RBC Financial Group

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Dear Mr. Stevenson and Ms. Beaudoin,

Re: Notice and Request for Comment – Registration Requirements - Proposed National Instrument 31-103, Proposed Companion Policy 31-103CP (the "Companion Policy") and Proposed Consequential Amendments (collectively, the "Proposed Instrument")

INTRODUCTION

This comment letter is submitted on behalf of the following entities within RBC: RBC Dominion Securities Inc.; RBC Direct Investing Inc.; RBC Asset Management Inc.; Royal Mutual Funds Inc.; and RBC Private Counsel Inc. We are also pleased to submit this letter in partnership with Phillips, Hager & North Investment Management Ltd. and Phillips, Hager & North Investment Funds Ltd. in connection with RBC's recent acquisition of such firms.

We appreciate the opportunity to provide our comments in relation to the Proposed Instrument. We recognize the substantial efforts and advancements that the CSA members have made in developing these significant registration reforms.

I. GENERAL COMMENTS

A. Complete the harmonization of the registration requirements across Canada.

As we have noted in our previous comment letter relating to the Proposed Instrument, we are very strongly in favour of the CSA's registration reform efforts to harmonize and streamline the regulatory framework governing registration matters across Canada. To that end, we believe that the Canadian securities regulatory authorities should adopt a common position on the requirements set forth in the Proposed Instrument with no provincial or territorial variation. Otherwise, we believe that one of the key underlying purposes of the reform efforts (namely, to create a flexible regime that protects investors and is responsive to the industry in terms of reducing the regulatory burdens associated with complying with multiple sets of rules and standards) will be significantly undermined. In short, if such fragmentation is not properly addressed in the context of these reforms, this unique opportunity to harmonize the registration requirements nationally will be missed. We have identified below in Part II.A of the letter the areas that we believe should be harmonized.

B. Moving towards a more efficient and streamlined administrative registration regime.

The significant progress made towards harmonizing the registration requirements through the implementation of the Proposed Instrument is a critical first step. As we noted in our previous comment letter, we believe that increased attention should also be paid to streamlining the administrative and operational inefficiencies that exist under the current framework of self-regulatory organization ("SRO") regulation. The current system of incomplete or partial SRO delegation for IDA member firms (whereby firm and individual registration matters have been delegated to the Investment Dealers Association of Canada ("IDA") only in the provinces of Alberta and British Columbia, and only partially (with respect to individual IDA registrations) in Ontario and Quebec) and no delegation of registration responsibility for Mutual Fund Dealers Association of Canada ("MFDA") member firms is costly and highly inefficient. We continue to support a move towards a more harmonized and fully delegated regulatory regime for SROs.

Further, notwithstanding the increased coordination achieved through the Passport System as provided for in Multilateral Instrument 11-102, we believe that movement towards a single national securities regulator is of significant importance. We recognize that the CSA believes that such matters to be outside of the scope of the development of the Proposed Instrument. However, we believe these issues should continue to be a top priority for the CSA (and the applicable government authorities) given that any registration-related rule reform initiatives can only be meaningfully implemented with an administrative framework that is both efficient and consistently interpreted and applied across Canada.

C. Continuing to be responsive to the industry, investor and other commenters.

In general, we are encouraged by the CSA's overall responsiveness and direction on many of the key areas of concern that were identified by RBC (and others) in our previous comment letter. In particular, we note the following:

- We strongly support the CSA's decision not to proceed with the information-sharing regime among firms that was outlined in Part 8.1 of the original proposal.

- We support the CSA's position of limiting the registration of "non-trading" officers to those that act as the "mind and management" of the firm.

- We support the CSA's move towards a more flexible approach to the provision to clients of the required Client Relationship Model-related information that was initially to be provided to clients in a single mandated and all-encompassing relationship disclosure document ("RDD"). We further support the CSA's responsiveness by not requiring registered firms to provide a customized document to each client. We continue to encourage the CSA to discuss and reach a common approach with the IDA and MFDA in terms of the provision of the RDD and other related information and documentation to clients. We have also outlined some further comments noted below.

- In general terms, although we have further significant additional comments and concerns as set forth below in Part II.G of the letter, we believe that the principles-based conflicts regime outlined in Part 6 has been improved to the extent that it appears to be limited primarily to conflicts that arise between registrants and their clients (versus the very broad scope that was outlined in the original proposal). We believe that these provisions have been somewhat improved, and should be further refined as outlined further below. We believe that the CSA should continue to consider the comments received from industry participants and all relevant stakeholders so that a more balanced approach to these issues can be reached.

