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Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
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Dear Sirs/Mesdames,

Re: Proposed National Instrument 31-103
Registration Requirements and Related Instruments

The CBA works on behalf of 51 domestic chartered banks, foreign bank subsidiaries and foreign bank branches operating in Canada and their 249,000 employees to advocate for efficient and effective public policies governing banks and to promote an understanding of the banking industry and its importance to Canadians and the Canadian economy.

The CBA appreciates the amount of time and effort that the Canadian securities administrators ("CSA") have devoted to the objective of harmonizing and simplifying Canadian registration requirements and we welcome the opportunity to provide you with our comments on the most recent draft of National Instrument 31-103 *Registration Requirements* and its related instruments that were published for comment on February 29, 2008 ("Registration Reform" or "Instrument" or "Proposed National Instrument").

Our comments are set out in four 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) Transition Period Issues and (4) Technical Issues.

1. BANK ISSUES

1.1 Comment process - Staggered release of Legislative Amendments

The Request for Comments on the Proposed National Instrument that was released on February 29, 2008 ("2008 Request for Comments") indicates that various jurisdictions are proposing to make certain legislative amendments to implement the registration reform regime.

While we applaud the CSA for undertaking wholesale, rather than piecemeal, reform of the registration regime, we regret that the harmonization objective of the Proposed National Instrument may not be fully realized because different jurisdictions are proposing to adopt and administer the Instrument in different ways. In the light of this development, it would have been helpful if the regulatory reform that is under consideration by each jurisdiction could have been published in a consolidated Request for Comment with a table of concordance rather than being the subject of consultation on a jurisdiction by jurisdiction basis. In the absence of a comprehensive understanding of the legislative amendments that have been, or will be, introduced to implement the Proposed National Instrument across Canada, it has been difficult for us to assess and provide meaningful comment on the Proposed National Instrument and to fully appreciate its potential impact on the businesses that are conducted by our members. For example, it is unclear whether, and to what extent, banks and other financial institutions will be exempt from the dealer, adviser and investment fund manager registration requirements of the securities legislation of jurisdictions other than Ontario. It is our current expectation that a bank will be exempt from such registration requirements in all Canadian jurisdictions to the extent that trading, advising and investment fund management activities are not precluded under the *Bank Act* (Canada) and the regulations thereunder given the proposed amendments to the *Securities Act* (Ontario) that are discussed in greater detail below. Alternatively, if there are any jurisdictions that are not prepared to grant such exemptive relief, it is our understanding that these jurisdictions would, at the very least, seek to preserve the status quo by exempting banks and other financial institutions from the investment fund manager registration requirement and allowing them to continue to conduct their operations in reliance upon the full range of dealer and adviser registration exemptions that are currently available to them in these jurisdictions. This is a critical issue for our members, who are anticipating maintenance of the status quo as well as a uniform approach to the issue in keeping with the harmonization objective of Registration Reform. It is therefore imperative that our

members be advised at the earliest opportunity of the way in which banks and other financial institutions will be able to continue conducting their operations in all jurisdictions following implementation of the Proposed National Instrument and that they be given ample opportunity to comment upon the proposed comprehensive regulatory framework that will apply to their operations throughout the country.

1.2 Ontario Legislative Amendments

On April 25, 2008, the Ontario Securities Commission (OSC) published a Notice and Request for Comment on proposed amendments to the *Securities Act* (Ontario) ("Act" or "OSA") that were published by the Government of Ontario on April 24, 2008 ("Draft OSA Amendments") and on consequential amendments to the Proposed National Instrument that would become effective if and when the Draft OSA Amendments become effective.

By publishing the Draft OSA Amendments, the OSC has made it easier for us to review the Draft OSA Amendments alongside the Proposed National Instrument and to assess the impact of the proposed registration regime on our businesses in Ontario.

As we have not seen the legislative reform that is to accompany implementation of the Proposed National Instrument in jurisdictions other than Ontario and British Columbia, it is difficult to comment on whether the language of the Draft OSA Amendments should be amended to conform to the language used in the Proposed National Instrument or whether the language of the Proposed National Instrument should be amended to conform to the language in the Draft OSA Amendments. It is, however, our submission that using language in Ontario that is different from the language being used in other Canadian jurisdictions is not the preferred approach. As indicated above, one of the stated goals of the registration reform project is to harmonize the requirements for registration across Canada. Harmonization is an important goal and one that we strongly support.

In order to further the goal of harmonizing regulatory requirements across Canada, we offer the following observations for your consideration:

- **Factors to consider in applying the business trigger:** While we expected to see the business trigger in the Draft OSA Amendments, we were surprised to see that the factors for determining whether a person or company is engaged in a business when trading securities or providing advice were also included in the Draft OSA Amendments.

  It is our understanding that the factors are intended to provide guidance on how to interpret the business trigger and that such guidance is normally provided by way of a companion policy rather than legislation.

  In addition, we believe that for the proposed registration reform regime to be successful it is essential for the factors to be the same in each Canadian jurisdiction. This is necessary so that the determination of whether the registration requirement has been triggered is consistent from one jurisdiction to the next. Including the factors in the Draft OSA Amendments could undermine this objective because it is not clear whether the factors to

be taken into account when interpreting the business trigger will be the same as those contemplated by the Draft OSA Amendments.

For these reasons, we believe that it is appropriate that the business trigger factors reside solely in the Companion Policy to the Instrument and we believe that the factors should be removed from the Draft OSA Amendments. Please refer to the comment letter we have submitted on the Draft OSA Amendments for our suggestions on how to revise the wording of draft section 35.1.

- **Financial institution exemption:** We were pleased to see the financial institution exemption included as section 35.1 of the Draft OSA Amendments and believe that a parallel exemption for financial institutions should be included in the Proposed National Instrument. This would serve to harmonize the registration requirements applicable to financial institutions across Canada.

