THE INVESTMENT FUNDS INSTITUTE OF CANADA
L'INSTITUT DES FONDS D'INVESTISSEMENT DU CANADA
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May 23, 2008

Sent via Email: consultation-en-cours@lautorite.qc.ca; jstevenson@osc.gov.on.ca

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
Nova Scotia Securities Commission
Registrar of Securities, Prince Edward Island
Superintendent of Securities, Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

In care of:

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John Stevenson
Secretary
Ontario Securities Commission
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Dear Sirs/Mesdames:

Re: Proposed NI 31-103 *Registration Requirements and Consequential Amendments*
And Re: Proposed Revocation and Replacement of NI 33-109 *Registration Information*

We are writing to provide the comments of the Members of The Investment Funds Institute of Canada ("IFIC") on the Notice and Request for Comments dated February 29, 2008, on Proposed National Instrument 31-103 *Registration Requirements*, Proposed Companion Policy 31-103CP *Registration Requirements* and proposed consequential amendments published for public comment by the Canadian Securities Administrators ("CSA") (collectively the "Revised Proposal"). In this letter we also provide a comment on Proposed Revocation and Replacement of National Instrument 33-109 *Registration Information* and the proposed consequential amendments related to it (collectively "NI 33-109").

General Comments:

We applaud the efforts made by the CSA to consider and respond positively to many of the comments submitted in relation to the previous version of the Proposal. We also wish to acknowledge the excellent collaborative approach which the CSA has taken during this consultation, an approach which we believe has resulted in a significant reduction in the number of remaining concerns for our Members.

Before outlining areas which we believe should receive further consideration, it is important to mention that our Members found it very difficult to properly and thoroughly review the Revised Proposal. Unlike other proposals that are typically issued for consultation, the sheer volume of materials combined with all of the consequential amendments and numerous exceptions and exclusions caused the review process to be slow and tedious, leaving readers doubting whether they have completely captured and understood all elements of the Revised Proposal.

The following points highlight issues with the Revised Proposal, which are itemized in the attached matrix. Some issues were brought to the CSA's attention during the previous comment process. Some are new issues arising in our review of the Revised Proposal and the additional materials issued by the CSA, including the content of consequential amendments.

1. Undesired Effect of Exempt Market Dealer Registration Requirement:

The Proposed Instrument seeks to implement a registration system for exempt market dealers, a new category of dealer similar to the current Limited Marker Dealer ("LMD") category that exists in Ontario and Newfoundland and Labrador, except that it will be subject to proficiency and additional fit and proper requirements for such dealers and their representatives, with some exceptions as described in the Revised Proposal. The CSA is of the view that the creation of this new category will bring more market participants under the registration umbrella, and thus will enhance the current system. While we support the policy reasons for the registration requirement, we have identified a major concern and a recommended solution.

At present the LMD category is perceived as a very "limited" category of registration used primarily for underwriting and the sale of prospectus-exempt products. The category is generally not used as a distribution channel for mutual funds as defined in NI 81-102 and sold to individual investors. This may have been a result of the lack of proficiency requirements for registration in this category in those two jurisdictions where registration is currently required. An informal canvass of our manager Members indicates that most do not currently offer any NI 81-102 mutual funds to any investors through an LMD.

We recommend that Exempt Market Dealers ("EMDs") be permitted to conduct business only in exempt products of the kind described in NI 45-106. Exclusive of those dealers that would be grandfathered as noted below, those EMDs that choose to deal in

NI 81-102 mutual funds should be members of the MFDA (or in the case of Quebec, comply with the regulations on mutual fund dealer requirements in that province), or if they carry on business in an IDA-related business they should be registered with the IDA. This approach provides the Canadian public with a consistent approach in terms of regulatory oversight, practice requirements and investor protection coverage when they purchase NI 81-102 mutual funds.

This is the easiest time to implement the requirement to be registered with an SRO if there is a desire by EMDs to sell mutual funds because this registration requirement will rarely create an additional requirement for existing LMD business models, as there is today little practice of selling NI 81-102 mutual funds by these registrants. As noted in the paragraph above, if current business models are affected at all, we recommend such EMDs be granted some form of grandfathering exemptive relief.

2. Proficiency Requirement Issues:

(a) Chief Compliance Officer:

With respect to investment fund manager Chief Compliance Officer ("CCO") proficiency, we acknowledge the CSA's expansion of the scope of appropriate qualifications to include the CFA designation, but the Proposal still requires qualifications that are not aligned with the responsibilities of being a CCO. Subsection 4.15(a)(i) should include other designations appropriate to being a CCO.

Our earlier concern was that the previous version of the Proposal required investment fund manager CCOs to meet the same proficiency requirements as portfolio manager CCOs. We agree with the CSA's decision to distinguish between the requirements for portfolio manager and investment fund manager CCOs. We are however, concerned that the Revised Proposal establishes proficiency requirements for investment fund manager CCOs that are much more restrictive than for portfolio manager CCOs without a policy basis.

Specifically, portfolio manager CCO applicants must have passed certain exams and worked for either a registered dealer or adviser for a specified length of time. Investment fund manager CCO applicants must have worked for an investment fund manager (and no other type of registered firm). It is unclear why a more limited type of work experience is necessary or appropriate for investment fund manager CCOs.

In addition, the text of the Revised Proposal requires applicants for investment fund manager CCOs to have "consecutive" years of experience – a requirement which does not exist for CCO applicants for other registrants. We confirm the CSA's advice that this is an error and there is no intention to require consecutive years of work experience.

Finally we are concerned with the language in subsection 4.15(b)(iii) that requires five years' work experience with a ***registered*** *investment fund manager*. As the requirement for investment fund managers to register commences only upon implementation of the

Rule, a literal interpretation suggests this CCO experience requirement will be impossible to meet for the first five years after implementation of the Rule. Although CSA representatives have noted this is a transition issue only, and that this will be factored in during the proficiency and fit and proper review for each applicant, we nevertheless recommend the addition of "equivalency" language to 4.15(b)(iii) such as "or in an equivalent capacity for such periods prior to the implementation of NI 31-103".

