RBC Financial Group

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Dear Mr. Stevenson and Ms. Beaudoin,

Re: Notice and Request for Comment
Proposed National Instrument 31-103 - Registration Requirements

We appreciate the opportunity to provide our comments to the Canadian Securities Administrators (the "CSA") on proposed National Instrument 31-103 ("NI 31-103" or the "Proposed Instrument"), the accompanying Companion Policy (the "Companion Policy"), as well as the proposed amendments to Multilateral Instrument 33-109 ("MI 33-109").

This letter is submitted on behalf of the following entities within RBC Financial Group: RBC Dominion Securities Inc.; RBC Direct Investing Inc.; RBC Asset Management Inc; Royal Mutual Funds Inc.; RBC Private Counsel Inc.; Royal Trust Corporation of Canada and The Royal Trust Company.

I. GENERAL COMMENTS

At the outset, we wish to state that we are generally very supportive of the CSA's registration reform initiative and its primary objective of harmonizing and streamlining the registration regime across Canada. We recognize that the CSA members, in partnership with the applicable self-regulatory organizations (the "SROs"), including the

Investment Dealers Association of Canada (the "IDA") and the Mutual Fund Dealers Association of Canada (the "MFDA"), have dedicated a considerable amount of effort in developing a more harmonized and national approach to registrant regulation in Canada. In particular, we appreciate that the CSA has actively consulted with industry participants and other stakeholders in developing the revised regime, and encourage the CSA to continue to do so as part of the ongoing registration reform process.

We believe that the current lack of harmonized requirements under securities law creates significant challenges and additional costs for registered firms and other market participants who are required to satisfy and comply with multiple sets of rules and administrative requirements imposed by the CSA members and the applicable SROs. We do not believe that there is a need for local rules in respect of registration matters and strongly urge the CSA to develop a common position on these issues.

A. The Development of the Registration Regime in Canada

Notwithstanding the significant work that is being done, we are concerned about the way in which the registration and registrant regulation regime is being developed. In particular, we were somewhat surprised that proposed National Instrument 11-102 – Passport System ("NI 11-102" or the "Passport System") was published *after* proposed NI 31-103 and yet had a shorter comment period. We see these two instruments as important "partners" in the creation of a unified national registration system which should have been published more or less simultaneously and with similar comment periods.

We believe that it is appropriate to express in this comment letter our views in relation to proposed NI 11-102. We wish to note that the development of an integrated, harmonized securities regulatory regime in Canada has proceeded incrementally over the past many years and we see the Passport System as another positive, important step in the right direction. We believe that the inability to create a truly national Passport System is a serious impediment to the effective operation of NI 31-103. In this regard, we support the comments submitted by the Investment Funds Institute of Canada and the Canadian Bankers Association regarding the Passport System and we strongly urge all members of the CSA (and their respective government bodies) to resolve these issues prior to the implementation of the Proposed Instrument. While worthwhile, we do not view the national Passport System as an alternative to, or substitute for, a single national securities commission which we continue to believe would be of considerable value to issuers, investors and market participants.

Lastly, in terms of the development of the Client Relationship Model proposals, we also strongly encourage the CSA and the applicable SROs (and, to the extent applicable, the Joint Forum of Financial Market Regulators in relation to point of sale disclosure for mutual funds and segregated funds) to coordinate their work efforts and approach in relation to these client-focused disclosure initiatives.

B. Incomplete or Partial SRO Delegation

We also continue to be concerned with the existing regulatory framework as it relates to SRO delegation. Although this matter is not specifically the subject of the Proposed Instrument, these administrative inefficiencies have the effect of undermining the effectiveness of the registration regime in Canada, both currently and under proposed NI 31-103. The current system of incomplete or partial SRO delegation is costly and highly inefficient. Currently, we note that firm and individual registrations have been delegated to the IDA only in the provinces of Alberta and British Columbia, and only partially (with respect to individual registrations) in Ontario and Quebec. We believe that full delegation should be implemented across the country to streamline the applicable regulatory framework.

Further, we note that no delegation of registration responsibility has been made with respect to the MFDA which has the effect of requiring mutual fund dealers to deal with multiple regulators in every jurisdiction in Canada. Notwithstanding that the MFDA currently has no responsibility for registrations, CSA members have, surprisingly, approved MFDA Policy No. 6 which will require mutual fund dealers to report registration-like information to the MFDA under the METS system, *in addition to* providing the same information to the CSA members themselves. We are very disappointed that the CSA did not recognize the significant duplication of effort this requires of mutual fund dealers and we continue to support a move towards a more harmonized and fully delegated regulatory regime for SROs.

In summary, we believe that achieving harmonization of the registration requirements, administrative processes and SRO regimes will be critical in enabling the CSA to successfully achieve its stated objective of creating a flexible registration regime that protects investors and is responsive to the industry in terms of reducing the regulatory burden associated with complying with multiple sets of rules and standards.

II. SPECIFIC COMMENTS

In addition to our general comments, we have outlined below a number of specific comments and concerns in respect of the Proposed Instrument, the Companion Policy and MI 33-109:

A. The New Registration Regime

1. The "Business Trigger" for Dealer Registration

We believe that the movement towards a "business trigger" for dealer registration across Canada represents a favourable development. It is anticipated that the adoption of the "business trigger" will lessen the need for exemptions from the dealer registration requirement. Further, we believe that the general factors described in section 1.3 of the Companion Policy in terms of assessing whether an activity is conducted as a business are generally appropriate.

