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

c/o John Stevenson, Secretary
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Via Email: jstevenson@osc.gov.on.ca

c/o Anne-Marie Beaudoin, Directrice du secrétariat
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Dear Sirs/Mesdames:

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

This letter is submitted on behalf of the Canadian Imperial Bank of Commerce and its affiliates (collectively, "**CIBC**") in response to the Notice (the "**Notice**") of Proposed National Instrument 31-103 *Registration Requirements* (the "**Instrument**") and Companion Policy 31-103CP (the "**Policy**") and related Request for Comments published by the Canadian Securities Administrators (the "**CSA**") on February 29, 2008.

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

We are very appreciative of the positive changes that have been made by the CSA to this draft of the Instrument and the Policy. We look forward to continuing our productive working relationship with the CSA in order to ensure that the Instrument is adopted in a format and in a manner that is beneficial and practical for all impacted parties.

GENERAL COMMENTS

CBA comment letter

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

Volume of regulatory changes

While we congratulate the CSA on its efforts to introduce legislation that has the intent of harmonizing and streamlining existing requirements, we are overwhelmed with the volume of proposed changes that the CSA is introducing for the industry to review in such a short time frame. By way of an example, below is a list of some of the proposed rule changes we were expected to review and comment on by May 29, 2008:

- Instrument and the Policy;
- Proposed amendments to National Instrument 45-106 *Prospectus and Registration Exemptions* ("**NI 45-106**");
- Proposed amendments to National Instrument 31-102 *National Registration Database* and Companion Policy 31-102CP;
- Proposed amendments to National Instrument 33-109 *Registration Requirements* and Companion Policy 33-109CP; and
- Proposed amendments to the Ontario Securities Act relating to the Instrument and the Policy released for comment on April 25, 2008 ("**OSA Amendments**").

This is not by any means an exhaustive list of the proposed regulatory changes arising as a result of the Instrument and the Policy. Additional proposed regulatory changes include amendments to SRO rules, revocations and rescissions from the various provincial securities acts and securities regulations and the amendments to various other national instruments. We are concerned that the speed with which these proposed regulatory changes are being introduced does not provide registrants and investors sufficient time to understand the implications the proposed changes will have on registrants, investors and the capital markets. Given the importance and magnitude of these proposed regulatory changes and the long lasting effect they will have on the securities industry, we recommend that the CSA either provide the industry with longer review and comment periods the next time these proposed regulatory changes are released for comment or restrict the scope of these proposed changes to registration issues. It is in the best interest of all involved to ensure that we get the proposed rules changes right.

Consequential provincial amendments

Furthermore, with the exception of a few provinces, we are concerned that the provincial legislative consequential amendments of most CSA jurisdictions were not released for comment at the same time as the Instrument. This lag in timing makes it difficult for the industry to understand the full implications that the Instrument will have on a Canada wide basis. We have therefore been placed at a disadvantage in reviewing the Instrument and our comments may not be as comprehensive. It would be prudent to ensure that the next time the Instrument is released for comment that it is accompanied with all of the proposed provincial legislative amendments and that such release is done in an easy to follow format.

We are also concerned that many of the proposed provisions contained in the Instrument are intended to be moved to provincial legislation rather than be maintained in the Instrument. This approach severely undermines the intent to harmonize securities regulation across Canada which is has been the overarching intent of the Instrument. Furthermore, this approach will lead to confusion on the part of the industry when trying to locate a relevant rule because it may not be intuitive for industry members to consult the Instrument and also consult each provincial legislation. In addition, in the event of future amendments to the Instrument, it will be very difficult to track such amendments across the provincial legislation to ensure that provisions found in both the Instrument and provincial legislation stay harmonized. Given the above, we recommend that all provisions found in the Instrument should remain in the Instrument as opposed to being moved to provincial legislation. Doing otherwise will lead to market inefficiencies and undermine harmonization.

Exemptive relief orders

We understand that the CSA is undertaking an initiative to assess the various exemptive relief orders that have been granted in the past in the context of the Instrument. We also understand that the CSA will provide further guidance with respect to the exemptive relief orders that will remain valid and those that will be invalidated as a result of the Instrument. We look forward to the publication of such detailed guidance prior to the adoption of the Instrument.

SPECIFIC COMMENTS

Business Trigger

Codifying business trigger in the Instrument

Having reviewed the OSA Amendments we note that the discussion of the business trigger codified in subsection 25(6) does not mirror the discussion of the business trigger in the Policy. For example, subsection 25(6) includes additional factors that must be considered when determining whether a person or a company is in the business of trading or advising such as whether the activity includes inducing investors (see subsection 25(6)4.), whether the activity is not merely incidental (see subsection 25(6)6.), and whether the activity satisfies such other criteria as the Director may consider relevant in the circumstances (see subsection 25(6)7.). We are concerned that allowing each province to adopt its own formulation of the business trigger in their respective Securities Acts will defeat the CSA's intent to harmonize requirements across all CSA jurisdictions and will make any future legislative changes to the concept of the business trigger very difficult to effect. Adding to the confusion would be the fact that the Policy also includes a discussion of the business trigger and as such registrants would be required to consider the discussion on the business trigger in both the Policy and the relevant Securities Acts. Given the inconsistencies between the business trigger factors in the Policy and those found in the OSA Amendments, it will be difficult for registrants to make conclusive determinations as to the need for registration. In order to avoid confusion, we propose that the business trigger be codified in the Instrument as opposed to in each jurisdiction's Securities Act. Furthermore, given that the business trigger factors are not law but instead are a form of guidance, we propose that they continue to be set out in the Policy as opposed to being codified in each jurisdiction's Securities Act.

Our alternative recommendation would be to ensure that all provinces adopt the exact same formulation of the business trigger in their respective Securities Act prior to the implementation of the Instrument. Under this alternative, we continue to recommend that the business trigger factors be retained in the Policy given their nature as guidance as opposed to conclusive statements of law.

The recommendations we have made serve to ensure that the overarching principle of harmonization is upheld and clarity is brought to bear.

Harmonization of Business Trigger

Given that one of the main purposes of the Instrument is to harmonize the registration regime across Canada, we find it extremely problematic that harmonization will not be achieved with respect to the business trigger in the provinces of British Columbia, New Brunswick and Manitoba. While we are not disputing that each of these provinces may have their own reasonable rationale for not uniformly adopting the business trigger, our concern is the resulting lack of harmonization and related confusion. For instance, it is proposed that British Columbia, New Brunswick and Manitoba will adopt some form of a business trigger concept in NI 45-106. Doing so will be confusing for registrants in a few years because it will not be instinctive for them to look to NI 45-106 when considering registration issues given that NI 45-106 will only be a prospectus exemptions instrument 6 months after the Instrument is adopted. As well, it is not conducive to a passport system to allow certain provinces to have a different registration regime than the rest of Canada. We therefore suggest that the rationale for differences in British Columbia, New Brunswick and Manitoba be seriously discussed amongst all CSA jurisdictions and a consensus be reached across Canada with respect to a harmonized business trigger. It is not productive or efficient for capital markets, registrants or investors to continue allowing certain provinces to implement registration regime requirements in a way that is not consistent with those of other provinces. The inconsistency conflicts with the intent of the Instrument to harmonize the registration regime across Canada.

Guidance with Respect to Business Trigger Factors

We understand that the starting point for determining whether registration is required will be to consider whether the activity is trading or advising and if so whether the activity can be considered to be in the business of trading or advising. Furthermore, we understand that there are many variables that will come into play with respect to this determination and that it would be difficult for the CSA to provide guidance that covers each and every possible circumstance. However, we think it is reasonable for the CSA to provide more guidance and clarity on each of the business trigger factors.

Providing this type of guidance will be useful to assist the industry in determining which activities, individuals and firms will require registration. For example, without any further guidance and clarity from the CSA, it would be difficult to assess at this point what types of activities would fall under each business trigger factor and whether individuals such as financial planners and research analysts would need to be registered. More detailed guidance from the CSA on the business trigger factors will help to address the grey activities such as those mentioned above.

PART 1 – DEFINITIONS

"Security" and "Exempt Security"

There is currently a lack of consistency across Canadian jurisdictions with respect to the definition of "security" and "exempt security". While we recognize that there may be local considerations with respect to the differences in the definitions of these terms and while we understand that the term "exempt security" is not specifically used in the Instrument, we are concerned that the lack of a harmonized definition for these terms has been creating confusion and will continue to do so. Given that these terms are the basis for whether registration will be required, it is imperative that the industry be provided with a clear and uniform definition of these terms. As you have seen from previous comment letters, the inconsistency in the definitions of security in provinces such as Quebec and Manitoba from the rest of Canada led to much confusion amongst industry members as to whether financial institutions who sell products such as Guaranteed Income Certificates and Index-Linked Guaranteed Income Certificates will need to register in order to sell those products once the Instrument comes into force. We acknowledge that mobilizing all of the CSA jurisdictions towards adopting a unified definition of "security" and "exempt security" is a large endeavor. We submit that now is the time to undertake such a project and we believe that this task is crucial to the smooth implementation of the Instrument. We therefore urge the CSA to take on this initiative prior to implementing the Instrument.

"Permitted Client"

We understand that the definition of a "permitted client" is a sub-set of the definition of an "accredited investor" as that term is defined in NI 45-106. As a result, we understand not all categories in the definition of "accredited investor" have been included in the definition of "permitted client". However, we suggest that certain categories from the "accredited investor" definition that were not included in the definition of "permitted client" (specifically, subsections (m), (n), (o), (t) and (v) of the definition of "accredited investor" in NI 45-106) be included in the definition of "permitted client". In our view, including such categories does not offend the intent of the CSA to only include clients in the "permitted client" definition who are "sufficiently sophisticated, or have sufficient resources to obtain expert advice, that they may neither need nor wish for the same level of protection as that which the registration regime extends to other investors."

Furthermore, we note that the CSA did not include numbers 14 and 15 of the definition of "permitted client" found in Ontario Securities Commission Rule 35-502 *Non Resident Advisers* ("**OSC Rule 35-502**") in the definition of "permitted client" in the Instrument. We suggest that those categories be included in the definition of "permitted client" in the Instrument given that including those categories would not offend the spirit behind the "permitted client" concept in the Instrument. Finally, subsection (l) of the definition of "permitted client" in the Instrument includes a registered charity as a permitted client. We suggest that this subsection should also include foundations, endowments and other not-for-profit organizations.

PART 2 - CATEGORIES OF REGISTRATION AND PERMITTED ACTIVITIES

General

Registration Application Process

The CSA has indicated that firms who wish to register in a new category must undergo the new proposed registration application process (the "**Application Process**") which would entail the firm submitting the following documents to the relevant securities regulator:

- Five-year business plan;
- Policies and procedures manuals;
- Proposed marketing materials;
- Issuer disclosure information; and
- Standard employment agreement between registrant and registered individuals.

