is no reason to draw a distinction between an institutional client buying a pooled fund in a fully managed account or in a non-discretionary account. If the intent is to protect clients and prospective clients, we think this intent is already satisfied by the adviser's registration as a Portfolio Manager and the prospectus exemptions set out in NI 45-106 *Prospectus and Registration Exemptions* ("**NI 45-106**"). Pooled funds are sold under prospectus exemptions. Eligible investors in pooled funds do not need the additional layer of protection provided by a prospectus and dealer registration when the manager of the pooled fund or an affiliate is selling the pooled fund units. We submit that the prospectus exemption regime is adequate and that limiting this dealer exemption to advisers dealing with their own pooled funds for their own managed accounts is inconsistent with the principles of NI 45-106.

Accordingly, since the Portfolio Manager registration category and NI 45-106 provide clients with the necessary protection they need, we recommend that the CSA expand the application of this exemption to capture scenarios where an adviser is dealing (a) in securities of an affiliate's pooled fund; (b) in securities of the adviser's or affiliate's public mutual fund; (c) with non-managed accounts; (d) with fully managed accounts where the adviser retains a sub-adviser to provide advice in order to manage the account; and (e) with third parties who are acquiring securities under prospectus exemptions (especially accredited investors).

2.3 Adviser categories

We note that this section ("specified securities or classes of securities") is narrower than the related commentary in the Notice ("specified securities, types or classes of securities or specified industries").

Section 2.3 of the Policy states that "This exemption is not intended to apply to an adviser that… dedicates more time to managing the fund as compared to managing the fully-managed accounts." We recommend that this sentence be deleted as it suggests that an adviser may choose how much time to spend on managing the fund. Both an adviser and a manager have a fiduciary duty to act honestly, in good faith and in the best interest of the client/fund. To suggest otherwise is not appropriate.

2.4 Exemption from adviser registration for dealers without discretionary authority

This exemption states that the adviser exemption for registered dealers only applies "in connection with a security in which *it deals* [emphasis added]". It is not clear if it is a condition of this exemption that the registered dealer actually deals in the security for which advice is provided for the client. We also note that this section ("in connection with a securities in which it deals") is narrower than the related commentary in the Notice ("which is necessary to support its dealing activities"). In order to remove any ambiguity, we suggest that this provision be changed to: "in connection with a security in which it <u>may deal</u>…".

2.6 Individual categories

General

See "Business Trigger" discussion above for our request to the CSA to exclude certain individuals from the new categories of individual registrations under the Instrument.

Associate Advising Representative

Among other things, the Associate Advising Representative category is designed to accommodate individuals employed by a Portfolio Manager who are responsible for, or in charge of, client relationships but who do not perform portfolio management for clients. We question the rationale behind expanding this registration category beyond the existing apprentice category and the harm that the CSA is attempting to remedy by requiring registration of individuals in charge of client relationships if no specific portfolio advice is associated with such relationships. Accordingly, we recommend that this registration category be limited to the existing apprentice scope. Requiring persons not actually providing portfolio management or investment advice to be registered as representatives of a Portfolio Manager seems inconsistent with the idea of the business trigger.

We also request that the CSA provide specific guidance as to who would fall under this category of registration by clarifying what "in charge of/responsible for" means. We are assuming that this registration category is not intended to capture individuals who are solely performing administrative, public relations or marketing services. Requiring such individuals to be registered and meet specific proficiency requirements seems too restrictive considering that the services such individuals are providing are simply client servicing in nature and not geared towards specific advice about securities or products. In that regard, we think it might also be helpful to distinguish between soliciting clients and maintaining a client public relations role which ought not to require registration, and soliciting trades or advising in securities, which would require registration.

We would also like confirmation that individuals employed by registrants solely to promote the registrant's products to registered dealers and their salespeople do not need to be registered (such individuals are commonly known as wholesalers). These wholesalers might meet with dealers one on one to discuss a specific product and they may participate in educational events attended by dealers and clients of the dealers as permitted under NI 81-105 *Mutual Fund Sales Practices* geared towards providing "know your product" type information. These wholesalers do not meet with clients on an individual basis and do not provide specific advice with respect to a client's particular circumstances. As such, we do not think they should be required to be registered. In this regard, we note the CSA's view not to require registration of individuals who are only providing generic advice. Accordingly, we recommend that wholesalers be specifically named in the "generic advice" discussion in the Policy as a group of individuals who do not need to be registered because they are only providing generic advice. You could then limit the permissible activities of wholesalers who are not registered.

2.8 Ultimate designated person

The choice of individuals permitted to act as the Ultimate Designated Person ("**UDP**") is too restrictive and should be replaced with a broader selection as is currently provided for in Ontario Securities Commission Rule 31-505 *Conditions of Registration* in section 1.3(2) and IDA By-law 39. Failing to do so will create an inconsistency and confusion for IDA members as to which requirement to comply with and it will lead to different requirements for IDA and non-IDA firms. Therefore, since IDA members are not exempt from this requirement, we recommend that the CSA work closely with the IDA to align the UDP requirements for IDA and non-IDA firms.

2.9 Chief compliance officer

This provision proposes to introduce a rule requiring "a registered firm to designate an individual to be responsible for *discharging the registered firm's obligations* under securities legislation … [who] must be registered … [as] the Chief Compliance Officer." As per the Joint Notice of the Staff of Regulation Services, the MFDA, the IDA and the Bourse de Montreal dated November 30, 2006 (the "**SRO Notice**"), "the role of the Compliance [Department] is to identify, assess, advise on, communicate, monitor and report on the Member's compliance with regulatory requirements." This concept of the role of Compliance put forth in the SRO Notice is contrary to that proposed in this provision. It is our view that discharging a firm's obligations is a function performed by personnel who have supervisory responsibility. As the SRO Notice details, a "supervisor" has authority for day-to-day management of a business function or area, which includes "the supervision of individuals and the authority to implement changes to how the business function or area is run. The difference between supervisory and compliance roles is defined by who has the authority to resolve issues once they are identified". The Chief Compliance Officer (the "**CCO**") should not be responsible for discharging the firm's obligations under securities laws as such a function is inconsistent with the role of a CCO as described in the SRO Notice. Such an obligation should rest with the UDP.

This concept, we believe, is reflected on page 8 of the Notice wherein it states that the CCO will be responsible for the day-to-day monitoring of the registrant's adherence to its compliance policies and procedures. Section 2.7 of the Policy also reinforces this concept where it refers to a large firm with diverse operations requiring a team of compliance professionals reporting to a CCO dedicated entirely to a compliance role who may or may not "also have the authority to resolve compliance issues" once identified. This distinction between "identifying" issues on one hand and "resolving" issues on the other, is consistent with the SRO Notice's distinction between supervisory and compliance roles. We submit that any confusion on this point must be clarified by the CSA.

We would also like guidance from the CSA on what happens in the event that a CCO resigns or is dismissed from a registered firm and there are no other individuals employed with the registered firm that are qualified to immediately replace the CCO? Will the CSA provide such registered firms with a grace period within which it can arrange for a specific individual to meet the proficiency requirements?

PART 3 - SRO MEMBERSHIP

3.2 MFD SRO membership for mutual fund dealers

We would like confirmation that the CSA will grandfather exemptive relief orders obtained by mutual fund managers from the requirement that they be members of the Mutual Fund Dealers Association (the "**MFDA**"). We assume that this is the intent of the CSA which is evident in provisions such as the proficiency requirements in the Instrument which provide for "mutual fund dealer-dealing representative-non MFD SRO". We therefore suggest that the existing (or future) exemptive relief orders be reflected in this provision as follows: "No person or company may be registered as a mutual fund dealer unless the person or company is a member of an MFD SRO *or has received an exemption from the MFD SRO membership.*"

3.3 Exceptions for SRO members

We commend the CSA on recognizing various SRO rules including capital, insurance, suitability, margin and confirmation requirements. However, we believe that SRO members should also be exempt from the following rules found in the Instrument because such rules are already addressed by the SROs as set out below:

Rule	**Instrument**	**MFDA**	**IDA**
Know your client	Section 5.3	Rule 2	Policy 2
Record-keeping	Sections 5.19-5.20	Rule 5	Regulation 200
Complaints	Sections 5.29, 5.31-5.32	Policy 3	Policy 8
Referral arrangements	Sections 6.11-6.15	Rule 2	By-law 29.1, 29.6

Our concern with not expressly exempting SRO members from rules that are already addressed by the SROs stems from the fact that the SRO rules might currently be contrary to or different from the rules proposed in the Instrument. This could lead to confusion amongst SRO members with respect to compliance. Should the CSA decide not to exempt SRO members from the above rules then we strongly urge the CSA to work closely with the SROs in an effort to introduce rules that complement the SRO rules to avoid an unlevel playing field between SRO and non-SRO members.

PART 4 - FIT AND PROPER REQUIREMENTS

Division 1: Proficiency requirements

We wish to submit to the CSA that the proficiency requirement for SRO and non-SRO registrants should be similar or the same. Failure to have consistent proficiency requirements between two types of registrants might result in a false public perception that some registrants are more qualified than others. To that end, we assume that the CSA has and will continue to engage in discussions with the SROs to ensure consistency with respect to proficiency requirements.

We would like to seek confirmation from the CSA that individuals who are currently registered and who meet the existing proficiency requirements will not be expected to meet the proficiency requirements mandated under the Instrument (including for current Chief Compliance Officers). We strongly recommend that the proficiency requirements only apply on a going-forward basis to individuals who wish to register once the Instrument comes into force. We submit that this position is not prejudicial to the interest of investors since the existing proficiency requirements are of a high standard and have been sufficient from a regulatory perspective.

In addition, we assume that the CSA took into consideration the numerous exemptive relief orders that have been granted with respect to the existing proficiency requirements, and incorporated the results of such exemptive relief orders into the proficiency requirements proposed in the Instrument. If not, we urge the CSA to undertake this task in an effort to pre-empt the necessity of seeking similar exemptive relief after the Instrument comes into force. If the proficiency requirements under the Instrument are not significantly different from the existing proficiency requirements, exemptive relief orders ought to be carried forward once the Instrument comes into force rather then requiring the submission for identical exemptive relief.