(b) Exempt Market Dealer – proficiency for sales representative and CCO

In response to the original version of the Proposal, we expressed concern about the Canadian Securities Exam ("CSE") being the sole expressed education standard for these registrants. We felt that the CSE is not the appropriate base proficiency for this category of registration. We offered an alternative solution for new dealing representatives to be able to meet their exempt market product registration requirements - passing the Canadian Investment Funds Exam, plus an appropriate exempt securities exam. In addition, we proposed that current representatives of MFDA dealers be able to add one or more individual exempt security modules, with associated exam(s), to qualify as EMD representatives. We believe this approach will provide registrants with superior proficiency qualifications.

Throughout our consultations, the CSA has maintained that there was no intention to create a monopoly in the CSE, and that alternative courses and exams would be considered during the fit and proper qualification review of applications. In fact, it was emphasized that the inclusion of the proficiency principle in section 4.3 underscores the CSA's desire and intention to explore alternative courses. We confirm recent discussions with OSC staff that the CSA's Registration and Proficiency Committee has developed a project charter and established sub-committees to begin work on implementing a new proficiency review system, with willingness to consult with the industry. We look forward to working with the sub-committees in establishing appropriate alternative education standards for registrants.

Notwithstanding this desire to establish alternative education standards in collaboration with the industry, we remain concerned that the continued reference in the Rule to the CSE as the only acceptable education standard entrenches a statutory monopoly for this exam. As this was not the CSA's intention, we submit that the Rule must include some reference to the process by which other competing exam providers can be accredited as equivalent providers under this Rule. At the very least the rule should include some language in the listing of minimum course requirements such as "…or such other exam(s) as may be accredited by the regulator from time to time." This would clearly confirm the CSA's intention to consider and approve other exams.

3. Comment on Proposed Replacement of NI 33-109

We agree with the CSA's decision to remove Part 8 (Information Sharing) from NI 31-103 and believe that the information sharing mechanism outlined in Section 4.3 of proposed new NI 33-109, where the representative is responsible for the transfer of

termination information between registrant firms, addresses some of our concerns about the intersection with privacy legislation. The requirement for the former registered firm to provide the representative with a copy of Form 33-109F1 (the "Form") would ensure that the representative is aware of the exact nature of the disclosures made by the firm and thus potentially limit the firm's liability.

We are concerned, however, by some of the questions in Section E of the Form. We recommend narrowing the scope of questions 1 and 2 to circumstances connected to the representative's dismissal or resignation. We are also concerned that some questions call for statements of opinion rather than fact regarding issues that may be unrelated to the individual's termination. For example, question 10 requires the registered firm to disclose whether there is any matter the firm "believes is relevant to the individual's integrity or competence as a registrant or permitted individual". In addition question 3 seeks judgment about integrity and competence and would yield sufficient information if it were limited to ask about "any significant internal disciplinary measures…related to the individual's activities as a registrant".

We believe that current caselaw on the provision and content of employment reference letters provided by former employers, will make registrants reluctant to include any information beyond fact, thereby limiting the value of any responses to open-ended, opinion questions. We recommend that question 10 be removed entirely as the first nine questions should generate sufficient factual responses to enable a firm to assess an individual's candidacy, or to at least provide sufficient basis for further questions to be asked directly of the individual. At a minimum, we recommend redrafting question 10 so that no subjectivity is called for in the response.

4. Harmonization Issues

There are a number of concerns we have in regard to harmonization. Three key areas are highlighted below with page references for more detail in the attached matrix.

a) the coordination of all necessary legislative amendments to enact the business trigger in all CSA jurisdictions (page 2). Please note that we will also be submitting a comment letter to the Ontario Ministry of Finance regarding the proposed amendments to the *Securities Act* (Ontario) and the related confusion this approach will bring to the readers of NI 31-103 in Ontario and the rest of Canada if all amendments to the *Act* were to be enacted as proposed;

b) harmonization of complaint handling requirements among all regulators, SROs and other agencies (page 4); and

c) harmonization of relationship disclosure requirements with SROs (page 7).

5. Items Requiring Clarification

The attached matrix also includes several items requiring clarification of the CSA's intent with respect to a particular section of the Rule, or the intended interpretation of such section. For example (again with page references for more detail in the attached matrix) there is uncertainty about the application of the business trigger to sales assistants (page 3) and the practical scope of the record retention requirements in Division 3 of the Revised Proposal (page 7). In both instances our understanding of the CSA's intention does not seem to be clearly reflected in the language used in the Revised Proposal.

We would appreciate the CSA's clarification or substantive response to each of the items noted in the matrix.

…*…*…*…

We thank you for providing our Members with the opportunity to comment on the Revised Proposal. Please contact the undersigned directly or Ralf Hensel, Director – Policy, Manager Issues, at (416) 309-2314 or rhensel@ific.ca, should you have any questions or wish to discuss these comments in detail.

Yours truly,

THE INVESTMENT FUNDS INSTITUTE OF CANADA

By: Joanne De Laurentiis
President & Chief Executive Officer

JDL/rh

Attach – RRP Issues Matrix

NATIONAL INSTRUMENT 31-103

Page

Includes CSA Comments in Response to June 2007 IFIC submission and IFIC response

(Updated – May 23, 2008)