In our view, it would be beneficial for the CSA to clarify the scope of the application of the "business trigger" as it relates to activities that are conducted at a registered firm by certain individuals. For example, we understand that the proposed changes to the registration regime are not intended to require the registration of individuals, among others, that are engaged on the institutional side of an investment dealer's business, including those individuals in the research, prime brokerage and investment banking departments, as well as certain "back office"-type functions where occasional client contact may occur. We believe that further guidance in these areas is warranted, including clarification of the term "dealing representative" as it is used in the Proposed Instrument.

We also wish to comment on the discussion in section 1.4 of the Companion Policy as it relates to principal dealing activities. The CSA states that individuals carrying on principal dealing on behalf of a registered firm (versus a non-registered entity) should be subject to the individual registration requirement, notwithstanding that such individuals may not necessarily trade on behalf of clients of the firm. We do not agree with this approach. The basis for this disparate treatment between registered and non-registered firms is not clear and we believe that a consistent approach should be adopted in this area.

2. Investment Fund Manager Registration

We are pleased that the CSA has renewed the discussion of mutual fund manager regulation, a key topic of the CSA's review when it introduced the concept paper entitled "Striking the Balance: A Framework for Regulating Mutual Funds and their Managers" in 2002. We believe that increased fund manager regulation in the form of registration will foster greater personal accountability and further promote the protection of investors by requiring the firm (and its representatives) to comply with applicable capital and proficiency requirements.

In the Notice accompanying proposed NI 31-103 (the "Notice"), we note that a fund manager is to register in the CSA jurisdiction in which the fund is located. We seek further clarification on whether the fund manager is also required to register in the other CSA jurisdictions in which it conducts business and, if not, whether the CSA believes that there are any implications from an enforcement perspective in terms of their ability to take appropriate regulatory or other legal action where required.

Further, in terms of the registered fund manager's obligations under the Proposed Instrument, we note in paragraphs 4.24(1)(c) and 2(c) that the fund manager is required to deliver to the regulator a description of *any* net asset value ("NAV") adjustment made during the fiscal year or quarter. We believe that there already exists significant oversight of NAV adjustments, both by a fund's auditor and by the independent review committee of the fund, and question the need for a third level of reporting and oversight at this time.

While we strongly disagree with additional reporting of NAV adjustments, if reporting is required we suggest that the CSA recognize *Bulletin Number 22 Correcting Portfolio NAV Errors*, the guideline published by the Investment Funds Institute of Canada for the investment fund industry in this connection.

3. Mutual Fund Dealer Registration

We applaud and support the initiative described in footnote 20 to the Notice that would permit mutual fund dealers to open discretionary managed accounts through proposed amendments to the MFDA rules. We believe that MFDA members should be able to provide such services to their clients.

Further, in connection with paragraph 2.1(b) of the Proposed Instrument, we wish to clarify whether a mutual fund dealer is permitted by its category of registration to sell exchange-traded funds and other non-traditional products that are by definition mutual funds in accordance with provincial securities legislation.

We further note that footnote 22 of the Notice makes reference to the fact that the MFDA will be responsible for setting the proficiency requirements for MFDA member representatives but that their individual registration will continue to be administered by the applicable securities regulatory authority in each jurisdiction. As stated above, we believe that full SRO delegation across Canada should take place. In our view, this delegation should clearly include MFDA registration matters to ensure consistency of approach in terms of the development, as well as the practical implementation, of the rules governing MFDA members and their representatives.

4. The Roles of the UDP and CCO

We support the introduction across Canada of the Ultimate Designated Person ("UDP") and the Chief Compliance Officer ("CCO") positions for all registered firms. However, in our view, the description of the UDP and the CCO roles, as are currently drafted in the Proposed Instrument, have been reversed. Moreover, the description of the roles (and the associated regulatory expectations) do not appear to be consistent as between the Notice, the Proposed Instrument and the Companion Policy.

We believe that the UDP and CCO roles have been appropriately described in the "Joint Regulatory Notice on the Role of Compliance and Supervision" that was issued by the IDA, MFDA and Market Regulation Services Inc. in December 2006. We also encourage the CSA to refer to SEC Rule 206(4)-7 under the Investment Advisers Act of 1940 in connection with the development of such roles.

In this regard, we believe that the description of the UDP's role in subsection 2.8(1) of the Proposed Instrument would more appropriately be described as follows:

> A registered firm must designate an individual to be responsible for ensuring that the registered firm <u>develops, implements and adheres to the compliance system contemplated by section 5.26</u>.

As a related matter, we note that the chief operating officer (COO) and chief financial officer (CFO) positions have not been specifically included as individuals eligible to assume the UDP role. For purposes of consistency with IDA By-law No. 38, it may be beneficial to include a specific reference to these individuals in section 2.8.

For the CCO role in subsection 2.9(1), we also propose the following alternative language for your consideration:

> A registered firm must designate an individual to be responsible <u>for providing advice and oversight with respect to the development, implementation and continuing effectiveness of the compliance system contemplated by section 5.26</u>.