- We support the CSA's overall responsiveness to the comments received regarding the new regulatory framework applicable to non-Canadian dealers and advisers.

II. SPECIFIC COMMENTS

In addition to our general comments, we have outlined below a number of specific comments with respect to certain elements of the Proposed Instrument. For ease of reference, we have set out our comments below in a manner and order that is consistent with the framework of the Proposed Instrument.

At the outset, we wish to highlight our specific comments that represent our key areas of concern. We strongly recommend that the CSA consider these issues further as we believe that they are of significant importance to developing an effective registration regime across Canada. These areas are generally identified as follows (and cross-references have been provided to the relevant part of the letter which provides a more detailed discussion of the issues):

- As we have noted above, the CSA should adopt a fully harmonized and consistent approach in the Proposed Instrument and eliminate any provincial or territorial variations. *See* Part II.A ("Further Alignment of the Registration Requirements") of the letter.

- We believe that fund managers that engage in marketing and wholesaling activities should not be required to be registered as a dealer, as long as its funds are distributed through registered securities dealers. *See* Part II.C ("Marketing and Wholesaling Activities of Investment Fund Managers") of the letter.

- We believe that SRO rules should not be duplicated or cover the same subject matter in the Proposed Instrument, which is confusing for dealers and which potentially results in dual reporting in certain cases. *See* Part II.D ("SRO Membership") of the letter.

- We continue to have significant comments in relation to the proposed record-keeping requirements contained in the Proposed Instrument. *See* Part II.F ("Record-keeping") of the letter.

- We have numerous comments in relation to the CSA's proposed complaint handling rules, including more fundamentally how client complaints are defined, and in terms of the duplication and conflict with the existing SRO requirements that provide a detailed regime on how applicable SRO member firms must address and report client complaints to securities regulators. *See* Part II.F ("Complaint Handling") of the letter.

- As we have noted in our previous comment letter, we believe that the proposed requirements in relation to the provision to clients of an issuer disclosure document is currently impractical and unduly burdensome. We believe that that the CSA should adopt a more flexible approach in terms of the availability of such information to clients. We also believe that the absolute prohibition for registered firms to trade the securities of related issuers and connected issuers with respect to clients' managed accounts should be removed. *See* Part II.G ("Issuer Disclosure Statement", "Limitations on Advising") of the letter.

- We continue to have key concerns with the proposed conflicts regime set forth in Part 6 of the Proposed Instrument. In particular, we believe that the principles-based approach and the related provisions continue to be somewhat vague, unduly burdensome and overreaching. *See* Part II.G ("Conflicts of Interest") of the letter.

- Given the nature of the wide-sweeping reforms which will require firms to dedicate a significant amount of time and resources to effectively implement the new requirements, as well as the need to update applicable policies and procedures and to provide sufficient training to firm representatives, we believe that the proposed transition periods should be extended to twelve months in

relation to the complaint handling requirements, referral arrangements and the provision of relationship disclosure information. We also believe that a twelve-month transition period should apply to the new proficiency requirements. *See* Part II.H ("Transition") of the letter

We understand that other industry members have previously raised and/or will be raising similar concerns with respect to these key areas. We are hopeful that the CSA members will continue to consult with, and meet with all relevant stakeholders, and to consider these issues further prior to the finalization of the Proposed Instrument.

A. Further Alignment of the Registration Requirements

We recognize the significant advancements that the Proposed Instrument provides in terms of harmonizing the registration requirements in Canada. However, we believe that there appears to be certain variations among jurisdictions that will continue to exist if the Proposed Instrument is implemented in its current form. These areas of concern include the following:

- We understand that, unlike the other Canadian securities regulatory authorities, the Manitoba Securities Commission (the "MSC") will not be adopting the "business trigger" for dealer registration. We believe that a consistent approach should be applied across Canada and that the MSC should follow the other regulators' lead in adopting the "business trigger".