We are uncertain as to whether the Application Process will apply only to firms who are not currently registered in any category and need to apply for registration for the first time. We would not expect that the Application Process will also apply to firms who are currently registered in an existing category and wish to register in an additional new category or to firms that are currently registered as limited market dealers in Ontario and Newfoundland and wish to register as an exempt market dealer in provinces other than Ontario and Newfoundland once the Instrument comes into force. We recognize that the Application Process is meant to assist the relevant securities regulators to learn about the firm and its activities. Therefore, it makes sense to subject only those firms who are not currently registered to the Application Process since the relevant securities regulator would not have had any prior interaction or familiarity with such a firm. However, where a firm is currently registered and wishes to be registered in a new category or in an existing category but in more jurisdictions, it is appropriate to assume that the relevant securities regulator is familiar with the firm and its activities given that the firm would have already been subject to that securities regulator's oversight for whatever length of time the firm has been registered. For such existing registrants, we believe that it would be an administrative burden to be subjected to the Application Process. We do not believe that the Application Process will provide any additional information to the relevant securities regulator that they would not have already seen through the initial application process and/or routine audits for firms that are currently registered. We therefore submit that existing registrants should be permitted to continue to follow the existing process of registration used when they request to add a new category of registration or be registered in more jurisdictions in a category they are already registered in.

Also, we submit that firms currently registered as limited market dealers in Ontario and Newfoundland who wish to extend their registration to other jurisdictions in Canada once the Instrument comes into force should be able to do so simply through the National Registration Database. In other words, such firms should get automatically mapped over from limited market dealer to exempt market dealer for Ontario and Newfoundland and for any other province that the registrant requests without having to undergo the Application Process. We suggest that the transition periods sections be clarified to reflect this.

2.1 Dealer categories

Exempt market dealer

We are concerned that Manitoba and British Columbia will not be adopting the exempt market dealer category. While we understand that Manitoba and British Columbia feel that their proposed approach better serves their constituents, we submit that the goal of harmonization across Canada far outweighs any provincial nuances that may exist. The registration regime in Canada is complicated enough without having to also deal with jurisdictional distinctions. Operational and capital market efficiencies are best served through harmonization. We fail to see how the exempt market dealer category would not achieve the same purpose for firms in Manitoba and British Columbia as that which those provinces believe is achieved through NI 45-106 exemptions. There is no better time than the present to reassess the validity of maintaining different registration regimes in Manitoba and British Columbia and serious thought should be given to ensuring harmonization. We have repeatedly made the point that lack of harmonization creates a fractured system that is both confusing and inefficient.

We congratulate the CSA for allowing exempt market dealers to trade in mutual funds. We believe that this is a positive move in the right direction because it will increase efficiencies and eliminate the need to unnecessarily require firms to register in multiple dealer categories where doing so will not increase investor protection. Allowing exempt market dealers to trade in mutual funds is highly beneficial for firms who are registered as portfolio managers but who only wish to obtain a dealer registration in order to be able to trade in prospectused mutual funds of their affiliates. Those types of firms are not generally in the business of trading mutual funds and limit their trading activities to a few prospectused mutual funds or pooled funds. In those types of circumstances, we submit that it is reasonable for such firms not to register as full mutual funds dealers. Given the limitations on the types of clients that an exempt market dealer may deal with (i.e. accredited investors), we are not concerned that allowing exempt market dealers to trade in mutual funds will lead to a migration of clients to exempt market dealers and a move away from mutual fund dealer registrations. For purposes of clarity, we agree that where a firm's business is solely to trade in mutual funds that firm should be required to register as a mutual fund dealer.

2.2 Exemption from dealer registration for advisers

This exemption relieves registered advisers that are actively managing their clients' accounts with discretionary authority from having to register as a dealer to distribute units of their pooled funds into the clients' accounts.

We understand that the CSA does not wish to extend this exemption to instances where the registered adviser is distributing its own pooled funds to third parties on the basis that doing so constitutes trading. While we do not fully agree that such a position is reasonable in instances where the client is an accredited investor, we nonetheless understand the CSA's rationale for taking this position. However, we do not believe that the CSA has provided us with a reasonable explanation for their desire to limit this exemption to the registered advisers' own pooled funds for discretionary clients.

We submit that a registered adviser who wishes to distribute pooled funds managed by an affiliate should 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/or pooled funds managed by an affiliate but also pooled funds managed by a third party, dealer registration would be necessary.

Furthermore, we submit that limiting the exemption to pooled funds only is problematic. We believe 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, in some instances, one might even argue that the sale of a proprietary or affiliate's public mutual fund brings with it more regulatory oversight than a pooled fund that may not be prospectused.

The scope of the exemption does not take into account sub-advisory practices where a registered adviser may retain a sub-adviser to fully manage the registered adviser's clients' accounts. Read literally, this exemption only applies if a registered adviser is actually doing the managing. We do not believe that this is an appropriate limitation and submit that this exemption should be extended to apply to registered advisers who retain sub-advisers. Therefore, registered advisers should be able to rely on this exemption in instances where the management of the registered adviser's clients' account may be done by the registered adviser or a sub-adviser retained by the registered adviser.

In addition, the narrow scope of this exemption has the effect of restricting the ability of a registered adviser to treat discretionary and non-discretionary clients in the same way. The non-discretionary clients are placed at a disadvantage by not being able to be invested in the same securities by their registered adviser as the discretionary clients. 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 obtain dealer registration. It would be inconvenient for the non-discretionary clients to have to deal with a different registrant that is a registered dealer in order to be able to have access to the same pooled funds (or public mutual funds, if the exemption is extended) that a discretionary client would have access to. There are cases where an institutional client and the adviser agree that the client's funds will be managed in a particular pooled fund, rather than in a separate account, due to the size of the investment or for other reasons. In these cases, the client is conferring discretionary authority at the fund level. This is in contrast to other institutional clients who might wish to confer discretionary authority to the portfolio manager at the account level. From the point of view of the client, in both scenarios, it is giving its money to the adviser to manage. We do not believe that clients choosing to invest in pooled funds should trigger the dealer registration requirement for the adviser. Therefore, for purposes of efficiency and fairness to clients, we urge the CSA to extend this exemption to cover a registered adviser's non-discretionary clients.

Finally, this exemption provides relief from the dealer registration requirement to advisers distributing their own pooled funds but does not extend to providing relief from the investment fund manager registration requirement to advisers who manage their own pooled funds. Therefore, an adviser who manages their own pooled funds would have to be registered as an investment fund manager and is not afforded the same type of exemption as is the case for dealing activities relating to the adviser's own pooled funds. The CSA has stated that they will consider exemptive relief orders for advisers managing their own pooled funds from the requirement to register as investment fund managers on a case-by-case basis. This approach implies that the CSA sees the merits in providing for this type of an exemption and we suggest that the CSA should include this type of an exemption in the Instrument before the Instrument comes into force to avoid the need for exemptive relief orders.

2.3 Adviser categories

The first draft of the Policy included a helpful discussion in section 2.5 about asset allocation being generic advice that does not require registration. We note that this discussion has been removed from the Policy. We assume that the removal of this discussion relates to the CSA's belief that pure asset allocation is generic advice and thus falls under the generic advice exemption that has been provided in the Instrument and does not require registration. However, in order to provide clarity to the industry on this issue, we suggest that the same asset allocation discussion from section 2.5 in the first draft of the Policy be put back in this draft of the Policy.

2.6 Investment fund manager

Definition of investment fund manager

Section 2.6 of the Instrument defines an investment fund manager as a "person or company that is *permitted to direct* the business, operations or affairs of an investment fund." On the other hand, section 1(1) of the Ontario Securities Act defines an investment fund manager as a "person or company that *directs* the business, operations or affairs of an investment fund." We query whether the differences in the definitions were intentional or a drafting oversight. In any event, the terms "permitted to direct" and "directs" can have different meanings and nuances in the terminology may prove to be problematic for firms determining whether they need to be registered as an investment fund manager. This type of confusion may be exacerbated depending on how the remaining CSA jurisdictions decide to define the term investment fund manager. To avoid this type of confusion and to ensure harmonization, it is our suggestion that the definition of "investment fund manager" be codified in the Instrument and not left to be included in the Securities Acts of the various jurisdictions. In the alternative, we suggest that all jurisdictions adopt the same definition of "investment fund manager". We are not sure at this point whether the definition found in the Instrument should be used as the harmonized definition since the term "permitted to direct" is vague. Therefore, we would like guidance from the CSA on what they mean by "permitted to direct" after which we may be in a better position to assess whether the definition used in the Instrument is appropriate to use as the harmonized definition.

Marketing and Wholesaling activities of Investment Fund Managers

Section 2.8.1 of the Policy provides that an investment fund manager will have to register as a dealer if it carries on marketing and wholesaling activities. The Policy also states that an investment fund manager does not have to register as a dealer if its marketing and wholesaling activities are incidental to its activities as an investment fund manager. We find this discussion in the Policy inherently contradictory because it is accepted in the industry that marketing and wholesaling activities of investment fund managers are incidental to their activities as investment fund managers. Our recommendation is that the Policy be clarified to state that marketing and wholesaling activities are incidental activities of investment fund managers that do not require dealer registration unless the marketing and wholesaling activities relate to third party investment funds that are distributed directly by the investment fund manager.

A further change we would recommend in section 2.8.1 of the Policy is for the CSA to include the marketing and wholesaling activities of investment funds that are managed by an affiliate of the investment fund manager as incidental. Including investment funds managed by an affiliate as wholesaling and marketing activities may be casting the net too wide. By way of an example, CIBC Asset Management Inc. ("**CAMI**") is a subsidiary of CIBC that will need to be registered as an investment fund manager because it manages its own investment funds. In carrying out marketing and wholesaling activities, CAMI may also market investment funds managed by an affiliate of CIBC.

We submit that the fact that CAMI may engage in marketing and wholesaling activities with respect to its own investment funds and those of its affiliates does not amount to CAMI acting as a dealer particularly if the proprietary investment funds and those of the affiliate are operated as one group of investment funds but with a different manager.

There are also instances where an investment fund manager may engage in cooperative marketing whereby investment funds managed by a third party may be marketed by that investment fund manager. In such instances, the dealer registration requirement should not be triggered if the investment funds managed by a third party are traded through a registered dealer and not the investment fund manager conducting the co-operative marketing.

Exemption for banks and trust corporations

We understand that the Ontario Securities Commission does not intend on requiring banks listed in Schedule I or II to the Bank Act (Canada) or trust corporations registered under the Loan and Trust Corporations Act that act or may act as managers of investment funds to register as investment fund managers (see response #574 to industry comments on the first draft of the Instrument). We have been advised that the other CSA jurisdictions will make their own local determinations on this point. While the Ontario Securities Commission stated that they will exempt banks and trust corporations from the requirement to register as investment fund managers that exemption was not specifically provided for in the Instrument. Furthermore, upon review of the OSA Amendments, we note that the OSA Amendments do not provide for an exemption for these entities from the requirement to be registered as an investment fund manager. In particular, section 35.1 of the OSA Amendments, which is the exemption for financial institutions, is limited to an exemption from the dealer and adviser registration categories only. Given that we have not yet seen the consequential legislative amendments for most other CSA jurisdictions we are not sure whether the remaining CSA jurisdictions will provide for this exemption from the requirement to register as an investment fund manager for banks and trust corporations. Our recommendation is for the CSA to codify a formal exemption in the Instrument for banks listed in Schedule I or II to the Bank Act (Canada) and trust corporations registered under the Loan and Trust Corporations Act from the requirement to register as an investment fund manager as opposed to relying on each jurisdiction to adopt such an exemption in their respective securities acts. Doing so will ensure a harmonized approach on this issue and will avoid confusion on the part of the industry as to whether registration for such entities is required in various jurisdictions. Given that the Ontario Securities Commission has already seen the merits in exempting banks and trust corporations from the requirement to register as investment fund managers, we ask that the other CSA jurisdictions consider taking the same view as Ontario.