1.3 Federally Regulated Financial Institutions

In the Summary of Comments published on February 29, 2008 ("2008 Summary of Comments"), the CSA commented on the respective responsibilities of the federal and provincial governments concerning the securities related activities of federal financial institutions. The CSA indicated that the current exemptions would continue to be available in Ontario and that the other jurisdictions would continue to follow their existing practices concerning the securities related activities of federally regulated financial institutions. (Please see response to comment #27 and Part 8 of the Summary of Key Changes to NI 31-103 included in the 2008 Request for Comments.) This indicates a continuation of the status quo. However, we have some discomfort that this may not be the case unless either the provisions exempting financial institutions are brought into NI 31-103 or the implementing legislation in the other jurisdictions contain such provisions.

We believe that a more productive approach would be for the CSA to agree to a harmonized approach for addressing the securities related activities of federally regulated financial institutions. We would highlight the following issues.

- **Exemption for federally regulated financial institutions:** As noted above, we believe that the Proposed National Instrument should include a harmonized exemption from the registration requirements for federally regulated financial institutions. The Instrument should exempt certain federally regulated financial institutions, such as banks and trust companies, from the requirement to be registered as a dealer, adviser or investment fund manager under securities legislation if the financial institution's trading activities and activities relating to providing advice are those activities that it is not precluded from conducting by its governing legislation.

- **Registration as an investment fund manager:** We were pleased to see in the 2008 Summary of Comments that Ontario does not intend to require a federally regulated financial institution to register as an investment fund manager. However, we were surprised to see that the other CSA jurisdictions will make local determinations concerning the registration of federally regulated financial institutions in the investment fund manager category (please see response to comment #574). As submitted above, we believe that a federally regulated financial institution should be exempt from the requirement to register as

an investment fund manager, that this issue should be addressed consistently across Canada and that it should be addressed explicitly in the Proposed National Instrument or in its Companion Policy.

1.4 Elimination of Exemptions from the Dealer Registration Requirements

Currently, National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106) contains a list of exemptions from the registration requirements. The 2008 Request for Comments indicates that "many of the exemptions that currently exist in securities legislation are not needed with a business trigger for dealers". We are concerned that, in the absence of an entity-based exemption for financial institutions as requested above, the elimination of certain registration exemptions could impact banks and certain activities that have been conducted by them for decades under existing registration exemptions. As examples (although not a complete list), we express our concern about the following:

- **Short Term Debt**

  We have compared the exemption from the dealer registration requirement for short term debt that are currently in NI 45-106 and in Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions* (OSC Rule 45-501) with the exemptions provided in the Proposed National Instrument. We are concerned that the current exemption for short term debt has not been continued in the Proposed National Instrument.

  Proposed NI 45-106 provides an exemption for short-term debt in section 3.35. However, section 3.0 provides that Part 3 does not apply in any jurisdiction other than British Columbia and Manitoba six months after the Proposed National Instrument comes into force. Consequently, after the transition period, the exemption for short term debt will be available only in British Columbia and Manitoba pursuant to NI 45-106.

  We note that proposed Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions* (OSC Rule 45-501) appears to continue the exemption for short term debt. Specifically, subsection 4.1 (1) of OSC Rule 45-501 provides that

  > ... the registration requirement does not apply to a trade by a financial intermediary or a Schedule III bank
  >
  > (a) of a type described in any section of Part 3 of NI 45-106 except the following ...

  Section 3.35 of NI 45-106 is not listed in paragraph (a) of subsection 4.1(1) of OSC Rule 45-106. Therefore, it appears that OSC Rule 45-106 provides an exemption for short term debt.

  While we are pleased to see that the exemption for short term debt will continue to be available in British Columbia, Manitoba and to financial intermediaries and Schedule III banks in Ontario, we are surprised to see that this exemption will not be available in all jurisdictions, especially given the national nature of the banking business. The availability of this exemption has been constricted without any commentary by the CSA explaining why the CSA decided to make the change. The removal of the national exemption for short term debt is a significant change to the status quo. We are surprised to see that the regime for

trading short term debt is not being treated on a harmonized basis by the CSA jurisdictions. We recommend that the exemption for short term debt be included in the final version of the Proposed National Instrument.

- **Registered Dealer**
  Section 3.1 of current NI 45-106 provides an exemption from the dealer registration requirement for a trade by a person acting solely through an agent who is a registered dealer. We believe that this exemption is still needed and should be included in the Proposed National Instrument.

3. DEALER ISSUES

3.1 Categories of Registration and Permitted Activities

Mutual Fund Dealer (MFD)
Paragraph (b) of subsection 2.1(1) of NI 31-103 provides that an MFD is a dealer that is

> ... *only* permitted to trade in securities of
>
> (i) mutual funds, and
>
> (ii) except in Quebec, investment funds that are labour sponsored investment fund corporations of labour sponsored venture capital corporations under provincial legislation [emphasis added]

We submit that limiting what an MFD can do in this way is problematic, especially when read with the requirement to register as an EMD to trade in securities that are distributed under an exemption from the prospectus requirement. The drafting of these sections has led commenters to express concern that an MFD may need to register in another category of dealer registration to trade any securities other than mutual funds and labour sponsored investment funds including so-called exempt securities that would be exempt from the dealer registration requirement pursuant to section 8.19 of the Proposed National Instrument.

An entity that trades prospectus exempt products for which there is no parallel registration exemption may need to register as an EMD. However, an entity that trades prospectus exempt products for which there is a parallel registration exemption would not need to register as an EMD. We recommend that NI 31-103 be amended to clarify this issue.

We note that many MFDs sell products such as Guaranteed Investment Certificates (GICs). Commenters have expressed a concern that an MFD would not be able to sell a GIC without registering as an EMD. The commentary in the 2008 Summary of Comments has not been helpful in clarifying this issue (please see comments #170 to 178). We recommend that the CSA provide clear guidance explaining that an MFD can sell products that fall within the exemption from the registration requirements provided in section 8.19 of the Proposed National Instrument.

3.2 Exemption from dealer registration for advisers (Section 2.2)

We submit that a registered adviser who also wishes to distribute pooled funds managed by an affiliate should also be able to rely on this exemption because their trading activities would still be so limited that their activities should not qualify as trading. The distinction between a registered adviser's pooled funds and those of an affiliate is in our opinion an artificial one that does not justify the need for dealer registration. We concede that where the registered adviser expands their trading activities to distributing not only their own pooled funds and those of an affiliate but also third party pooled funds, dealer registration would be necessary.