4.2 Time limits on examination proficiency

This provision states that, if an individual passed an exam required for a category of registration more than 36 months before the date the individual applied for registration, then the individual would need to have been registered in the category, or equivalent for any 12 months during the 36 months before the date the individual applied for registration or gained 12 months relevant experience during the 36 months before the date the individual applied for registration.

- This is a change from the current time limits set out in Ontario Securities Commission Rule 31-502 *Proficiency Requirements for Registrants*.

- We recommend that the CSA revert to the existing threshold of requiring that the individual have had the relevant registration or the relevant experience *at any time* during the 36 months before the date the individual applied for registration. We think that the emphasis should be on the type of experience obtained as opposed to the amount of time in which the experience was obtained. While we believe that there are certain instances where the length of time will dictate competency, there are other instances where an individual may have spent a shorter amount of time gaining relevant experience and obtained a higher level of experience than another individual who may have spent the full 12 months undertaking relevant experience. Accordingly, we submit that the 12 months requirement may lead to inequality and should be replaced with a general *at any time* requirement.

- In addition, we note that the CFA charter which is a designation not unlike the Chartered Accountant designation expires, whereas the Chartered Accountant designation does not. It is not realistic or practical to expect an individual who currently holds a CFA charter to go back and complete the 3-year program again. We suggest that the Instrument contemplate an active CFA designation that is in good standing (i.e., the individual has maintained their CFA charter by paying their dues and meeting any requirements of the CFA Institute).

4.10 Portfolio manager – associate advising representative

We would like clarification on the meaning of "any part of a requirement". This terminology is too vague and open to interpretation. For instance, does it mean that as long as 6 months (i.e., part of the 12 months proposed requirement) of investment management experience was obtained during the 36 month period before applying for registration that an individual would qualify to be registered as an Associate Advising Representative? Or does it mean that so long as the individual applying to be registered as an Associate Advising Representative has earned either their CFA or has 12 months of investment management experience that individual would qualify to be registered?

4.11 Portfolio manager – chief compliance officer

Given that the role of the CCO is to identify, assess, monitor and generally advise on a firm's compliance with regulatory requirements as opposed to actually discharging the firm's obligations, the CSA ought to consider relaxing the proficiency requirements for a CCO of a Portfolio Manager. It is not apparent that to monitor the activities of a Portfolio Manager one need have the same qualifications of an actual Portfolio Manager or meet the proposed proficiency requirements. Industry experience is often an adequate substitute for industry or professional credentials.

In particular, the scope of the proficiency requirements for CCOs of a Portfolio Manager seems overly narrow in the following regards:

- We commend the CSA for including lawyers and Chartered Accountants as two of the professions which can satisfy the CCO proficiency requirements for a Portfolio Manager. However, we note that there a several other relevant and suitable accounting designations which ought to be added to the list of options namely, an Accredited Public Accountant, a Certified General Accountant, a Certified Management Accountant, a Public Accountant and a Registered Public Accountant.

- Part of one of the options set out for meeting the proficiency requirements is employment with a registered dealer or a registered adviser for a specific period of time. We recommend that this requirement be expanded to include employment with an affiliate of a registered dealer or a registered adviser if such affiliate is a bank. Frequently, large banks employ individuals such as in-house lawyers who are employees of the bank as opposed to the affiliated registered firm.

- The proposed requirement of having completed a specific portion of experience or employment in a set amount of "consecutive" years should be reconsidered. We submit that as long as the time frame has been met it should not matter whether the time of employment or experience was consecutive. Accordingly, we suggest that the word "consecutive" be deleted from this section.

- We note that a CCO of an Exempt Market Dealer can satisfy the proficiency requirements by passing the Series 7 Exam and the New Entrants Exam. A CCO of a Portfolio Manager should also be allowed to satisfy the proficiency requirements by passing the Series 7 Exam and the New Entrants Exam. Accordingly, we suggest that those options be added to the proficiency requirements of a CCO of a Portfolio Manager.

- The CFA charter is missing from the list of options. The CFA charter is highly relevant to the investment management business and should be added as one of the options for satisfying the proficiency requirements.

4.13 Investment fund manager – chief compliance officer

We would like clarification from the CSA on whether a firm registered in multiple categories, i.e., Portfolio Manager, Exempt Market Dealer and Investment Fund Manager, can have the same individual registered as the CCO of each, as opposed to having a separate CCO for each category of registration. We submit that allowing such a firm to have the same CCO should be permitted. If permitted, we would need clarification as to whether the CCO would have to meet the highest proficiency requirements or the proficiency requirements of all categories.

In addition, we wish to receive clarification from the CSA on whether a CCO can hold a CCO role for two or more affiliated registrants. We suggest that the ability to act as a CCO for two or more affiliated registrants be permitted to allow for continuity of compliance supervision over similar activities.

With respect to the proficiency requirements themselves, we do not think it is necessary to have the same stringent requirements for a CCO of an Investment Fund Manager as a CCO of a Portfolio Manager because the types of activities performed by a Portfolio Manager are quite different than those of an Investment Fund Manager (i.e., administrative in nature and do not involve the management of assets). In addition, Investment Fund Managers usually outsource certain functions to qualified third parties or affiliates. Therefore, we suggest that the CSA consider having less stringent proficiency requirements for the CCO of an Investment Fund Manager and adopt proficiency requirements similar to those of a CCO of a dealer.

Division 2: Solvency requirements

With respect to the insurance requirements we have the following general comments:

- The CSA should provide guidance as to whether registrants are permitted to use capital to offset the proposed insurance requirements.

- We recommend that the CSA provide guidance permitting affiliated registrants owned by one parent to be covered under one insurance policy.

- It is our assumption that the current requirement in certain provinces to have surety bonds will cease as of the effective date of the Instrument.

- It is our assumption that the current Quebec requirement to have individual professional liability insurance will cease as of the effective date of the Instrument.

4.16 Insurance – dealer

With respect to the increased levels of insurance coverage being imposed on dealers and advisers, we note that insurers of large Canadian banks and perhaps other large companies consider losses within the first $25 million to be within a bank's bearable risk, and as such insurers do not offer traditional full risk transfer insurance policies in this range. To meet existing insurance requirements, insurance companies have been offering "fronting policies"; in essence, the insurer issues the policy and the bank agrees to reimburse the insurance company for any losses they pay out under the policy on the bank's behalf. The proposed insurance requirements should consider the commercial realities of materially different sizes of registrants.

The impact of the proposed insurance requirements under the Instrument will be that insurance companies will likely require higher premiums from registrants to increase the limits on the fronting policies. The registrants, in turn, will pay additional interest cost to support their indemnity to the insurance companies. This increased financial burden resulting from the proposed provisions without any obvious benefit is clearly unnecessary in the context of large banks and other large companies which are in most instances more financially viable than the insurance companies that are issuing fronting policies. Furthermore, we question the need for the increases in insurance thresholds without evidentiary support as to the effectiveness of such insurance policies and the frequency with which claims are made on such insurance policies.

We recommend that a lower insurance threshold be applied for registrants that are affiliated with large banks financially capable of satisfying any claim on their own, rather than requiring them to obtain a "fronting policy", to meet their regulatory obligations.

4.17 Insurance – adviser

We recommend that the requirement to obtain insurance for advisers apply only to advisers who "handle, hold or have access to client cash or assets". In addition to the fact that the concept of handling and having access to client cash or assets is unclear and which we suggest be clarified, registrants who do not actually hold cash clearly do not present the same level of risk as those who actually do hold cash.

See also comment made for section 4.16 above.

4.19 Notice of change, claim or cancellation

The requirement to notify the regulator in writing of any change in, claim made under, or cancellation of any insurance policy, is too broad and should incorporate a materiality threshold that is based on the registrant's reasonable analysis.

Division 3: Financial records

4.22 Delivering financial information – dealer

We note the proposed requirement for dealers to deliver to the regulator quarterly financial statements. We question the utility of this requirement and suggest that audited annual financial statements should be sufficient. We therefore recommend the elimination of the additional requirement to deliver quarterly financial statements.

Should the regulators decide to retain the requirement to deliver quarterly financial statements, we suggest that the time frame provided for delivery be extended. Quarterly results are not usually released until after the board meetings which do not usually take place within 30 days after the end of the quarter. We recommend that registrants be provided with at least a 60-day window after the end of a quarter to deliver the quarterly financial statements.

4.24 Delivering financial information – investment fund manager

Among other things, this section requires the Investment Fund Manager to provide a description of any net asset value ("**NAV**") adjustment made during the fiscal year or the quarter in the Investment Fund Manager's financial statements. We question the objective behind requiring the Investment Fund Manager to disclose NAV adjustments since NAV adjustments occur at the actual fund level. Therefore, we propose that the more relevant place to disclose NAV adjustments is in the fund's Management Report of Fund Performance or the fund's financial statements.

In any event, we strongly encourage the CSA to provide a description of what they consider to be a NAV adjustment and to incorporate a concept of materiality to the requirement to disclose NAV adjustments. We would be interested in understanding what the CSA will do with such information once it is disclosed.

See also comments made for section 4.22 above.

4.26 Audit of financial statements and auditor's report

This section proposes to require that annual audited financial statements be prepared on an unconsolidated basis. This is a change from the existing regime which permits annual financial statements to be delivered to the regulator on a consolidated basis. We submit that the existing regime complies with Generally Accepted Accounting Principles and should be sufficient for the regulator's purposes. Changing the requirement from consolidated to unconsolidated reporting will require a change in the procedures of registrants with respect to how they prepare their financial statements which will be time and resource intensive and, more importantly, will increase costs as a result of additional required audits. Without a strong reason for requiring such a change we recommend that the current requirement to deliver consolidated financial statements be upheld.

4.27 Content of financial statements

This section only provides guidance on the content of annual financial statements. The Instrument has introduced a new requirement for certain registrants to also deliver quarterly financial statements and Form 31-103F1 *Calculation of Excess Working Capital* to the regulator, which as discussed above in section 4.22, do not appear to be driven by any demonstrated need. In any event, the CSA did not provide any guidance with respect to what the expected content of the quarterly financial statements will be. If the requirement for quarterly financial statements remains, we would like the CSA to provide additional guidance with respect to what they expect to see in quarterly financial statements (i.e., consolidated or unconsolidated, audited or unaudited, etc.).