2.7 Individual categories

Associate advising representative

The CSA is introducing a new requirement for a registered adviser that designates an advising representative pursuant to section 2.8(1) of the Instrument to notify the regulator of the designation no later than the 5th business day following the date of the designation. Given the administrative burdens that would be imposed on registrants to comply with this notification requirement, we would like to understand how this notification requirement will assist the relevant securities regulator. The CSA should have confidence in registrants faithfully carrying out the requirements in section 2.8 of the Instrument without the need for notification. Furthermore, the relevant securities regulator will have an opportunity to audit the requirement of this section during their routine audits of registrants.

We would like to congratulate the CSA on the helpful guidance provided in section 2.7 of the Policy with respect to the processes for approving the advice of an associate advising representative. This guidance incorporates a principles based approach that allows registrants to determine the approval process based on the circumstances, including the individual's level of experience. This guidance together with confirmation provided by the Ontario Securities Commission at a roundtable discussion regarding the Instrument confirms that pre-approval of advice given by an associate advising representative will not always be necessary and the advising representative approving the advice need not be in the same physical location as the associate advising representative. Notwithstanding the above, section 2.8 of the Instrument states that "an associate advising representative…must not advise in securities unless, *before giving the advice, the advice is approved* by an advising representative designated by the adviser". Given that section 2.8 in the Instrument conflicts with the guidance provided in the Policy and the Ontario Securities Commission statements at the roundtable, we suggest that this inconsistency between the Policy and the Instrument be corrected by deleting the words "before giving the advice" from section 2.8 of the Instrument.

2.9 Ultimate designated person

The CSA provides that the ultimate designated person must be the chief executive officer of the registered firm or the senior officer responsible for the division in the firm that carries on the activity requiring registration. We submit that the choice of individuals permitted to act as the ultimate designated person is too restrictive and should be broadened to include president, vice-president, chief operating officer, chief financial officer, secretary, general manager, or such other officer designated with similar supervisory, policy-making or decision-making responsibility. This alternative list is more reflective of the organizational structures of large firms and provides firms with more flexibility while still meeting the CSA's objective of ensuring that the ultimate designated person is someone fairly senior who has the ability and the power to set the compliance tone for the firm.

2.10 Chief compliance officer

Section 2.9.2 of the Policy states that the securities regulators will consider applications, on a case-by-case basis, for situations where the chief compliance officer of one registered firm may act as the chief compliance officer of another registered firm. As an alternative, we suggest that the securities regulators consider this type of an arrangement at the time of registration of the chief compliance officer, if appropriate, as opposed to requiring a formal exemptive relief application.

There are currently instances where a large registrant has distinct activities carried out by various operating divisions of the firm such as retail and institutional activities. Such registrants may currently have two separate chief compliance officers each overseeing the relevant activity (i.e. one chief compliance officer for the retail division of a registrant and one chief compliance officer for the institutional division of the registrant). We would like confirmation that such registrants may continue to have two chief compliance officers after the Instrument comes into force without the need for any further action on the part of the registrant or the chief compliance officers in this regard.

PART 3 - SRO MEMBERSHIP

3.2 MFD SRO membership for mutual fund dealers

We understand from your response to comments received on the first draft of the Instrument that exemptive relief orders granted to mutual fund dealers from the requirement to be members of the Mutual Funds Dealers Association (the "**MFDA**") will continue to be honoured. We agree with your response but suggest that, for purposes of future certainty, the response be codified in section 3.2 of the Instrument as follows: "No person or company may be registered as a mutual fund dealer unless the person or company is a member of an MFD SRO *or has received an exemption from the MFD SRO membership.*"

3.3 Exceptions for SRO members

We continue to believe that SRO members should be exempt from the following rules cited in the Instrument because the topics of those rules are already addressed by the Self-Regulatory Organizations (the "**SROs**") as set out below:

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

We are concerned that SRO members are still subject to the above rules cited in the Instrument for a few reasons. First, the rules in the Instrument differ from the SRO rules.

- With respect to records retention, the Instrument is principles-based whereas the Investment Dealers Association (the "**IDA**") and MFDA rules cited above are prescriptive in that they provide a specific list of documents that must be retained for a specified period of time. Furthermore, the IDA and MFDA rules cited above do not distinguish between relationship and activity records as does the Instrument.

- With respect to the complaints regime, the definition of a complaint in each of the Instrument, the IDA and MFDA rules vary in scope; the scope of who can make a complaint also ranges from a client (IDA and MFDA rules) to anyone (the Instrument); the form that a complaint can take ranges from written and oral (the Instrument and the IDA rules) to just written (MFDA rules); initial expressions of dissatisfaction are included in the Instrument and the IDA rules but not in the MFDA rules or Quebec Securities Act; the time to provide an acknowledgement letter ranges from 10 days (the Instrument and the IDA rules) to 5 days (MFDA rules); and the time to provide a substantive response ranges from 90 days (the Instrument and the IDA rules) to a 180 days (MFDA rules).

- With respect to referral arrangements, the Instrument extends the referral arrangement requirements to include referrals between affiliates, non-registrants and prospective clients. This is not the case in the SRO referral arrangements rules.

These are some of, but certainly not all, of the differences between the rules in the Instrument and those of the SROs covering the same topics.

Second, we do not see the harm in exempting SRO members from rules in the Instrument if the SROs have similar requirements. Failing to exempt SRO members creates confusion for registrants particularly in determining which rules they should comply with in the event the rules are inconsistent. We do not believe that it is sufficient to tell registrants to comply with the more stringent rules when it would be much more productive to subject registrants to one set of rules i.e. those of the SROs, as opposed to placing the onus on registrants to figure out how the SRO rules work with the rules in the Instrument. Duplication in rules is burdensome, inefficient and counter-productive.

Third, we note that the CSA has exempted all firms registered in Quebec from complying with the complaint handling provisions in the Instrument on the basis that those firms are already complying with provisions of the Quebec Securities Act relating to complaint handling. This begs the question of why the CSA is comfortable with exempting those firms from having to comply with the complaint handling requirements in the Instrument on the basis that they have similar provisions in Quebec but is not comfortable taking the same approach for SRO firms who also are subject to SRO complaint handling requirements.

If the CSA is intent on making SRO firms comply with requirements in the Instrument that are also the subject of SRO rules than the CSA must work with the SROs to ensure that the SRO rules are harmonized with the rules in the Instrument. At this point, as highlighted above, we believe that the SRO rules differ from rules in the Instrument.

PART 4 - FIT AND PROPER REQUIREMENTS

General

For purposes of clarity and certainty, we suggest that a specific exemptive relief provision from the proficiency requirements be provided for. We suggest using the following language which is currently found in Part 4 of OSC Rule 31-502: "The Director may grant an exemption to this Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption."

4.5 Mutual fund dealer- dealing representative

The Instrument reinforces the current regime of prescribing proficiency requirements for all mutual fund dealer representatives, whether or not the firm is a member of the MFDA. This is in contrast to the approach the CSA is adopting with respect to firms that are members of the IDA which is to require dealing representatives of those IDA firms to comply with the proficiency requirements set out by the IDA.

The CSA states in its explanatory notes to the Instrument that the different treatment with respect to proficiency requirements between MFDA and IDA members is because the registration of MFDA dealing representatives will continue to be done by the securities regulatory authority or regulator, as applicable, in each jurisdiction, whereas the CSA has in some jurisdictions delegated the registration duties relating to dealing representatives of IDA firms to the IDA.

We understand from the CSA that the question of delegating registration duties to the IDA and MFDA is not within the mandate of the Instrument and that the CSA is not, at this time, contemplating on harmonizing IDA and MFDA registration delegation across all jurisdictions but may consider doing so in the future. We disagree with this approach given that one of the main purposes of the Instrument is to harmonize the registration regime across Canada. Considering the broad implications of the Instrument, it would make sense for the CSA to consider issues such as this one in the context of the Instrument to avoid perpetuating lack of harmonization. In the context of proficiency for mutual fund dealing representatives, given that the MFDA has its own proficiency requirements for its dealing representatives it seems counterproductive and confusing to then require those dealing representatives to comply with proficiency requirements set out in the Instrument instead. We urge the CSA to reconsider its position with respect to reviewing the registration delegation duties to the IDA and MFDA in the context of the Instrument in hopes of harmonization and streamlining the proficiency requirements and related oversight.

We suggest that section 4.5 of the Instrument be limited to mutual fund dealers who are exempt from the MFDA membership requirement.

4.6 Mutual fund dealer- chief compliance officer

One way to meet the proficiency requirements for a chief compliance officer of a mutual fund dealer is to meet the requirements of a chief compliance officer of a portfolio manager as set out in section 4.13 of the Instrument. The criteria set out in section 4.13(a) should also contemplate an individual being previously registered as a dealing representative of a mutual fund dealer in the instance of the proficiency requirements for a chief compliance officer of a mutual fund dealer.

4.9 Exempt Market Dealer – dealing representative

We are not sure whether representatives of currently registered limited market dealers who might need to register in additional provinces once the Instrument comes into force will have to meet the new proficiency requirements for a dealing representative of an exempt market dealer. We submit that such representatives should not have to meet the new proficiency requirements for dealing representatives of exempt market dealers. Presumably if a representative is qualified today under the limited market dealer category they should not be subject to the new proficiency requirements since the core activities of an exempt market dealer are not materially different than those of a limited market dealer. Furthermore, we believe that currently registered limited market dealer representatives who wish to register in additional provinces (i.e. other than Ontario and Newfoundland where they would be currently registered) should not have to meet the new proficiency standards for an exempt market dealer dealing representative on the basis that they are already considered to be qualified to be limited market dealer representatives in Ontario and Newfoundland and what has been working in those provinces should continue to be sufficient in additional provinces given that the core activities are the same. We therefore urge the CSA to consider this issue and grandfather the proficiency requirements of currently registered limited market dealer representatives in Ontario and Newfoundland and also extend this grandfathering to all other Canadian jurisdictions once the Instrument comes into force.