Furthermore, we believe that limiting the exemption to only pooled funds is problematic. We submit that the exemption should also allow the registered adviser to distribute securities of the registered adviser's or affiliate's public mutual funds. We do not understand why a registered adviser's distribution of pooled funds would garner a different treatment than distribution of the registered adviser's or affiliate's public mutual fund particularly if the rationale behind the distribution is limited in both instances to the registered adviser's desire to distribute those funds (whether they be pooled or public funds) to its own clients as an efficient way to invest client funds. We do not see the harm that a client would face by allowing a registered adviser to invest the client's funds in the registered adviser's or affiliate's public mutual fund without being registered as a dealer. The registered adviser's activity is no different in the public mutual fund arena than it is in the pooled fund arena. Indeed, in some instances, it is arguable that the sale of a proprietary or affiliate's public mutual fund involves greater regulatory oversight since a public mutual fund has been qualified by a prospectus whereas a pooled fund may not have been so qualified.

In addition, the narrow scope of this exemption places non-discretionary clients at a disadvantage relative to discretionary clients where they share the same registered advisor. That is because the exemption, as currently drafted, does not allow the registered advisor to invest the funds of non-discretionary clients into the same securities as those eligible for the investment of funds of discretionary clients. The Instrument should enable non-discretionary clients to receive the same treatment from their registered adviser as the discretionary clients would. Allowing a registered adviser to treat its discretionary and non-discretionary clients in the same manner does not amount to trading in securities generally such that the registered adviser should have to obtain dealer registration. It would be inconvenient for non-discretionary clients to have to deal with a different registrant (ie. one that is a registered dealer) in order to have access to the same pooled funds (and public mutual funds, if the exemption is extended) to which a discretionary client would have access. Therefore, to further the goals of efficiency and fairness to clients, we urge the CSA to extend this exemption to a registered adviser's non-discretionary clients.

3.3 Know-your-client: Direct Brokerages

Section 5.3(1)(c) of the Instrument as drafted requires that all registrants take reasonable steps to ensure that they have sufficient information about their clients to meet their regulatory obligations in recommending a trade, acting on trade instructions or making a discretionary trade for a client. Currently pursuant to IDA Policy 9(A)(3)(a) direct-brokerages (which offer execution-only services), while required to fulfill IDA KYC obligations, are exempt from suitability requirements. Direct brokerages must inform their customers, in writing, at the time an account is opened that they "will

not consider the customer's financial situation, investment knowledge, investment objectives and risk tolerance when accepting orders from the customer". We would ask the CSA to confirm that in respect of direct-brokerage the "regulatory obligations" that are applicable are limited to the IDA imposed KYC obligations. Our concern is that if clients are asked to provide any additional personal information they may falsely believe they are being provided something they are not because IDA Policy requires direct-brokerages to clearly advise their clients that their particular situation will not be used by the direct brokerage in executing trades.

3.4 Client Relationship Model (CRM)

The CSA's move to a principles-based approach surrounding relationship disclosure and its delivery flexibility is commended. However, the IDA SRO has engaged a materially different approach regarding relationship disclosure to that of the CSA. This is despite the assurance of the CSA that it did not anticipate material differences between the SRO requirements that it is to approve and those set out in the Proposed National Instrument.

In contrast with the IDA's CRM, the approach taken by the CSA as regards relationship disclosure information in section 5.4 of the Proposed National Instrument supports the core principles of clear allocation of responsibilities and transparency without resorting to the prescriptive requirements of a relationship disclosure document or customized content.

The list of information items which will be required to be given to clients as set out in section 5.4, further differs significantly from the CRM Relationship Disclosure document ("RD"). For example, the conflicts of interest disclosure in section 5.4 is limited to that required under securities legislation, whereas the RD document must include a statement indicating Member and adviser conflicts of interest, without any apparent limitation. This will lead to an unwieldy RD document. The RD document further engages a requirement to indicate when suitability assessments must be made, including entirely new requirements to do so upon enumerated suitability "trigger events" such as when an account is received via transfer, which create new regulatory requirements and is also inconsistent with section 5.4 of NI 31-103. The RD document is required to indicate whether or not ongoing monitoring of suitability will be an option offered by the firm and a description of the "process" used by the adviser to assess the client's objectives and risk tolerance, neither of which is required in section 5.4 and the latter being so unique that it would require customization of the RD document potentially for every advisor. A description of the account relationship is required in the RD document, again not required by section 5.4. It is unclear how this requirement can be satisfied in any event, other than causing duplication of disclosure such as in the case of a managed account where the content of the managed account agreement would be reproduced therein or having the client receive multiple RD documents for different types of accounts or a "combined" one in a confusing manner, which clients are unlikely to welcome receiving.

While the requirement for relationship disclosure information in the Proposed National Instrument allows for an exemption for permitted clients, such is not available in the proposed IDA relationship disclosure. Such waiver or exception for permitted clients should similarly be available to the IDA SRO members.

A further example of the substantive difference is that section 5.4 of NI 31-103 does not require a client signature, acknowledgment or audit trail to evidence the provision of information to the client, or require partner, director or officer approval to ensure that the information has been provided to a client, whereas the proposed IDA relationship disclosure requires such measures be taken.

Moreover, it is of concern that the Mutual Fund Dealers Association (MFDA) and the IDA did not work jointly or release their proposed Rules simultaneously in regard to minimizing discrepancies between proposed IDA and MFDA relationship disclosure requirements. No cost-benefit analysis has ever been conducted regarding the CRM initiative to validate particulars of any regulatory approach. The result, accordingly, is a lack of uniformity as between SROs and the inconsistent approach used by the SRO and CSA regulators. In the circumstances, it is imperative that the CSA promote standardization of relationship disclosure requirements for all registrants before implementation, in accordance with a principles-based approach that does not create new additional regulatory or contractual obligations. Substantive differences and/or the timing of implementation require resolution before the proposed Rules are approved, given the substantial regulatory compliance burdens and the interest of investors alike to obtain understandable concise disclosure.