PART 5 - CONDUCT RULES

Division 1: Account opening and know-your-client

5.1 Application – investment fund managers exempt

The CSA posed a question as to whether the requirements of Division 1 should apply to clients that are accredited investors as defined in NI 45-106. Provided that a registrant can rely on a representation from a client as to the client's status as an accredited investor, we support the CSA's approach to exclude accredited investors from the requirements of Division 1.

5.3 Know-your-client

We note that SRO registrants are not exempt from this requirement even though SRO registrants are subject to know-your-client ("**KYC**") rules set out by the SROs. As suggested in our comments under section 3.3 above, we suggest that SRO registrants should be exempt from this section. We also think it is crucial to have consistent KYC rules for SRO and non-SRO registrants because inconsistency will lead to confusion for clients and to an unlevel playing field.

With respect to the components of the KYC rule, we have the following comments:

- The CSA proposes that registrants take reasonable steps to establish the reputation of the client. The reputation of a client is a very subjective concept, and absent guidance by the CSA as to what factors registrants should take into account regarding the reputation of the client, such a requirement is impractical. Accordingly, we recommend that the requirement be deleted. Alternatively, the requirement should be qualified with a standard of actual knowledge by registrants of material issues with respect to the client's reputation, which material issues should be identified by the CSA.

- The requirement to ascertain whether a client is an insider of a reporting issuer is vague and requires clarification. For instance, would asking a client if she is an insider satisfy the requirement to take reasonable steps to ascertain whether a client is an insider?

- The CSA states that a registrant must take reasonable efforts to keep the information required under this section current. We need guidance from the CSA as to what it considers to be current. In order to avoid confusion and contention between SRO and non-SRO registrants, it would be useful to ensure that the timing for updating KYC information imposed on non-SRO and SRO registrants is the same. As well, clarification on what steps a registrant must take to satisfy the reasonable efforts standard would be welcomed. For instance, does a registrant satisfy its reasonable efforts standard by contractually requiring clients to notify the registrant of changes to their KYC information?

5.4 Suitability

Section 5.4(2) provides that if a registrant receives an instruction from a client that in the registrant's opinion would not be suitable for the client, the registrant must not act on the instruction without first informing the client that in the registrant's opinion the transaction is not suitable for the client. We would like clarification on what "without first informing the client" means and, in particular, if the CSA believes that the registrant must not act execute any transactions until the client has acknowledged the client notification.

The requirement to determine suitability at a client level as opposed to at the account level can prove problematic for registrants dealing with clients who have multiple accounts and have different investment objectives for each account. If registrants had to comply with the proposed requirement for determining suitability on a client level, the registrant would have to explain to the client that they are legally bound to determine suitability on a client level and as such cannot accept the client's instructions to treat the various accounts differently from a suitability perspective. Since this result may not always be well-received by a client, we assume that this was not the intent of the CSA. Accordingly, we recommend that registrants be provided with the discretion to determine with each client whether suitability should be determined on a client or an account level.

The Policy (on page 79) states that a registrant must understand all products made available to clients, including each product's structure, features, full costs and buyer qualifications. While we support this know-your-product requirement, we submit that this knowledge requirement should be restricted to information that is publicly available and registrants should not be required to confirm the accuracy of such information.

5.6 Leverage disclosure

The proposed requirement as set out in the Instrument to deliver leverage disclosure will arise if the registrant believes, after having *exercised reasonable diligence*, that the client will use borrowed money to invest. However, in the Policy, the standard which triggers the registrant's requirement to deliver leverage disclosure is if the registrant *becomes aware* that the client will use borrowed money to invest. Aside from the inconsistency between the Instrument and the Policy as to what will trigger the delivery obligation, which should be clarified by the CSA, we are concerned about the onus that the Instrument places on registrants to exercise reasonable diligence to determine if a client will use borrowed money to invest. Absent express guidance as to what meets the reasonable diligence standard this requirement will lead to regulatory uncertainty. We submit that the existing standard of the registrant becoming aware is a more reasonable standard to impose on registrants and is more realistic from a compliance perspective.

Section 5.4 of the Policy states "Subsection 5.6(1) of NI 31-103 requires that leverage disclosure be provided to a client when a registrant opens an account for a client, makes a recommendation to a client to purchase securities using in whole or in part borrowed money, or otherwise becomes aware of a client's intent to purchase securities using in whole or in part borrowed money." This sentence seems to suggest that a registrant is obligated to deliver leverage disclosure to a client when an account for a client is opened regardless of whether the registrant is aware that the client will be using borrowed money to invest. We do not think this is the intent of the CSA and for purposes of avoiding confusion, we recommend that the CSA amend the Policy to provide that leverage disclosure is only required to be provided at account opening if the registrant is aware that the client will be using borrowed money to invest. In any event, we would like guidance from the CSA as to whether registrants who adopt the practice of providing all of their clients leverage disclosure at account opening only (whether or not the client will be using borrowed money to invest at account opening or at a later date) satisfy the requirement to deliver leverage disclosure.

In addition, section 5.4 of the Policy states that "the requirement [to deliver leverage disclosure] applies whether or not the borrowed money was specifically borrowed for the purpose of purchasing the securities". This requirement could conceivably capture any loans that a client may have, i.e., a mortgage, which is not used to invest in securities. The requirement should be restricted to circumstances where money is borrowed to purchase securities only. In any event, the statement in the Policy is contrary to the provision in the Instrument which restricts the requirement to provide leverage disclosure to instances where borrowed money will be used to purchase securities only and not for borrowed money generally.

5.7 Disclosure for activities in a financial institution

We support the idea of highlighting to clients instances where the registrant is sharing space with a Canadian bank. However, rather than require clients to provide a written acknowledgement to such disclosure, we believe it would be sufficient to simply provide clients with written notice.

Division 2: Relationship Disclosure

While we support the goal of providing clients with full and plain disclosure in an effort to ensure investor protection, we have the following general concerns with the Relationship Disclosure Document ("**RDD**") proposal:

- **Adequacy of Existing Regulatory Regime:** We are not aware of the concerns or failures that the RDD is meant to address and whether the introduction of the RDD will in fact remedy such concerns and failures, if any. We believe that the existing regulatory regime sufficiently protects investors and we are not aware of any material gaps in the current legislation that should be a cause for concern.

- **Need to Harmonize RDD with the SROs' CRM:** We note that Division 2 does not apply to SRO registrants and understand that the SROs expect to introduce a Client Relationship Model ("**CRM**") that is meant to mirror the requirements of Division 2. However, it is apparent that the RDD is not consistent with the CRM or existing SRO requirements (i.e., requirement for signature, non-application to accredited investors, performance reporting etc.). We strongly urge the CSA to work closely with the SROs in an effort to introduce consistency between the CRM and the RDD to ensure that clients of SRO and non-SRO members are treated in a similar manner.

- **Counter-Productive:** The result of the RDD together with the existing regulatory requirements will likely lead to an even larger volume of documentation that a client will receive at account opening and on an ongoing basis. One of the main purposes of disclosure is said to be investor protection. It is unclear how providing clients with an increased volume of documentation will serve to achieve this goal since an abundance of documentation will likely confuse and annoy rather than educate clients. Our registrants have repeatedly advised us that clients complain about the volume of disclosures they receive. We anticipate that increasing the volume of regulatory disclosures, by having to also provide clients with the RDD, will prove to be a client dissatisfaction issue.

- **Duplication of Existing Disclosures:** We are not convinced that the content of the RDD is not a duplication of information currently provided to clients by registrants through documents such as account agreements, disclosures booklets, investment policy statements and KYC forms. Requiring registrants to amalgamate all of this information to create the RDD when clients are sufficiently protected under the existing disclosures provided to them does not appear warranted, given the substantial resources that will be required to achieve this result. Has the CSA determined through focus groups or surveys whether clients will truly benefit from additional disclosure and whether clients will understand the information contained in the RDD in light of the existing disclosure they also receive?

5.10 Providing relationship disclosure document

The Instrument proposes to require registrants to provide clients with a revised RDD in the event that there is a material change to the information in the RDD before the registrant next purchases or advises on a security. We question whether this means that registrants cannot execute any transactions on a client's account until the revised RDD is delivered to the client. If that is the intent, we believe that this requirement is problematic since prohibiting a registrant from executing any transactions on a client's account until the RDD is delivered might inevitably lead to some investment losses for the client. Since we do not think that this is the intended effect of this provision, we urge the CSA to reconsider the timing of the delivery of a revised RDD. An alternative might be to require registrants to provide the revised RDD to clients within a reasonable time frame after a material change.

5.12 Content of relationship disclosure document

The Instrument provides that the RDD must be customized for each client and account.

It is impractical from an operational, efficiency and cost perspective to expect a unique RDD for each client and account. Quite apart from this concern, however, is the fact that customized disclosure might serve both to confuse clients and create inconsistency in the industry. For example, clients who retain a portfolio manager do not necessarily want to be provided with the detail around how each investment product meets their investment objective. By way of another example, the requirement to disclose risk factors associated with investing with an adviser is fraught with problems ranging from advisers using this as an opportunity to market their firm (i.e., some advisers might fail to highlight all the risks while other advisers will provide a more thorough analysis of the risks) to advisers being negatively impacted by clients misconstruing the risks as incompetency on the part of the adviser. We recommend that the objective of investor protection is better achieved through the introduction of standardized industry disclosure.

Further, we fail to understand why clients need to receive a customized RDD that includes items such as a client's KYC and investment policy statement ("**IPS**") when that information is already available to the clients, albeit in a separate document. Combining standard disclosure with customized disclosure presents practical issues in instances where only one part of the RDD (either the standard disclosure or the KYC/IPS) needs to be updated. This would then beg the question of whether the other part of the RDD would also need to be updated.

We submit for the CSA's consideration that the RDD does not need to be customized because clients already receive the relevant information through existing documentation i.e., KYC forms, IPS, fee schedules, etc. Furthermore, we strongly recommend that the CSA not impose a requirement to create a separate RDD document but to specifically highlight to registrants gaps in existing client disclosure and allow registrants to address those gaps by updating their existing client disclosure.