PROPOSED NATIONAL INSTRUMENT 31-103

General Issues

Issue	IFIC submission on Feb 2007 Proposal	Feb 2008 Proposal	IFIC comment on Feb 2008 Proposal
Status of Legislation to Require Fund Manager Registration **FMTF**	IFIC Members are concerned about the lack of clarity on the status of the required amendments to securities legislation that are necessary to implement the new registration categories and the "business trigger" for dealing in securities and acting as an investment fund manager. The legislation must clarify the scope of "investment fund manager", to ensure, for example, that trustees of investment funds are not considered investment fund managers .	CSA response Each jurisdiction is addressing the necessary legislative amendments in accordance with their local processes. Since legislative amendments are ultimately within the mandate of the Legislature the process for these amendments is not the same as a commission's rule-making process. Some jurisdictions will be publishing a local notice setting out the proposed or completed legislative amendments. For those jurisdictions which are not yet in a position to publish their legislative amendments we have attempted wherever possible to provide as much information as possible to assist industry in understanding what those amendments will include. April 23, 2008 Update: CSA expect to publish final rule by end of 2008 with implementation in March 2009 subject to necessary legislative amendments.	Most jurisdictions expect to pass legislation by June 2008, to give effect to the manager registration and business trigger elements[1]. It is intended that the legislative "in force" dates be coordinated. IFIC Members have not to date been able to review proposed legislation. CSA response addresses IFIC member comments, except for remaining concern that implementation be coordinated. On April 25 Ontario Ministry of Finance issued draft OSA amendments (and resulting changes to Rule) for comment period ending May 29, 2008.
Trade Trigger vs. Business Trigger **FMTF**	We support the move to the business trigger but require a clearer definition of the business trigger and the proposed mechanism for expanding the list of activities requiring registration We require clarity as to the definition of "dealing"	CSA – We have expanded the discussion of the business trigger in the CP to more clearly set out its intended scope. The business trigger for dealers applies to persons or companies who are in the business of trading in securities. The term "trade" or "trading" has not been	We welcome the clarification provided in the definition of business trigger but are concerned if the resulting application excludes persons or companies who are in

[1] QC, NB, NS, NF will introduce amendments in spring window, and expect approval before June. In Yukon the new Securities Act is approved and expects to receive Royal Assent in June. BC passed its legislation in December 2007 and should have approval by June. SK has drafted the legislation but hasn't gone to Legislature – hoped by June. MB has tabled its amendments and expect approval by June. PEI has already approved the amendments and will be in effect in March. ON status as noted in matrix above.

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DATF	in the legislation which is being tabled to give effect to the business trigger. This would provide us with clarity on the audit and enforcement functions of the SROs. We would like clarification as to the CSA's position regarding the obligation for financial planners to become registered. IFIC recommends that fee-for-service financial planners (not affiliated with a mutual fund dealer) require registration.	amended and is the same term used with the current trade trigger. People such as research analysts or financial planners would only be subject to registration if first, they were trading, and second, were in the business of trading. The analysis to determine whether someone is trading under the proposed Rule is the same as the analysis to determine whether someone is trading under the current trade trigger. It is important to remember that a person is only required to be registered when they are "in the business" of "trading in securities". In responses to comment letters, CSA wrote that separate MF sales assistant registration category is not necessary at this time. Two technical changes to the discussion of the business trigger factors in the Companion Policy. Neither represents a material change to the substance of the business trigger, which remains as it was in the 2007 Proposal. • Business trigger for dealing activities is now described by way of a reference to "trading in securities", instead of "dealing in securities". Change made to clarify the breadth of activity intended to be captured by the trigger. It does not reflect any change in policy. • Have added the concepts of acting in an intermediary capacity or as a market-maker to the discussion in the Companion Policy of the factors to be considered when assessing whether an activity is conducted as a business. These factors were not included in the 2007 Proposal. Registration of Financial Planners - The proposed Rule does not deal with financial planners that do not carry	the business of advising clients on their investment portfolios though not involved in the processing of trades. Concern regarding application of the business trigger to the activities of dealer sales assistants. The broad language in the business trigger as to scope of activities performed would seem to capture the typical administrative activities of a sales assistant which suggests registration is required. We understand that the business trigger was not meant to capture sales assistants who perform the administrative work on sales transactions (absent any active trading functions). Formal confirmation of this understanding would alleviate many concerns, as the CSA response to a similar comment on this issue on previous version of Rule was not conclusive. We remain concerned that the proposed Rule does not deal with financial planners who are not in the business of trading. We expect that persons who advise on portfolios or investments should be registered. The absence of registration requirements for the fee-based advice channel, many of the services of which compete

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		out trading or advising activities with reference to specific securities. Various members of the CSA are considering the issues associated with financial planners but no proposals are being made at this time. April 23, 2008 Update Registration of Financial Planners is on the agenda of most CSA jurisdictions and will be addressed once NI 31-103 is implemented. OSC staff noted that most of the financing planning activity is already regulated under the PM advisor category so the focus will be on identifying the areas that are not regulated.	directly with registered dealers, provides for unequal investor protection and promotes regulatory arbitrage that is not in the interest of investors. (See April 23 update) Remaining concern with effect of potential inconsistency resulting from different methods of adoption of rule among provinces. E.g. MB adopting business trigger of sorts by way of exemption from trade trigger.
Complaint Resolution Process **FMTF** – Compliance Sub-Group **DATF** – Compliance Sub-Group	The discussion in the CP is confusing because it tries to define what a complaint is and is not – such definition should be avoided. The CP should be directional, less prescriptive, and concordant with the requirements of existing complaint handling systems to avoid client confusion. No timelines should be imposed when a complaint proceeds to litigation. Client complaints should be defined as being limited to regulatory complaints submitted to the firm. Non-regulatory complaints (such as those regarding service or fund performance) should be explicitly noted as being outside the scope of this instrument. The recommendations of the Sub-Group seek to clarify the definition and suggest a simplified process for responding to complaints.	CSA - Have not made substantial changes to the basic requirements of the 2007 Proposal other than to exempt investment fund managers and exempt market dealers from the requirements. Expect registrants to handle complaints promptly. Division 6: Complaint Handling S. 5.27 Exemption for investment fund managers and exempt market dealers, but CP appears to apply prompt complaint handling rules to managers. Transition rule requires (except in Québec), that registrants comply with the complaint handling procedures within six (6) months of Rule implementation. April 23, 2008 Update OSC staff reiterated that investment fund managers are completely exempt from the complaint handling requirements and the discussion in the CP is not meant	We note the exemption for investment fund managers but highlight that the proposed CP does not contain a similar carve out – it requires that all registrants (including investment fund managers?) will be expected to handle complaints promptly. The Companion Policy indicates that a substantive response to a complaint should be provided within 3 months of the date it was received. Clarifying language is required in the CP if investment fund managers are to be excluded from its requirements as well. We continue to recommend a less prescriptive approach vis-à-vis timelines, and for greater harmonization with the rules for

