CANADIAN BANKERS ASSOCIATION

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British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marches financiers
Nova Scotia Securities Commission
New Brunswick Securities Commission

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

Dear Sirs/Mesdames,

Re: Proposed National Instrument 31-103
Registration Requirements and related instruments

The Canadian Bankers Association ("CBA") appreciates this opportunity to provide comments on proposed National Instrument 31-103 - Registration Requirements and related instruments ("Registration Reform" or "Instrument" or "proposed National Instrument").

Our comments are set out in five broad sections: (1) Bank Issues (i.e., issues raised by member banks); (2) Dealer Issues (i.e., issues raised by securities dealers and mutual fund dealers; (3) Conflict of Interest, Relationship and Referral Disclosure Issues; (4) Document Retention Requirement Issues; and (5) Registration Issues.

1. Bank Issues

Federal Jurisdiction over Banking

The proposed Registration Reform raises questions concerning the intersection of federal jurisdiction over banking and the provincial and territorial jurisdiction to regulate securities as a matter of property and civil rights. In practice, the boundary has been maintained for many years from the provincial and territorial side, by extending exemptions to various activities, relationships and investment products. This approach, in our view, has been largely successful in demarcating the respective jurisdictional authorities of the federal and provincial / territorial governments.

With the line of demarcation as a backdrop, we note that banking has changed considerably over the years, but this does not change the fact that "banking" (and the providing of services and the offering of products that come within "banking") is subject to exclusive federal jurisdiction.

Moreover, it is clear that the government of Canada takes its responsibilities in this area seriously. We note in this regard that the federal government, in its March 2007 Budget, announced its intention to enhance investor protection in relation to principal-protected notes and index-linked deposit products offered by banks. The federal Department of Finance is currently engaged in drafting new regulations that will provide enhanced disclosure requirements.

Approached in this way, we have some misgivings about the possible reach of the Registration Reform project. By removing most of the current exemptions and in some cases through the application of the Business Trigger concept, the proposed National Instrument may require banks to register as Exempt Market Dealers or Restricted Dealers and comply with corresponding proficiency requirements. This, in our opinion, could subject activities of banks that are regulated at the federal level, to inappropriate and duplicative provincial regulation, particularly in regard to deposit products such as index-linked GICs and principal-protected notes.

Elimination of Exemptions

The Request for Comment indicates, in general statements and in a footnote, that (i) the CSA proposes that the Business Trigger concept "will simplify the statutory registration exemptions by eliminating, for example, the need for statutory exemptions based on occasional trades"; and (ii) the CSA proposes "to repeal registration exemptions for capital-raising and the sale of certain securities, referred to in some jurisdictions as "safe securities". Appendix B - Summary of Legislative Amendments Proposed by OSC, moreover, states that "proposed amendments may include changes to the exemptions set out in section 34 [Exemptions of advisers] and section 35 [Exemption of trades] of the Act."

Simply put, we have significant concerns and uncertainty as to how the proposed Registration Reform could impact banks and certain activities that have been conducted by them for decades under existing registration exemptions.

Some examples of activities regularly undertaken by banks, which we submit should not become subject to registration requirements, in addition to sales of index-linked GICs and principal-protected notes discussed above, include but are not limited to dealings in federal and provincial government bonds and indebtedness (including provincial and Canada Savings Bonds), treasury bills, certain derivatives, accommodation trades and commercial paper.

Moreover, banks currently come within registration exemptions which appear in a combination of provisions of securities legislation, National Instruments, Rules and/or Regulations. Some specifically apply to trades by Schedule I or II banks, loan or trust corporations or insurance companies, or to a Canadian financial institution or financial intermediary defined to encompass each of those regulated entities. Other provisions relate to the nature of a particular security or type of transaction. We submit that these activities should not become subject to registration requirements either by an overly-extended application of the Business Trigger concept (or individual elements of its definition) or by the removal of the existing specific exemptions for financial institutions.

We note that section 9.11 of the proposed Instrument does provide an adviser registration exemption. However, there appears to be no similar statement of exemption for financial institutions in respect of dealer registration. At the same time, there are unspecific comments about the repeal of exemptions. We are therefore concerned that the factors, as worded, in determining the application of the Business Trigger concept may not provide all appropriate exclusions for the activities of financial institutions.

We strongly urge the CSA to retain registration exemptions applicable to, and relied upon by financial institutions. We strongly urge the CSA to ensure, before any existing exemptions are removed, that specific instrument amendments should be published for assessment and a usual comment period. We would very much welcome further consultation on this issue.

Business Trigger concept and incidental activities of a bank affiliate

Under a banking group structure, an affiliate of a bank may be registered in Ontario as a Limited Market Dealer. This affiliate would typically have, as part of its organization, a small group of employees who provide M&A advisory and divestiture services to the bank's corporate finance clients primarily. M&A advisory and divestiture services, we note, do not currently require any form of registration (nor would registration appear to be required for such activity under the proposed Registration Reform); however, in the context of providing financial advisory services, the affiliate would on occasion, in the course of helping a client raise capital, act as the facilitator between a corporate/institutional client and accredited investors. This activity has required the affiliate, under the current regime, to register as a Limited Market Dealer in Ontario and to have its salespersons registered, because this incidental activity is considered an "act in furtherance of a trade".