Division 3: Client assets

5.13 Securities, cash and other property

We recommend that the CSA include a provision in this section to the effect that non-SRO registrants may use clients' encumbered securities (i.e., margined securities), cash and other property in the ordinary course of their business (i.e., lending) so long as they can ensure the safe return of similar securities and property to the client upon the client's instructions, and that only fully-paid or excess margin securities must be segregated and held in trust for clients (similar to IDA By-Law 17.3). Failure to allow for this concept may bring the practice of margining or lending against a client's securities to a halt and we do not think that the CSA intended for this result.

5.14 Securities subject to safekeeping agreement; 5.15 Securities not subject to safekeeping agreement

We note that registrants who are members of SROs are not exempt from sections 5.14 and 5.15. SROs have existing rules with respect to client assets and we recommend that SRO registrants be exempt from these requirements. In addition, we recommend that the non-SRO rules be harmonized to the SRO rules to ensure consistency.

Division 4: Record-keeping

We note that registrants who are SRO members are not exempt from Division 4 and question the decision behind sweeping SRO members under the CSA regime when SRO members are subject to record-keeping requirements pursuant to SRO rules and regulations. In any event, the proposed record-keeping requirements are not consistent with existing SRO record-keeping rules. This inconsistency will prove to be a source of confusion in terms of compliance for SRO members since they will become subject to two different and contradictory sets of record-keeping requirements. To avoid confusion for firms and to ensure that the harmonization goal of the Instrument is met, we urge the CSA to work closely with the SROs in order to introduce a record-keeping regime that is consistent for both SRO and non-SRO registrants.

Along the same lines as the need to ensure harmonization with SRO record-keeping rules, we assume that the CSA conducted reviews of all existing legislative and statutory requirements with respect to record-keeping and retention requirements (i.e., Anti-Money Laundering, Statutes of Limitations, Criminal Code, etc.) in order to ensure that the proposed rules do not contravene existing requirements. It is crucial that registrants be able to comply with the proposed rules without contravening other existing rules.

Most firms already have in place sophisticated record-keeping systems that are based on existing record-keeping requirements. Setting up and maintaining such record-keeping systems were and continue to be enormous projects that involved and continue to involve the use of substantial financial, technological and personnel resources. To expect firms to revamp those existing record-keeping systems without identifying an obvious risk with existing record-keeping requirement is not realistic. The existing record-keeping systems are not systems that can be easily, readily or economically changed or implemented. Therefore, if the CSA wishes to impose new record-keeping requirements that will be extremely costly and burdensome to implement, the industry should be provided with a cost-benefit analysis to support such a drastic change failing which the CSA should not change the existing record-keeping requirements.

It would be useful to receive guidance from the CSA on whether it expects registrants to comply with the proposed record-keeping requirements on a going forward basis for new clients only or retroactively. We assume that the CSA will only expect registrants to comply with these proposed rules on a going forward basis. If we are wrong in our assumption, we submit that most firms would not be able to comply with these proposed rules without a significant transition period (i.e., at least 3 years).

5.19 Records – general requirements

Prescriptive vs. Principles-Based Approach

The CSA is proposing to replace the existing prescriptive lists of documents that firms must retain with a general obligation for registrants to maintain an effective record-keeping system. We do not believe that this is an appropriate application of the principles-based approach. A general obligation to maintain an effective record-keeping system places the onus on registrants to determine what an effective record-keeping system would be. Registrants should not be left to guess with respect to which documents need to be retained but should be provided with specific guidance on what is exactly expected of them in order to comply with the Instrument. The principles-based approach in the area of record-keeping will lead to inefficiency in the ability of firms to comply with the Instrument and potential regulatory exposure or litigation risks depending on the decision to retain or not to retain a specific document.

Email Retention

The CSA is proposing a new requirement for registrants to retain client correspondence including emails.

We would like confirmation that the CSA does not contemplate that a registrant should keep evidence of all email client correspondence. We assume that the intention of the CSA is to mandate that registrants retain a record of material email client correspondence that evidences the business relationship and activities between the registrant and the client. We do not see the merit in requiring registrants to retain client email correspondence that would not have any bearing on the registrant's relationship with the client.

We would like confirmation from the CSA with respect to the method of retaining client email correspondence. We understand that the CSA expects that records be retained in a safe manner which would allow them to be produced to regulators within a reasonable time frame. However, we are not clear on whether in the context of emails that would mean that the CSA expects a hard copy of all client email correspondence to be printed and physically retained in the client's file or whether electronic retention would suffice. It is our view that registrants should be able to determine the method of retention of emails within the general principle of ensuring the safety and retrieval of such emails.

5.20 Records – form, accessibility and retention

We have the following concerns with the CSA's proposal to categorize records as either "activity records" or "relationship records":

- Firms will face difficulty in determining whether a specific record should be categorized as an activity or a relationship record. This is exacerbated by the fact that there is overlap in the description of the types of records in the Policy (i.e., communication between registrants and clients). Although activity records deal with specific transactions, a relationship record includes disclosure provided to clients which can potentially include activity records. We recommend that the CSA eliminate the overlap between these two categories (i.e., communications between registrant and client should be a relationship record as opposed to an activity record). As well, we submit that the requirement to retain client communications should be limited to material client communications only.

- With respect to relationship records, the Instrument states that such records should be retained for at least seven years from the end of the relationship. We assume that the "relationship" with the client does not end until all of the accounts the client holds with the registered firm are closed. It would be helpful for the CSA to clarify whether the end of the relationship extends to the end of the relationship with the registered firm only or whether it extends to the registered firm's affiliates as well.

Section 5.20(2) of the Instrument provides that for a period of two years after the creation of a record, a registered firm must keep the record in a manner that permits it to be provided *promptly* to the regulator. Depending on how the CSA interprets "promptly", the retrieval of records from storage may not necessarily be achievable promptly. The proposed time frame should take into consideration the business reality of storage and retrieval for large firms who employ complicated record-keeping systems that might involve off-site storage. Therefore, we suggest that the CSA impose a "within a reasonable timeframe" standard for all record retrieval regardless of the time that the record will be retrieved.

Division 5: Account activity reporting

5.21 Confirmation of trade – general

Section 5.21(4) provides that paragraph 1(h) does not apply if the security is a security of a mutual fund that is an affiliate of the registered dealer and the names of the dealer and the fund are sufficiently similar to disclose that they are affiliated. Rather than require that the name of the registered firm and the mutual fund be "sufficiently similar to disclose that they are affiliated", it would be more appropriate to require that actual disclosure of the affiliation is disclosed. In addition, we do not believe that the statement "mutual fund that is an affiliate of the registered dealer" is appropriate or clear in this context because it is the mutual fund manager and the registered dealer that are affiliated as opposed to the mutual fund and the registered dealer. Accordingly, we suggest that the provision be rephrased to read as follows "paragraph 1(h) does not apply if the security is a security of a mutual fund manager that is an affiliate of the registered dealer and the affiliation between the mutual fund manager and the registered dealer is disclosed."

5.22 Reporting trades otherwise

With respect to section 5.22(2), see comments on section 5.21(4) above.

5.23 Semi-annual confirmations for certain automatic plans

This section allows for no trade confirmations to be sent out to clients where they have a regular investment plan with an investment frequency no less frequent then monthly, provided that a confirmation is delivered at least semi-annually. When read in conjunction with the statement of account and portfolio requirement in section 5.25 which requires that statements of account be delivered quarterly unless the client requests statements on a more frequent basis, this section seems redundant, as the transactions would appear on the quarterly statement of account in any event. Given that most of the trade confirmation disclosure is either in the statement of account or not applicable in the case of a mutual fund (principal or agent for example, the marketplace on which the transaction took place), we question the benefit to the client to also deliver a semi-annual confirmation for automatic plans regardless of the frequency of the investment.

5.25 Statements of account and portfolio

Section 5.25(1) provides that "a registered dealer must send a statement of account to each client not less than once every three months… unless the client has requested statements on a more frequent…".

- We recommend that this provision include an exemption similar to that set out in section 5.24 which would exempt the registered dealer from the need to send a statement of account to each client if the investment fund manager of the mutual fund sends the client a statement of account. We believe that most investment fund managers currently perform this service in any event for clients who hold mutual funds in client name. Duplication of statement of accounts (i.e., one from the registered dealer and one from the investment fund manager) is not something that clients would appreciate being subjected to because it will result in confusion.

- The provision that a client may request statements with a frequency of their choosing can be an administrative nightmare to comply with if the client, for instance, would like statements on a weekly or bi-weekly cycle. We suggest that this section make it clear that the ability of the client to request more frequent statements is limited to monthly statements.

- In instances where investment fund managers deliver client account statements on behalf of dealers and a client requests account statements to be delivered more frequently then on a quarterly basis, we suggest that the dealer bear the onus of having to satisfy the more frequent delivery obligations as opposed to the investment fund manager. Failing that, we suggest that dealers compensate investment fund managers for the system changes that will need to take place in order for the investment fund managers to meet clients' frequency requests.

Section 5.25(4) appears to be imposing an obligation on a registered adviser acting as a sub-adviser in a wrap program offered by a registered dealer to deliver a monthly statement to the client, to the extent the client has consented as per section 5.21(1) to the delivery of trade confirmations to the registered adviser. Our concern is that, depending on the legal structure of the wrap program involved, the client in question is the client of the registered dealer and not the registered adviser. Indeed, the registered adviser typically does not even know who the client is. Imposing a statement delivery requirement on a registered adviser in such circumstances would be inappropriate.

Division 6: Compliance

5.26 Compliance system

Section 5.26(1)(b) provides that a registered firm must establish, maintain and enforce a system of controls and supervision designed to "manage the risks associated with the business…". We submit that the CSA has no jurisdiction to mandate compliance with the registrant's business generally and the CSA's mandate should be restricted to ensuring that registrants manage the risks associated with securities issues only.

Division 7: Complaint handling

Throughout Division 7, there are references to registrants having to deal with complaints as such complaints relate to one of the products or services provided by the registrant. We recommend that the CSA clarify that Division 7 applies only to complaints that relate to the registrable activities of the registrant. In other words, if a registrant were also a public issuer, complaints about the registrant's public disclosure documents would not be subject to Division 7, whereas a complaint about the reporting in a client's account with the registrant would.