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		to indicate otherwise. CSA continues to meet with SROs to ensure long-term harmonization of the complaint handing requirements.	complaint handling that apply to SRO Member firms. Harmonization among all regulators, SROs and agencies is preferred solution. Since the rules for complaint resolution are currently under review among all these entities CSA should avoid establishing any prescriptive rules about complaint handling at this time.
Mechanism contemplated for inter-registrant information-sharing	We are concerned that the proposed inter-registrant information sharing regime does not fit with current legal realities such as privacy, employment and defamation laws and will create legal uncertainties for IFIC Members.	CSA - Have deleted the Information Sharing Part from the proposed Rule. Instead of the information sharing provision as originally proposed, we have amended NI 33-109 to provide: • an obligation on the part of the registered firm to provide the representative with a copy of the Form 33-109F1 • an obligation on the part of a registered firm that is considering becoming the sponsoring firm of a registered individual to obtain from such individual a copy of the Form 33-109F1 completed by his or her most recent sponsoring firm. Form 33-109F (new Part E. Further details) (You do not have to provide the information in this Part E unless the individual resigned or was dismissed. If required, you have until 30 business days after the effective date of the termination to file your responses to the questions in this Part E – the remainder of the form should still be filed within 5 days business days after the effective date of the termination.)	This provision has been removed from the Rule and added into 33-109 due diligence section – a stronger provision to require inclusion of information on termination – when hiring firms should obtain person's termination form. Will submit separate comment letter on the changes to 33-109. Q1 and 2 of Form should be clarified to limit context to circumstances connected to the dismissal/resignation. The open-ended questions of proposed 33-109F (e.g. Questions 3 & 10) which require statements of opinion rather than fact regarding items that may be unrelated to a person's termination should be

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		If the individual resigned or was dismissed (whether or not for just cause), explain why in the space provided and answer the following questions to the best of the firm's knowledge. 1. Was the individual charged with any criminal offence? 2. Was the individual the subject of any investigation by any securities or financial industry regulator? 3. Was the individual subject to any significant internal disciplinary measures at the firm or any affiliate of the firm related to the individual's integrity or competence as a registrant? … 10. Is there any other matter relating to the individual's termination or conduct leading up to it that the firm is aware of and believes is relevant to the individual's integrity or competence as a registrant or permitted individual? April 23, 2008 Update Some CSA jurisdictions had reservations about appropriateness of including Q10. Stakeholders are encouraged to provide their views on this issue.	removed, or guidance provided as to how they should be responded to because the provisions provide for open ended liability. Recommend Q10 be redrafted as a yes/no question, so that no subjectivity or opinion is required to respond. Recommend Q3 be amended to read "Was the individual subject to any significant internal…related to the individual's activities as a registrant". In any event, we believe the first 9 questions sufficiently canvass the area and should generate a sufficiently wide range of factual responses such that Q10 can be deleted since it calls for opinion on part of terminating employer.

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Record Keeping	N/A	Section 5.15(1) requires dealer, adviser and investment fund manager firms to maintain records to accurately record business activities, financial affairs and client transactions and to demonstrate compliance with applicable requirements of securities legislation. 5.15(2) lists a broad and open-ended spectrum of records that must be maintained. But s. 5.16(4) which notes the length of retention seems to refer only to 2 umbrella categories for records, namely activity records and relationship records.	Believe that there may be inconsistency in the scope of records to be retained under 5.15 and 5.16. 5.16 does not appear to be limiting the breadth of the sorts of records listed in 5.15(2) such that all listed records must be kept only if they are activity records and relationship records. As an example, CSA clearly did not intend for firms to retain copies of birthday cards that may be sent to clients, but those would seem to be caught by 5.15(2)(l). CSA needs to clarify its intention, and ensure the language in Division 3 is clarified accordingly.
Relationship Disclosure Document **DATF**	November 2007 IFIC Note – CSA staff clarified that they are not looking for a specific document and acknowledged that much of the required information may already be captured elsewhere. Revised rule will refer to "relationship disclosure information" and will specify the information that must be collected. CSA advised that current form can continue to be used, but within 6 months will be required to include this information – information could also be included in other forms. Focus will be on nature of the information, not its location or the document in which it appears.	Have replaced the requirement to provide a relationship disclosure document to clients, with a principle based provision requiring registrants to provide information that a reasonable client would consider important respecting the client's relationship with the registrant. The Rule provides a basic list of information items which will be required to be given to clients by registrants Exempt market dealers that do not handle, hold or have access to client cash or assets, including cheques and other similar instruments, are exempt. Requirement may be met by providing clients with separate documents which, together, give them the	We support consistent outcomes for investors regardless of whether or not they are clients of SRO Members. Non-SRO registrants should not be under less stringent requirements to disclose to their clients the nature and terms of their relationships than SRO members. We recommend that these measures be developed in parallel with the measures that are being developed by the SROs. The exemption of EMDs that do not handle client cash and financial

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		prescribed information. Will continue to work within the Joint Forum on the development of the point of sale initiative, which is a separate project and does not form part of the registration reform project April 23, 2008 Update CSA acknowledges concern and will continue to work with the SROs to ensure a harmonized approach all around.	planners not in the business of trading pose further problems in this regard.