4.15 Investment fund manager – chief compliance officer

Although the CSA responded to industry comments to make the investment fund manager chief compliance officer proficiency requirements different than the portfolio manager chief compliance officer proficiency requirements, the CSA seems to have made the investment fund manager requirements more restrictive. For instance, the CSA requires investment fund manager chief compliance officer experience to be gained in consecutive years whereas that is not the case for a chief compliance officer of a portfolio manager. We are uncertain of whether this was an oversight by the CSA or intentional. In any event, we suggest that the word “consecutive” be deleted from the investment fund manager chief compliance officer proficiency requirements wherever it appears.

As well, the investment fund manager chief compliance officer will have to have spent a prescribed period of time working for an investment fund manager as apposed to working for any registered firm as is the case for a chief compliance officer of a portfolio manager. This is too restrictive particularly given that the category of an investment fund manager is new. We suggest that the relevant experience be broader to allow for "relevant investment management experience with any registered firm". Otherwise, it might be difficult for an investment fund manager to fill the chief compliance officer position.

4.16 Grandfathered registrants

Currently there are individuals who are registered in an existing category (i.e. an advising representative), in some but not all provinces, who meet the current proficiency requirements for such a category. Read together sections 4.16 and 10.2 of the Instrument do not make it clear whether such individuals who might need to register in additional provinces once the Instrument comes into force will have to meet the new proficiency requirements in order to register in those additional provinces. We assume that the CSA did not intend for this outcome given that such individuals already meet the existing proficiency requirements. Therefore, it is our suggestion that the CSA should allow such individuals to rely on their existing proficiency requirements when registering in additional provinces since those proficiency requirements have served them well and have been satisfactory to the CSA for their existing registration category.

Division 2: Solvency requirements

Handle, hold or have access to client assets

The guidance in section 4.7.1 of the Policy on what it means to handle, hold or have access to client assets is too far reaching. We understand that the CSA provided this guidance in an effort to address previous comments received with respect to some registrants claiming that they do not handle client assets and as such should not be subject to the same requirements as those who do. We appreciate the effort made by the CSA to address these concerns by exempting registrants from certain requirements in the Instrument if those registrants do not handle, hold or have access to client assets. However, we are concerned that the guidance on what it means to handle, hold or have access to client assets will essentially make the exemptions afforded to certain registrants useless. The far reaching nature of the guidance would make it virtually impossible for most registrants to claim that they do not handle, hold or have access to client assets.

For example, physically holding a cheque that is not payable to a registrant but provided to a registrant by a client to deliver to the client's custodian would be considered as handling client assets pursuant to the guidance. We do not believe that this is an appropriate conclusion since in such instances the registrant is merely acting as a conduit for the client and should not be considered as holding, handling or having access to client assets.

Furthermore, even if a registrant implemented steps to avoid handling, holding or having access to client assets in accordance with section 4.7.1 of the Policy, there may still be instances where a client may inadvertently deliver a cheque or a security certificate to the registrant whereas the delivery should have been made to the client's custodian directly. It is unfair in such instances to not allow the registrant to rely on a given exemption as a result of such an event.

In addition, registrants may sometimes be required to receive settlement cheques from class action administrators on behalf of their clients. Such cheques may or may not be payable to the registrant. Regardless of who the payee is, the end result would still be the registrant delivering the cheque to the client or the client's custodian such that the registrant is not actually handling, holding or having access to client assets for an extended period of time. In such situations, we still believe that the registrant should be able to avail itself of the exemptions afforded to registrants who do not handle, hold or have access to client assets.

As well, the Anti-Money Laundering ("**AML**") guidelines coming into force June 2008 will allow entities such as custodians to rely on an agent such as a portfolio manager to fulfill the custodian's AML obligations. In those cases, the portfolio manager will still need to vet client cheques in order to carry out its agent duties to the custodian. The current formulation of what it means to handle, hold, or have access to client assets would essentially put an end to such relationships and would require custodians to conduct their own AML procedures since portfolio managers would not want to risk losing exemptions afforded to them under the Instrument.

Given the above, we suggest that the guidance provided in section 4.7.1 of the Policy be reviewed and replaced with a principles-based formulation as opposed to listing the factors currently listed in that section. The principles-based approach should take into account that where a custodian is involved the risk to the client is greatly reduced such that registrants in those relationships should be able to avail themselves of the exemptions provided in the Instrument for registrants who do not handle, hold or have access to client assets.

4.21 Insurance – dealer
4.22 Insurance – adviser
4.23 Insurance – investment fund manager

We would like the CSA to clarify the expected minimal limits of insurance for dealers, advisers, and investment fund managers as we find the wording of sections 4.21, 4.22 and 4.23 of the Instrument confusing. Section 4.21(1)(a) indicates that the minimal amount is $200,000 while subsections (b) and (c) indicate the minimal amount should be $25 million. The same holds true for sections 4.22 and 4.23 of the Instrument.

Insurers of tier one Canadian financial institutions typically consider losses within the first $25 million to be within the bank's risk appetite and as such insurers do not offer traditional full risk transfer insurance policies in this range. To meet existing securities regulations regarding insurance, the insurance companies have been offering fronting policies; which in essence means that the bank will reimburse the insurance company for any losses they pay out on the bank's behalf. Therefore the $25 million limit for insurance, will still mean the bank will respond to losses which occur between zero and $25 million and will be faced with additional cost to front the program.

Division 3: Financial records

4.28 Delivering financial information – dealer

We are still concerned with the short time frame provided to deliver quarterly financial statements (i.e. no later than the 30th day after the end of the quarter). Generally, where there is a requirement to deliver quarterly financials elsewhere in securities legislation (i.e. NI 81-106 and NI 51-102), registrants are provided with 45 days after quarter end in order to meet their delivery obligation. Although firms are required to maintain adequate books and records and although the quarterly financials are not required to be audited, 30 days is still not enough time in the context of large firms given that quarterly results are not usually released until after the board meetings which do not usually take place within 30 days after the end of the quarter. For practical reasons, we suggest that registrants be allowed to deliver their quarterly financial statements no later than the 45th day after quarter end. We believe that this is a reasonable compromise.

4.30 Delivering financial information – investment fund manager

See comments made for section 4.28 above.

4.32 Preparation of financial statements

GAAP

Section 4.32 of the Instrument states that annual and quarterly financial statements must be prepared in accordance with generally accepted accounting principles ("**GAAP**"). SRO firms are not exempt from this requirement. Therefore, by way of an example, a firm that is registered as an investment fund manager and an investment dealer with the IDA will have to comply with the investment fund manager financial reporting requirements under the Instrument and the financial reporting requirements of an investment dealer provided by the IDA. The financial statements of IDA members are not indented to be prepared in accordance with GAAP (see the Joint Regulatory Financial Questionnaire and Report). Therefore, we are concerned that IDA firms that will also be registered as investment fund managers will now be obligated to change their practices and prepare financial statements in accordance with GAAP to meet their financial reporting obligations under the Instrument.

Aside from the incremental cost that such firms will have to incur, we do not believe that it is necessary to require financial statements to be prepared in accordance with GAAP for firms that are dually registered with the IDA and the securities regulator (albeit in different categories). Non-GAAP financial statements have been satisfactory to the IDA up to this point. We believe that the current IDA requirement should be the standard used in the Instrument at least for IDA firms that will also need to be registered as investment fund managers.

Trust companies

CIBC Trust Corporation runs three key businesses within the legal entity. One activity is in the capacity of a portfolio manager (in certain provinces) and the other two activities relate to trust and deposit taking businesses. CIBC Trust Corporation's financial statements include an uncategorized balance sheet which is appropriate for a trust company. Is there an expectation to prepare classified balance sheets with current assets and current liabilities defined even though a trust company could and would report a balance sheet in an uncategorized format? Your guidance on this point would be appreciated.

PART 5 - CONDUCT RULES

Division 1: Relationship with clients

Delivery of documents by electronic means

Section 5.4 of the initial draft of the Policy stated that all disclosure or consents required by the Instrument may be delivered by electronic means. We note that this guidance is not included in this draft of the Policy. Given the importance of electronic delivery in this day and age we suggest that the guidance previously found in section 5.4 of the initial draft of the Policy be included in the Policy to bring certainty to the industry that the CSA acknowledges the importance and efficiency of electronic delivery and permits its use.

5.3 Know-your-client

Insider Status

We note that the requirement in section 5.3(1)(b) of the Instrument to ascertain whether a client is an insider of an issuer uses the term issuer as opposed to reporting issuer as was the case in the first draft of the Instrument. Given that the definition of an issuer in section 1 of the Ontario Securities Act refers to a reporting issuer and given that non-reporting issuers do not have insiders we assume that the term "reporting" in section 5.3(1)(b) was erroneously deleted. For purposes of clarity, we suggest that you add the word "reporting" in section 5.3(1)(b) before the word "issuer".

Furthermore, we note that the IDA requirement for ascertaining whether a client is an insider relates to publicly traded companies only as opposed to reporting issuers generally. We therefore suggest that the CSA consider aligning the requirement in section 5.3(1)(b) with the IDA requirement in order to avoid confusion and inconsistency between SRO and non-SRO firms.

Beneficial Ownership

Section 5.3(2) of the Instrument imposes a new requirement on registrants to identify any individual who is a beneficial owner, directly or indirectly, of more than 10% of the client. Although we recognize that this is a requirement that currently exists for IDA firms and is similar to the AML requirement that will become effective June 2008, it is nonetheless different in two respects. First, the 10% threshold is higher than the 25% threshold adopted under AML regulations. We therefore urge the CSA to consider why the AML threshold of 25% is not acceptable. Second, both the IDA and the AML beneficial ownership determination requirements provide for exemptions for certain clients (see IDA Regulation 1300 and AML regulations coming into force June 2008 for a list of the exemptions) from the requirement to determine beneficial ownership. We urge the CSA to provide the same exemptions from the beneficial ownership determination requirement set out in section 5.3(2) of the Instrument as those provided for under IDA Regulation 1300 and the AML regulations in order to allow for a level playing field and to promote harmonization.

Exemptive relief orders

Some registrants have previously obtained exemptive relief orders from the requirement to obtain certain know-your-client and suitability information for particular clients. In specific, we would like to make reference to an exemptive relief order granted to CIBC Global Asset Management Inc. (formerly, TAL Global Asset Management Inc.) by the AMF (see decision# 2005-PDIS-0565 dated October 18, 2005). We assume that these types of exemptive relief orders will survive the coming into force of the Instrument. We would however, like confirmation from the CSA on this point. We acknowledge that some formulation of the above cited relief is codified in the Instrument in the sense that permitted clients can waive certain know-your-client and suitability obligations under the Instrument. However, we believe that the exemptive relief orders provide exemptions for permitted type clients that go beyond what permitted clients are exempt from in the Instrument. To that end, we suggest that either the proposed exemptions for permitted clients from certain know-your-client and suitability obligations be expanded to mirror the previously granted exemptive relief orders, or the CSA to confirm that previously granted exemptive relief orders will be honoured after the effective date of the Instrument.

5.4 Relationship disclosure information

We would like to commend the CSA for removing the concept of a relationship disclosure document from the Instrument. The revised relationship disclosure information (the "**RDI**") requirement is much more practical and addresses many of the issues that were outlined to the CSA by the industry. However, we still have a few concerns with the RDI requirement.