Section 5.12 of the Policy provides that complaints must be acknowledged in writing within 5 business days. We do not think that this time frame accommodates business realities of large registrants that have to follow specific internal procedures with respect to acknowledging complaints. We believe that this time frame is too short and should be extended to at least 10 business days.

5.29 Complaints

We note that the proposed complaint handling regime under the Instrument differs from the complaint handling regime adopted by SROs. It is crucial that all SRO and non-SRO registrants be subject to similar complaint handling regimes. Therefore, we recommend that SRO members be exempt from Division 7 as they are currently subject to SRO rules with respect to complaint handling (IDA Policy 8 and MFDA Policy 3). In addition, we recommend that the CSA work closely with the SROs in an effort to formulate complaint handling rules for non-SRO registrants that are sufficiently similar to or the same as the SRO rules.

The Policy provides that “a complaint is the expression of at least one of the following elements that persists after being considered and examined at the operational level capable of making a decision on the matter: a reproach against the firm, the identification of a real or potential harm that a client has experienced or may experience or a request for remedial action.” The scope of the definition of a complaint is overly broad and vague. We suggest that the definition of a complaint be harmonized with that used by SROs to ensure consistency and avoid confusion. At the very least, we need clarification from the CSA on what is meant by “reproach” and “harm”. It is problematic to use such broad terms because they may lead to frivolous complaints that are wholly unrelated to the registered firm’s business activities. As well, we submit that complaints should be restricted to complaints that relate to a breach of a regulatory requirement or duty as opposed to complaints of a service nature that should be handled in the ordinary course of business.

5.30 Dispute resolution service

The CSA imposes a requirement for registered firms to participate in a dispute resolution service and notify a client who makes a complaint of the dispute resolution service. We are unsure of what is meant by “dispute resolution service” and whether that extends beyond the Ombudsman for Banking Services and Investments (“**OBSI**”). We are therefore seeking clarity on which dispute resolution services would fall within the meaning of this term. If entities beyond OBSI are meant to be captured, we need clarification on whether the CSA will provide registrants with an approved list of dispute resolution services from which to choose from or whether registrants and clients will be able to mutually select a dispute resolution service. If it is the latter, what happens if the registrant and the client cannot agree on a dispute resolution service? Also, if a fee is involved for using a dispute resolution service, who will be responsible for paying such a fee in the event that the client’s complaint was without merit?

5.31 Policies and procedures on complaint handling

A registered firm must have policies and procedures on recording and examining a complaint made by a person or company having an interest in a product or service it has provided. We are not sure of what “having an interest in a product or service” means. Registered firms should have to respond to complaints from clients only and not third parties. Therefore, this concept should be clarified.

5.32 Reporting to the regulator or securities regulatory authority

There is a requirement for registered firms to submit a report to the regulator that includes the number and nature of complaints as at the end of the registered firm’s fiscal year. Since the Instrument does not distinguish between regulatory and non-regulatory complaints, the scope of complaints that may be captured under this section potentially extends to all complaints whether they are of a regulatory nature or not. We do not support this position because it is not necessary for regulators to be notified of all complaints since only regulatory complaints should be relevant for their purposes.

Therefore, we suggest that reporting of complaints to regulators be handled the same way as IDA Policy 8 and MFDA Policy 3 so that only regulatory complaints, and not service issues, are reported to the regulator.

By way of a drafting comment, the reference to section 5.29 in this section should be changed to section 5.31.

PART 6 - CONFLICTS

Division 1: General

6.1 Conflicts management obligations

We are concerned with this proposed requirement for two reasons. First, it is overly prescriptive and second, the requirement will be difficult to comply with in practice. In particular:

- This section generally overlooks fundamental contractual and statutory obligations of advisers to act honestly, in good faith and in the best interest of their clients, which stands at the core of the investment manager-client relationship. These principles are sufficient to ensure the objectives of the proposed requirements without having to impose such prescriptive rules.

- The term "conflict of interest" is broadly defined in section 6.1 of the Policy to include "circumstances in which the interests of different parties … are inconsistent or divergent". This vague definition casts a very wide net and, most importantly, fails to distinguish between material and immaterial conflicts of interest. Read literally, the proposed definition would capture all competing interests that have long been accepted by investors and businesses alike as part of doing business (i.e., the inherent conflict between institutional clients who aim for the highest prices versus retail clients who aim for the lowest prices). We suggest that the CSA consider the definition of a conflict of interest contained in NI 81-107 *Independent Review Committee for Investment Funds* ("**NI 81-107**") which is a "situation where a reasonable person would consider [a manager]…to have an interest that may conflict with [the manager's] ability to act in good faith and in the best interests of [the investment fund]". We urge the CSA to reconsider the definition of a conflict of interest and introduce a more realistic definition (i.e., as in NI 81-107), that includes a materiality threshold and that will allow registrants to develop procedures to permit them to comply.

- Investment Fund Managers should be exempt from the requirements of this Division 1 because they are subject to very strict conflicts of interest rules pursuant to NI 81-107. In any event, we suggest that the CSA coordinate the rules in this Division 1 with the rules set out in NI 81-107.

- Section 6.1(1) requires a registrant to identify each *potential and actual* conflict of interest within the registrant, with other entities, with a client, between clients, and the registrant's agents (see section 6.1 of the Policy).

    - It would be nearly impossible for registrants to confirm with certainty that they have identified every potential and actual conflict of interest. Regardless of this unattainable standard, registrants would be in breach of this proposed requirement if they fail to identify all potential and actual conflicts of interest.

    - It is impractical to extend the scope of this requirement beyond conflicts of interest within the registrant. Registrants cannot be expected to identify a potential conflict of interest with another entity if the registrant has no way of knowing of the actual existence of a conflict. As well, the concept of requiring firms to identify potential and actual conflicts of interest with agents is too broad i.e., who is an agent of the registrant? How can a registrant be expected to possibly identify all potential and actual conflicts of interest with an agent when the registrant is not privy to policies and procedures of those agents? In addition, it is unrealistic to expect registrants to identify all potential and actual conflicts of interest between clients since they are not privy to certain facts that may lead to the existence of a conflict of interest.

    - Unless the CSA is able to identify specific concerns and existing failures underlying this proposed requirement, we suggest that the CSA consider changing the proposed requirement to a requirement that registrants have effective policies and procedures to identify and appropriately deal with actual and material conflicts of interest.

- Section 6.1(2) requires registrants to deal with a conflict of interest in a fair, equitable and transparent manner, and by exercising responsible business judgment influenced *only* by the best interest of the client or clients. We do not believe that every conflict should be subject to the "influenced only by the best interest of the client" test. This is recognized in NI 81-107 where the Independent Review Committee (the "**IRC**") does not have to come to that conclusion for every conflict it considers, but only for matters that are otherwise prohibited under securities laws. For other conflicts, the IRC has to determine that the proposed action "achieves a fair and reasonable result for the investment fund". Furthermore, the existing requirement would be unworkable when dealing with two clients that may have conflicting interests. We are not sure how we would comply with this proposed rule in such instances i.e., which client's interest would take precedence? For these reasons, we suggest that the best interest of the client be only one of the factors that registrants should take into consideration when dealing with conflicts of interest.

- Section 6.1(3) requires registrants to provide written disclosure of conflicts to clients “when there is a reasonable likelihood that the clients would consider the conflict important when entering into a proposed transaction”.

    - This is a very subjective standard. This standard is impossible to monitor or supervise from a compliance point of view. Furthermore, it may amount to an invitation to litigate, since clients can claim with hindsight that an undisclosed conflict would have deterred them from a transaction if it had been disclosed. The risk of litigation will force registrants to err on the side of caution and disclose all potential and actual conflicts of interest to every client. The effect will be excessive and meaningless disclosure to clients. The only viable solution for these problems would be to have the CSA specifically highlight in the Instrument the conflicts of interest which would require client disclosure as they did with related and connected issuers etc.

6.2 Prohibition on certain managed account transactions

We have the following concerns with the proposed definition of “responsible persons” under section 6.2(1) of the Instrument:

- We disagree that every partner, director or officer of an adviser should necessarily be considered a “responsible person”. If partners, directors or officers do not have access to information about investment decisions or advice, we strongly urge the CSA to exclude such persons from the definition of “responsible person”.

- The proposed definition of “responsible person” seeks to capture all affiliates of the adviser. This is a key change from the existing requirement found in section 118 of the Ontario Securities Act which restricts the concept of affiliates in the definition of “responsible person” to those affiliates who participate in the formulation of, or have access prior to implementation, to investment decisions made on behalf of or the advice given to the client of the adviser. We submit that the existing formulation of affiliate is the more reasonable and practical approach. Most organizations have put in place ethical walls and related policies and procedures to prevent certain affiliates of the adviser from having prior access to investment decisions. Casting such a wide net will have a negative impact on the practices of larger organizations that have many affiliates and advisers. We therefore recommend that the definition of “responsible person” be revised to capture only those affiliates who have access to or can influence investment decisions.

- We note that the definition of “responsible person” has been expanded to include agents of the adviser which is a divergence from the existing definition in the Ontario Securities Act. We are not sure who would qualify as an agent and seek clarification from the CSA on the meaning of this term.

We have the following concerns with proposed section 6.2(2) which sets out the restrictions on investments by a registered adviser in the context of a fully-managed account or an investment portfolio unless a client has provided their prior written consent:

- The existing corresponding requirement found in section 118(2) of the Ontario Securities Act includes a knowledge qualifier such that the adviser is prohibited from "knowingly" making one of the prohibited investments without the client's prior written consent. We note that this knowledge qualifier has been removed from section 6.2(2). We submit that the knowledge qualifier should be included in section 6.2(2) as, without such a qualifier, inadvertent errors may result in a breach of this requirement, which is surely not the CSA's intent.

- We note that an adviser would be required to obtain a client's written consent prior to each purchase transaction.

    - In practice, this requirement may not always be in the best interests of clients. Clients who do not submit their written consents in a timely manner will not have access to the widest array of investments because their adviser would be prohibited from executing a specific trade unless they have the client's specific written consent on file prior to execution. As a result, these clients may suffer some investment losses. We fail to see how this can serve the best interests of the client. Therefore, we believe that the underlying purpose to protect investors is severely undermined by the specific consent requirement. In any event, most clients do not place much emphasis, if any, on these types of consent forms. On the contrary, clients have voiced complaints and confusion about the need to sign such consent forms. Accordingly, we submit that the appropriate requirement is to mandate general client disclosure at account opening relating to the responsible persons, related issuers and connected issuers conflicts.