3.5 Holding client assets in trust: Prime Brokerages

Section 5.10(2) of the Proposed National Instrument mandates that a "registered firm that holds cash on behalf of a client must hold the cash separate and apart from the property of the firm in a designated trust account with a Canadian financial institution or a Schedule III bank." The CSA received a comment in response to the first draft of the Instrument advising that prime brokerage arrangements do not accord well with this requirement. That is because it would be impractical from a business perspective since prime brokerage operations typically need to utilize cash balances as security or margin or both as regards to client positions. Prime brokerage clients are typically mutual fund and alternative investment fund managers. Also, from an operational perspective, section 5.10(2) would require prime brokerage operations to set up entirely new cash management systems.

The CSA responded to the above-noted comment by acknowledging that prime brokerage operations raise unique regulatory issues and that it would consider this issue on a case-by-case basis, perhaps adopting a uniform exemption at some point in the future. (Please see comment #389 of the 2008 Summary of Comments.) Upon reviewing this issue, we agree with the commenter and would urge the CSA to adopt a uniform exemption as soon as practicable. If the CSA chooses not to adopt a uniform exemption, the OSC, in particular, may find itself inundated with exemptive relief applications. In addition, should the provision be adopted in its current form, not only would prime brokerage operations be adversely affected, but clients of prime brokerage operations would suffer as they would no longer be able to avail themselves of the specialized services currently offered by prime brokerage operations. There is also the danger that if a prime broker is not granted timely exemptive relief from the requirement in section 5.10(2), the curtailment of its business could then cause its fund manager clients to breach their fiduciary obligations to their investors.

3.6 Section 5.16 Records – Form, Accessibility and Retention

We support the CSA's desire to implement effective and consistent record-keeping requirements for registered firms. It would be difficult to understate the importance of firms properly maintaining and storing their respective business records. However, by creating two new types of records - activity records and relationship records - the CSA inadvertently may be creating what will no doubt be a substantial financial and administrative burden for registered firms.

Section 5.16(4) of the Proposed National Instrument requires registered firms to maintain activity records for a period of seven years from the "date of the act", and relationship records for seven years from the "date the person or company ceases to be a client of the registered firm." Unfortunately, an overwhelming number of firms archive email correspondence, for example, based solely on the mode of delivery as opposed to content. In order to comply with the proposed retention periods, firms may have to resort to archiving emails in perpetuity. This solution would prove costly and mean that firms would retain client correspondence far longer than appropriate given their respective responsibilities vis-à-vis privacy legislation. In addition, searches of archived emails are expensive and time-consuming as they are usually conducted by third parties who are experts in data management and recovery. The CSA could simplify matters a great deal by eliminating the concepts of activity and relationship records altogether. We suggest that the CSA follow the prescriptive approach as found in MFDA Rule 5 and IDA Regulation 200, which would provide additional consistency with current industry record-keeping requirements. To that end, we believe that it would be much more effective for the CSA to mandate that firms maintain records of client communications for a single, fixed period of time.

As with emails, requirements regarding records of oral communications are equally troubling. The practical implications of this requirement concern us as our business is built on direct client contact primarily through oral communications. It is unreasonable to expect registrants to document every conversation with both clients and prospectus clients. At the very least, there should be a materiality provision included in the record-keeping requirements so as to avoid the necessity of capturing all telephone calls (or otherwise documenting conversations).

3.7 Statements of Account and Portfolio

In the 2008 Summary of Comments, a commenter noted that transaction reporting should be retained in statements. In response, CSA staff noted that the Proposed National Instrument had been revised. (Please see comment #424.) This change does not appear to have been made to section 5.22 of the Proposed National Instrument. We recommend that section 5.22 be amended to require details of transactions that have taken place during the period to be included in the statements.

3.8 Individual Registration Categories – UDP and CCO

Several commenters on the 2007 version of the Proposed National Instrument noted that the Instrument needed to be redrafted in order to be consistent with the concepts regarding the Ultimate Designated Person (UDP) and Chief Compliance Officer (CCO) included in IDA By-law No. 38. This was noted in the 2008 Summary of Comments and the CSA indicated that they had clarified the responsibilities of the UDP and CCO (please see comment # 215.). While we generally agree with the changes made to role of the UDP and CCO, we believe that the role of the UDP needs to be further clarified.

- **UDP – Functions**

  Section 5.24 of the Instrument extends the responsibilities of the UDP to supervising the activities of "each individual acting on its behalf". IDA By-law No. 38 limits the responsibilities of the UDP to supervising its employees. We believe that the IDA formulation of the responsibilities is more appropriate. We are concerned that expanding the supervisory responsibilities of the UDP to individuals acting on its behalf would require the UDP to supervise third party service providers that it may have a limited ability to supervise. We recommend that the CSA conform section 5.23 of the Proposed National Instrument to IDA By-law No. 38.

- **Number of UDP and CCOs**

  We continue to be concerned that the Proposed National Instrument requires each registered entity to have only one UDP and one CCO.

  As you know, some large investment dealers or advisors may have distinct divisions that may be better served by each having their own CCO. We thank you for recognizing this in your summary of comments and amending the Companion Policy to the Instrument to reflect this understanding. We request that you clarify whether a firm would need to file an application for discretionary relief in order to have more than one CCO and how this would be dealt with during the transition period. We question whether it would be more appropriate for the Instrument to permit a registered entity to have more than one CCO where it is merited.

  We also note that for the same reason that a large investment dealer or advisor may need more than one CCO it may put the responsibility of the UDP on more than one person. For example, some entities may be better served by having Co-UDPs to reflect how their business is structured.

  We question whether this would be permitted under the Instrument or whether application for discretionary relief would need to be made.

We believe that while it is important for the functions of CCO and UDP to reside among the senior management, we believe that the Instrument should provide sufficient flexibility to recognize the business needs of large investment dealers and advisors.

3.9 Complaints Handling

We support a principles-based approach to the complaints handling process. From an investor protection perspective, it is important that all registered firms implement policies and procedures to address client complaints.