Harmonization

We note that the Client Relationship Model (the "**CRM**") to be adopted by the SROs is still substantially different than the RDI and we submit that the RDI is the better formulation of client disclosure. To that end, we urge the CSA to work closely with the SROs in an effort to ensure that the CRM requirements mirror the RDI requirements so that clients of SRO and non-SRO members are treated in a similar manner.

Content of RDI

We are concerned with some of the content of the RDI and how registrants can be expected to disclose such content. In particular, we are concerned with the requirements to provide: (a) a discussion that identifies which products or services offered by the registered firm will meet the client's investment objectives and how they will do so (section 5.4(3)b of the Instrument); and (b) a description of how the adviser will ensure that investments made are suitable for the client based on the information provided by the client (section 5.4(6)b of the Instrument). The concern with these requirements is the potential need to customize such disclosure on a client-by-client basis and the detail that is required to meet these disclosure points. For instance, how granular does a firm need to get in terms of disclosing which products or services will meet the client's investment objectives? Will it be sufficient for the registered firm to provide an asset allocation or will specific products within each class of assets be required? The latter would be too onerous and impractical particularly in a discretionary context. We are not contesting the need to provide clear and helpful disclosure to clients but we are concerned that disclosure that is too detailed might be confusing to clients and too onerous on registrants. Moreover, clients who retain a portfolio manager do not necessarily want to be provided with detail around how each investment product meets their investment objectives because that discretion is left to the portfolio manager.

Section 5.9 Disclosure when opening an account in a financial institution

This section requires a registered firm to obtain written confirmation from a client with respect to specific disclosures that a registered firm must make when it opens a securities account in an office or branch of a Canadian financial institution. In answering a question by an industry member, the CSA clarified in its responses to comments received on the first draft of the Instrument that the written confirmation from the client under section 5.9 of the Instrument must be obtained at account opening (see CSA answer #364).

We agree with the CSA's response but we are concerned that section 5.9(2) of the Instrument can be read to mean that the written confirmation must be obtained before each and every trade. As a result, we suggest that the CSA revise section 5.9(2) to reflect the CSA's answer #364 as follows: "A registered firm that is subject to subsection (1) must receive a written confirmation from the client that the client has read and understood the notice at account opening."

Division 3: Record-keeping

5.15 Records – general requirements

Most firms already have in place sophisticated record-keeping systems that are based on existing record-keeping requirements. Setting up and maintaining such record-keeping systems were and continue to be enormous projects that involved and continue to involve the use of substantial financial, technological and personnel resources. To expect firms to overhaul those existing record-keeping systems without identifying current risks or short-falls with existing record-keeping requirements is not realistic. The existing record-keeping systems cannot be easily, readily or economically changed or implemented. Therefore, if the CSA wishes to impose new record-keeping requirements that will be extremely costly and burdensome to implement, the industry should be provided with a detailed rationale articulating the risks sought to be addressed by such new record-keeping requirements and should be provided with a thorough and comprehensive cost-benefit analysis to support such a drastic change. In our view, the CSA should not change the existing record-keeping requirements until such rationale and analysis is provided, reviewed and discussed with all affected parties. At the very least, the CSA should review the record-keeping requirements of the SROs and ensure that any requirements that they wish to propose in the Instrument mirror those of the SROs. We believe that the SRO record-keeping requirements are prudent, efficient reasonable and practical and the CSA should seriously consider adopting requirements that are much more similar to the SROs requirements than not.

The CSA states that the proposed record-keeping requirements are intended to reflect current business practices. We agree that this should be the focus of the record-keeping requirements however we believe that the proposed record-keeping requirements in the Instrument do not at all reflect current business practices of archiving, retrieving and purging records, particularly email, telephone and oral records.

5.16 Records – form, accessibility and retention

Section 5.16 requires a registered firm to keep an activity record for seven years from the date of the act and to keep relationship records for seven years from the date the person or company ceases to be a client of the registered firm. Section 5.16 goes on to provide a definition for an activity record and for a relationship record.

Eliminate distinction between activity and relationship records and introduce prescriptive list of records to retain

We do not believe that it is necessary, practical or efficient to require registrants to categorize records as either activity or relationship records and suggest that the concept of an activity and relationship record be removed from the Instrument. We are not aware of any local or international precedent wherein a securities regulator has required registrants to retain and deal with records for different periods of time based on the registrant's subjective review and determination of whether the record is an activity or a relationship record. Creating such a precedent is not warranted, feasible or appropriate.

Requiring firms to categorize records based on whether the record is an activity or a relationship record brings with it a host of problems ranging from the firm's ability to make a determination as to which category the record should fall under to creating a system or multiple systems to assist registrants to store, retrieve and destroy records based on whether the record is an activity or a relationship record. These are complicated tasks that do not, in our view, yield any benefits to either the firm's clients or to regulators.

The CSA's intention with respect to record keeping is set out in section 5.15 of the Instrument which is to require firms to maintain records to accurately record their business activities, financial affairs, and client transactions, and demonstrate compliance with applicable requirements of securities legislation. We suggest that this purpose can be achieved without the complication of categorizing records into activity and relationship records. We propose that registrants can meet the CSA's objective for record retention by retaining records that assist them in meeting their obligations under section 5.15 of the Instrument. The records that firms should retain should be based on a prescriptive list similar to the record retention list set out in MFDA Rule 5 and IDA Regulation 200. The principles-based approach can then be adopted by way of the CSA requiring firms to retain any other documents, other than the documents specifically set out by the CSA in the Instrument as proposed above, to assist them to meet their obligations under section 5.15 of the Instrument. In this way, the problems related to categorizing records between activity and relationship records fall away while still ensuring that firms retain all necessary records.

Furthermore, the categorization of the records as activity and relationship records is problematic given that each category dictates a different starting date from which the retention period is calculated. Current record retention systems do not easily lend themselves to categorizing, archiving, retrieving and purging records based on such criteria. It is complicated enough to implement systems that are based on one trigger date let alone creating and implementing systems that entail two trigger dates. Our proposal to eliminate the distinction between activity and relationship records and instead treat all records as falling under one category with one related retention period would make implementation much more feasible. We note that this is the approach adopted in the U.S. which seems to be effective and workable.

Relationship disclosure information

The definition of a relationship record includes relationship disclosure information provided to the client under section 5.4 of the Instrument. These types of records must be maintained for seven years from the date the person or company ceases to be a client of the firm. Given the ever changing nature of these types of documents and sheer volume of such records, we suggest that firms be allowed to meet this requirement by retaining the most current version of the applicable relationship disclosure documents for record-keeping purposes as opposed to particular relationship disclosure documents that each and every client may have received. We acknowledge that where a client has signed a specific disclosure document, firms should be expected to retain that specific document. Therefore, our comment only extends to pure disclosure documents as opposed to disclosure documents that require a client signature.

Exclude e-mails, recorded calls and oral communications from record-keeping requirements

We are concerned with the overly broad definition of a record set out in section 5.5 of the Policy, particularly the extension of a record to include e-mail, recorded calls (potentially) and oral records. Including such records in the record-keeping requirements of the Instrument does not reflect the current industry business practices commonly associated with the archiving, retrieving and purging of such records.

With respect to e-mails, from a practical perspective most firms in the industry retain, archive, retrieve, and purge e-mails based on the date of the e-mail as opposed to client names or a floating date. In order to comply with the proposed requirements set out in the Instrument with respect to e-mails, industry firms would have to scope out and implement software solutions that are likely very expensive, time consuming, user sensitive and potentially filled with risks, to allow firms to categorize, retain, archive, retrieve and purge e-mails based on client names and date of act (i.e. a floating date). Furthermore, in order to comply with the proposed record-keeping requirements, firms would be required to implement computer systems that would allow them to differentiate between activity and relationship records since most industry members' data systems do not currently operate on that basis. We are not even certain that computer systems equipped to handle such categorization exist and if so, at what cost. If the proposed floating date trigger and the distinction between activity and relationship records are maintained by the CSA, the result would essentially be to require firms to retain such e-mail records in perpetuity because it may not be possible from a technology perspective to implement systems that accommodate the proposal in the Instrument and even if such systems exist the costs of implementing them may be prohibitive. This result may create potential breaches of privacy laws and pose potential risks to client privacy protections.

To the extent the Instrument is trying to capture recorded calls with clients, we have similar concerns to those set out under the e-mail section above. Currently, voice recording data cannot be segregated by call type or client name and no obtainable technology exists today to align a voice recording to a particular client name, category of call or date of act. Consequently, firms would be required to retain recorded telephone calls in perpetuity if they are to implement the proposed record-keeping requirements. It is therefore our recommendation that the CSA exclude recorded calls from the record-keeping requirements and instead rely on the requirement that firms should retain all records that pertain to their obligations set out in section 5.15. This way the focus is not on the medium through which the record is created but on the content of the record itself.

With respect to oral communications, we are concerned that the wording in section 5.5 of the Policy of requiring notes of oral communications with a client to be retained casts the net too wide. We do not believe that it is necessary to mandate firms to retain a record of oral communications so long as firms retain records that assist them to meet their obligations under section 5.15 of the Instrument. In other words, stipulating the form of record to be retained is problematic whereas retaining the information that the CSA deems relevant is not. It is much more workable to implement a requirement that specifically sets out the records that should be retained, such as trade confirmations, account statements and account agreements, rather than to retain all notes of oral communications with a client whether or not those notes relate to section 5.15 of the Instrument and whether or not the relevant information in those notes are already reflected in another record.

We do not believe that the intent of the proposed record-keeping requirements would be undermined by removing the proposed requirements to retain e-mails, recorded calls and oral records because our proposal would still require firms to retain all records that they would be obligated to retain to meet their requirements under section 5.15 of the Instrument regardless of format.

Proposal for a consultation meeting between the industry and CSA

As noted above, it would be very complicated and problematic for most industry members to implement the record-keeping requirements proposed by the CSA in the Instrument. We have tried to propose alternatives that we believe might mitigate the practical problems associated with the current record-keeping requirements proposals in the Instrument. We would welcome a meeting organized by the CSA with industry members and technology experts prior to the implementation of the Instrument to discuss the issues that firms will have with attempting to implement the proposed record-keeping requirements as set out in the Instrument. The intent of such a meeting would be to come up with a solution that is workable for the CSA, clients and industry members.

Division 4: Account activity reporting

5.22 Statements of account and portfolio

Section 5.22(1) of the Instrument provides that "a registered dealer must send or deliver a statement of account to each client not less than once every three months… unless the client has requested statements on a monthly basis in which case the registered dealer must send or deliver statements monthly." We note that the CSA has exempted investment fund managers from Division 4 on the basis that it feels it is important that dealers should provide consolidated information to their clients. We agree with this rationale in instances where clients may hold investment funds that are managed by a number of different investment fund managers including third party investment fund managers. For such clients, it would be inconvenient to receive statements of accounts from multiple investment fund managers and therefore not have the benefit of consolidated reporting. However, we have a dealer that only sells investment funds of one investment fund manager (and potentially investment funds managed by an affiliate of that investment fund manager). In those cases, it would be useful for that investment fund manager to continue sending statements of accounts to such clients on behalf of the dealer. In such circumstances, the client would be receiving consolidated reporting given that they only hold one investment fund manager's (and potentially an affiliate of that investment fund manager's) investment funds. We therefore urge the CSA to exempt registered dealers from the need to send a statement of account to each client in instances where the client only holds investment funds managed by one investment fund manager (and potentially investment funds managed by an affiliate of that investment fund manager) and that investment fund manager sends the client a statement of account.