One of the goals of the new Business Trigger concept, as we understand it, is to eliminate the need for exemptions (and therefore the need for registration) based on occasional trades. While the affiliate, in the above-noted example, may, by providing advice in conjunction with a transaction which may ultimately result in a trade between other parties who are issuers or dealers, be deemed under the current regime to be acting "in furtherance of a trade" and be required to be registered as a Limited Market Dealer, it is important to note that the affiliate does not distribute any product or carry out any trade itself.

To the extent that the definition of "dealing in securities" remains similar to the current definition of a "trade", the stated goal of eliminating the need for exemptions (and thus registration) for occasional trades would not, in our view, be achieved. It would, in fact, result in requiring such entities which are only occasionally involved in such activity to undertake costly and time consuming registration as Exempt Market Dealers and to ensure compliance with proficiency requirements for their sales force and compliance officers with such effort and expense that would in no way be commensurate with any benefit, given the nature of the activity, the low volume of activity and the nature of the clients to whom such services would be provided. We therefore request that the CSA ensure that the definitions in the amendments match the stated objective of the proposed Instrument and that such occasional activity not be captured in the Business Trigger concept.

We believe the Business Trigger concept requires greater clarification. The list of factors are extremely broad and insufficiently clear, and could unintentionally capture a variety of activities that are only incidentally related to the trading of securities. It is not entirely clear, for example, as to whether M&A and corporate and equity financing activities are captured and whether employees engaged in these activities are required to be registered. These concerns, we note further, are not restricted to Limited Market Dealers. In short, we believe that the CSA should specify what exactly the Business Trigger is intended to encompass.

2. Dealer Issues

Potential Impact of NI 31-103 on Local Practices
One of the stated goals of National Instrument 31-103 is to standardize requirements between jurisdictions. While we are generally in support of such an initiative, we are also aware that certain regulators, either in their governing legislation or by local practice, recognize various methods of ensuring compliance with the spirit of some requirements – which have benefits to dealers and registrants.

One example is proposed rule 5.25(1) of NI 31-103. Certain jurisdictions currently allow dealers to rely on client-name statements sent by mutual fund companies to satisfy the requirement for client statements to be sent every three months (where the dealer can verify that the client is receiving the statements from the fund companies). Our members have invested in systems and processes built around such local practices and, wherever possible and where such local practices are effective and not causing any risk to clients, we would prefer to see the new standards in NI 31-103 reflect the option most advantageous to dealers and to clients who would not be burdened with receiving multiple copies of the same information.

Impact on Limited Market Dealers
Some of our members' MFDA dealers also have Limited Market Dealer registration in Ontario and Newfoundland. These firms have been operating in this capacity for years and their staff members are experienced in this capacity. NI 31-103 introduces a new category called "Exempt Market Dealer" which would replace the existing Limited Market Dealer category. Employees of an Exempt Market Dealer would be required to complete courses such as the CSC within 36 months of commencing employment with an Exempt Market Dealer. Again, as most of the employees that work for our members' Limited Market Dealers are experienced, we request a grandfathering in NI 31-103 to recognize the status of these individuals and minimize the impact, measured in both time and cost, to our member firms.

Impact on Sales of Certain Products
NI 31-103 will have a significant impact on sales of certain products by banks and their MFDA dealers. As one example, index-linked GICs and principal-protected notes ("PPNs") of Schedule I/II banks are exempt from securities legislation in most provinces, while in a few they are considered to be exempt securities. This inconsistency in the provincial securities legislation will lead to an uneven playing field for individuals and firms in these few provinces. With the implementation of the proposed rules in NI 31-103, our member banks and our banks' MFDA dealers would be forced to register as Exempt Market Dealers if they want to continue selling products like PPNs and index-linked GICs in provinces that treat PPNs as securities, unless NI 31-103 is amended to provide a registration exemption in respect of deposits issued by a Schedule I/II bank in these provinces.

For another example, in British Columbia and Alberta, the definition of "security" includes futures contracts and options not traded on an exchange. "Futures Contract" is defined broadly and includes most types of over-the-counter derivative products. In Alberta, Blanket Order 91-502 excludes from the definition of "Futures Contract" (and, consequently, from the definition of "security") OTC derivative contracts between certain "qualified parties" (which includes various types of financial institutions and commercial users of OTC products). In British Columbia, Blanket Order 91-501 excludes OTC derivatives between certain "qualified parties" from the prospectus and registration requirements of the BC Securities Act. However, pursuant to the proposed Instrument, sales by banks of such OTC derivatives in these provinces may require an Exempt Market Dealer registration.

We urge the CSA to carve out the sale of OTC derivative products to "qualified persons" from the Exempt Market Dealer registration category.

Information Sharing with other Dealers
[See our comments under the heading "Information sharing", at page 11.]

International Dealers
Most of the bank-owned dealers in Canada have U.S. broker dealer affiliates to trade with U.S. resident customers in compliance with U.S. securities laws. These U.S. broker/dealer affiliates are registered with the U.S. Securities and Exchange Commission (SEC) and are members of the National Association of Securities Dealers (NASD) subject to NASD rules and oversight.