    - This is a very onerous requirement for registrants affiliated with large banks to comply with and it unfairly restricts their business activities. If the intent behind the consent requirement is to ensure that the adviser is not prioritizing the interests of responsible persons, related issuers and connected issuers over the best interests of the client, then we suggest that advisers are already subject to a high standard with respect to managing a client's account. For example, advisers have a statutory and frequently contractual fiduciary duty to act in the best interests of their clients and an obligation to ensure that transactions are suitable to the client's investment objectives. We suggest that this framework already serves to prohibit advisers from "dumping" securities of responsible persons, related issuers and connected issuers in a client's account. Accordingly, we submit that the existing securities law regime is sufficiently robust to protect the interests of investors in this regard without the need to obtain prior written consent.

- Section 6.2(2)(b) prohibits an adviser from purchasing or selling a security from or to the account of a responsible person of the adviser whether the client has provided their consent or not. This is problematic because it means that we cannot put principal transactions through a related dealer which is inconsistent with IDA rules and therefore creates an uneven playing field. We submit that this provision should allow for an exemption in the event that the client provides consent to such transactions.

- We note that that this section could also apply to purchases of mutual funds. We recommend that section 6.2(2) include an exemption for transactions made in accordance with subsection 4.1(4) of NI 81-102 *Mutual Funds*.

6.3 Registrant relationships

Section 6.3(1) appears, on its face, to permit individuals registered as dealing or advising representatives to be registered in the same capacity with an affiliated firm. We commend the CSA in taking this approach and would also encourage the CSA to work with the SROs to permit, subject to the applicable proficiency requirements being met, a dealing representative of a mutual fund dealer to also be registered as a dealing representative of an investment dealer when the dealers are affiliates. It is our view that there are significant benefits to both clients and registrants of such an approach and that adequate controls to address any regulatory concerns can be established to allow for this development.

6.4 Issuer disclosure statement

We have the following concerns with the proposed requirement for an issuer disclosure statement (which is similar to the existing requirement to have a statement of policies):

- Section 6.4(1) proposes to require that the issuer disclosure statement contain a list of connected issuers of the registrant. The determination of whether an issuer is “connected” to a registrant is only relevant during the course of distribution by the issuer. This determination is fact specific and usually made by counsel for the issuer and underwriter for that issuer’s prospectus and inevitably results in a generic statement in the prospectus that the issuer “may be a connected issuer”. Given the fact-specific nature of the determination and the continuous changes that occur on a daily, if not hourly, basis of who would be a connected issuer, it is difficult and impractical to require registrants to maintain a list of connected issuers. We urge the regulators to allow registrants to deal with this requirement by (i) describing the concept of a connected issuer in the issuer disclosure statement; and (ii) providing specific examples of connected issuers in the issuer disclosure statement.

- Section 6.4(2) requires the delivery of an issuer disclosure statement before each and every purchase and sale or recommendation of a related or connected issuer. We do not believe that clients would react positively to receiving issuer disclosure statements on such a regular basis. In addition to the practical concerns noted above, we submit that clients already complain about the volume of material sent to them and are less likely to read the issuer disclosure statement if it is delivered to them on such a regular basis. As well, it is operationally difficult to keep track of ensuring that the issuer disclosure statement is delivered for each client at the right time. We urge the CSA to reconsider this position and instead allow for the delivery to take place upon account opening and then annually. We also suggest that the CSA provide advisers with the option of satisfying this delivery requirement by posting the updated issuer disclosure statement on their website i.e., access equals delivery. This suggested approach would eliminate client inconvenience and would be more practical from an operational perspective.

- With respect to section 6.4(3), we refer you to our comments made under section 6.4(2) above.

- With respect to section 6.4(5), we refer you to our comments made under section 5.21 above.

6.5 Research recommendations

With respect to section 6.5(c), we refer you to our comments made under section 5.21 above.

6.6 Fairness in allocation of investment opportunities

Section 6.6(b)(ii) states that if there a material change in the trade allocation policy then the adviser must provide the updated policy to clients before next advising the client to purchase, sell or hold a security. This proposed requirement can be detrimental to clients who might suffer some investment losses as a result of advisers being prohibited from trading on a client's account unless the revised trade allocation policy has been delivered to the client (which can take hours or days, depending on the delivery method). Based on this fact alone, we urge the CSA to move towards a delivery of the updated policy promptly without restricting the adviser's ability to trade on the client's account in the meantime. We also suggest that the CSA provide advisers with the option of satisfying this delivery requirement by posting the updated trade allocation policy on their website i.e., access equals delivery.

Division 2: Referral arrangements

We generally support the introduction of guidance surrounding referral arrangements and specifically commend the CSA for eliminating the requirement, currently in place in Quebec, to file the agreement of referral with the Autorité des marchés financiers. However, we are concerned that Division 2 is worded quite broadly and in such a way that we believe it casts a very wide net. In particular, we have the following concerns:

- The requirements with respect to referral arrangements might capture referrals between affiliates. We submit that referrals between affiliates be specifically excluded from the Instrument. CIBC registrants already provide clients with referral disclosure at account opening with respect to a referral fee that is received or paid between affiliates for the referral (or possible referral) of a client. We have reproduced the disclosure we currently make in this regard below, which we believe sufficiently informs the client of the arrangements and highlights the important issues (i.e., amount of the fee, permitted activities, etc.):

  > "We and certain of the CIBC group* (each a "CIBC Member"), have entered into a referral arrangement to refer qualified clients to each other. You are under no obligation to purchase any product or service from a CIBC Member. However, if you do so, you acknowledge that a CIBC Member may pay another CIBC Member an annual referral fee of up to *% of the fees that you will pay each year for the products and services purchased from that CIBC Member. You do not have to pay any fee for the referral. It is illegal for the CIBC Member receiving the referral fee to trade or advise in respect of securities unless it is duly licensed or registered under applicable securities legislation to do so.
  >
  > *The CIBC group includes Canadian Imperial Bank of Commerce and its subsidiaries that offer deposits, loans, mortgages, mutual funds, portfolio management, investment counseling, securities trading, trust and insurance services."

- We are also concerned that the combination of the business trigger and the referral arrangements requirements might mean that referrers that are not currently registered will need to be registered in order to carry out referral activities, regardless of the fact that those individuals are not conducting registrable activities. For example, bank employees who might regularly refer clients to affiliated registrants and receive a referral fee for doing so might be said to trigger the factors set out in the business trigger. While we understand that whether a party needs to be registered depends on the activities carried out, we do not believe that the business trigger was meant to capture referrals by bank employees to their affiliated registrants. As a result, we recommend that such activities should be specifically exempt from the registration requirement.

6.11 Definitions – referral arrangements

We have the following concerns with the definitions:

- "Client" is defined to include prospective clients. We do not think it is necessary for a registrant to comply with this Division 2 if the prospective client does not become a client. We believe that the onus should be on the entity that makes the referral to provide any necessary disclosures particularly if no services are ultimately rendered by the registrant to whom the prospective client was referred.

- The definition of "referral arrangement" in the Instrument ("any arrangement in which a registrant agrees to pay or receive a referral fee") differs from the concept used in the Policy ("where registrant is paying for the referral and to referrals from a registrant to a company that provides investment products or services"). There should be consistency in the articulation of the meaning of referral arrangement in the Instrument and the Policy.

6.13 Disclosing referral arrangements to clients

With respect to the specific items that must be addressed under section 6.13(1), we have the following concerns:

- Section 6.13(1)(c) requires disclosure of any conflicts of interest resulting from the referral arrangement relationship. We note that conflicts of interest are thoroughly covered in section 6.1. We think it is duplicative and unnecessary to have conflicts of interest requirements covered under two different sections. This duplication will lead to inconsistency and confusion for registrants. Accordingly, we suggest that the CSA select either section 6.1 or section 6.13 to cover conflicts of interest. In any event, we need guidance as to the meaning and the scope of conflicts of interest as such term pertains to referral arrangements. We urge the CSA to incorporate a materiality threshold and limit the potentially far reaching scope of the concept of conflicts of interest in the context of referral arrangements.

- Section 6.13(1)(g) requires disclosure of any other information that a reasonable client would consider important in evaluating the referral arrangement. This is a very broad provision. We do not agree with including such a catch all provision and suggest that the CSA specifically include any other disclosure requirements that they wish to have registrants make to their clients with respect to referral arrangements.

Section 6.13(2) requires registrants to provide clients with a revised written disclosure if there is a change in the referral arrangement that affects the client. The disclosure would need to be provided to the affected client promptly but no later than 30 days before the next payment or receipt of any referral fee.

- We do not think it is necessary for clients to be apprised of all changes regardless of whether or not those changes are material to the referral arrangement. We suggest that the requirement should be to mandate registrants to provide revised written disclosure only if there is a material change to the referral arrangement information that will have an impact on the client.

- The proposed time frame is too prescriptive. It is our recommendation that the timing be changed to provide for the notice to be delivered to clients within a reasonable time frame after the material change.

6.15 Application and transition to prior referral arrangements

We do not believe that it is appropriate for the Instrument to capture existing referral arrangements. We are concerned that repapering existing referral arrangements might serve to unnecessarily confuse clients. Referral arrangement requirements should be restricted to referral arrangements that arise as of the date the referral arrangement requirements under the Instrument take effect.

PART 7 - SUSPENSION AND REVOCATION OF REGISTRATION

The CSA is proposing that the regulator have discretionary power to revoke or suspend a registration or impose terms and conditions on registration at any time when the regulator makes a determination that a registrant no longer meets the fit and proper requirements or that their continued registration is objectionable. We understand that the CSA introduced this provision by way of balancing out the change of no longer requiring registrants to annually renew their registration. However, we are concerned that the discretionary power is too broad and we recommend that the CSA provide registrants with guidelines as to what it will consider to be objectionable. At the very least, we believe that the objectionable standard should be restricted to a registrant's activities as they relate to securities laws. In addition, we believe that registrants should be provided with reasonable notice to remedy the objectionable behavior before regulators revoke or suspend their registration.