Furthermore, section 5.22(4) of the Instrument provides that if a client has provided the consent referred to in section 5.18(1) of the Instrument, the registered adviser must send or deliver to the client not less than once every month, a statement of the portfolio of the client under the registered adviser's management. We submit that delivering monthly statements of portfolio in the context of a discretionary portfolio manager is inappropriate. A discretionary portfolio manager is engaged by a client to manage their investments and is paid by the client to manage and supervise the clients' accounts, including the purchase and sale of securities and arranging for trade execution and settlement. Accordingly, since clients do not provide trade instructions, monthly statements of portfolio will serve no useful purpose to clients except possibly to be a source of confusion and annoyance. We would prefer not to impose monthly statements of portfolio on clients of discretionary portfolio managers since some of these clients already complain about receiving too much paper. The trades will be reflected in quarterly statements of portfolio that the discretionary portfolio manager will deliver to clients. Therefore, we recommend that delivery of quarterly statements of portfolio should be the rule in the context of discretionary portfolio managers, unless the client specifically requests monthly statements of portfolio.

Also, section 5.22(4) of the Instrument appears to be imposing an obligation on a registered adviser acting as a sub-adviser in a wrap program offered by a registered dealer to deliver a monthly statement to the client, to the extent the client has consented as per section 5.19(1) to the delivery of trade confirmations to the registered adviser. The concern we raised on the first draft of this section is that, depending on the legal structure of the wrap program involved, the client in question is the client of the registered dealer and not the registered adviser. Indeed, the registered adviser typically does not even know who the client is. Imposing a statement delivery requirement on a registered adviser in such circumstances would be inappropriate. The CSA indicated that they revised this section to address this concern, however, we do not see where or how such a revision was made.

Division 5: Compliance

Section 5.11 of the initial draft of the Policy included a statement to the effect that in certain circumstances no branch managers are required. We would like confirmation that the CSA is still of that view and suggest that that provision be included back in the Policy for purposes of clarity and certainty.

Division 6: Complaint handling

Harmonization

We are concerned that the various formulations of the complaint handling regimes adopted or being proposed by the IDA, MFDA, AMF and CSA will be conflicting and as a result confuse investors and industry members alike. For a brief description of some of the differences between the various proposals please see our comments to section 3.3 of the Instrument above. We believe that consistency in the industry with respect to complaint handling regimes will be beneficial to investors because they will be able to follow the same consistent complaint handling process regardless of the industry member they are dealing with. In addition, harmonization of complaint handling regimes will allow industry members to more easily comply with the various regimes without a duplication of efforts or the need to address conflicting or different rules. Currently the complaint handling regime proposed pursuant to the Instrument is different than that being proposed by the IDA and MFDA. IDA and MFDA members are not currently exempt from complying with the complaint handling regimes under the Instrument. To that end, IDA and MFDA members will need to struggle to address the conflicts between the complaint handling regime proposed in the Instrument and the complaint handling regime proposed by the IDA and MFDA. We believe that harmonization of the complaint handling regime across the Instrument, IDA and MFDA would enhance market efficiency and create a level playing field for industry members and investors. As noted in our comments to section 3.3 of the Instrument above, the most preferred approach would be for the SRO members to be exempt from the complaint handling regime proposed pursuant to the Instrument since those members are already subject to the SRO complaint handling requirements.

Firms registered in Quebec

Section 5.12.1 of the Policy states that registered firms in Quebec do not have to comply with Division 6 if they comply with the Quebec Securities Act requirements for complaint handling. However, section 5.12.1 of the Policy provides that firms registered in Quebec must still comply with the complaint handling guidance provided in the Policy. We disagree with this approach and suggest that firms registered in Quebec should be fully exempt from the complaint handling requirements in the Instrument and the Policy. This is particularly important given the differences between the proposal in the Instrument and the requirements in Quebec. In particular, Quebec rules exempt initial expressions of dissatisfaction from their complaint handling requirements whereas the Policy does not.

5.28 Complaints

Definition of a complaint

The definition of a complaint should be consistent across SROs and non-SROs. Currently, each of the CSA, IDA and MFDA are proposing to adopt a different formulation of a definition of a complaint. Adopting inconsistent definitions of a complaint across the CSA, IDA and MFDA will result in confusion for clients and industry members. We urge the CSA to work with the SROs in order to ensure that a consistent definition of a complaint is adopted.

Service related complaints vs. regulatory related complaints

We understand from the CSA's response to an industry comment that service complaints and not merely complaints of a regulatory nature will be included in the scope of complaints under the Instrument. We submit that service complaints should only be caught under the complaint handling regime being proposed in the Instrument if they relate to trading and advising activities. Including service complaints that do not relate to trading and advising activities is too far reaching. To that end, we recommend that section 5.28 of the Instrument be clarified to address this point.

Initial expression of dissatisfaction

Section 5.12 of the initial draft of the Policy included a provision that 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. This provision has now been deleted from the Policy. We submit that the Quebec approach of excluding initial expressions of dissatisfaction by a client, whether in writing or otherwise, from the definition of a complaint where the issue is settled in the ordinary course of business is a more appropriate standard. This exclusion is necessary in order to ensure that frivolous expressions of dissatisfaction do not trigger the complaint handling regime contemplated by the Instrument. Such complaints are more efficiently and effectively solved through the ordinary course of business.

Including initial expressions of dissatisfaction in the scope of the Instrument's proposed complaint handling regime has the unnecessary effect of unduly delaying complaints that may otherwise be easily resolved in the ordinary course of business by subjecting them to a detailed procedural system.

Excluding initial expressions of dissatisfaction from the scope of a complaint in the Instrument would ensure harmonization with the Quebec approach. We note that the IDA's proposed complaint handling rule includes the initial expression of dissatisfaction by a client in the scope of a complaint. In our comments to the IDA on their proposed complaint handling rule, we suggested that the IDA should harmonize with the Quebec approach with respect to excluding initial expressions of dissatisfaction from the scope of a complaint. We are therefore making the same recommendation to the CSA and suggesting that they harmonize with the Quebec approach and exclude initial expressions of dissatisfaction from the scope of a complaint.

Oral complaints

The proposed definition of a complaint in the Instrument includes both written and oral complaints. We submit that a complaint should be recognized in the definition of a complaint only if it is written. Verbal comments are too subjective and may lead to confusion and miscommunication between the client and the registrant. It would be difficult to decipher when an oral statement may be a complaint.

The element of subjectivity embedded in the concept of an oral complaint could potentially mean that a client may think they have voiced a complaint whereas the registrant may think the client is venting and not actually complaining. The requirement of having complaints in writing removes the element of subjectivity on the part of both the client and the registrant. Furthermore, as verbal complaints are frequently made in the heat of the moment or when emotions may be high, imposing the requirement that a complaint be rendered in writing before it is subject to the complaint handling regime contemplated by the Instrument will allow clients to devote the reflection and time necessary to articulate a formal complaint.

One of the biggest areas of concern with permitting complaints to be expressed orally is the potential inability of the registrant to determine when the 90-day time frame allotted to registrants to deal with complaints begins. Verbal complaints are subject to various elements that are not conducive to working within a specific time frame. For instance, would the 90 day period begin to tick when the client believes they have launched a complaint or when the registrant believes that the complaint has been launched? Would the time frame not be triggered if the registrant does not in their reasonable judgment consider the verbal "complaint" to be a complaint? The time frame hinges on the ability of all involved to conclude that the verbal complaint is in fact a complaint and given the subjectivity involved in such a determination there is much room for confusion. Therefore, rendering a complaint in writing serves two purposes- it will permit registrants to more effectively deal with the complaint and it will serve to ensure that clients know that their concerns are now on the record and must be dealt with by the registrant.

5.29 Dispute resolution service

Exhausting internal complaint handling mechanisms first

Section 5.29 of the Instrument provides that if a person or company makes a complaint to a registrant, the registrant must as soon as practicable inform the person or company of how to contact and use (a) the dispute resolution service in which the firm participates; or (b) the dispute resolution service of the securities regulatory authority, if it provides a dispute resolution service. This provision makes it unclear as to whether the client may pursue such options prior to exhausting all internal complaint resolution mechanisms employed by the registrant. We have been advised by a member of the CSA at a roundtable discussing the Instrument that the intent of the CSA is to ensure that clients exhaust all internal complaint handling mechanisms prior to pursuing third party dispute resolution services. To that end, we suggest that this intent be clearly laid out in the Instrument.

Allowing clients to pursue the options set out in section 5.29 of the Instrument prior to exhausting all internal processes including the internal ombudsman process essentially means that clients may circumvent the internal ombudsman process which is a process that has proven to be extremely effective in the past for clients, registrants and the industry generally. For client relations purposes, it is preferable to resolve complaints internally. In addition, the effect of section 5.29 of the Instrument essentially amounts to registrants being required to immediately resolve complaints; otherwise they risk clients pursuing external dispute resolution options immediately upon making a complaint. Accordingly, we suggest that this provision be revised so as to require that clients use and exhaust all internal complaint handling mechanisms (including the internal ombudsman) prior to pursuing the use of a dispute resolution service.

Selection of and fee payments for dispute resolution service

The CSA imposes a requirement for registered firms to participate in an independent dispute resolution service and notify a client who makes a complaint of the dispute resolution service. We would like confirmation that registrants may select any independent dispute resolution service that they deem appropriate. We would also like guidance on who will be responsible for the fees associated with using the dispute resolution service, if any, particularly in instances where a complaint has no merit.

5.31 Reporting to the regulator or securities regulatory authority

There is a requirement for registered firms to submit a report to the regulator that includes the number and nature of complaints as at the end of the registered firm's fiscal year. Please clarify whether a standard report will be provided to registrants for this purpose or whether registrants can submit their own version of such a report.

5.12.5 Handling of complaints

Section 5.12.5 of the Policy requires registrants to keep a current record of complaints, and retain it for seven years from the date of the complaint. Complaint records must include, among other things, the name of the person who is the subject of the complaint. For privacy reasons, we do not currently include such information in our complaint records. We submit that for purposes of privacy and employee confidentiality that firms not be required to include the name of the person who is the subject of the complaint in the complaint record.

Division 7 Non-resident registrants

5.33 Notice to clients

This section of the Instrument applies to "a registered firm whose head office is not located in the local jurisdiction", who would be required to make specific disclosures to their clients in the local jurisdiction with respect to agents of process of service and the fact that legal rights might not be enforceable in the local jurisdiction. We suggest that this section should only apply to foreign non-residents as is the case for section 5.35 of the Instrument. We believe that section 5.35 of the Instrument is the more proper formulation. Otherwise we are not sure why a registrant who might be registered in a certain province but has their head office in another should have to make such disclosures to local clients.