In addition to their operations in the U.S., these affiliates also operate branches or offices in Canada, staffed by Canadian-based representatives who are registered with the NASD. These U.S. broker dealers are typically registered with securities regulators in Canada as dealers under the category of "International Dealer" and restrict their activities in Canada to specified permissible activities. The only trading activity conducted in Canada by these U.S. broker dealers is with their domestic dealer affiliates and parent banks. Most Canadian based U.S. registered employees are also registered as representatives of the domestic dealer affiliate. Exemptive relief has been obtained from securities regulators in Canada permitting this dual registration. When dealing with U.S. resident customers, the resulting trades are booked through the U.S. broker dealer, while all trades with or on behalf of Canadian customers are booked through the domestic dealer.

As non-resident firms, these U.S. broker dealers are neither required nor are eligible to become members of the Investment Dealers Association of Canada (IDA). Instead, they are subject to NASD rules which are at least comparable, if not more comprehensive than the IDA rules. These SRO rules impose extensive reporting requirements on their members as well as fees and charges.

Proposed NI 31-103 will require that these U.S. broker dealers be registered as investment dealers since the current "International Dealer" category will not be retained. They would not be eligible for the exemption under Section 9.13 of proposed NI 31-103 since they maintain establishments, officers and employees in Canada. As investment dealers, they will be required under Section 3.1 of the proposed rule to become members of the IDA, but this will require the IDA to amend its By-law No. 2 to permit non-resident firms to become members. Without such an amendment to the IDA by-law, the proposed rule will force these U.S. broker dealers to close their Canadian branch offices. There is no obvious regulatory benefit to this additional IDA oversight of these U.S. regulated broker dealers that restrict their business to U.S. resident customers.

We recommend deletion of the requirement in the definition in section 9.13(1) that an International Dealer can have "no establishment in Canada or officers, employees or agents resident in Canada.". We submit that the foreign registration requirement in paragraph (b) of the definition of "International Dealer" in section 9.13(1) combined with the restrictions in subsection 9.13(2) would sufficiently address any regulatory concerns.

3. Conflict of Interest, Relationship and Referral Disclosure issues

We support the approach taken by the CSA to consolidate all the applicable regulatory requirements pertaining to related and connected issuer disclosure into one all encompassing regulation.

Conflicts Management

While we generally support the CSA's efforts to include principle-based regulation in the proposed Instrument, we have concerns that the combination of both principle-based and prescriptive regulations would result in its being extremely difficult for firms to comply with the Instrument.

For example, section 6.1(1) requires registered firms to identify "each potential and actual conflict of interest." "Conflict of interest" is defined very generally in the companion policy. The requirement in section 6.1(3) mandates the disclosure of all potential and actual conflicts of interest. It is our view that such broad-based disclosure would not be meaningful to clients as it would, *inter alia*, be too long and likely irrelevant to most clients. Further, it is impossible for dealers to exhaustively identify all potential conflicts irrespective of relevance to the client. We believe a better approach would be to require registrants to develop policies and procedures to identify and manage conflicts of interest and not impose a disclosure requirement.

If disclosure is to be mandated, we submit that the definition of "conflict of interest" should include a materiality test, so that registrants would be less inclined to generate vast lists of potential conflicts. We urge the regulators to provide guidance as to what they consider to be a conflict of interest requiring disclosure, as was done with related and connected issuers. We also request that the disclosure requirement not include general wording such as "any conflict of interest which it is reasonably likely that a client would consider important when entering into a proposed transaction." This is a very subjective standard, in our opinion, which would be virtually impossible to implement from a management and compliance point of view.

Furthermore, we are concerned that such a subjective standard would invite litigation (including class actions), as it could be all too easy for clients who have suffered a loss and who now have the benefit of 20/20 hindsight, to claim that had they received disclosure of an alleged conflict or potential conflict, no matter how immaterial, that they would not have entered into the transaction. How could a firm combat this argument except by providing written disclosure of every conceivable conflict of interest to every single client?

Section 6.1(2), moreover, would require registered firms to deal with conflicts of interest by "exercising responsible business judgment influenced only by the best interest of the client or clients." In our submission, this sets a standard that is far too vague and general. We would be interested in guidance, for example, on how one deals "in the best interest of clients" particularly where the conflicting interests are between two clients. In addition, the CSA should allow registered firms to take into consideration factors other than the best interest of the client.

We note, by analogy, that NI 81-107 allows for the registrants to consider the best interest of the fund itself and not just the best interest of the client. Therefore, we would recommend that section 6.1(2) be revised to take other considerations into account.

Responsible Person

Section 6.2(1) of proposed NI 31-103 defines "responsible person" as including every affiliate of the adviser with no exemption for those who do not participate, or have access prior to implementation, of investment decisions, as was previously provided in section 118 of the Ontario Securities Act. We submit that this narrowing of the definition is not warranted, and the existing definition should be retained so that only affiliates of an adviser that may influence the investment recommendations and decisions of the adviser would be captured.

We also ask for guidance on whether an "agent" of an advisor would include a non-affiliated sub-advisor.