However, the revised requirements in the Proposed National Instrument and its Companion Policy are materially different from what exists under the current SRO complaint handling procedures. In addition to requiring that oral complaints, "informal" and non-regulatory complaints of an undefined scope, be the subject of the Proposed National Instrument's prescribed complaints handling process, and also that the CCO be aware of all complaints, contrary to what is currently mandated by SRO regulatory requirements, the Proposed National Instrument further dictates reporting of all complaints to the CSA. This goes well beyond the reporting of regulatory complaints to the SROs in accordance with these established complaint handling regimes. Practically, the requirements for the dealer to acknowledge, document and report all complaints as re-defined and to provide a substantive response to these complaints is unreasonable.

Of particular concern is the deletion of the clarification that existed in the prior version of the Companion Policy, which stated that "the initial expression of dissatisfaction by a client, whether in writing or otherwise, will not be considered a complaint, where the issue is settled in the ordinary course of business." As presently being proposed, any request for remedial action would constitute a complaint. This would mean error corrections due to posting errors and a huge range of other items could be considered complaints. At the very least, the CCO should only be expected to be aware of serious complaints and of trends that might be reflective of systemic issues.

As well as creating an unwieldy and unfocussed complaints handling system that has no parameters for reporting purposes and not providing reasonable means for determining the actual commencement and substance of a complaint as is possible when it is provided in writing, there is also a lack of harmonization. This is reflected in respect of Quebec's legislated complaints handling process that provides firms registered in Quebec with an effective exemption to the complaints handling process in the Proposed National Instrument. It is unclear why the Quebec statutory scheme, which does not include the particularity of requirements included in the Proposed National Instrument and its Companion Policy, apart from an annual reporting requirement to the provincial regulator on "the nature and number of complaints filed", is deemed to be compliant with the Proposed National Instrument but the SRO complaint handling regulation is not.

Changes to the SRO (both IDA and MFDA) complaints handling processes have been subject to recent comments by industry. Absent any exemption in the Proposed National Instrument for SROs in recognition of their complaints handling regimes, we believe that the issues raised by the SRO Members regarding the IDA's proposed complaints handling rule must be positively addressed. The CSA must co-ordinate with the SROs for the purpose of harmonizing the SRO rules with the general securities regulation in all jurisdictions in Canada for a clear and effective complaints handling regime to the benefit of all investors.

3.10 Prohibition on certain managed account transactions

For many jurisdictions, section 6.2(2)(c) of the Proposed National Instrument reflects greatly enhanced prohibitions in respect of certain managed account transactions. We have difficulty understanding the CSA's willingness to expand the application of the provisions of s.118 of the *Securities Act* (Ontario), which has been the source of much difficulty of interpretation and which is far from meeting the plain language principles of the CSA.

Contrary to the prohibitions contained in paragraphs 6.2(2)(a) and (b) of the Proposed National Instrument, even transparent disclosure or client consent cannot overcome the trading prohibition imposed by 6.2(2)(c). This prohibition likely aims to ensure that the interests of one portfolio are not favoured over those of another. However, in many instances, the interests of both portfolios would be better served by allowing such transactions, rather than prohibiting them, a policy consideration that was recognized by the Stromberg Report published in January, 1995.

As the adviser is already held to a (contractual and/or statutory) fiduciary duty to act in the best interest of its client, this prohibition does not increase client protection. To the contrary, when neither portfolio would be disadvantaged by a transaction, it is difficult to understand who is protected by such prohibition. Indeed, "cross trade" type transactions (which are prohibited under the Instrument) generally allow advisers to manage asset classes more efficiently, to reduce transaction costs for clients, and to reduce or avoid the "artificial" market impact stemming from the transfer of institutional-size blocks of securities.

While we support the legal oversight of such transactions, we respectfully submit that this should be done in a manner other than extending the Ontario regime to the rest of Canada.

3.11 Related and Connected Issuers

Section 6.6 of the Proposed National Instrument restricts a registered firm from acting as an "advisor" in respect of a related or connected (in the course of distribution) issuer's securities. Currently, securities law regimes permit registered firms to make such trades for clients in managed accounts where client consent has been obtained (for example, in Ontario, under Securities Regulation 227(2)(b)).

The current draft of the Proposed National Instrument provides an exemption to the prohibition on related and connected trades where a registered firm is acting as an advisor in respect of a fully managed account only if the transaction is made in accordance with Section 4.1(4) of National Instrument 81-102 which pertains to approval by the independent review committee (the "IRC Process"). The introduction of the IRC Process for registered dealers and advisors in respect of fully managed accounts in the current draft of the Proposed National Instrument is a significant change in policy by the CSA. The original Instrument provided for these trades for clients with client consent (under section 6.2 (2)(a)(iv)). Client consent also continues to be the basis for relief from the trading prohibition that would apply to registered advisors pursuant to section 6.2(2)(a) and (b) of the Proposed National Instrument. Furthermore, the CSA has recently provided exemptions to several dealers to allow these trades with one-time client consent. Thus, it appears that this change was unintentional and we request that the CSA amend the Proposed National Instrument in

accordance with recent exemptive relief orders to allow registered firms to purchase securities of related and connected issuers for clients in fully-managed accounts once the client has provided consent to such trades.

3.12 Conflicts of Interest

The proposed conflicts regime contemplated in Part 6 of the Proposed National Instrument, represents an improvement relative to the previous version of the Instrument. However, we remain concerned that the section, as currently drafted, does not provide sufficient clarity and may be overly broad. In particular, we believe it is troublesome to introduce an obligation for registered firms to identify conflicts that the firm reasonably "would expect to arise" between it and its clients. It will be difficult from a practical perspective for a firm to identify potential conflicts that may arise in the future. Furthermore, this standard may give rise to legal actions by clients seeking to establish that the firm should have known in hindsight about a conflict. We recommend that the CSA incorporate a standard of materiality here. In addition, it would be useful to provide concrete examples as to the types of potential conflicts that should be addressed, rather than leaving this requirement entirely open-ended. We are also concerned about the wording of section 6.2.3 of the Proposed Companion Policy as it appears to lend itself to an interpretation that would require firms to implement procedures and create "internal systems" to manage conflicts of interest that may arise as between clients. While we acknowledge the importance of ensuring that all clients are treated in a fair manner, in our view it would be onerous to impose a general requirement that firms address these issues and to create new systems without regulatory guidance as to the specific ills this section is intended to address. With respect to the example provided in the section in question, in our view there are already regulatory requirements in the Proposed Instrument (most notably, suitability requirements) and elsewhere that would address the potential conflict that is described.