PART 6 - CONFLICTS

Division 1: General

6.1 Identifying and responding to conflicts of interest

Standard for disclosing conflicts of interest

Section 6.1(3) of the Instrument provides that a firm must disclose the nature and extent of a conflict of interest to a client "if a client, acting reasonably, would expect to be informed of a conflict of interest." This is not the standard used elsewhere in the Instrument. For instance, section 5.4(3) of the Instrument which deals with the relationship disclosure information provides that relationship disclosure information means information that a reasonable client would consider important. We submit that section 5.4(3) presents a better formulation for disclosure standards. As such, we suggest that section 6.1(3) of the Instrument be amended to read as follows "If a reasonable client would consider a conflict of interest important, the registered firm must disclose the nature and extent of a conflict of interest to the client." Making this change will ensure that a harmonized standard is used throughout the Instrument as to when disclosure should be made and in our view this formulation is the more appropriate standard.

Conflicts of interest between clients

Section 6.2.3 of the Policy states that if there is a conflict between clients, a firm should be fair to all clients. Read literally, this statement may imply that firms are prohibited from carrying out activities such as allocating investment opportunities amongst clients, or acting as a party both on the sell and buy side. Since we recognize that this is not the intent of the statement given the CSA's acknowledgement in section 6.8 of the Policy with respect to allocating investment opportunities fairly for example, we suggest that the statement in section 6.2.3 of the Policy be revised to avoid the conclusion that may be erroneously drawn from it. We suggest the standard be changed to allow firms to use reasonable efforts to try to be fair to all clients.

6.2 Prohibition on certain managed account transactions

Agent

Section 6.2(b) of the Instrument includes agents of an affiliate of the adviser in the definition of "responsible person." This is a divergence from the existing definition of "responsible person" found in section 118 of the Ontario Securities Act. We do not understand the need to include agents in the definition of a responsible person given its broad nature and suggest that the concept of an agent be deleted from the definition of a "responsible person" in the Instrument.

Knowledge qualifier

Section 6.2(2) of the Instrument sets out the restrictions on investments by a registered adviser in the context of a fully-managed account or an investment portfolio.

The existing corresponding requirement found in section 118(2) of the Ontario Securities Act includes a knowledge qualifier such that the adviser is prohibited from "knowingly" making one of the prohibited investments without the client's prior written consent. We note that this knowledge qualifier has been removed from section 6.2(2). We submit that the knowledge qualifier should be included in section 6.2(2) as, without such a qualifier, inadvertent errors may result in a breach of this requirement.

Client consent

Section 6.2(2)(a) and (b) of the Instrument allow a registered adviser to invest in a security of an issuer in which a responsible person is a partner, officer, director, or employee, or for which a responsible person is an agent, if the registered adviser has obtained a client's written consent prior to each purchase.

This requirement may not always be in the best interests of clients. Clients who do not submit their written consents in a timely manner will not have access to the widest array of investments because their adviser would be prohibited from executing a specific trade unless they have the client's specific written consent on file prior to execution. As a result, these clients may suffer some investment losses. We fail to see how this can serve the best interests of the client. Most clients do not place much emphasis, if any, on these types of consent forms. On the contrary, clients have voiced complaints and confusion about the need to sign such consent forms. Therefore, we believe that the underlying purpose to protect investors is undermined by the proposed form of consent.

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

Mutual funds exemption

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

Inter-fund trading/Cross-trading

Section 6.2(2)(c) of the Instrument prohibits a registered adviser from causing a portfolio managed by it to purchase or sell a security from or to another investment portfolio managed by the adviser or a responsible person including an investment fund for which the adviser or responsible person acts as adviser. In essence, section 6.2(2)(c) creates an absolute prohibition on the purchase or sale of securities between any two portfolios managed by the same portfolio manager (i.e. not just between two funds). For example, a portfolio manager will be prohibited from conducting cross trades between segregated accounts managed by the portfolio manager. Investment funds that are subject to NI 81-107 will be exempt from the prohibition if they obtain the approval of an Independent Review Committee. However, unlike sections 6.2(2)(a) and (b), section 6.2(2)(c) does not provide separately managed accounts with an exemption from the inter-portfolio trading prohibition, even if the portfolio manager obtains the consent of both portfolios.

This prohibition is a significant change from section 118 of the Ontario Securities Act and comparable provisions in other jurisdictions. We do not understand the reason for the change which we believe is disadvantageous to investors. As previously mentioned, advisers have a statutory and contractual fiduciary duty to act in the best interests of their clients and an obligation to ensure that transactions are suitable to the client's investment objectives. Therefore, if an adviser, acting reasonably, believes that cross trades between two segregated accounts is in the best interest of clients, than the adviser should be permitted to conduct such trades. The CSA may mitigate any concerns they may have in this regard by allowing advisers to conduct cross trades between segregated accounts only if the registered adviser has provided clients with specific disclosure relating to cross trades at account opening and obtained clients' consent with respect to cross trades at account opening.

6.4 Issuer disclosure statement

We have a technical change on this section which is to change the reference to subsection (3) in section 6.4(5) to subsection (4).

6.6 Limitations on advising

Section 6.6 of the Instrument prohibits a registered firm from acting as an adviser in respect of a security of the registered firm, a related issuer of the registered firm or, in the course of distribution, a connected issuer of the registered firm with a few exceptions. There is no provision for allowing the registered firm to act as an adviser in the specified instances if the registered firm obtains the client's consent. This is a divergence from the existing standard used in securities law (see for example, section 227 of Ontario Securities Regulation) where a registered firm may act in such a capacity if the registered adviser obtains the client's consent. Furthermore, the initial draft of the Instrument allowed the registered firm to conduct such trades for clients with client consent (see section 6.2(2)(a)(iv) of the initial draft of the Instrument). In addition, the CSA has recently granted exemptive relief orders to a number of registrants to allow them to conduct such trades using an initial consent only (as opposed to initial and annual consent). For all these reasons, we believe that the removal of the consent provision was inappropriate. We request that section 6.6 of the Instrument be amended to include a provision allowing a registered firm to purchase securities of related and connected issuers for clients in fully-managed accounts provided that the client has provided initial consent at account opening to such trades. We suggest that initial consent is the proper standard because it aligns with the recent exemptive relief orders granted by the CSA and it avoids the resulting client inconvenience that accompanies the requirement to obtain consents on an annual basis or prior to each and every trade.

Furthermore, for reasons similar to those we set out above under section 6.2 "Client consent", we suggest that the disclosure standard required in section 6.6(1)(b) in the context of non-fully managed accounts be changed to initial client disclosure at account opening as opposed to the proposed standard of requiring disclosure before or concurrently with providing the advice.

Division 2: Referral arrangements

Application to affiliates

The CSA has indicated that the referral arrangements requirements proposed in the Instrument will apply to referrals between affiliates. While we agree that clients should be informed of referrals between affiliates, we disagree that referrals between affiliates should be subject to the same level of disclosure as referrals between a registrant and a third party.

Section 6.11.4 of the Policy sets out the purpose of the referral arrangements rule by stating that "the disclosure of information to clients required under section 6.13 is intended to help clients make an informed decision about the referral arrangement and to assess any conflicts of interest." In the context of referral arrangements between affiliates of large financial institutions, customized referral arrangement disclosure is not necessary to give effect to this intention. The conflict of interest that arises in this context is apparent to the client. The desire of a financial institution to be called upon to serve all of its clients' financial needs cannot be obscured - it is an obvious commercial reality that no member of a financial institution's family would be inclined to suggest its client take any portion of its business to a competitor.

Furthermore, it is important to make a distinction with respect to referrals between affiliates and referrals between non-affiliates. We do not think that referrals between affiliates should be characterized as true referrals. A client is usually referred to an affiliate within an organization due to regulatory reasons (i.e. one affiliate cannot carry out relevant activity or provide relevant service) or business reasons (i.e. an organization may choose to operate some businesses in separate subsidiaries). At the end of the day, the client is still the client of the organization such that the move from one affiliate to another should not be necessarily viewed as a true referral. This type of a situation should be viewed as distinct from a situation where the client is referred to a third party for a product or a service. In the latter situation, disclosure with respect to the details of the referral is warranted. In the former situation, the disclosures required under section 6.13 of the Instrument seem excessive.

For example, the requirement to disclose the category of registration of each registration as required under section 6.13(1)(2) seems unnecessary in the context of affiliates of large financial institutions. These affiliates are heavily regulated either by securities or banking legislation, and are subject to intense public scrutiny and oversight by governmental bodies and self-regulatory organizations. Clients of large financial institutions expect that such institutions govern their activities in accordance therewith, and trust that both the internal and external legal, compliance and audit functions imposed on such organizations are sufficient and reliable. Referrals between affiliates will therefore always be made to entities that are registered to carry out the service the client is being referred for. From that perspective, we do not believe that there is a need to provide the category of registration of each affiliate that is subject to a referral as proposed in section 6.13(1)(e).

We recommend that referrals between affiliates of a large financial institution should be either (a) outside the scope of the referral arrangements requirements in the Instrument on the basis that they are not true referrals; or (b) subject to a standard set of disclosures that can be provided to all clients at account opening. It should be sufficient for this standard disclosure to be to the effect that affiliates have entered or may enter into referral arrangements with other members of the institution's family for the purpose of encouraging client referrals within the institution's family, and that such affiliates may receive a referral fee of up to a specific percentage of the annual revenue generated from the referral.

6.13 Disclosing referral arrangements to clients

Catch all provision

Section 6.13(1)(g) of the Instrument requires disclosure of any other information that a reasonable client would consider important in evaluating the referral arrangement. In our comments on the first draft of the Instrument, we advised the CSA that we had concerns with the broad nature of this provision. In answering this concern, the CSA provided a response (see #505) that focused on the need to disclose conflicts of interest. If the intent that the CSA is trying to capture in this section solely relates to conflicts of interest then we suggest this intent is already covered under section 6.13(1)(c). To that end, it is our recommendation that section 6.13(1)(g) be either deleted or replaced with the specific disclosure that the CSA would like us to make.

Notification of change

Section 6.13(2) of the Instrument requires registrants to provide clients with a revised written disclosure if there is a change in the referral arrangement that affects the client. The disclosure would need to be provided to the affected client promptly but no later than 30 days before the next payment or receipt of any referral fee. We do not think it is necessary for clients to be apprised of all changes regardless of whether or not those changes are material to the referral arrangement. For instance, a name change of an entity, while a change, is not in our opinion a material change that requires notification. We therefore suggest that the requirement should be to mandate registrants to provide revised written disclosure only if there is a material change to the referral arrangement information that will have a material impact on a reasonable client.

6.15 Application and transition to prior referral arrangements

We are still concerned that the referral arrangements requirements proposed in the Instrument will apply to existing referral arrangements that involve the payment of a fee at the time the Instrument comes into force. This requirement will serve to confuse clients who may receive disclosure about a referral that happened years ago. We do not understand the harm that the CSA is trying to remedy by making this requirement apply retroactively.