Purchase Restrictions
Section 6.2(2) of the proposed National Instrument sets out restrictions on investments by an adviser in a managed account or an investment portfolio that apply unless a client consents in writing prior to the purchase. This would replace section 118(2) of the Ontario Securities Act, which constrains an adviser from "knowingly" making one of the prohibited investments, but does not provide for an exception where the client consents. Section 6.2(2) would remove the knowledge requirement, and would provide for an exception where the client consents.

We note that the consent provision specifically requires the registered adviser to obtain written consent for each purchase transaction. We point out that this more onerous requirement would increase standards in most provinces and could result in investment loss for clients if the consent is not obtained on time. Therefore, we submit that this pre-transaction disclosure requirement be replaced with the provision for a statement of related issuers on an annual basis or for a statement posted on a website and for connected issuers, we suggest that we move to a requirement where a list of connected issuers may be provided to clients upon request.

We note that the investment prohibition in section 6.2 (2) of the proposed National Instrument could also apply to purchases of mutual funds which we think should be exempt.

We also request that "investment portfolio" be defined.

Issuer Disclosure Statement
Section 6.4 of the Instrument requires a registered firm to maintain an "issuer disclosure statement" that is similar to the statement of policies and related parties that is required under section 223 of the Ontario Securities Act (Regulations). The proposed statement would contain a list of connected issuers, in the course of distribution, which, in our view, would be almost impossible to keep current inasmuch as the status of whether an issuer is in or out of distribution changes on a daily basis.

The statement also would have to be delivered before the client first purchases or sells a security of an issuer listed in the current disclosure statement or before the registrant first advises the client to purchase, sell or hold a security of an issuer listed in the current disclosure statement. We request that this requirement should be replaced by an option to either maintain a statement on a website that is accessible to clients or to deliver the statement at account opening.

We request that the requirement in section 6.4(5)(a) that the name of the registered firm and the mutual fund be sufficiently similar to disclose that they are affiliated, is not realistic since there are many funds that are affiliated with a registered firm but do not have a name similar to the firm's. We believe that it would be unfair to exclude such mutual funds from the exemption. Accordingly, we suggest that the requirement should provide an alternative in such situations, namely to disclose the affiliation.

4. Record Retention Requirements

We are concerned that the retention requirements set out in Section 5.20 of proposed NI 31-103, when read in conjunction with Section 5.7 of the companion policy would be costly and difficult to administer. As a result, we are requesting the following changes:

E-mail retention would be of particular concern, as e-mail communications are generally retained at the employee level and not electronically at a client relationship supervisory level. As electronic copies of e-mails (which include metadata that prove the authenticity of the e-mail) are now generally required as an international 'best-evidence' standard, printing copies of e-mails and retaining them in client files would, we believe, not be a sufficient form of retention for regulatory purposes.

If firms are to be required to retain records and also destroy records in accordance with the proposed National Instrument and privacy best-practices, we believe that firms would need to implement costly technology solutions that could automatically sort and store e-mails in a manner that relates them to client relationships. Alternatively, we point out that, effectively, firms would need to retain all e-mail records in perpetuity, as they would be unable to identify which ones relate to which client, and as such would be incapable of destroying the right e-mails seven years after the termination of the client relationship.

Furthermore, we are not aware of issues with firms' current document retention requirements that would make such a costly change necessary.

We accordingly urge the CSA to revisit this issue. In our view, the currently prescribed record retention requirements are appropriate, and further prescriptive rules are not warranted.

5. Registration Issues

We have several comments to make about the proposals being put forward, about how the registration process should work.

Jurisdictional Delegation
We urge the CSA to delegate registration authority to the IDA to a greater extent, in order to expedite regulatory reviews and simplify the registration process for both the registrant and the regulators alike.

NI 31-103 Implementation and Transition
It is our view that several transition periods would be needed based on the different aspects of the instrument.

Scope of the Business Trigger Concept
It is difficult to determine how far the Business Trigger concept will extend. Will it apply to Research Analysts, Financial Planners, Investment Bankers, Asset Allocation staff and Client Relationship Managers? The pertinent section of the companion policy is lengthy, and needs to be clarified and elaborated on to give stakeholders the needed guidance.

More to the point, we wonder whether the Business Trigger is meant to impact non-registered individuals of registered dealer firms who rely on the exemptions provided in sections 34 and 35 of the Ontario Securities Act and similar exemptions in some other jurisdictions. These individuals are not currently required to be registered provided they are dealing solely in the exempt products defined in the Ontario Securities Act, we request clarification that this would not change based under the Business Trigger concept. To be clear, we do not think that these existing exemptions should be taken away and if that is the intent of the CSA, the industry should be provided with an opportunity to comment on the impact.

Individual Categories
We ask for guidance concerning situations where the Chief Compliance Officer (CCO) or Ultimate Designated Person (UDP) leaves, and the firm wishes to appoint a replacement who does not yet meet the proficiency requirements (i.e. passing of the Partner, Directors and Officers exam) for registration as an Officer.