3.13 Referral Arrangements (Sections 6.11-6.15)

The CSA states that requirements with respect to referral arrangements will extend to referrals between affiliates. While we agree that some form of disclosure for referral arrangements is beneficial to clients, we submit that standard disclosure in the case of referrals between affiliates should be sufficient. Clients generally expect referrals to occur within a large financial institution between affiliates since that is part of standard commercial business. In addition, referrals between affiliates do not present the type of harm that the CSA is trying to remedy in introducing the referral arrangement requirements in the Instrument. Furthermore, most referral fees paid between affiliates result in a change to compensation to individual representatives as opposed to specific payments of fees. Detailing such referrals would be very difficult given that the type of service involved may not always be identifiable at the outset. For instance, a client might be referred for a mortgage but might also eventually request a credit card and a line of credit. Standard disclosure in these cases would be more efficient and practical given that we have not seen any harm arising as a result of these types of safe referrals.

The need to notify clients of any change to referral arrangements is too broad. We suggest the requirement to notify clients of a change to the referral arrangement be substituted with a requirement to notify clients of a significant change. Significant change is the term the CSA has chosen to use in the Proposed National Instrument as a result of some jurisdictions having a definition of "material change". We believe that this is a necessary amendment to the Proposed National Instrument given the impracticalities with mandating revised disclosures in the event of any change could lead to revised disclosures for such inconsequential changes as a name change.

4. TRANSITION PERIOD ISSUES

The Proposed National Instrument requires registrants to comply with certain requirements, such as record retention and financial reporting, immediately upon the effective date of the Instrument and other requirement after transition periods ranging in length from 6 to 12 months.

We submit that the implementation timelines in the Proposed National Instrument place an unduly onerous financial and administrative burden on large registrants. For these registrants, the effective implementation of the changes to the existing registration regime contemplated by the Instrument and related legislation will require coordinated efforts across various constituents and resources. In the experience of the banking industry, it has taken at least a year to implement reform projects of *lesser* magnitude than the Registration Reform. Financial institutions are unable to finalize projects and resources related to the implemention of the complete package of registration reforms until the final requirements under the Instrument and related legislation are finalized, which undermines their ability to undertake advance planning with respect to the new registration regime.

We strongly urge the CSA to give greater consideration to business realities when setting the transition periods in the Instrument. A longer transition period is imperative especially in respect of certain requirements such as record retention, complaint handling and referral arrangements because compliance with these requirements in particular places a heightened burden on large registrants. We also request that, in setting the implementation timelines for the Instrument, the CSA be mindful of various other regulatory initiatives that are forthcoming in the near future and with which registrants will have to comply, such as point of sale, CRM and suitability requirements.

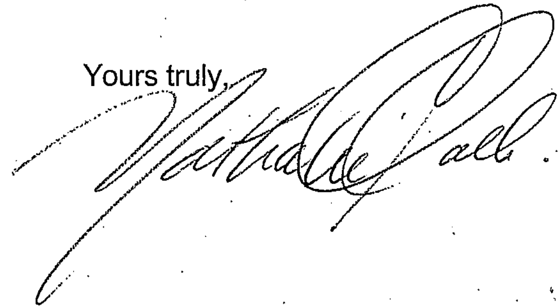
We recommend that transition periods be provided for all requirements in the Proposed National Instrument, with transition periods of at least 12 months for the less onerous requirements and at least 18-24 months for the more onerous requirements, including record retention, complaint handling and referral arrangements.

5. TECHNICAL ISSUES

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

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

Yours truly,



Appendix A
Technical Issues

NI 31-103 and NI 31-103CP

Part 2 – Categories of Registration and Permitted Activities

- With the removal of the requirement for most officer registrations, what rules, if any, will there be governing firms' corporate structures?
- Will there be any restrictions on titles used by officers (i.e. use of "Director" or "Managing Director") - or would that only be addressed at the SRO level?

Part 2.2-2.6 - Exemptions

- Please clarify the transfer procedure in situations where the registrant does **not** meet those conditions. Would an F7 be required and if so, how would NRD be equipped to differentiate?

Part 2.10 – Chief Compliance Officer

- In response to comments on 2007 version of rule, the CSA indicated they were reviewing the proficiency requirements for CCOs. We look forward to gaining further clarification on the professional accreditation requirement.

Part 4 – Fit and Proper Requirements

Part 4.2 – US Equivalency

- The current proficiency rule states that "an individual may meet a requirement to complete the Canadian Securities Course or the Conduct and Practices Course by completion of the New Entrants Examination and the U.S. Series 7 Examination;" however there is no reference to the Conduct and Practices Course in the revised rule. Please clarify if this is correct.
- If so, will a separate CSA exemption be required for CPH if the IDA retains the CPH equivalency for the New Entrants/Series 7 exams?

Part 4.15 – Investment Fund Manager

- The previous version of the proposed instrument established Portfolio Manager CCO proficiency requirement for Investment Fund Mgr CCOs. Would this standard still be accepted or will Investment Fund Manager CCOs only qualify if they meet the requirements under Part 4.13?
- Please clarify why "consecutive" years are referenced, whereas that requirement was removed from Part 4.13. We recommend removal of the "consecutive" employment requirement from Part 4.15.