We recognize that disclosure is important but we must be practical about the impact disclosure may have on a client when it is done out of context and at a time when the client may no longer remember that a referral even took place. It is our recommendation that referral arrangement requirements should be restricted to referral arrangements that arise as of the date the referral arrangement requirements under the Instrument take effect.

PART 8 - EXEMPTIONS FROM REGISTRATION

Division 1: Financial institutions

Lack of harmonization

We are concerned with the lack of harmonization when it comes to the treatment of federally regulated financial institutions. The application of securities legislation to federally regulated financial institutions is not set out the same way in all CSA jurisdictions and this creates confusion and uncertainty on the part of the industry as to the status of existing exemptions for federally regulated financial institutions. By way of illustrating the lack of harmonization, the Ontario Securities Commission has advised that the exemption regime that currently exists for federally regulated financial institutions in Ontario will continue under the proposed regime. On the other hand, the Policy states that the other CSA jurisdictions will continue to follow their existing practices concerning the securities-related activities of federally regulated financial institutions. We find this approach problematic. We recommend that the current exemptions for federally regulated financial institutions be specifically set out in the Instrument to ensure a harmonized approach across all CSA jurisdictions and to bring certainty to the industry that current activities carried out by federally regulated financial institutions will not be impacted by the Instrument or any consequential provincial amendments to provincial Securities Acts.

Short Term Debt Dealer Exemption

Section 2.35 of NI 45-106 which provided an exemption from the dealer registration for dealing in short term debt has been removed from NI 45-106 and has not been included in the Instrument. We are not sure why this exemption has been dropped given that many industry members, including financial institutions, currently rely on this exemption to conduct trades in short term debt.

In Ontario, federally regulated financial institutions are still exempt from the need to register in order to sell commercial paper in reliance on section 35(2) of the Ontario Securities Act. However, the same does not hold true for other CSA jurisdictions. We request that the short term debt exemption currently available in section 2.35 of NI 45-106 be included in the Instrument. Doing so will avoid the lack of certainty associated with what other CSA jurisdictions might decide to do with respect to the treatment of short term debt. Failing to include this short term debt exemption in the Instrument will severely undermine the goal of the CSA to achieve harmonization.

We note that certain federally regulated financial institutions have obtained relief to vary the conditions in current section 2.35 of NI 45-106 (for example, see MRRS decision document *In the Matter of Canadian Imperial Bank of Commerce and CIBC World Markets Inc.* dated October 23, 2006) and we would assume that the reliefs granted in those exemptive relief orders will be incorporated into the harmonized short term debt exemption that should be adopted in the Instrument.

Registered Dealer Exemption

We request that the registered dealer exemption currently found in section 3.1 of NI 45-106 be specifically codified in the Instrument in order to ensure that there is clarity on circumstances where federally regulated financial institutions may carry out certain trading activities through a registered dealer that doing so does not require the federally regulated financial institution to be registered.

Advising Exemption

Current section 3.7 of NI 45-106 and section 9.11 of the first draft in the Instrument which provide for an exemption from the adviser registration for federally regulated financial institutions in instances where the performance of adviser services are incidental to their principal business have been removed. In Ontario the removal of such an exemption may not be problematic given section 35.1 of the OSA Amendments exempts financial institutions from the adviser registration requirement if their activities are authorized under governing legislation, and we believe that advising is authorized under the governing legislation. However, we are concerned that the same approach may not be adopted in the remaining CSA jurisdictions. The removal of these exemptions brings a level of uncertainty as to whether the advising activities of federally regulated financial institutions outside of Ontario will require registration. We are confident that this outcome is not the intent of the CSA but nonetheless the removal of these exemptions highlights the problems that arise when there is a lack of harmonization. To that end, we suggest that the CSA specifically provide for an exemption from the requirement to register as an adviser for federally regulated financial institutions that are carrying out advising activities in the Instrument. Doing so will ensure that the current status quo for federally regulated financial institutions with respect to advising activities is not disturbed and will ensure that the industry has certainty that all provinces will treat advising activities of federally regulated financial institutions in the same manner.

Furthermore, we do not believe that the advising exemption for federally regulated financial institutions should be limited to instances where the advising services are incidental to the principal business of the federally regulated financial institutions. Doing so, would be a divergence from the existing adviser exemptions provided in Ontario and Newfoundland & Labrador for federally regulated financial institutions. Currently, those provinces provide certain entities with an exemption from the adviser registration requirement whether or not the advisory services they perform are incidental to the principal business (see section 209(10) of the Ontario Securities Regulations and section 173(10) of the Newfoundland & Labrador Securities Regulations). We question the rationale behind the restriction of the adviser registration exemption to entities that are only providing advisory services in a manner that is incidental to their principal business, when it is arguable that advisory services are integral to the principal business, such as where a trust company is managing estate assets as an executor.

8.4 Investment fund reinvestment

The words “out of earnings, surplus, capital or other sources” have been added to section 8.4(3) but we think that was inadvertent and suggest that those words be deleted.

8.15 International dealer

The definition of an “international dealer” is a dealer that is registered under the securities legislation of the foreign jurisdiction in which its head office is located. In contrast, the definition of an “international adviser” is an adviser that is registered, or operates under an exemption from registration, under the securities legislation of the foreign jurisdiction in which its head office is located. We query why the definition of an international dealer does not allow for exemption from registration whereas that of an international adviser does. We suggest that the concept of an exemption from registration as a dealer be included in the definition of an international dealer.

8.16 International adviser

Section 8.16(2)(d) of the Instrument provides that the registration requirement does not apply to an international adviser provided that it derives not more than 10% of the aggregate consolidated gross revenue of the international adviser and its affiliates for any fiscal year from portfolio management activities of the international adviser and its affiliates in Canada. We note that the 10% threshold is lower than the current 25% threshold set out in OSC Rule 35-502. The 10% threshold is too restrictive for large firms that have many affiliates and particularly too restrictive since this requirement captures Canadian affiliates as well. We suggest that the current 25% threshold be maintained. We are unsure of the rationale behind reducing the limit to 10% and would like to understand better the intent behind such a decrease.

8.17 Sub-advisers

We congratulate the CSA on its intention to codify exemptive relief orders previously granted to Canadian registrants to allow them to hire non-Canadian sub-advisers or sub-advisers that are not registered in a particular Canadian jurisdiction for their managed account programs. We recognize that the CSA has included in section 8.17 similar conditions as in exemptions previously granted, including the condition that a sub-adviser cannot be registered in any Canadian province without also being registered in Manitoba, if the sub-adviser wishes to make use of the exemption for a Manitoba client.

We do not understand the rationale behind having a distinct regime for Manitoba in this instance, particularly since the fit and proper requirements for an adviser in Manitoba are the same as those that exist in other Canadian jurisdictions. We suggest that this Manitoba-specific condition be removed in an effort to ensure harmonization across Canada.

PART 10 – TRANSITION PERIODS

We are concerned with the implementation timelines that have been proposed by the CSA in the Instrument. The CSA is proposing to require that registrants comply with certain requirements (i.e. record retention and financial reporting etc.) immediately upon the effective date of the Instrument. In other instances, the CSA is proposing a transition period of 6-12 months.

For large registrants the proposed timeframes and transition periods are not practical. Changes of the magnitude contemplated in the Instrument require coordination across various constituents and resources in order to effect implementation. For instance, to implement the proposed requirements, we would need to launch projects to allow us to coordinate efforts across various registrants within CIBC and arrange to allocate resources in at least the following areas: personnel, funding, technology, systems, training, legal, compliance and audit. From past experience, projects of lesser magnitude required at least one year from inception to fruition. While we can begin mapping out the implementation process for the requirements in the Instrument prior to the Instrument coming into force, the uncertainty surrounding the final formulation of the Instrument will prevent us from finalizing projects and resources until such time as the CSA has provided us with more clarity and certainty on what the final requirements will look like.

While we understand that the CSA would like to see registrants begin complying sooner rather than later, we urge the CSA to consider the business realities in setting the implementation dates for the Instrument. For some requirements such as record retention, complaint handling and referral arrangements, a longer transition period is imperative. There are very complicated and involved processes currently in place surrounding these types of requirements and we anticipate that effecting a change in these areas will require twice the amount of time and resources as any other requirement in the Instrument.

We also believe that when setting the implementation dates, the CSA needs to consider the various other regulatory initiatives on the horizon that registrants will need to comply with in the next few years such as point of sale, client relationship model and suitability requirements which will also require resources, time, effort, funding, and technology changes.

Given all of the above, we are proposing that a transition period be provided for all requirements within the Instrument and that the transition period be no less than 12 months for less onerous requirements and 18-24 months for more onerous requirements (i.e. record retention, complaint handling and referral arrangements).

10.1 Change of registration categories – Firms

Under section 10.1(2) of the Instrument, a registered international dealer in Ontario will be deemed to be registered as an exempt market dealer. In our view this seems to be a drafting error as it is inconsistent with the registration exemption provided to international dealers under section 8.15(2) of the Instrument. To that end, we recommend that the reference to international dealers in section 10.1(2) should be deleted.

10.3 Registration of investment fund managers

Section 10.3 of the Instrument states that an investment fund manager does not have to comply with capital requirements for 6 months after the effective date of the Instrument. This is in contrast to all other registrants who are provided 12 months to comply with capital requirements after the effective date of the Instrument (see section 10.10 of the Instrument). We submit that investment fund managers should be treated the same as other registrants when it comes to capital requirements and as such should also be provided with 12 months to comply after the effective date of the Instrument.

<u>OTHER ISSUES:</u>

Please see Appendix A for our comments on the proposed form 31-103F1.

* * * * * * *

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

Yours truly,

/s/ Carole Dagher

Carole Dagher
Counsel, Legal Department

APPENDIX A

PROPOSED FORM 31-103F1
CALCULATION OF EXCESS WORKING CAPITAL

General: We assume that the calculation of excess working capital relates to a registrant's registrable activities only. Therefore, if a registrant carries out non-registrable activities (i.e. trustee, deposit taking business, custodian, etc.) than the registrant can adjust those non-registrable activities out of its calculations of excess working capital on Form 31-103F1. Your confirmation of this understanding would be helpful.

Line 2: We need clarification from the CSA on whether the current portion of deferred taxes would be considered a "current asset not readily convertible into cash".

Line 12: We would like clarification on what is considered an "unresolved difference that could result in a loss from either firm or client assets". For some of our registrants, the custodian is the chief record keeper of the clients' cash and securities. Since such registrants do not act as the clients' trustee/custodian, they do not handle, hold or have access to the clients' assets (as we explained in our comments to Section 4.7.1 of the Policy above). For example, at the end of each period, when clients' securities and cash are reconciled between the registrant's internal system and the external custodian's records, any reconciling items that occur will be merely related to the timing issues. When these reconciling items occur, the registrant relies mainly on the custodian's records. These discrepancies would not create an exposure or a loss for the registrant.