Consistent with IDA By-Law No. 38 - Responsibilities of the Chief Compliance Officer and Ultimate Designated Person, we also believe that the Proposed Instrument should expressly provide that a registered firm may designate more than one UDP and/or CCO, if such firm deems this structure to be appropriate based on the nature and scope of its key business operations. For example, it is common for IDA member firms to have a UDP and CCO for each of its retail and institutional business divisions. Similarly, the Proposed Instrument should also provide sufficient flexibility to enable a firm that has multiple registrations to have more than one UDP and/or CCO.

In terms of the requirements for the CCO and UDP roles, it would be beneficial for the CSA to clarify whether it intends to impose any Canadian residency requirements for such positions. Moreover, it would appear that the Proposed Instrument provides (in paragraphs 4.11(b)(iii)(B) and 4.11(c)(ii)(B)) that a proposed CCO for a portfolio manager is to, among other things, have been employed by a dealer or adviser for a minimum of 12 consecutive months. We note that this requirement would foreclose many qualified lawyers, accountants, and other professionals (such as those individuals with MBA designations) from being eligible to fulfill this role. These individuals may come directly from private or public practice, or may be technically "employed" in-house with an affiliate of the portfolio manager (such as an in-house bank lawyer employed by the bank but not its affiliated dealer or adviser). The issue would also appear to apply to the CCO role for restricted portfolio managers and investment fund managers given the current requirements in sections 4.12 and 4.13, respectively.

Lastly, in response to Question #6 of the Notice regarding whether the "mind and management" of a registered firm needs to be registered with the applicable securities regulatory authorities, we are supportive of an approach that streamlines this category so that it applies only to senior executives and directors. We also believe that registered firms should have sufficient discretion to assess which individuals constitute "senior management" of the firm based on the individual's activities and involvement with the firm.

5. Registration Information

We have enclosed as Appendices "A" and "B" and "C" to this letter comments in relation to proposed Form 33-109F4 (Application for Registration of Individuals and Permitted Individuals), Form 33-109F1 (Notice of Termination) and Form 33-109F6 (Application for Registration as a Dealer, Adviser or Investment Fund Manager for Securities and/or Derivatives), respectively.

B. The Fit and Proper Requirements

1. Proficiency Requirements

At the outset, we wish to express our support in terms of the CSA's move to streamline the proficiency requirements as they apply to IDA and MFDA members firms. It is anticipated that the elimination of the duplicative (and sometimes conflicting) provincial proficiency-related requirements across Canada will significantly reduce the need for such firms to obtain exemptive relief from such requirements. However, in order to achieve this end state, section 4.2 of the Proposed Instrument should also be identified in the exceptions for SRO members in section 3.3. In addition, we believe that section 4.2. should be reworded in order to clarify the expectations in relation to "relevant experience". As it is currently drafted, the provision implies that an individual must have 12 months of relevant experience or have been registered for 12 months before the individual can re-apply for registration. It is not clear whether the relevant experience or registration needs to be continuous or cumulative.

In terms of the specific proficiency requirements set forth in the Proposed Instrument, we believe that the CSA should provide sufficient flexibility to permit appropriate alternative courses to be recognized, including certain university and college level courses offered by specialized business programs which, in many cases, are more extensive in terms of their scope and depth (particularly in the areas of finance and capital markets) as compared to those offered by the traditional course providers. Currently, the Autorité des marchés financiers (Policy Statement Q-9, section 48) recognizes certain university degrees in relevant disciplines for registration as a representative of an advising firm.

With respect to the proficiency requirements applicable to CCOs of portfolio mangers and investment fund managers, we would like to point out that neither the Canadian Securities Course nor the Partners, Directors and Senior Officers Exam is directly relevant to these types of business. While we recognize that the CSA does not develop or administer industry exams and does not control the Canadian Securities Institute (the "CSI"), we believe that this is a flaw in both the current and proposed proficiency regimes that should be addressed as soon as possible by the industry, the CSA and the CSI.

Lastly, we believe that, for the purposes of the applicable proficiency requirements relating to mutual fund managers, the CSA should recognize the courses offered by the Investment Funds Institute of Canada.

2. Solvency Requirements

In terms of the prescribed insurance coverage requirements set forth in Part 4, Division 2 of the Proposed Instrument, we believe that the CSA should clarify to what extent such coverage can be shared amongst related entities of registered firms. Specifically, we recommend that for subsidiaries of large, well capitalized financial institutions that purchase sizeable insurance policies that include coverage for their subsidiaries that this coverage be deemed sufficient with no capital penalty. We also note that no deductible limits or any guidance on fronting policies have been specified in the proposed requirements. Again, we recommend allowing subsidiaries of large, well capitalized financial institutions to continue to purchase insurance policies with provision for the parental indemnification of insurers.

In addition, we note that section 4.19 of the Proposed Instrument refers to the obligation of registered firms to provide regulatory notification of any "change in, claim made under or cancellation of any insurance policy ...". We do not believe that this should be required for firms that are well capitalized and insured. Firms should be responsible for maintaining the appropriate regulatory prescribed insurance coverage and not be unduly administratively burdened with providing regulatory notification of all such details. At a minimum, if this approach is adopted, we believe that some form of significant materiality threshold should be included in the provision.