Manager Issues

Issue	IFIC submission on Feb 2007 Proposal	Feb 2008 Proposal	IFIC comment on Feb 2008 Proposal
Role of Fund Manager CCO / Compliance System Requirements **FMTF** Compliance Sub-Group	There is a discrepancy in the allocation of roles between a UDP and the CCO. We believe that the UDP is the person responsible for discharging the registered firm's obligations under the securities legislation while the CCO is the individual responsible for administering the firm's policies and procedures adopted under those obligations. Further, the language in 5.26 (1) is overbroad and purports to include aspects of the registered firm's business that are beyond securities activities, and hence are beyond the scope of the CSA. The CCO should be a senior position within the firm.	Have clarified responsibilities of the CCO in the Companion Policy The Rule now prescribes that the UDP's functions are to supervise the firm's compliance directed activities, and promote compliance. The functions of the CCO are described in the Rule as follows: • establish policies and procedures for assessing compliance by the firm • monitor and assess compliance • report to the UDP as soon as practicable in the event of substantial non-compliance • submit an annual report to the board of directors or partnership for the purpose of assessing compliance	All registered firms will still be required to establish a compliance program with a "reasonableness test". Firms to establish a written system of controls and supervision sufficient to provide "reasonable assurance" that the firm and individuals acting on its behalf comply with securities legislation; the compliance system will also be required to manage the risks associated with the firm's business in conformity with prudent business practices. Emphasis on firm's responsibility to establish a system for supervising registered staff and on manager's responsibility for ensuring that registered staff act honestly and in good faith towards clients, comply with securities legislation and the firm's own policies and procedures and maintain appropriate proficiency.

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Fund Manager CCO Proficiency Requirements **FMTF** Compliance Sub-Group	Suggest alternative, appropriate proficiency requirements, or exemptions when a fund manager makes use of qualified third parties. We recommend grandfathering of the current "relevant experience" requirements. We suggest there be no mandated/required professional (lawyer or CA) designation and, as an alternative to the CSC and PDO courses, we suggest a "fit for purpose" proficiency certification for CCOs.	Have not changed the substantive proficiency requirements from the 2007 Proposal except: • added a general proficiency principle in the Rule, <u>requiring education and experience reasonably necessary to perform the activity of the registered individual</u> • included the proficiency requirements which will apply to all mutual fund dealer representatives • eliminated the requirement that exempt market dealer representatives must pass either the Partners, Directors and Senior Officers exam or the Conduct and Practices Handbook exam • amended the proficiency requirement applicable to the associate advising representative s. 4.15 (a) (i) – professional designation has been expanded to include a CFA designation, CMA, CGA in addition to the lawyer or CA designation s. 4.16 outlines grandfathering provision of current registrants BUT: S. 4.15 - An investment fund manager must not designate an individual as its chief compliance officer under subsection 2.10(1) [chief compliance officer] unless the individual (a) has (i) earned a CFA Charter or a professional designation as a lawyer, Chartered Accountant, Certified General Accountant or Certified Management Accountant in a jurisdiction of Canada, a notary in Québec, or the equivalent	Transition rule requires individuals designated as UDP or CCO to apply for registration within one month, unless deemed registered (in case of CCO) in that category. Acknowledge progress made in expanding scope of appropriate qualifications to include CFAs, but proposal still forces qualifications that are not aligned with the responsibilities of being a CCO. S. 4.15(a)(i) should include other designations appropriate to being a CCO. <u>New issue:</u> Feb 2007 proposal required investment fund manager CCOs to meet the same proficiency requirements as portfolio manager CCOs. Good to distinguish between the proficiency requirements for the 2 types of CCOs. But, the proficiency requirements for portfolio manager CCOs appear to be more flexible. Applicant for PM CCO will be qualified if he or she has passed certain exams and worked for either a registered dealer or adviser for a specified length of time. Applicant for investment fund manager CCO

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		in a foreign jurisdiction, (ii) passed the Canadian Securities Exam and the PDO Exam, and (iii) either A) worked for an *investment fund manager* for three *consecutive* years, or B) provided professional services in the securities industry for three *consecutive* years and worked for an *investment fund manager* for 12 *consecutive* months, or (b) has (i) passed the Canadian Investment Funds Exam, the Canadian Securities Exam, or the Investment Funds in Canada Exam, (ii) passed the PDO Exam, and (iii) worked for a *registered investment fund manager* for five *consecutive* years, including for three consecutive years in a compliance capacity. April 23, 2008 Update OSC staff noted that the "consecutive" requirement will be removed from the proficiency requirements. This was a drafting error. OSC staff also indicated that the requirement to have worked for a registered investment firm for five years is a transition issue, i.e., in the first five years after the implementation of the rule the CSA will consider whether the person has worked for an investment fund manager. Nevertheless the OSC has requested that we comment on this provision.	must have worked for an investment fund manager (no other type of registered firm). In addition, applicants for investment fund manager CCO must have "consecutive" years of experience working for an investment fund manager, whereas applicants for portfolio manager CCO must only have satisfied the prescribed length of working experience, but it need not be consecutive (see April 23, 2008 update in column to left). It is not clear why the CSA has taken a different approach for investment fund manager CCOs or whether they intended to do so Significant concern for banks who may move their compliance people between divisions. On issue of requirement to have been registered for 5 years, although CSA notes it as a transition issue, we will suggest the addition of a phrase to 4.15(b)(iii) such as "or in an equivalent capacity for such periods prior to the implementation of 31-103".