Part 7 – Suspension and Revocation of Registration

- Automatic transfer process – we understand that the form will only be available when the registrant is transferring in the exact same categories and jurisdictions, and if the transferring firm has the same category as the terminating firm. Please clarify whether the new transfer submission would be more restrictive than the current process, or whether the process will be virtually the same as it is now. For instance, if there are multiple firm categories, does the transferring firm have to be registered in ALL the same categories as the previous firm, or do they just have to be registered in the same firm category under which the registration is being transferred?
- We would appreciate further clarification on timelines of the hearing process.
- In the unlikely event that a former sponsoring firm was found to have erroneously or maliciously disclosed exaggerated or inaccurate details under Section E of Form 33-109F1, would there be any penalty? We believe this would be appropriate if this filing caused the regulator to suspend an individual's registration pending review of the details.
- Suspension of IDA approval – we assume that section 7.3(2) contains a clerical error when it refers to an individual's registration in the category of "investment dealer".
- Suspension of MFDA approval – similarly, we assume that section 7.4(2) contains a clerical error when it refers to an individual's registration in the category of "mutual fund dealer".

Part 10 - Transition

- Would the CSA consider a pre-transition period for firms to de-register "junior officers"? This would ease the burden on both firms and the CSA with respect to processing of F1s for all non-trading officers who will no longer require registration. It would also allow firms to avoid renewal fees for those who will not require registration following implementation of NI 31-103.
- We understand that there will be a "freeze" period for NRD of approximately 30 days, and would appreciate clarification on what we will be required to disclose during the NRD freeze period. Will the CSA accept scanned documents during the freeze period, or will paper copies be required?
- With regard to the freeze period, we propose a waiver of the requirement to disclose notice-type filings (excepting terminations, and perhaps changes to Items 13-17) in paper form during the freeze. We believe that this would be duplicative for both registrants and CSA staff, as the submissions would be filed in paper form and then re-filed via NRD. We believe that this proposal carries low risk due to the short length of the freeze period.

Part 10.1 – Change of Registration Categories – Firms

- Will previously approved IDL companies be subject to the new EMD proficiency requirements for Reps, UDPs and CCOs? We had understood

that activities previously captured under the IDL category would change to an exemption from the dealer requirement following the implementation of 31-103, however by converting existing IDLs to the EMD category, the proficiency requirements will actually be more stringent than they were previously.

Amendments to NI 33-109 - Forms

Overall Comments

- We note some inconsistency in the various forms with regard to alpha and numeric numbering and spaces for authorized signatures (for example, some forms have lines for the names of the signatories and others don't; some forms ask for the signatory's title, some don't.
- Please define "authorized (signing) partner or officer," given the changes in officer registration under NI 31-103. Will these be officers appointed by the corporation? In addition, these terms should be consistent on all forms.
- We suggest that officer titles be removed from all forms.
- A short guide to completing each of the forms, addressing each item, would be extremely helpful. In this way, less explanation would be required in the actual questions.

Form 33-109F1 – Notice of Termination of Registration

- We request clarification on the imposition of fees for late filing. For instance, there appears to be potential for firms to pay fees twice for one Notice of Termination (by missing both the five- and thirty-day deadlines).
- We would appreciate further clarification on how the two-stage filing procedure will be set up on NRD; will there be a new submission type, or will the existing "Correct Termination Information" submission type be used for this purpose?
- The CSA's responses to comments on the previous draft of the instrument (see page 160) indicate that Section E must be filed within 30 calendar days of the effective date of termination. However, both the form and the 33-109, Part 4.3(2)) indicate 30 business days. In order to be consistent with all other filing deadlines, we recommend that business days be used.
- If all details are available within the initial five-day period, could a single submission be made? Or would we have to put details for Section E on a separate submission? Please clarify.
- Item A
    - Name of Firm is also requested in Section H (Certification). This is where the firm name is recorded on the other 33-109F series forms for individuals. We suggest removing this section to eliminate duplication and maintain consistency with the other forms

- Item D.1
  - We would appreciate further clarification of the definition of *effective date of termination* and confirmation that it may not be the last effective date of employment. For example, a registrant may have resigned and left the firm's physical premises on Date A, but still be employed by the firm until the last day of a required notice period (Date B). Therefore the registrant was still technically employed by the firm until Date B. According to the definition provided, Date A would be the effective date of termination, assuming the registrant was not performing, nor was authorized to perform, registerable activities during the period from Date A to Date B. Please verify if our understanding is correct.
- Item D.2
  - We note that "dismissed for **just** cause" replaces "dismissed for cause" on the current form. We would appreciate clarification of the rationale for the addition of the word "just," as we believe it adds a higher legal risk for the firm.
  - We suggest re-wording "requested or encouraged to do so by the firm" to the more neutral "permitted to resign." We believe that the former wording could be subjective.
  - There is no option for "dismissed in good standing" – would this be considered an "Other" reason? Are there examples of additional "Other" reasons that could be provided?
  - To avoid subjectivity, we suggest using the following reasons: Resigned in Good Standing, Permitted to Resign*, Dismissed in Good Standing*, Dismissed for Cause*, Retired, Deceased, Other*. Those marked with * would require further explanation.
- Item E
  - Would any "Other" reasons for termination of registration require the completion of Item E (e.g., "dismissed in good standing")?
  - We recommend removing "engaging in undisclosed outside business activity" from the list of examples in Question 7. We would expect that such a matter would only be disclosed on the 33-109F1 if it led to the individual's termination.
  - Please provide guidance on the meaning of the terms "significant," "pattern," and "relevant" in Questions 3, 8 and 10. We are concerned that these terms are subjective and may give rise to inconsistency in reporting.
  - We believe that Question 8 is somewhat duplicative, as the information requested would have been captured in the response to Question 7.
  - Is it possible to obtain guidance as which positive answers might cause a registration to be suspended?

- Item G
  - We suggest that reference be made to the specific law that makes it an offence to submit information that is misleading or untrue.
  - We suggest that the statement found at the end of this section, 'If there is any doubt about the relevance of information, it should be included' would be better included under section E.
- Item H
  - Name of Firm has already been provided in Item A (see comment for Item A, above). We recommend that this duplication be removed.

Form 33-109F2 – Change or Surrender of Individual Categories

- There is no field for the effective date of the change/surrender. This date may differ from the date of the submission.
- Item F.3
  - We would prefer to keep the questions as in the current form, rather than add the new F1 questions to this form. The individual is remaining with the firm so presumably the current, more general questions are sufficient.
- Quebec is not listed under "Notice of Collection and Use of Personal Information."