C. The Conduct Rules

1. The Relationship Disclosure Document

The relationship disclosure document ("RDD") is a core element of the Client Relationship Model initiative, and we anticipate that the RDD will form an important part of a registered firm's account opening procedures with retail clients. We agree with the general objective of the CSA to ensure that retail clients fully understand the services that they can expect from a registered firm, including the associated fees and expenses.

We are concerned that the CSA's expectation to disclose and continually update matters relating to 12 different disclosure points may become unwieldy and prohibitively difficult and costly for firms to introduce and update from an operational perspective. This approach may also be counter-productive to the objective of providing clear and concise information to the client in terms of the key aspect of their relationship with the firm. We note that many of our clients have not responded positively to the increased amount of mandated disclosure due to its volume and complexity. The RDD will result in an additional layer of disclosure. Moreover, we are somewhat concerned that the implementation of the RDD may have the unintended effect of a "tick the box"-type approach to the establishment of the client relationship, and that a principal-based approach would be preferable.

In connection with the practical implementation of the RDD, we believe that the CSA should provide guidance on the expectations of registered firms to tailor the RDD at the individual retail client level, particularly given that the RDD is to include the know-your-client (KYC) information collected from the client. In this regard, we believe that the content of the RDD should not be duplicative with other prescribed details commonly included in a firm's account documentation, including a client's KYC information.

In addition, we note that the RDD is to identify, among other things, the products and services that are offered by the firm that will meet the client's investment objectives. It is unclear as to the level of detail required under the Proposed Instrument and we are somewhat concerned as to the possible need to continually update the information relating to the firm's product and service offerings. We would appreciate further guidance on the expectations of registered firms in this area.

Lastly, we note that many of the disclosures proposed for inclusion in the RDD are based on subjective assessments (e.g. changes to product offerings, descriptions of conflicts of interest) and may have the unintended effect of increasing the risk of frivolous litigation by disgruntled clients occurring more often in the future. Further, we believe that a materiality threshold should be included in relation to certain of the RDD mandated disclosures (e.g. in particular, with respect to the description of a firm's conflicts of interest).

2. Record-keeping

In general, the Proposed Instrument moves away from a prescriptive list of records to be maintained by a registered firm and towards a more principle-based approach to record-keeping. We believe that that the requirement to maintain a relationship record for seven years from the date the person or company ceases to be a client of the registered firm is unduly onerous particularly with respect to very long-term clients. This time period is particularly troublesome given the very broad scope of registered firms to maintain relationship records that include disclosures provided to clients, client agreements, notes of verbal communications with a client, as well as all e-mail (which could be prohibitively expensive from a systems and operational perspective) and other client communications. We believe that the CSA should consider whether the obligation should instead be seven years from the date in which such the document was created regardless of the length of the client relationship with the firm.

We also note that, for purposes of determining the applicable record retention period, the CSA has generally classified the records as either "activity records" or "relationship records". Certain documents, such as notes of verbal communications with clients, as well as e-mail and other similar forms of communications have been categorized in the Companion Policy as relationship records. However, we note that certain of these documents could potentially be more properly characterized as "activity records" if the circumstances that they were created relate to a specific transaction. We believe that further guidance on this classification system is warranted.

3. Compliance Systems & Account Supervision

The Proposed Instrument is intended to promote firm-wide compliance. In terms of the obligation of registered firms to develop and implement compliance systems, we suggest that the word "reasonably" should be added to subsection 5.26(1) of the Proposed Instrument as follows: "A registered firm must establish, maintain and enforce a system of controls and supervision *reasonably* designed to …". Similarly, we note that section 5.11 of the Companion Policy describes the expected standard of compliance for registered firms as follows: "Firms are also encouraged to go further and *meet or exceed industry best practices* to assist them in complying with regulatory requirements". Determining what represents "industry best practices" can often be very difficult, if not impossible, for registered firms to assess. Also, what may constitute a "best practice" may vary significantly depending on the size, nature, technology and resources of the registered firm.

We also note that, in connection with a registered firm's compliance system obligations, the CSA does not set out prescriptive requirements concerning account opening procedures and trade supervision or branch managers and branch offices. However, the CSA advises that SRO members should be mindful of applicable SRO requirements. We believe that the CSA should consult with the IDA and the MFDA in developing a common approach to these matters, including whether firms have specific obligations with respect to "account supervision", "branch supervision" and/or "staff supervision" (as referred to in section 5.11 of the Companion Policy) given that each concept has the potential to have different outcomes for registered firms in terms of how they ultimately structure their business to implement these requirements.

In this regard, we also question what the phrase "supervised separately and distinctly" means as it is used in section 5.18 of the Proposed Instrument in relation to account supervision. Does this specifically refer to the account being supervised separately and distinctly, the account being managed separately and distinctly, and/or the activities of the salesperson being supervised separately and distinctly. We believe that this matter should be clarified further.

4. Client Complaints

The Proposed Instrument introduces various new requirements relating to the handling and resolution of client complaints by registered firms. In particular, section 5.32 of the Proposed Instrument requires registered firms to submit a report to the regulator concerning its complaint handling policies that includes the number and nature of the complaints filed as at the end of the year. At the outset, it is not clear why IDA and MFDA member firms would be subject to sections 5.31 and 5.32 given that they are already subject to a detailed complaint notification regime prescribed by IDA Policy No. 8 and MFDA Policy No. 6, respectively. Accordingly, we believe that these provisions should also be referenced in section 3.3 of the Proposed Instrument.