We believe that it would be useful to revisit the provisions concerning the designation of the CCO and UDP. We note that subsection 2.8(1) of the proposed National Instrument refers to the UDP as responsible for ensuring that the registered firm develops and implements policies, and subsection 2.9(1) refers to the CCO as "responsible for discharging the registered firm's obligations"; however, we note that in practice, the individual who is appointed as the firm's CCO has considerable responsibility for developing and implementing compliance policies and procedures while the UDP, as a senior business leader in the firm is responsible for, and has the authority to direct, the operation of the firm in compliance with regulations. The CCO advises the UDP, supports development of the firm's policies and procedures and monitors and reports on adherence to internal and regulatory requirements. However, the CCO is not usually empowered to directly effect or implement change within the firm. That responsibility rests with the UDP.

The description of responsibilities of the UDP and CCO in the proposed National Instrument creates, in our minds, a misplaced responsibility for supervision of the firm and its employees on the CCO rather than on the senior management team responsible for hiring, firing and remunerating those employees. Management of the business (i.e., the front office) should be held accountable for the conduct of business personnel. Management of the respective control areas (i.e., Finance, Operations, and Compliance) should be held accountable for the conduct of personnel within their respective areas. The Board of Directors, Chief Executive Officer and Executive Management Team should be accountable for the firm's overall conduct.

We do not believe the proposal to register only two individuals in senior management would promote the desired culture of compliance and ensure proficiency of persons performing management functions and carrying out responsibilities to see that the firm conducts itself in accordance with regulatory requirements. The proposed National Instrument appears to have excluded important management areas requiring day-to-day monitoring and management functions designed to achieve compliance with regulatory requirements including senior management responsible for trading, sales, and corporate advisory and underwriting businesses, and control functions such as finance and operations. The following summary illustrates that there are typically at least three key areas of management that contribute to a dealer's culture of compliance:

- Governance functions
    - Board of Directors
    - Chief Executives
    - Executive Management Team
- Systems and controls functions (Back-office)
    - Finance
    - Operations
    - Compliance
- Business Management functions (Front-office)
    - Product Sales
    - Investment Banking
    - Trading

The National Instrument should, in our opinion, address the objectives of promoting a culture of compliance, and should ensure persons performing management functions have the requisite proficiencies and tools to deal with employees who do not carry out their business in accordance with regulatory requirements. Rather than regulate the designation and registration of two members of management to carry out these responsibilities for an entire firm, it would be more effective and appropriate, in our opinion, for the proposed National Instrument to impose responsibilities on the dealer and those persons responsible for its governance, including the Board Of Directors, if management is found to be deficient. Alternatively, if the CSA continues to believe they are unable to accomplish their regulatory objectives without individual registration of certain members of a dealer's management team, they should consider the Financial Services Authority model of registering individuals in senior management "controlled functions" (http://fsahandbook.info/FSA/html/handbook SYSC Senior Management Arrangements, Systems and Controls).

Proposed NI 31-103 contemplates that each business division within a registered firm could appoint a UDP while a single CCO appointment across the entire firm would be required. This proposal is in our view, inconsistent with the current IDA model which permits a separate UDP and CCO for each separate business division. For firms with multiple registrations and several autonomous operational divisions, in our view, the ability to segregate UDP and CCO roles by division makes sense, particularly given the different proficiency requirements that might attach to each CCO's registration.

We have, furthermore, some specific concerns respecting the proposed proficiency requirements for fund manager CCOs. Fund companies have been operating on an exempt basis to date and there has been, to our knowledge, no evidence that the compliance staff of fund companies are in any way incompetent or unqualified to perform their obligations. In the face of that experience, we question the need to require CCO proficiency requirements that are more onerous than those currently required in Ontario for CCOs of advisers or of IDA member firms. The requirements are, in fact, largely unachievable by the current CCO incumbents in many fund companies. We believe that requiring a compliance officer to go to law school or to become a CA or to obtain a CFA designation in order to retain his or her current position, without any analysis of the specific competencies that any of those designations would provide to the compliance officer that is beyond the competencies they currently possess is not appropriate.

We note, moreover, that an individual would qualify as the CCO of an adviser not only by being a CFA, a CA or a lawyer but also by having been registered as an officer of a dealer or an adviser for a specified number of years. The requirements for registration as officer of a dealer are successful completion of the Canadian Securities Course and the Partners, Directors and Senior Officers Examination. Since adviser and dealer operations can be significantly different, the assumption of a transportable competency between the two, which the adviser CCO proficiencies contemplate, must be based on the years of general industry experience and the two examinations.

We also believe that with the creation of a fund manager registration category, there is no basis for treating fund manager CCOs differently from adviser or dealer CCOs. According to us, the base requirement should be the CSC, the PDO and 5 years of industry experience as an officer of a dealer, an adviser or a fund manager. While recognition of an LL.B, a CA or a CFA may also have some value, there needs to be an alternative proficiency standard available that would avoid effectively the disenfranchisement of the compliance professionals currently in the investment fund industry.

Fit & Proper Requirements
Is the reference to the examination prepared and administered by the "RESP Dealers Association of Canada" correct in section 4.1?

We request that the "12 months during the 36 months" requirement in section 4.2(2)(a) be cumulative as opposed to being continuous.

We further request that section 4.2(2)(b) should be included in list of exceptions for SRO members in section 3.3. We suggest clarifying section 4.2(2)(b) by replacing "before" with "from".