7.5 Termination of employment, etc.

A related amendment to NI 33-109 *Registration Information* introduces a revised Form 33-109F1 (Notice of Termination). The notice now includes a list of questions designed to elicit more information from a former sponsoring firm that will be relevant to the regulator's assessment of an individual's continued fitness for registration. We recommend that the CSA clearly indicate on Form 33-109F1 that the registered individual is providing continued ongoing consent to both the regulator and the registered firm that clearly outlines the express consent to mutual collection and disclosure of personal information about the registered individual and outlines the purposes for which the information may be used without further requirement for additional consent.

We are also concerned that by complying with the request for information on Form 33-109F1, registered firms are exposing themselves to potential legal action brought about by the registered individual.

7.6 Reinstatement

We would like guidance on how the National Registration Database will accommodate the concept of automatic reinstatement of a registrant.

PART 8 - INFORMATION SHARING

8.1 Firms' obligation to share information

This provision purports to require sharing of information between registrants. We have the following specific concerns with this requirement:

- We believe that it might lead to privacy (particularly in Quebec), defamation and libel claims against the registered. As a result, we recommend, that this provision incorporate a specific consent requirement from the registered individual permitting registered firms acting in good faith to comply with this provision without any liability.

- The requirement to provide information "of which it is aware that is relevant to the person's conduct or to an assessment of the person's suitability as a registered individual or that is material to the hiring of the person by the registrant" is too vague and broad. Issues of relevance or materiality can be very broad or narrow in scope depending on whether the language is intended to cover only issues relating to registration and disciplinary actions or issues relating to the employment relationship generally. For example, regular breaches of a firm's discretionary trading policy would likely be both relevant and material to a potential sponsoring firm's hiring decision whereas constantly being late or rude to an underling is likely not relevant to the viability of a registered individual's capabilities as a portfolio manager. Accordingly, unless the phrase above is limited to registration and disciplinary actions, we recommend that it be deleted.

- This provision places the onus on the registered firm to determine what is relevant or material to the hiring of the person. This is a very high standard that registered firms need to meet. For instance, would registered firms need to disclose to a potential sponsoring firm suspicious activity by an employee that has not been proven? It is not appropriate to impose this requirement on a registered firm who would be caught between balancing the privacy rights of the registered individual and against the responsibility of the registered firm to disclose the appropriate information. We suggest that since regulators generally request additional information and details regarding a termination for cause that the regulators take the proactive approach and share that information with potential sponsoring firms upon request.

- If the CSA decides to retain this provision, we think it would be fair to include an immunity provision to protect registered firms for complying with this provision (i.e., registered firms should not be held liable if they decide in good faith not to disclose certain information that they deemed to be irrelevant which later on becomes relevant and is the subject of a lawsuit; registered firms should not be held liable for disclosing all information that they in good faith deemed to be relevant).

- Sections 8.1(2) and (3) place limits on the uses of the information and limits the scope of disclosure. We submit that both of these subsections are too narrow in scope. If information about the registered individual is disclosed then it must be capable of being used by the registrant in defending itself in any lawsuit or complaint from anyone impacted by the sharing of that information. This use is arguably beyond the limited uses described in section 8.1(3). Further, it must be disclosed in contexts which can include responses to a client complaint, i.e., to the client, or to any other agency or body and should include human rights commissions.

PART 9 - EXEMPTIONS FROM REGISTRATION

Division 1: General

The CSA states that "As a result of adopting the business trigger the number of registration exemptions needed will be significantly reduced. As a result, proposed amendments may include changes to the exemptions set out in section 34 [Exemptions of advisers] and section 35 [Exemptions of trades] of the Act." We submit that if such an effort is to be undertaken, the CSA should provide the industry with an opportunity to comment on the impact of reducing the number of available exemptions. Allowing the industry to comment is crucial since many market participants rely on certain exemptions set out in sections 34 and 35 of the Ontario Securities Act. For example, we assume that the CSA's intent is not to require firm and individual registration for the sale of safe securities such as Canada Savings Bonds. Requiring registration for the sale of such products is counterproductive considering the low risks associated with investing in Canada Savings Bonds.

9.3 Investment fund reinvestment

Section 9.3(1)(a) restricts the exemption to reinvestment in the same class or series. We suggest that a reinvestment in a fund in the same fund family should also be permitted.

With respect to section 9.3(1)(b), we do not understand the reference to "trade on a marketplace" if the exemption is meant to deal with pre-authorized purchase plans. We would the like clarification from the CSA on this point.

9.4 Additional investment in investment funds

We query whether the exemption in section 9.4(b) should be limited to additional purchases of the same class or series as the security initially acquired. This limitation seems quite restrictive.

9.11 Adviser

We note that the entities listed in section 9.11 can only rely on the adviser registration exemption if the advisory services they perform are "incidental to their principal business". This is a divergence from the existing adviser exemptions provided in Ontario and Newfoundland & Labrador for the entities listed in section 9.11. Currently, those provinces provide certain entities with an exemption from the adviser registration requirement independent of whether the advisory services they perform are "incidental to the principal business" (see section 209(10) of the Ontario Securities Regulations and section 173(10) of the Newfoundland & Labrador Securities Regulations). We question and object to the rationale behind the restriction of the adviser registration exemption to entities that are only providing advisory services in a manner that is incidental to their principal business. The entities listed in section 9.11 are already heavily regulated and requiring them to register as advisers would be tantamount to over-regulation. We urge the CSA to delete the reference to "incidental to their principal business" from section 9.11 and revert back to the current language used in Ontario and Newfoundland & Labrador.

9.13 International dealer

We object to the CSA's proposed implementation of clause (a) in the definition of "international dealer" in section 9.13 which states that an international dealer means a dealer that has no establishment in Canada or officers, employees or agents resident in Canada.

- While in most cases U.S. broker dealers, that are affiliated with Canadian bank-owned dealers, do not have any Canadian branches or offices, many employees of the affiliated Canadian bank-owed dealer that are based in Canada will have supervisory responsibility for, or business functions on behalf of, the U.S. broker dealer affiliate. Indeed, many Canadian bank-owed dealer employees are registered with U.S. securities regulators as associated persons and/or principals of the U.S. broker dealer affiliate. This enables Canadian bank-owned dealers to leverage their domestic broker dealer operations and institutional expertise to serve their Canadian and U.S. clients. Clause (a) of the proposed definition of "international dealer" would make it virtually impossible for Canadian bank-owned dealers to have U.S. broker dealer affiliates as Canadian dealers would be required to completely separate their U.S. broker dealer affiliates from Canadian supervision and support, which we believe would impose undue financial and operational costs on Canadian bank-owned dealers and potentially reduce the ability of "permitted international dealer clients" to gain access to foreign capital.

- If Canadian bank-owned U.S. broker dealer affiliates are not able to avail themselves of the international dealer exemption because they would not be able to comply with clause (a) of section 9.13, these U.S. broker dealer affiliates would be required pursuant to section 3.1 of the Instrument to become members of the IDA. As you know, this is not possible under the current IDA regime as the IDA by-laws prohibit non-resident firms from becoming IDA members. Even if the IDA by-laws allowed Canadian bank-owned U.S. broker dealer affiliates to become IDA members, we believe that there would be no obvious regulatory benefit as U.S. broker dealer affiliates are currently registered with and subject to the oversight of the U.S. Securities and Exchange Commission and SROs such as the National Association of Securities Dealers. Rather, this additional IDA oversight would impose a significant regulatory burden on these U.S. broker dealers who would have to comply with similar but not identical reporting rules as well as incur duplicative fees and expenses.

- Accordingly, we do not believe that clause (a) of the definition of "international dealer" in 9.13 is necessary or desirable, and we urge the CSA to delete this requirement on the basis that as it would impose a significant financial and operational burden on Canadian banks without any obvious regulatory benefit, unduly interfere with the efficiency of Canadian capital markets and reduce the ability of Canadian based broker dealers to meet Canadian investor demand for "debt securities offered primarily abroad" or "foreign securities". Moreover, we believe that the deletion of this clause would be consistent with the CSA's objective to develop rules that are "based on the rationale that there is another regulatory regime in place that adequately addresses the regulatory risk associated with the dealing or advising activity".

We object to the CSA's proposed implementation of the definition of "permitted international dealer client" in section 9.13.

- While the proposed definition incorporates many of the "accredited investor" categories from NI 45-106, it excludes the categories of sophisticated investors under clauses 1.1(m), (n), (o) and (r) of NI 45-106. We believe that there is no policy reason for the CSA to prohibit Canadian bank-owned U.S. broker dealer affiliates from dealing with these investors. These investors would constitute corporate clients, hedge funds and registered charities that would be considered sophisticated investors and/or would otherwise be advised by a registered adviser under securities legislation. We believe that many of these types of institutional investors seek access to foreign capital markets, especially in the United States, and as a result, have direct relationships with foreign dealers. This is particularly true of Canadian corporate clients who offer securities, on a public or private basis, to raise capital in the United States.

- Accordingly, we request the CSA to include the categories of investors that fall under clauses 1.1(m), (n), (o) and (r) of NI 45-106 in the proposed definition of "permitted international dealer client" under section 9.13.

9.14 International portfolio manager

We note that the definition of "permitted international portfolio manager client" set out in section 9.14(1) is substantially more limited than the current "permitted client" definition found in section 1.1 of Ontario Securities Commission Rule 35-502 *Non Resident Advisers* ("Rule 35-502"). Specifically, we note that the following categories of clients currently found in Rule 35-502 are excluded from the definition of "permitted international portfolio manager client": (a) charities and endowments that meet a certain monetary threshold; (b) accredited investors; and (c) portfolio managers for fully managed accounts. We do not understand the rationale behind excluding these clients. For example, charities and endowments can be just as large and financially viable as pension funds. In addition, accredited investors are sophisticated and financially viable. Furthermore, the exclusion of portfolio managers for fully managed accounts is troubling particularly since section 9.14 requires that the international portfolio manager be directly engaged by permitted clients and we do not think it is reasonable to prohibit such portfolio managers from engaging international portfolio managers directly. We submit that these excluded clients should properly be included in the list of clients in section 9.14(1).