Further, it would appear that the scope of this specific reporting obligation extends beyond what is currently required under applicable IDA requirements. In general, under IDA Policy No. 8, IDA members are required to report to the IDA client complaints that are of a non-service nature only. It is not clear under the proposed regime whether administrative issues raised by clients would be covered. Moreover, we believe that the CSA should clarify that such reporting only applies to complaints originating from a client versus other parties who may contact the firm to voice their complaints (e.g. inquiries from a third party regarding firm matters and/or industry issues). In our view, additional guidance on what constitutes a client complaint would be beneficial, and should be consistent as between SRO and non-SRO registered firms.

Further, it would appear that registered firms (including both SRO and non-SRO firms) are required to provide this report to each applicable CSA jurisdiction. We believe that any such reporting should be made to the registered firm's principal regulator only.

Lastly, we believe that the obligation of the CCO to personally know "<u>all</u> complaints and pending legal actions" as is described in section 5.12 of the Companion Policy is overreaching given the scope, size and division of responsibilities at many registered firms. As an alternative, this obligation should be limited to having a system in place to be advised of complaints and legal proceedings of a material nature to the firm. Further, we believe that the time period for providing written acknowledgement to the client as described in the Companion Policy should be extended from 5 to 10 business days.

5. Other Comments

We have a number of other comments in relation to the proposed conduct rules set forth in Part 5 of the Proposed Instrument as follows:

- We wish to clarify in paragraph 5.3(1)(a) relating to a registered firm's know-your-client obligations what is meant by the requirement to assess "the reputation of the client". Further guidance on this would be beneficial.

- In addition, in connection with the requirement of a registrant to take reasonable steps to ascertain whether a client is an insider of a reporting issuer in paragraph

5.3(1)(b), it is not clear why such requirement would apply to mutual fund dealers. Moreover, it would be beneficial for the CSA to clarify what constitutes "reasonable steps" for the purposes of this provision.

- In connection with subsection 5.3(2), it would be beneficial for the CSA to provide further guidance regarding a registered firm's obligation to the keep a client's know-your-client information current. Also, what constitutes "reasonable efforts" for the purposes of this provision?

- The general know-your-client obligation contained in section 5.4 is currently drafted as applicable to all registered firms, including IDA members. However, we note that the IDA provides certain exemptions from this requirement in IDA Regulation 1300 and IDA Policy No. 9 in relation to order execution only dealers, as well as IDA Policy No. 4 in relation to institutional accounts. The provision should be revised to reflect these exemptions.

- Do the notification requirements in subsection 5.4(2) need to be documented in writing and, if so, in what manner (e.g. notes to file, by marking the order "unsolicited", etc.)?

- In relation to the requirements prescribed by section 5.7 as it relates to registrants conducting securities-related activities in an office or branch of a Canadian financial institution, it would be beneficial to clarify how these measures would apply (if at all) to the call centre operations of registered firms.

- What is contemplated in paragraph 5.19(2)(j) in terms of records that relate to "securities pricing as may be required by securities legislation"? Does this relate to the trade confirmation requirements as prescribed by securities legislation?

- Subsection 5.25 sets forth the account statement requirements applicable to registered dealers. We note that subsection 5.25(1) does not readily apply to mutual fund dealers in circumstances where a client transacts through the dealer, but holds his or her funds in client name directly with the fund company. We believe that such arrangements should not be subject to this provision. Further, in our view, the obligation to deliver account statements to clients more frequently than on a quarterly basis (unless upon the request of the client) should be removed. In general, we are supportive with the move towards the provision of quarterly (versus monthly) account statements for registered firms.

- In relation to the CCO board reporting requirements, section 3.3 should also refer to section 5.27 given that IDA member firms are currently subject to such requirements under IDA By-law No. 38.

D. Conflicts of Interest

1. Principles-Based Approach to Managing Conflicts

The Proposed Instrument seeks to consolidate and modernize the conflict of interest provisions contained in applicable securities law in Canada by adopting a principle-based approach to conflict resolution by registered firms. We are very concerned with the unduly broad scope of the obligations imposed on registrants to identify and deal with each actual <u>and</u> potential conflict of interest within the firm, as well as with other entities, clients and as between clients. In particular, the ability of a registered firm to identify both actual and potential conflicts between clients is extremely limited. Further, firms do not know (or may in fact not be entitled to know) what relationships clients maintain with other entities.

We believe that a concept of "materiality" should be introduced into the identification and management of conflicts. In this regard, the CSA may consider using a formulation similar to the definition of "conflict of interest matter" as set forth in section 1.2 of National Instrument 81-107 – Independent Review Committee for Investment Funds.

2. Issuer Disclosure Statement

We support the CSA's move to harmonize the requirements relating to related issuer and connected issuer disclosures across Canada. However, we note that the provision (and continuous updating) of an issuer disclosure statement to clients that identifies, among other things, a list of connected issuers that is subject to frequent changes is unduly onerous and is difficult for firms to administer on an ongoing basis. We believe that such information should only be required to be provided upon request from a client and/or be accessible to clients by reference to the registered firm's website or other similar means.