We note that currently, the Canadian Securities Institute only offers examinations on the full Canadian Securities Course, and we understand that the CSI does not support an exam-based approach and is not planning to offer stand-alone exams.

Automatic Reinstatement
We believe that the reference in the proposed NI 31-103CP to "automatic reinstatement" may be misleading, as the Instrument indicates that a Form 33-109F4 must be submitted. Registrants might conclude that they do not need to file any paperwork prior to contacting or advising their clients, once they have been hired at the new firm.

NRD and Transfers
Will the shortened version of the Form 4 continue to be used? It would be helpful to have more information about regulatory expectations, as well as details concerning the mechanics of a registrant transfer and "automatic reinstatement."

Information Sharing
With respect to section 8.1, the phrase 'a person' should be changed to "a registrant", as the reference to "person" could be misinterpreted to include a client. As well, we believe the proposed requirement to disclose to another registered firm 'all information in its possession or of which it is aware that is relevant" would open registrants to excessive potential liability. A requirement to share information should include a safe harbour to protect the registrants who are expected to disclose information about their former employees. We note that in the US, employer disclosures on NASD Form U-5 are protected by an absolute privilege in the context of lawsuits for defamation.

We also believe that the provision is much too subjective, and would be difficult for firms to comply with. We suggest that queries regarding individual registrants should be directed to the registering body (i.e., the IDA, the MFDA or the Commissions) instead of imposing a "disclosure" requirement on employer firms. This way, thorny employment law issues can be avoided.

We suggest that the regulators provide guidelines concerning the sharing of information, in particular dealing with (i) whether the registrant involved will need to provide consent; (ii) contact between the firms; (iii) deadlines that firms will have for communicating; and (iv) what happens if a firm does not comply with information sharing requests, and how the regulators become involved.

Comments On Proposed Forms
Our comments on the proposed forms are attached as Appendix A.

Technical Questions
In addition to the comments we have made about the proposed National Instrument, we have some technical questions in response to which we would very much appreciate receiving answers. For ease of reference, these are set out in Appendix B.

In closing, we have appreciated the opportunity to express our views regarding the proposed Registration Reform. We would be pleased to answer any questions that you may have about our comments.

Yours truly,

WL/DI/sh
Attach.

Appendix A

Comments On Proposed Forms

Form 33-109F1 Notice of Termination

Miscellaneous
References to Officers throughout Form 33-109F1 should be reviewed given that under proposed NI 31-103 only the UDP and CCO will be registered as Officers of the firm.

D. - Information about the termination
We recommend that the reference to "for cause" be deleted, as it invites a conclusion as to the character of the individual's termination that may not be appropriate for the person completing the form to make. We do not believe that it is necessary to ask whether a termination was "for cause" in this context.

E. - Further details
The form is required to be filed within five days of the effective date of termination, and Part D of the form is required to be completed in all cases where the individual resigned or was dismissed, but in that case the filer has 30 days to file responses to the questions in Part D.

As responses to questions about resignations and dismissals generally require careful review, the result would likely be a two-stage filing process for many resignations and for all dismissals. It would be onerous from an administrative point of view to be obliged to submit two separate filings for each termination. The need to track these responses would likely require additional staff and new internal mechanisms to ensure deadlines are met at the five and 30 day stages, and this could be expected to lead to late filing penalties as well.

We recommend that the form be revised so as to avoid a two-stage process. We suggest that firms be given 30 days to file a complete Form 33-109F1, similar to the approach in the US. Registrants could rely on the automatic transfer process via the shorter version of NRD Form 33-109F4 and on the regulators to notify firms accordingly; this is where a transfer form would be very useful for firms and regulators alike.

Are the five and 30 days, from the effective date of termination, "business" days or "calendar" days?

Will there be late filing fees? Will there be a potential for late filing fees at both 5 and 30 days?

The qualification in the request for further details to provide information about the reasons for dismissal or termination "to the best of the firm's knowledge" is very welcome, in our opinion.

Question 3:
The question about "any significant internal disciplinary measures at the firm or any affiliate of the firm" is problematic, in our view, as internal discipline varies between firms, and it could be difficult and time consuming to obtain information from an affiliate. If the reference to affiliate is to remain, it should at least be changed to read "regulated affiliate".

Question 5:
The language used on the Uniform Termination Notice should be imported here (i.e. Are employees accounts, or those controlled by employee, fully secured, margined or paid? Are client accounts fully margined, secured or paid? In the opinion of the firm were under-margined or unsecured client accounts the result of bad business or credit practices on the part of the employee?)

Question 7:
It would be difficult for firms to comply with this request for information about investigations undertaken by affiliates.

We suggest that "engaging in undisclosed outside business activities" be deleted. Most instances of undisclosed outside business activity arise due to a lack of understanding on the registrant's part of what constitutes an "outside business activity", and these are usually addressed when they come to light. Most are not material. Previously undisclosed outside business activities that are serious and that actually lead to termination would, in our minds, almost inevitably be disclosed on the Notice of Termination.

Question 9:
We would suggest merging this question into Question 7.

Question 10:
This question in effect asks the firm, in the guise of disclosing "any other matter", to pass judgement on the suitability of the individual for registration. We believe questions 1-9 are sufficiently comprehensive to elicit the information that the regulator will need to assess the individual's suitability for future registration.