Section 9.14(2)(e) provides that the registration requirement does not apply to an international portfolio manager provided that it derives not more than 10% of the aggregate consolidated gross revenue of the international portfolio manager and its affiliates for any fiscal year from portfolio management activities of the international portfolio manager and its affiliates in Canada. We note that the 10% threshold is lower than the current 25% threshold set out in Rule 35-502. The 10% threshold is too restrictive for large banks that have many affiliates and particularly too restrictive since this requirement attempts to capture Canadian affiliates as well. We suggest that the current 25% threshold be maintained and that the concept of affiliates be restricted to non-Canadian affiliates.

<u>OTHER ISSUES:</u>

Annual Fee Payment Date

The CSA asked the question of whether a May 31 or December 31 annual fee payment date is better for registrants. We prefer a May 31 annual fee payment date as it will fall outside of the busy fiscal and calendar year activity period. As well, a May 31 payment date would permit registrants to use final figures based on audited financial statements. Currently financial statements are not ready until after the Participation Fee calculation is submitted to the regulators.

Proposed Forms

Please see Appendix A for our comments on the proposed forms.

* * * * * * *

Thank you for this opportunity to provide our comments. Please do not hesitate to communicate with the undersigned at the number appearing above should you have any questions regarding the foregoing or wish to discuss it further.

Yours truly,

/s/ Carole Dagher

Carole Dagher
Counsel, Legal Department

APPENDIX A

PROPOSED FORM 31-103F1
CALCULATION OF EXCESS WORKING CAPITAL

We need clarification from the CSA on the meaning of "Current assets not readily convertible into cash" (line 2).

"Less unreconciled differences" (line 12): Some reconciliations are not completed 30 days after month-end which would be problematic given the requirement to submit this form no later than the 30th day after the end of each quarter.

PROPOSED FORM 33-109F1
NOTICE OF TERMINATION

Miscellaneous

Section D asks whether the employee resigned or was dismissed "for cause". This terminology requires further clarification as it is not a recognized concept in employment law.

We ask that clarification be provided regarding the administration of fines for late filings. It appears that there will be a two stage Notice of Termination filing and we question whether registered firms will need to pay fees twice if the Notice of Termination is not initially filed within 5 business days and then exceeds the 30 day balance to file the rest of the information required on Part D of the Notice of Termination.

In an effort to streamline the reporting of Notice of Terminations, we would suggest that the Notice of Termination Form 1 be revised so that a two stage reporting process would not be required. The firms should be given 30 days to produce a complete filing. Registrants can rely on the automatic transfer process in the interim to ensure the transfer of registrations is not delayed as a result of the 30 day filings.

We suggest that the disclosure relating to the collection and use of personal information currently used in Form 4 be incorporated into the Notice of Termination.

Question 3

The question reads as follows: "Was the individual subject to any significant internal disciplinary measures at the firm or any affiliate of the firm?" The term "significant" may be interpreted in various ways and each registered firm may have their own measures of internal disciplinary actions and standards of significance. Accordingly, we would like guidance from the CSA on the meaning of the term "significant" since it is very broad and vague. We would also suggest that the information collected for "affiliates" be replaced with information collected for regulated affiliates to ensure the information reported is material and can be collected and reported in a timely manner.

Question 7

The question reads as follows: "Did the firm or any affiliate investigate the individual in connection with possible material violations of fiduciary duties, regulatory requirements or the compliance policies and procedures of the firm or any affiliate?" The term "affiliate" is very broad in this context. We would like clarification from the CSA on which entities would be considered affiliates and would suggest that only regulated entities be included in the scope of this context.

Question 10

The question reads as follows: "Is there any other matter relating to the individual's termination or conduct leading up to it that the firm is aware of and believes is relevant to his or her suitability for registration?" We suggest that the CSA provide guidance around the meaning of the term "suitability" as opposed to placing the onus on registered firms to make a subjective determination of suitability which can expose them to legal action. In the alternative, we suggest that the question be removed as the information disclosed in questions 1-9 provides sufficient information to the regulator to assess the individual's suitability for registration.

Section H – Certification

The certificate requires the individual who signs the form to certify that the statements in the form were provided by a duly authorized representative. In most cases, the firm's Registration Officer completes the information on the Notice of Termination by inputting information received from an authorized individual such as the Branch Manager. The Registration Officer that completes the filing does not necessarily speak to the authorized firm representative that signs the Notice of Termination. We would suggest that the certification be revised to state that the authorized firm representative is making the certification that the information contained in the Form is accurate, "to the best of their knowledge".

Signature Section

The signature section calls for the signature of an "authorized signing officer". We request clarification on which individuals will be permitted to sign the form. If it is intended that the form be signed by individuals who are not registered as officers, this should be clarified.

PROPOSED FORM 33-109F4
APPLICATION FOR REGISTRATION
OF INDIVIDUALS AND PERMITTED INDIVIDUALS

Miscellaneous

We recommend that the CSA include the name and NRD number on every page of the NRD report that we generate for the individual.

We would like clarification on how the new questions asked on this form will affect existing registrants? What will be the expectation of registered firms to input this new information? Will this result in another Data Transfer Submission process? If so, will registered firms be provided with a three-year transition period to input this information on to NRD? What assurances will be provided by the regulators that the errors experienced during the initial NRD conversion are not repeated?

Registrant Relationships

The Form 4 does not ask for spousal information. Currently the information is reported outside of the NRD system, via an email. Will the proposed Form 4 be amended to include this question or will we continue to record the information outside of NRD?

Notice of Collection and Use of Personal Information

Currently the NRD screens that the AFR sees prior to submitting the Form 4 are submission to jurisdiction, notice of collection and use of personal information and information contained under the heading, Self Regulatory Organization. The AFR signs off on the NRD filing. The form should be amended to allow the applicant the ability to attest to the information prior to submission.

Item 1 – Other Personal Names

We seek clarification to the meaning of "style name". This section should provide specific instructions concerning the disclosure of team and marketing names, since the regulators have indicated they want this information on record.

Item 6 – Individual Categories

It is not clear whether the reference to Securities in the checklist of types of products the applicant may deal in includes Options and Futures; we presume that these are not included. We suggest that Options and Futures be added as separate approval categories.

It could be onerous on firms and their registrations departments to be obliged to track changes in the types of products that individuals are authorized to deal in, outside of the NRD. The NRD should capture this information, and firms should not be required to upgrade their systems and procedures to meet audit trail requirements because NRD does not capture the information.

It would be helpful for the regulators to make it clear in the forms what products registrants are and are not permitted to deal in, and which categories will require regulatory approval and which ones will simply be acknowledged.

The individual categories are limited and confusing in the following ways:

- There is no option for APM or Options.

- The "Relationship with Sponsoring Firm" includes "Officer" but the "Investment Dealers Association of Canada- Additional Information" does not.

- We request clarification on what the term "Representative-Non-Employee" refers to?

- Futures and derivatives are not an option under "Products".

- Under "Traders", what is the difference between "Floor Trader" and "Floor Broker"? We request clarification on the term "Local"?

- Under the "Registration by Jurisdiction", what is the meaning of "Trading Advising Associate"? If an individual has ceased to be registered in a province, the permanent record will continue to show the surrendered province. Also, if you investigate further, the permanent record will show no registration information for that province. However, if you are viewing on-line, when you get to the registration category it indicates "suspended (employment termination)". We suggest that the "suspended (employment termination)" be removed from the list or indicate "not active" beside the province so we can view this information in one glance and have a clearer understanding of the registration history of the individual.

<u>Item 7 – Address for Service</u>

We question the appropriateness of permitting residential addresses to be used in this context.

<u>Item 9 – Location of Employment</u>

We request that a "multiple locations" option be added to this section. This will cover circumstances where individuals may be located in a different branch on a part-time basis.

Item 10 – Current Employment and Other Business Activities

Do we need to include trade names here if it is already disclosed under Other Names? If so, what is the expectation of firms to move the existing Team Names to Item 1 of the proposed form?

We suggest that information pertaining to outside business activities be asked separately from current employment information. The applicant is more likely to understand the different information being sought and is more likely to provide detailed information.

We would like some flexibility to indicate the time spent with respect to outside business activity in the form of days/months/quarterly/yearly instead of a fixed number of hours.

We recommend a section under Item 10 that deals specifically with leaves of absence (personal, parental, disability etc).

Item 12 – Resignations and Terminations

We recommend that this question be limited to employers in the securities industry, as opposed to employers generally which we submit casts too wide of a net and is not relevant. In addition, the term “for cause” requires further clarification as it is not a recognized concept in employment law.

Item 13 – Regulatory Disclosure

This question should be a pre-populated field by the regulators. This information can be provided by the regulators with the correct dates. We also wonder whether the two sections regarding securities regulatory authorities and self-regulatory organizations can be combined into one section as the questions are similar in nature and the registrants are repeating the same information in both sections.

Item 14 – Criminal Disclosure

This section indicates that we are not required to disclose speeding offences etc. for which a pardon has been granted, and such pardon has not been revoked. Does this mean we would need to disclose this information if a pardon was not granted and the pardon was not revoked?

With respect to the questions in section (c) and (d), we suggest that a knowledge qualifier be added i.e., “To the best of your knowledge, are you aware of…”.

We would like clarification on the meaning of “similar conduct”, as it is currently ambiguous.

Item 15 – Civil Disclosure

We would like clarification on the meaning of “similar conduct” in the context of (a) and (b).

Item 16 – Financial Disclosure

We question the appropriateness of asking whether an applicant has “ever failed to meet a financial obligation of $5,000 or more.” Even if such a question is justified, we suggest that specific timeframes be established rather than having an open-ended timeframe.

We also question the appropriateness of asking whether “any firm, while you were a partner, director, officer or major shareholder of, failed to meet a financial obligation as it came due”? Even if such a question were justified, the questions should specify thresholds for personal reporting obligations and specific timeframes should be established.

In Item 16(4), the applicant is required to disclose the “percentage” of earnings to be garnished. We suggest that if we do not have the percentage it should be acceptable to provide the exact amount that is being paid.

Collection and Use of Personal Information/Self Regulatory Organizations

We would like clarification as to whether this provision will be extended to both the proposed Form 4 and the Notice of Termination. If it does, we suggest that the provision be re-worded to indicate the inclusion of the Notice of Termination.