Form 33-109F3 – Business Locations Other Than Head Office

- Item 1
  - "Sub-branch" is listed as a type of location; however our understanding is that the category is not being retained. Please clarify if this is meant for IDA firms only.
- Quebec is not listed under "Notice of Collection and Use of Personal Information."

Form 33-109F4 – Application for Registration of Individuals

- Item 1.3 (Business Names)
  - We suggest that the appropriate place for this to be captured is under the Firm Information details on NRD (not on individual applications); we believe that team names should be dealt with outside of NRD, with Sales Compliance.
- Item 5 (Registration Jurisdictions)
  - Please clarify the procedure we should follow under the new Passport System (e.g., how would principal regulator be indicated?).
- Item 6 (Individual Categories)
  - "Branch Manager (MFDA firms only)" – please provide clarification with respect to the use of this category.
- Item 8 (Proficiency)

  - We believe that the CSA's intent is to capture any *relevant* post-secondary education in this section. If this is incorrect, we are concerned that **all** post-secondary information has not been tracked for the past nine years. The level of detail required in Item 8 (e.g., exact completion date, original proof of completion) will be extremely difficult to obtain/verify in many cases. We therefore suggest that the wording be amended to "Under "Other", include all post-secondary education, degrees and diplomas <u>that are relevant to or required for this application</u>"; we would then appreciate guidance on what the regulators would consider relevant.
  - We suggest the inclusion of "(formerly AIMR)" after CFA Institute as some are still not familiar with the newer name.
- Item 9 (Location of Employment)
  - We sincerely appreciate the addition of the Unique ID and Branch Transit/Cost Centre fields. It would be preferable if the Unique ID field were under Item 3 (Personal Info) rather than under Location. Also *both* fields should be labeled "(optional)" for consistency.
- Item 10, Schedule G (Current Employment)
  - Please clarify if all OBA entries are to be included under the "description of duties" field. Will there be separate entries for each entity (as it is on NRD currently)? If all in one item, it will be very difficult to manage for multiple activities. We would prefer the option of a new field specific to OBAs that does not require as much detail as Item 10.
- Item 12 (Resignations and Terminations)
  - Please clarify if **all** previous employment should be referenced in these questions, even if not related to financial services.
- Item 13 (Regulatory Disclosure)
  - We appreciate the work done to put this section into plainer language.
  - Ideally, the historical registration information would be generated from the regulators, and kept in a fixed format. The existing format has led to multiple entries when corrections are requested, as errors cannot be removed. The existing format (free form text box) also allows for significant inconsistencies with respect to how the information is entered: we suggest that there be fixed fields with some flexibility.
  - Why must foreign registration information be captured? For the most part, these details are readily available through foreign regulatory bodies' web-based systems.
- Item 16 (Financial Disclosure)
  - Item 16.2 - We understand that previous "yes" answers will not be mapped to the new question, but will be available in the "History" section of the registration record. We support this solution.
  - Item 16.4 – We suggest adding "to the best of your knowledge" to this question.

- Collection and Use of Personal Information - The section refers to collection and use of personal information however, paragraph 3 states that 'by submitting this form you consent to the collection and disclosure of your personal information...' We request that how and when disclosure is going to be made by the regulatory authority be specified.
- Self-Regulatory Organizations - We believe requiring an individual to be conversant with the rules of jurisdictions for which he/she isn't registered (i.e., where the firm is registered in such jurisdictions) is a too onerous of a requirement and we request that the CSA consider rewording this section.
- Certification
    - There are three signature lines for "authorized officer or partner", with no line for their names (see also General Comments, above).

Form 33-109F5 – Change of Information in Form 33-109F4

- The instructions indicate that this form is also to be used for changes in 33-109F6; please amend the form's title.
- Under "Certification," there are three signature lines for "authorized officer or partner", with no line for their names.
- Quebec is not listed with the other jurisdictions under the privacy information.
- We suggest that filings regarding changes to Item 10 of Form 33-109F4 (Current Employment) be permitted within 10-20 business days of the change (to allow for sufficient information gathering and review by the firm).
- We note that updates to Item 3 (Personal Information) of Form 33-109F4 can be filed within 20 business days. We suggest that one year is a more reasonable timeframe for updating changes of this nature, since most details would either never change (date of birth, place of birth), or would only change infrequently or inconsequentially (gender, eye colour, hair colour, height & weight).
- Our understanding is that this form will not be available on NRD. As such, we propose that the filing deadline of five business days be extended to ten business days, or that scanned soft copy sent by email be acceptable rather than requiring hard copy sent via mail/courier.

Form 33-109F7 – Notice of Reinstatement ("Transfer Form")

- Instructions (bolded in box)
    - There will **always** be a change to Item 13 (Regulatory Disclosure) when preparing this form, as we will be end-dating the applicant's registration history with the previous sponsoring firm. Based on the wording of the current F4 form, this would not trigger a change to Item 13 *("Other than a registration that has been recorded on NRD under the NRD number you are using to make this submission...")*. We therefore request that Items 13.1(a) and 13.2(a) be specifically excluded from the changes that preclude using this form.

- Could the regulators provide guidance on the time frame for review and possible revocation of a reinstatement?
- Item 6
  - We question whether providing a field for the NRD Location number of the previous sponsoring firm is necessary; if so, we strongly recommend pre-populating the previous firm's NRD Location number in this form, as the new sponsoring firm will have no way of knowing it.
- Item 9
  - For Type of Location details on the paper version of the form, please clarify the meaning of "effective date".
  - In order to be clearer, we would suggest re-wording this as the "effective date of registration transfer", with a full definition contained in the rule or CP.
- Item 13 – See comments on instructions, above.
- Acknowledgements, etc.:
  - We suggest removal of "etc.," as this section consists **only** of acknowledgements.
  - Please edit the second paragraph for consistency in voice: "You acknowledge that you are required…there is no unreported change to my Form 33-109F4…".
  - Third paragraph - will firms be given the option to either accept Terms & Conditions or withdraw the application, or will the T&C be imposed automatically? If a transferring registrant fails to disclose undischarged T&Cs, we request that firms be given the option to accept or withdraw the application, upon notification from the regulator.