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Elimination of international advisor registration category and exemptions available for international portfolio managers **FMTF**	With the proposed elimination of the "international advisor" registration category, non-Canadian advisors would need to become full domestic advisors (now "portfolio managers") and bear the full regulatory burden (including proficiency of individual advising representatives), notwithstanding that they are registrants with other recognized regulators globally, their Canadian clients are primarily institutional and their focus is on non-Canadian securities. IFIC is concerned that this will affect Canadians' access to such global investment management expertise by making the registration process a barrier to entry for these international participants. Moreover, although the Proposals introduce an international portfolio manager registration exemption, the proposed conditions attached to such exemption (including the prohibition on solicitation, and the very narrow list of permitted clients which does not include an investment fund) render the exemption unavailable to most non-Canadian advisors. IFIC strongly encourages the CSA to consider including a nationally harmonized category of registration for international advisors which would mirror the current Ontario international advisor registration category contained in Ontario Securities Commission Rule 35-502. IFIC Members are concerned that without this accommodation, previously negotiated and long-standing relationships and Canadians access to international investment expertise will be put into jeopardy.	We believe that investment funds managed in Canada should have a registrant as their principal adviser. Foreign advisers with sufficient business of this kind in Canada to warrant the costs associated with registration will make the decision to register. Others will be able to utilize the exemption for sub-advisers in section 8.17 of the proposed Rule, which imposes few costs if any on the sub-adviser. Under the proposed Rule, an adviser to an investment fund will be required to register in the Canadian jurisdiction(s) where the fund is directed, but not necessarily in other jurisdictions where it is distributed. If the investment fund manager does not direct a fund from within a Canadian jurisdiction, neither the investment fund manager nor a foreign adviser to the fund would be required to register (although the dealers distributing units of the fund in Canada would be required to register in the appropriate category). Have expanded the list of permitted clients for international dealers and advisers and removed the prohibition on international advisers from soliciting new business <u>International Portfolio Manager registration exemption</u> Several commenters suggested that, for a variety of reasons, the proposed exemptions for international dealers and international advisers were too restrictive to serve their intended purpose. We find these arguments persuasive and have amended the exemption by expanding the permitted client list for both international dealers and advisers.	No further issue - Feb 2008 proposal significantly addresses previous concerns. Registration as an adviser or investment fund manager will not be required in Ontario solely because securities of the investment fund are distributed in Ontario. The list of permitted clients for international registrants is different under the proposal – there appear to be no remaining concerns for IFIC Members

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Investment Fund Manager Registration	Concern re duplicative registration requirements	CP 31-103 S. 2.8 We do not expect an investment fund manager to register in every jurisdiction where a fund is distributed. Investment fund managers are required to register only in the jurisdiction where the person or company that directs the management of the fund is located, which in most cases will be where their head office is located. However, if an investment fund manager directs the management of funds from locations in more than one jurisdiction, it must register in each of them. If an investment fund manager is located outside Canada, there is no requirement for it to be registered in Canada, unless it is directing the management of a fund from inside Canada.	Need clarity on what is meant by "directing the management of funds" – what does this mean and does this catch firms who have portfolio managers in offices other than, or in addition to, head office?
Fund Manager Capital Requirements **FMTF**	Unsubordinated debt and investment risk on securities held should be treated as per GAAP and not as the subject of specific inclusions/deductions. Although we understand the minimum capital calculations are the same as those applied to other registrants, we believe the business operations of a fund manager dictate that the treatment of the above items in accordance with GAAP is more appropriate.	The basis for the capital formula is a registrant's financial statements which are prepared in accordance with GAAP. However, certain conservative adjustments should be made for purposes of the capital calculation to reflect operational risk, market risk and liquidity risk. These are present in varying degrees in all businesses. Unsubordinated debt is treated conservatively in the capital formula. However, a registrant may determine whether the execution of a subordination agreement is necessary for the purposes of capital calculation. Form 31-103 F1 - Calculation of excess working capital Line 9 – Market Risk	Need to clarify what CSA means by "NAV adjustment". This is unclear as is NAV error - there are no materiality tests and no guidance from regulators at all. Language seems to cover any NAV adjustment whatsoever. Form 31-103F1 requires a market risk adjustment for securities of mutual funds qualified by prospectus for sale in any province of Canada at a margin rate of 5% for money market funds and 50% for all other mutual funds. We are concerned about the application of the market risk adjustment in cases where an investment fund manager invests in

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			proprietary mutual funds (both reporting and non-reporting issuers). We believe it is inappropriate to require a market risk adjustment in such cases because the investments in proprietary mutual funds can be readily converted to cash by the controlling fund manager. As such, we recommend a 0% margin rate for investments in proprietary funds
Fund Manager Insurance Requirements **FMTF**	Given the multiplicity of structures and varying access to insurance over time, we suggest a flexible approach that would allow the Board of a fund manager to determine the amount and type(s) of coverage to be maintained. Although we understand the insurance requirements are the same as those applied to other registrants, we believe the business operations of a fund manager dictate that a flexible approach to determining insurance coverage is more appropriate.	We do not believe this is an instance where a principles-based approach would be appropriate because the inherent difficulty of determining appropriate coverage would result in different standards from registrant to registrant. S. 4.23 Insurance – Investment Fund Manager S.4.23 (1)(a) - no longer refer only to a "financial institution bond", but rather "bonding or insurance" New section 4.23(1)(b) – New single loss limit amount of *one per cent of the investment fund manager's total assets*, as calculated using the investment fund manager's most recent financial records, or $25,000,000, whichever is less; FMTF has no concern with this additional limit.	Reiterate previous concerns – desire flexible approach that permits fund manager Board to determine The Revised Draft Instrument replaces the reference to "financial institution bond" with "bonding or insurance" and adds that any bonding or insurance must be acceptable to the regulator. FMTF concerned with "acceptable to regulator" requirement and how it would work – does it require submission of proposed policy coverage to regulator in advance, rather than submission of an issued policy. Process might result in need to change coverage already in place. CP contains guidance on the concept of double aggregate limit and a provision for full

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			reinstatement of coverage. Registered firms permitted to hold a global financial institution bond that benefits or names another person as insured subject to conditions.
Filing of Financial Statements **FMTF** Capital and Compliance Sub-Groups	Proposal considered by both Fund Manager Capital Sub-Group and Fund Manager Compliance Sub-Group. No recommendations.	Investment fund manager to deliver annual, as well as quarterly financial statements – S. 4.30(1) and (2) including descriptions of any NAV adjustments made during the preceding period. Advisers required only to deliver annual financial statements.	Fund manager financial reporting obligations are the same as those for dealers –managers with current adviser registrations are required only to report annually – any issues? NAV adjustment issue arises, as described in previous comment. This change only affects firms that are not publicly traded – any issue for them?
NAV Error Report **FMTF** Compliance and Capital Sub-Group	Considered by both Fund Manager Capital Sub-Group and Fund Manager Compliance Sub-Group. No recommendations. Generally, IFIC should urge CSA to not require filings for routine adjustments – there is currently no definition for "net asset value adjustment". Also, what will the CSA do with the information filed?	Fund managers should have internal policies and procedures relating to the treatment of NAV errors including setting an internal materiality threshold to determine when an adjustment will be required. The Investment Funds Institute of Canada's guidelines for correction of NAV errors may be helpful in this regard.	Still an issue that filings are required for routine adjustments, and there is still no indication what the information in the filings will be used for.