H. – Certification
The certificate for NRD filing requires the individual who signs the form to certify that the statements in the form were provided by a "duly authorized firm representative of the NRD filer" who confirmed their accuracy and understands the Warning in Part G.

We note that the AFR who completes the form typically is a Registration Officer who inputs information received from an authorized individual of the firm, such as the person's Branch Manager or direct supervisor who is terminating the employee. We note that typically, the AFR who inputs the information does not necessarily speak directly to the "authorized firm representative" who signs the form.

Accordingly, we submit that the certification section should be reworded, so that the individuals who sign are not being asked to certify without qualification statements based on information provided by others. We suggest that the certificate be revised to indicate that the authorized firm representative, when submitting the form on NRD, acknowledges that, to the best of his or her knowledge, the warning above has been read and understood and that the information contained in the Form is accurate.

Signature section
The signature section on the form calls for the signature of an "authorized signing officer." However, once NI 31-103 is implemented, the CCO and the UDP would be the only individuals registered as Officers. The CCO or UPD of large firms would not be the appropriate persons to sign these forms. If it is intended that the Form be signed by individuals who are not registered as Officers, that should be clarified.

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

Miscellaneous
NRD Mapping
It is vital that extremely rigorous testing be done by regulators and by the CDS prior to implementing any changes on NRD, if the types of massive errors that were experienced during the initial NRD conversion process are to be avoided.

We would be interested to know what are the regulators' expectations, with regard to who will be responsible for verifying and correcting errors on NRD that result from changes that flow from these proposals. Do the regulators anticipate that there will be a registration freeze period?

The changes that will be required to be made to NRD and other processes in order to implement these proposals, should be undertaken in a manner that does not subject registrant firms to a costly and lengthy data conversion process. It would not be fair, in the CBA's view, to registrant firms or to their customers, if the implementation process proves as difficult and costly as the three-year period (March 31, 2003 to March 31, 2006) during which firms completed the NRD data conversion process.

Current registrants and the new Form
How will the new wording of the questions asked on Form 33-109F4 ("Form F4") apply to current registrants and their existing NRD records?

Relationships & Conflicts Of Interest
The Form does not ask for spousal information. In some jurisdictions, disclosure is required of any relationships the individual's spouse may have with other securities firms and/or any associations with individuals or companies who are registrants, directors, officers or principal shareholders of a securities firm. This information is currently reported outside of the NRD system via an email. Will this to continue to be the case?

Notice of collection and use of personal information
Currently, the NRD screens that the authorized firm representative (AFR) is presented with immediately prior to submitting current Form F4 require submission to jurisdiction, provide notice concerning collection and use of personal information, and includes several paragraphs under the heading Self-Regulatory Organizations. The AFR and not the applicant currently signs off on the NRD filing. We believe that the form must be changed to permit the applicant to make the appropriate attestations after reviewing their application and prior to choosing the submit to firm button for processing.

References to officers throughout
The form should be reviewed to ensure that references to "Officers" are appropriate, given that once NI 31-103 is implemented, the CCO and the UDP would be the only individuals registered as Officers.

Schedule A
Item 1: Name / Other personal names
It would be helpful if this section specifically referred to nicknames in the bold sub-heading. Firms currently enter nicknames under this section, but as nicknames are not referred to in the sub-heading, we have to train our applicants to do this.

This section also should clearly set out instructions concerning the disclosure of Team and Marketing names, given that the regulators have indicated they want this information on record.

The reference in the instructions to the disclosure of "Trade Names" should be replaced with a reference to Team or Marketing Name.

It is not clear what 'Style Name' means.

Item 4: Citizenship
We welcome guidance concerning the purpose of asking for information about other citizenships and passports. We also would be interested to know whether citizenship is relevant to suitability.

Schedule C
Item 6: Individual Categories
What are the regulators' expectations surrounding activity triggers?

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

Schedule E
Item 8: Proficiency
It is not clear what the word "relevant" in Item 8.1 is meant to encompass. We suggest the sentence be changed to read "relevant to the requirements or proficiencies of the registration that you are applying for."

The reference under Item 8.2 to "CAIFA" should be changed from to ADVOCIS.

A standard course list should be included in the final form.

Item 9: Location of employment
A field re: transit #s and cost centre info. should have an automatic approval built in because these fields are for administrative purposes for the firms and would not require a review/ acknowledgment by the regulators.

Schedule G
Item 10: Current employment and other business activities
Other business activities should be addressed separately from the question about current employment. Registrants often do not consider their outside business activities as matters to be disclosed when they are asked in the context of a question about their current employment. Asking about other business activities in a stand-alone question would be more likely to elicit accurate information.

We suggest that the questions about outside business activities should be posed similarly to the way they were asked in the old 1 U 2000 - 20 b form - *i.e. "Are you engaged in any other business or have any other employment for gain except your occupation with the firm with which you are now applying?"*

It is not practical to ask for all details of outside business activities to be entered in the "description of duties" field, in cases where there are numerous activities to be disclosed.

If information about outside business activities continues to be requested in this question, we would suggest that the types of such activities should be expressly referred to - i.e. "dual registration with affiliate firms, officer/ director positions with affiliate or non-affiliated firms, employment outside of the firm for gain."