Further, we believe that the requirement to obtain written consent from the client in subsection 6.2(2) is somewhat practically difficult to administer and that disclosure of such trading activity for fully-managed accounts should be sufficient.

3. Referral Arrangements

The Proposed Instrument introduces harmonized requirements relating to referral arrangements for registrants across Canada. In general, we are pleased that the CSA has provided guidance in this area since the publication of the "CSA Distribution Structures Committee: Position Paper" in 1999.

We believe that it would be beneficial for the CSA to clarify whether the proposed requirements applicable to referral arrangements also apply to commission and/or fee splitting arrangements.

Further, in our view, it is not clear whether the scope of the Proposed Instrument is intended to cover payments made in relation to certain types of referral arrangements, including those that are made within a registered firm, or as between a registered firm and an affiliate or other related party. In our view, the proposed referral arrangement requirements should not apply in these circumstances, unless it is not apparent to the client that the referral arrangement is between affiliated and/or related parties. For example, where a client is being referred from one RBC entity to another, we do not believe that clients expect that the referral is being done on an unbiased basis and, accordingly, we believe disclosure would be superfluous. However, if there is no obvious way for a client to know that two parties are related (in RBC's case, for example, if there were no "RBC" in one of the entities' name), disclosure would seem appropriate, but would likely have a different content than the disclosure required in respect of an arm's length referral.

In terms of the disclosure obligations to clients in relation to referral arrangements, we believe that paragraph 6.13(1)(c) of the Proposed Instrument should refer to "any <u>known material</u> conflicts …".

Lastly, we note that section 6.10 the Companion Policy provides that parties to a referral arrangement should clarify their relationship and each party's roles and responsibilities within a written agreement. We are supportive of the fact that such agreement not be subject to prior regulatory approval as is currently required under the securities laws of certain CSA jurisdictions.

4. Information Sharing

We are concerned that the proposed information-sharing regime amongst firms outlined in section 8.1 of the Proposed Instrument may prove to be administratively burdensome and difficult to comply with an ongoing basis. In this regard, it is not clear what standard of disclosure will be required by firms to fulfill their duty. We also believe that there could be significant issues associated with the provision of such information, including employee privacy and defamation, as well as practical considerations in terms of acceptable timeframes for responding to such requests. The Proposed Instrument would require, at a minimum, some form of immunity and/or available defences to those that provide information in good faith under the proposed information sharing regime.

Although we generally acknowledge that registered firms are responsible for conducting some level of due diligence before hiring individuals who will be conducting activities requiring registration, it is not clear where that obligation exists at law nor how far it extends under the existing registration regime. We would appreciate further clarification on these matters as it relates to an individual's general fitness for registration, particularly given that such information is not generally publicly available in Canada. In this regard, we note that under the current U.S. registration system, an individual registrant's education, industry experience and other relevant background information (including whether the individual has been the subject of past regulatory infractions) is generally publicly available.

We further note that, in certain cases, there may also be practical issues regarding how a firm communicates a request for information to another firm to obtain an individual registrant's background information - i.e. "tipping off" the individual registrant's current employer that he or she is considering leaving that firm.

Lastly, as a conceptual matter, we note that the proposed information sharing process seems to involve firms in some form of duplication to the securities regulator's "gatekeeping" role in approving and facilitating individual registration transfers, and we question the efficiencies of such dual approach. If the CSA suggests a more active role on firms to perform this role, we would suggest that the securities regulators significantly streamline or eliminate their administrative review role in such process.

E. Exemptions from Registration

1. Adviser Exemptions

We are supportive of section 9.12 of the Proposed Instrument which contains an exemption for those persons providing generic advice. In particular, we agree with the CSA's position as stated in section 2.4 of the Companion Policy that generic advice is to include asset allocation recommendations provided the advice does not specify particular securities. We believe that this is the proper approach particularly as it applies to the provision of financial planning services.

We are also supportive of the adviser exemption contained in section 9.11 of the Proposed Instrument that is currently available for certain specified financial institutions in relation to advising activities that are "incidental to their principal business". We strongly believe that these exemptions should continue to be available under applicable securities law where the advice about securities is not the primary reason for the client's relationship with the financial institution. For example, there are circumstances where certain financial institutions such as trust companies, in connection with the estate and trust services that they provide, may invest and manage assets. We believe that the maintenance of these types exemptions for specified financial institutions is consistent with the CSA's view to retain the existing "business trigger" for adviser registration.

Lastly, we seek clarification in section 2.4 of the Proposed Instrument in terms of the adviser registration exemption for dealers without discretionary authority and whether it would apply in the circumstance where a dealer is provided with time-limited discretionary authority granted by a client (e.g. circumstances where a client is on an extended vacation, etc.).

2. Non-Canadian Dealers and Advisers

Non-Canadian Dealers

The Proposed Instrument provides a new regulatory framework as it relates to non-Canadian dealers and advisers. In particular, subsection 9.13(2) provides a new registration exemption for an "international dealer" (as defined in the Proposed Instrument) to trade with a narrow list of permitted international dealer clients in respect of foreign securities and certain Canadian debt securities. We note that a key condition of the exemption is that the "international dealer", by definition in paragraph 9.13(1)(a), must have "... no establishment in Canada or officers, employees or agents resident in Canada." This condition will create significant issues for non-Canadian dealers who may have certain representatives in Canada.