Dealer Issues

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Structure of proposed dealer registration requirements **DATF**	IFIC believes that the registration regime must avoid "layering", in that registrants registered in broader categories with more onerous requirements should not have to qualify, register and meet duplicative requirements in more narrowly-focused registration categories. IFIC also recommends that NI 81-102 be reviewed for differences in treatment of MFDA and IDA members that serve no public policy purpose, such as the trust account requirements of Part 11 of NI 81-102. IFIC recommends that the CSA consider requiring all dealer registrants to become members of an SRO.	Have not changed the categories of registration for firms but have clarified that only investment dealers and exempt market dealers are permitted to act as an underwriter. Have not eliminated multiple categories but have made every effort to reduce duplicative requirements for registrants who hold multiple registrations, e.g., if a firm is registered in multiple categories, it must meet the highest capital requirement of its various categories of registration Individual registered in multiple categories must meet the proficiency requirements of all the registration categories. A review of current SRO requirements is not part of the mandate of this project. We believe the regulatory oversight that will be provided with the introduction of the EMD registration category will in fact enhance investor protection. The diversity of exempt market dealer activities is such that we do not believe a new SRO membership requirement would be appropriate.	We are concerned with the introduction of the EMD as a distribution channel for NI 81-102 mutual funds to accredited investors, without SRO/AMF oversight or protections. This will reduce, not enhance, investor protection in the large and growing high net worth market. (See comment below under EMD registration.)
Range of securities that can be sold by mutual fund dealers **DATF**	Given the level of regulation of mutual fund dealers, including registration requirements and MFDA membership, an entity registered as a mutual fund dealer should at the very least be permitted to sell any form of mutual fund (whether a reporting issuer or not). Registration regime should recognize the higher level of oversight that SRO membership brings and, accordingly, MFDA members should be permitted to sell exempt securities without the requirement to register in addition as EMDs.	31-103 CP includes expanded guidance concerning multiple registration categories. Have not eliminated multiple categories but have made every effort to reduce duplicative requirements for registrants who hold multiple registrations. We do not believe it is possible to eliminate all multiple registrations and we do not agree that exempt market dealing is a "sub-set" of mutual fund dealing. Registration categories and their terms and conditions of registration are tailored to specific purposes, and the sale of mutual funds is different in substance from the sale of other products.	We still recommend that the registration regime recognize the higher level of oversight that SRO membership brings and, accordingly, MFDA members should be permitted to sell exempt securities without the requirement to register in addition as Exempt Market Dealers

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Proficiency Requirements: Exempt Market Products **DATF**	We do not consider the Canadian Securities Exam to be the appropriate base proficiency for this category of registration. By mandating the same proficiency for representatives of exempt market dealers as for representatives of investment dealers, there is a danger that all mutual fund dealers wishing to deal in exempt securities will be pushed into the IDA business model. Propose allowing dealing representatives to meet their exempt market product registration requirements by passing the Canadian Investment Funds Exam, plus an appropriate exempt securities exam. The Canadian Investment Funds Course (CIFC) will remain the standard requirement. Then, students will be offered individual exempt security modules with an associated exam.	The CSA will set up a subcommittee to explore alternative courses and course providers for proficiency requirements. The revised proposed Rule treats the PDSOC and the OPD as equivalent. The Canadian Securities Examination represents baseline knowledge of the securities industry and provides regulators with a measurable benchmark to evaluate prior industry experience. Individuals with extensive industry experience should not have undue difficulty in passing the CSE. April 23, 2008 Update OSC staff reported that the CSA's Registration and Proficiency Committee has developed a project charter and established five sub-committees expected to begin meeting in the coming months. OSC has indicated a willingness to have industry consultations with sub-committees. OSC staff noted that given the number of business models in the LMD category it would be difficult to prescribe a more tailored proficiency requirements form EMDs than the proposed CSE. OSC staff also noted that the inclusion of the proficiency principle in section 4.3 highlights the CSA's flexibility in exploring alternative courses.	CSA officials have indicated that the Rule is not meant to provide a monopoly to a single course or exam provider. The continued reference to the Canadian Securities Examination, however, does just that. We recommend that the Rule include reference to the process by which other competing exam providers can gain accreditation as equivalent providers under this Rule. At the very least the rule needs some open-ended language in the listing of minimum course requirements such as "…or such other exam(s) as may be accredited by the regulator from time to time." This would underscore their intention to consider and approve other exams. This is a significant concern among the Quebec members.
Exempt Market Dealer Registration **DATF**	IFIC Members believe that it is important that a harmonized definition of "exempt security" be adopted nationally before registration in the category of exempt market dealer is required. Accordingly, the various provincial *Securities Act* definitions will need to be amended once a clear list of "exempt products" is arrived at, developed with	We believe that the description for the exempt market dealer in sec. 2.1(d) of the proposed Rule clearly sets out the activities that the dealer can carry on. The proposed Rule does not use the term exempt product. It is a term that primarily relates to the prospectus requirement, which is not the subject of the Rule.	We are concerned that the creation of the EMD as a new national category will legitimize it as a viable distribution channel for 81-102 mutual funds to accredited investors that the LMD has not traditionally been. This will