Consideration should be given to whether the question should refer to outside business activities or to "other business activities".

It would be helpful to include a section with check boxes for leaves of absence (i.e., personal, parental or medical.)

Schedule H
Item 11: Previous employment
The question "Reason why you left the firm" duplicates information requested under Item 12.

Item 12: Resignations and terminations
We note that this item does not include the words "investment related" which appear in the current version of Form 33-109F4 with reference to "failure to supervise compliance with any statutes". The removal of "investment-related" makes the question open-ended. We recommend retaining the words.

We recommend that the reference to "for cause" be deleted, as it invites a conclusion as to the character of the individual's termination that may not be appropriate for the person completing the form to make. We do not believe that it is necessary to ask whether a termination was "for cause" in this context.

We also suggest that the question would, in fact, be likely to capture more information if "for cause" were deleted.

We note that firms may have different "standards of conduct." Accordingly it would be helpful for the CSA to provide guidance within the instrument or the companion policy.

Schedule J
Item 13: Regulatory Disclosure
We suggest a standard format or template should be developed for this question. We note that NRD Item 13 is not clear, and each firm inputs information differently. The NASD Web CDR system might be a suitable model.

We also wonder whether the two sections concerning securities regulatory authorities and self-regulatory organizations could be merged.

We note that the section for recording Partner/Director/Officer (P/D/O) registrations has been omitted. Are these details intended to be captured elsewhere, or will disclosure of prior P/D/O (non-trading) registration no longer be required?

Item 14: Criminal Disclosure
14 (a)
This question asks for disclosure about any "outstanding or stayed charge". Are the regulators satisfied that it is appropriate to request information about charges that have been stayed?

14 (b)
This question asks for disclosure about offences in respect of which the applicant received an absolute or conditional discharge. Are the regulators satisfied that it is permissible to request information about charges that have been disposed by way of absolute discharge?

14 (c)
We suggest that the reference to "any firm" should be changed to "any securities firm", and the phrase "to the best of your knowledge" should be added.

14(d)
We note a grammatical error in item 14(d), where "was granted" should read "has been granted."

Item 15: Civil Disclosure
15 (a)
The phrase "to the best of your knowledge" should be added before "any".

The word "similar" is ambiguous, in our view.

15 (b)
The phrase "to the best of your knowledge" should be added before 'any.'

The word similar" is ambiguous.

Schedule M
Item 16: Financial disclosure - debt obligations
We question whether it is appropriate to ask an applicant whether he or she has "ever failed to meet a financial obligation of $5,000 or more." Even if such a question can be justified, the open-ended timeframe (ever) should be changed.

We also question the appropriateness of asking whether "any firm, while you were a partner, director, officer or major shareholder, failed to meet a financial obligation as it came due". Again, even if such the question could be justified, there should be a monetary threshold, and the open-ended timeframe (ever) should be changed. Furthermore, the phrase "to the best of your knowledge" should be added.

Should questions 2 (Debt Obligations) and 4 (Garnishment, unsatisfied judgements or directions to pay) be merged in one question?

As with the preceding questions, the open-ended timeframe (ever) should be changed.

Item 17: Ownership of securities firms
This question should be reworded because it is too repetitive with other questions. The wording pre-NRD under section 20(c) *stated "Are you a partner, director, officer, shareholder or other contributor of capital of a partnership or of a company having as its principal business that of a broker, dealer or adviser in securities commodities commodity futures contracts or options other than the firm with which you are now applying"* and we feel this wording is clearer to interpret.

Appendix B

Comments On Miscellaneous Technical Matters

Fit and Proper Requirements
Will an individual had the requisite experience rest with firms, the regulators or the SROs? [What answer do we want? Explain] Assuming that a submission to the effect that an individual has gained 12 months relevant experience has to be assessed, how long do regulators expect that a submission will typically take to process?

Automatic Reinstatement
At what point is a registrant considered to be gainfully employed following departure from one firm and during the course of being hired by another firm? What is the trigger? Is the registrant considered to be gainfully employed again as soon as a firm offer letter has been delivered?

NRD and Transfers
Will the shortened version of the Form 4 continue to be used? It would be helpful to have more information about regulatory expectations, as well as details concerning the mechanics of a registrant transfer and "automatic reinstatement."

A transfer form would be most helpful to firms.

Termination of Employment
Will there be late filing fees? Could a firm be required to pay late filing fees at both the 5 day and 30 day filing stage?

Are the days to be measured by "business" days or "calendar" days?

Suspension of a Registered Firm
Will a firm's registration be suspended if its UDP or CCO is suspended?

Exception - hearing
In the event that a registrant appeals a suspension and requests a hearing, will there be provision to allow the individual to continue to work subject to supervision and conditions?

How long will the appeal process take?

Mobility Exemptions
Is the mobility exemption for an individual in a local non-principal jurisdiction, limited to 5 clients per individual registrant or 5 clients per registrant firm? How was this number arrived at?

What is the expectation of the regulator concerning the tracking and surveillance that firms should have in place to monitor compliance with client mobility limits?

How will the mobility exemption be affected by the implementation of NI 11-102 in participating jurisdictions, and in Ontario?