We also note that the proposed international dealer exemption narrows the list of clients with whom a non-Canadian dealer may trade on an exempt basis (as compared to the current international dealer category in Ontario). Further, under the proposed exemption, non-Canadian dealers will be restricted to trading only in "foreign securities" (which does not include inter-listed securities). Under the current regime, a non-Canadian dealer may trade in both Canadian and non-Canadian securities on a dealer registration exempt basis with an "accredited investor" resident in most provinces and territories, other than Ontario. We note that the current restrictions on "foreign securities" is only applicable to the existing international dealer regime in Ontario. As a result of these restrictions, many unregistered non-Canadian dealers will be required to trade with the more narrow list of permitted clients under the new international dealer exemption or become registered as an "exempt market dealer" (to be able to trade with the full range of accredited investors) and be subject to duplicative registration regimes which we believe is unecessary (in particular, with respect to non-Canadian dealers who are subject to a rigorous regulatory oversight in their home jurisdiction).

We believe that the CSA members should consult further with industry members to better understand the implications of the proposed changes contained in the Proposed Instrument with respect to non-Canadian dealers and advisers.

3. OTC Derivatives

The definition of "security" in British Columbia and Alberta includes futures contracts and options not traded on an exchange. The term "futures contract" generally includes most types of over-the-counter ("OTC") derivatives products. The sale of such OTC derivatives by financial institutions such as banks in these provinces may require an Exempt Market Dealer registration under NI 31-10. We believe the CSA members should exclude from the Exempt Market Dealer registration category the sale of OTC derivatives products to "qualified persons" given that they are highly sophisticated parties such as financial institutions and commercial users of OTC products (and that such transactions can currently be made on a registration –exempt basis in Alberta and BC.).

Sub-advisers

We wish to confirm that, in connection with the exemption for sub-advisers in section 9.17 of the Proposed Instrument, the term "client" would include an investment fund. In this regard, portfolio managers often do not have contracts directly with the funds that they manage but rather a contract with the fund's trustee or they may simply act as both trustee and manager of the funds. We believe that it would be beneficial to clarify this matter in the Proposed Instrument.

Further, we also note that the sub-adviser exemption in section 9.17 does not apply in Manitoba where the person or company acting as an adviser is registered in another jurisdiction in Canada. We do not believe that this additional condition is required and that there should be uniformity across Canada with respect to this exemption particularly given there is no compelling policy justification for the differential treatment in this local jurisdiction.

Concluding Remarks

Thank you for providing us with the opportunity to comment. We would be pleased to discuss our comments further with you. If you have any questions or require further information, please do not hesitate to contact me.

Yours sincerely,

Charles M. Winograd
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RBC Dominion Securities Inc.

George Lewis
Group Head, Wealth Management
Royal Bank Financial Group

James Westlake
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c. Kelley Hoffer, Director, Compliance
Gary Tamura, Senior Counsel, RBC Law Group
Natalie Marshall, Manager, Registrations

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
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

APPENDIX "A"

Proposed Form 33-109F4 - Application for Registration of Individuals and Permitted Individuals

ITEM NUMBER	COMMENTS
Item 1 – Name	Question 3 – Business Names: • Recommend the addition of "team name" as this is a more familiar term to IDA member firms.
Item 10 – Current Employment	• Recommend adding the following checkboxes: Maternity/Parental Leave (from-to); Long-Term Leave (from–to) • Recommend that an additional question be added to request disclosure regarding Outside Business Activities (OBA). This will provide greater clarity to registrants in understanding their obligations in reporting this information. Further, the manner in which the question is drafted in Schedule G is unclear. The disclosure of the employment activities with the sponsoring firm should be separate from the disclosure of the other business activities.
Item 10 – Current Employment	Schedule G: • The manner in which the question is drafted in Schedule G is unclear. The disclosure of employment activities with the sponsoring firm should be separate from the disclosure of the other business activities. • Recommendation for Schedule for OBAs. Where the firm is required to confirm in the "conflict" section, create check boxes for the confirmation of: o Potential for Confusion by Clients? (if YES, provide details) o Potential for Conflict of Interest? (if YES, provide details) o Policies & Procedures in Place at Firm to Minimize Conflict of Interest? (If No, provide details) o Registrant Confirmation of Firm's Policies & Procedures

Item 12 – Resignations and terminations	• Recommend removing "for cause" as a registrant could have resigned or been terminated in good standing and have been subject to the allegations outlined in Questions 12 (a), (b) and (c).
Item 14 – Criminal Disclosure	• Question (c) and (d) should be removed as this information should be captured on the Form 33-109F6. If it cannot be removed, we recommend the following amendments: o Question (c): "<u>To the best of your knowledge</u> are there any outstanding charges against any firm of which you were at the time of the offense was alleged to have taken place in any province, territory state or country, a partner, director, officer or major shareholder?" o Question (d): "<u>To the best of your knowledge</u> has any firm, when you were a partner, officer, director or major shareholder, even been convicted of or pleaded guilty o no contest to, or was granted an absolute or conditional discharge from , an offence that was committed in any province , territory, state or country?"
Item 15 – Civil Disclosure	• Recommend clarification of the reference to "similar conduct" in Questions 15(a) and 15(b)?
Item 16 – Bankruptcy	• Recommend that the CSA remove "...or has any firm while you were a PDO…" since the registrant would not necessarily be aware whether the firm failed to pay a bill, etc. • Financial suitability should be in relation to the individual. The CSA could include reference to Item 1(3). The question could then read: "Have you or has any business named in Item 1(3) ever failed to meet …."