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	industry participation.	April 23, 2008 Update OSC staff noted that the majority of manufacturers are located in Ontario and asked whether they currently use LMDs to distribute their funds. Committee members indicated that although not currently the case, the implementation of the EMD category as currently proposed would result in the migration of high net worth clients to EMDs and encourage IDA and MFDA registrants to become EMDs, moving to non-SRO oversight platforms, OSC staff noted that there are currently 700 LMD registrations representing 9 different business models in Ontario. Not sure how the industry's proposals for SRO oversight could affect certain business models. Response is that any negative impact could be handled via the exemptive relief process.	result in a deterioration of SRO regulation in a large and growing segment of the marketplace, resulting in a serious erosion of investor protection. MFDA and IDA Members currently sell exempt market products and mutual funds to the same segment of the retail market but are subject to detailed SRO rules regarding business conduct and prudential requirements. This will result in a migration of high net worth business to the more lightly regulated EMD channel, and clients of these dealers will receive reduced levels of regulatory protection than they currently receive. We recommend that EMDs be permitted to conduct business only in prospectus-exempt products of the kind described in 45-106. If they are dealing in mutual funds they should be a member of the MFDA, or comply with regulations on MFD requirements in Quebec. If they carry on business in an IDA related business they should be registered with the IDA.

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Restricted Dealer Registration **DATF**	Recommend that the CSA clarify which firms, and which securities would be registered and dealt in under the category of restricted dealers. IFIC Members would be disappointed if this category of registration were to permit creation of provincial differences in the categories of registration or enable the avoidance of registration in one of the categories of registration with more rigorous oversight.	The restricted dealer category is intended to provide for some flexibility in the registration regime as business structures emerge. If over time a new business structure becomes widely adopted we will consider amending securities legislation to provide a category for that business structure. The CSA is committed to a harmonized approach to the use of the restricted dealer category.	We continue to be concerned that the Restricted Dealer category will be used over time for the creation of provincial differences in the categories of registration, and permit a movement away from, rather than toward, the greater harmonization of registration that this Rule is designed to promote.
Proposed exemption that will apply to entities providing "generic advice" and that otherwise are "in the business of advising"	We view the exemption from registration for entities providing generic advice as not being a positive step, since it will exempt from registration entities such as fee-based financial planners. IFIC Members believe that these entities should be required to be registered. IFIC Members assert that the relationship between fee-for-service financial planners (not affiliated with a mutual fund dealer) and their clients is similar to that of the relationship between a dealer registrant and its clients, in that both offer advice for compensation. IFIC Members believe that this type of business relationship should continue to be caught by the business trigger for advisors, which would require fee-for-service financial planners to be registered, in turn providing additional investor protection that regulatory oversight affords.	The proposed Rule does not deal with financial planners that do not carry out trading or advising activities with reference to specific securities. Various members of the CSA are considering the issues associated with financial planners but no proposals are being made at this time.	(See comment on Financial Planners above under Business Trigger)
Suitability	Section 3.3 contemplates that the SROs may establish different rules for their members from what is contained in NI 31-103 in	The IDA has a more detailed suitability regime that recognizes different standards for advisory clients, clients wanting only order execution and institutional clients. Having the same	Consistency in suitability requirements remains the key issue. Client experience must

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DATF Compliance Subgroup	several areas. Generally, we don't disagree with approach but believe that the CSA must take a hard-line position on suitability, which is fundamental for clients of all dealers - therefore all dealers must be subject to the same rules and requirements to ensure appropriate and consistent investor protection. Unless the CSA take this position, the SROs may adopt different suitability rules which will result in investors receiving different treatment for no adequate reason. Investors have a right to expect consistent treatment and experience when working with anyone "in the business of dealing" in securities. Members feel strongly that suitability obligations beyond those stated in NI 31-103 should not be dictated by the SROs, but should be defined by the business relationship contracted between the Dealer and the Investor as part of the expectations of that business relationship. Members support a portfolio-based application of suitability requirements by the SROs (particularly when completing assessments of trade suitability).	standard for all clients of all dealers does not recognize the reality that IDA Members have different kinds of clients seeking different kinds of services. The suggestion could in fact eliminate the ability of some clients to get the limited services they desire, such as order execution, with a concomitant increase in their costs. Have not changed the suitability obligation, except to provide that it does not apply to permitted clients as follows: • to registrants where the permitted client has waived the obligation in writing • to exempt market dealers when dealing with permitted clients	be similar regardless of channel.

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Cross-Provincial Border Clients **DATF**	The proposed mobility exemption for dealers and advisors does not reflect the realities of a more mobile Canadian population and will not significantly reduce the regulatory burdens of having to become registered in multiple provinces where clients reside. In addition, the CSA should provide clarity around the rules pertaining to the movement of clients from an MFDA to a non-MFDA jurisdiction.	The intent of the exemption is to accommodate, on a *de minimus* basis, a registrant who has clients that move to another jurisdiction. If the number of clients exceeds the stated number the registrant is, in our opinion, carrying on a sufficient level of activity in the jurisdiction that registration is appropriate.	We appreciate the comments on consideration of the issue on a *de minimus* basis. However we remain concerned about the focus on number of clients as a proxy of level of activity. We reiterate that the proposed mobility exemption for dealers and advisors does not reflect the realities of a more mobile Canadian population and will not significantly reduce the regulatory burdens of having to become registered in multiple provinces where clients reside. In addition, the CSA should provide clarity around the rules pertaining to the movement of clients between jurisdictions or SROs.
Incorporated Salespersons **DATF**	IFIC supports definitive regulatory direction for the MFDA proposal to continue to permit the principal-agent model with directed commissions, which maintains the benefits of incorporation to salespersons without compromising investor protection. We would be pleased to work with regulators in developing a solution for inclusion in NI 31-103. We desire more discussion with regulators on the possible interpretations of this relationship by other stakeholders (including CRA).	The SROs are working to address this issue separately from the proposed Rule. April 23, 2008 Update OSC staff noted that is not within the CSA's mandate to advocate for changes to the tax treatment of incorporated salespersons. CSA staff has no objections with other stakeholders doing so.	We desire more discussion with regulators on the possible interpretations of this relationship and the merits of a legislative solution permitting the incorporation of salespersons. A carve-out from NI 31-103 for incorporated salespersons is necessary to avoid unintended consequences to this structure caused by the business trigger.