APPENDIX "B"

Proposed Form 33-109F1 – Notice of Termination

ITEM NUMBER	COMMENTS
Item D(1) – Information about the termination	• What termination date should be specified in the circumstances when the registered firm requests a notice period and it is declined by the individual registrant? In this regard, there may be discrepancies between the date that the individual actually physically leaves the firm and when the employment relationship is actually terminated factoring in an appropriate notice period. The differences in date may have implications in terms of facilitating the transfer of the individual's registration, pay, etc. Further guidance would be beneficial.
Item D(2) - Comments regarding the reason for termination	• Recommend the removal of "… for cause". The facts and circumstances surrounding the dismissal or resignation should be of key consideration in terms of classifying an individual as being terminated for cause or in good standing.
Item E (3) - Was the individual subject to any significant internal disciplinary measures at the firm or any affiliate of the firm?	• What about non-securities related matters that do not deal with fraud or ethical breaches? (i.e. violating the firm's/parent company's <u>internal policies</u>). Further, we note that there are limitations as to how much can be disclosed in relation to "non-securities related activities" without potentially violating employee privacy. • What would the CSA consider to be "significant"? Should be more specific regarding the types of internal discipline (e.g. would the "inappropriate use of email" be required to be disclosed?)
Item E (4) - Did any investors allege they lost money because the individual acted inappropriately? Such allegations include written complaints, civil actions and arbitration notices	• Clarify why it is important to disclose on the F1 whether or not the clients lost money. The individual's conduct and the circumstances surrounding the termination should be the key consideration when assessing an individual's suitability for future registration. • Providing a response to this question may be

	problematic for representatives that do not manage a book of clients (e.g. call centre environment). In such an environment, representatives could be handling hundreds of clients daily and examining each interaction could be difficult due to the excessive volumes. • In order to capture any information with respect to civil claims (which would also reflect monetary losses or potential monetary losses by investors), we would suggest that the CSA ask whether there are any securities-related civil claims and/or arbitration notices filed against the individual (and/or the firm) by a client. We would also limit the question to include civil claims and/or arbitration notices that were filed while the individual was in the employ of the firm or concerning matters that occurred while the individual was in the employ of the firm.
Item E (6) - Has any firm or any affiliate suffered monetary loss or harm to its reputation as a result of the individual's actions?	• Can the CSA provide clarification as to why this information is required on the F1 as it addresses the impact to the firm. We feel that the Form 33-101F1 should be limited to the requirement to disclose details regarding an individual's actions and behaviour. • It is difficult for a firm to definitively determine whether the firm or an affiliate of the firm has suffered, or is likely to suffer, loss or harm to its reputation as a result of the individual's actions unless a client has complained, the firm has become aware of certain activities of the individual and is conducting an internal investigation, or if a client has filed a lawsuit against the individual and/or firm • The question is very broad and how, from a practical perspective can harm to the firm's reputation be identified and quantified?
Item E(10) - 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?	• Can the CSA clarify by providing examples of what would be considered "relevant"? • We believe that firms should not be making any judgments as to what would be relevant to an individual's suitability of registration. This type of questioning could be subjective

	and vary by firm as to the types of matters that would be relevant to suitability of registration. • What criteria would be used by a Branch Manager or Branch Compliance Officer to be able to make a determination on suitability?
Item H – Certification and Signature	• We believe that this section needs to be reworded as it states that an authorized firm representative ("AFR") has confirmed that the "... information contained in the form is accurate and complete to the best of his or her knowledge and belief". An AFR is defined in Multilateral Instrument 31-102 – National Registration Database ("NRD")_as an individual who submits information in NRD format on behalf of firm filers and individual filers. An AFR is often not directly involved in the supervision of an individual registrant and cannot attest to the accuracy of the information disclosed on Form 33-109F1. • The signature section of Form 33-109F1 should be amended in order to remove the reference to an "authorized signing officer" as the Proposed Instrument intends to only require the registration of "mind and management". As a result, for larger firms, the "mind and management" would not likely be the appropriate individuals to sign a Notice of Termination. We recommend that the CSA consider an "authorized signatory of the firm" in place of 'authorized signing officer'. The CSA should consider adding an amendment to the Companion Policy by clarifying that an authorized signatory of the firm may be anyone that the firm has determined is authorized to sign firm documents. In the case of Notice of Termination, a branch manager commonly would be authorized to sign-off.

APPENDIX "C"

Proposed Form 33-109F6 - Application for Registration as a Dealer, Adviser or Investment Fund Manager for Securities and/or Derivatives

ITEM NUMBER	COMMENTS
General	• If the registered firm is subject to a merger, amalgamation or similar corporate change, is the firm required to complete this form?
Item A – Contact Information	• Item 3 - Recommend revising the item as follows: "List all previous all the previous names ever used by the applicant firm".
Items D and G	• We question the relevance of some of the information that is required to be provided, in Items D and G, including: the requirement to include a business plan for the next five years; a copy of the policies and procedures manual; copy of the firm's standard employment agreement.