- We also note that the MSC has taken a divergent approach with respect to the exemption for subadvisers. In paragraph 8.17(f) of the Proposed Instrument, the MSC would continue to require a sub-adviser to register in that jurisdiction if it was registered elsewhere in any other Canadian jurisdiction. We do not believe that this additional registration is necessary given that the Canadian registered firm dealing directly with clients would ultimately be responsible for the actions of the sub-adviser and would be directly accountable to the MSC for any inappropriate actions. We believe that there is no compelling policy justification for the MSC to adopt this position.

- We understand that the MSC and the British Columbia Securities Commission (the "BCSC") will maintain the capital-raising and "safe" securities exemption currently set out in National Instrument 45-106 ("Prospectus and Registration Exemptions") for a person who trades solely under these exemptions in these jurisdictions. Accordingly, in general, a person trading under these exemptions will not be required to be registered in BC and Manitoba as an exempt market dealer. Although we recognize that there may be certain regional sensitivities to accommodating the needs of local markets, we believe that the MSC and BCSC should also adopt the exempt market dealer registration category so that it is consistently applied across Canada.

- The definition of "security" is not uniform in each of the Canadian jurisdictions. In particular, the definition of "security" under the securities legislation of BC and Alberta includes futures contracts and options not traded on an exchange. The term "futures contract" generally includes most types of over-the-counter ("OTC") derivatives products. As we noted in our previous comment letter, we were concerned that the sale of such OTC derivatives by financial institutions such as banks in these provinces would require an exempt market dealer registration under the Proposed Instrument. We note such OTC derivative arrangements are often structured to implement a hedging or other strategy requested by a sophisticated institutional client, and that the terms of the applicable agreement are fully negotiated between the Bank and the sophisticated client. In our view, the exempt market dealer registration category should exclude the provision of OTC derivatives products to "qualified parties". We also note that other commenters have raised similar concerns with respect to certain other products as well where banks are active participants (e.g. principal-protected notes, etc.).

  We understand from the discussion in the "Summary of Comments" that accompanied the publication of the Proposed Instrument that the exemption regime that currently exists for federally regulated financial institutions in Ontario will continue under the Proposed Instrument. Moreover, we understand that the other jurisdictions will also continue to follow their existing practices concerning the securities-related activities of federally regulated financial institutions. We encourage the CSA to continue to adopt this approach in terms of the finalization of the rules and believe that it would be useful to clarify this matter directly in the Proposed Instrument (and not solely in amendments to the applicable securities legislation).

In summary, we believe that the regional variations that continue to exist in the Proposed Instrument are not justified and should be eliminated. Such continued regulatory fragmentation leads to increased complexity and confusion that, in our view, may actually undermine capital market participants' understanding and compliance with the applicable requirements in each jurisdiction. We do not believe that there is a need for local rules and requirements in this regard and strongly urge the CSA to develop a unified approach to these issues.

B. The Application of the "Business Trigger" for Dealer Registration

As we have noted in our previous comment letter and above, we are supportive of the movement towards the "business trigger" for dealer registration across Canada. We also appreciate the further interpretive guidance that the CSA has provided, particularly as it relates to those areas within a registered firm (e.g. certain "back office"-type functions where client contact may occur, research, prime brokerage, etc.) where the application of of the current "trade trigger" test is somewhat unclear.

We note that, pursuant to section 1.3 of the Companion Policy, in determining whether an individual is to be registered in the category as a dealing representative, firms are to first assess whether an individual is "trading" in securities, and second whether such activity is to be conducted as a business. We understand that the CSA intends to maintain the definition of "trade" in its current form for this purpose. Given the broad definition of "trade" as currently exists under the securities legislation of many jurisdictions (and which commonly includes acts in furtherance of a trade), we are concerned that the key purpose of the "business trigger" test to limit the scope of the dealer registration requirement in appropriate circumstances will not be fully achieved. We believe that a more limited definition of "trade" should be adopted if this approach is to be maintained in the final rules. Further, we also note that the CSA has included "acting as an intermediary capacity ..." as a factor in assessing whether someone is engaging in the trading and/or advising business. We note that such terminology has often been difficult to interpret (particularly in the universal registration context), and accordingly we believe that it should be clarified and/or eliminated from the business trigger test.

In addition, in relation to the application of the "business trigger" test to the activities of securities issuers, we raise primarily as a drafting matter that it would be useful to clarify in the corresponding commentary in section 1.4.1 of the Companion Policy that the trading in securities referred to therein relates to trading in securities for investors (versus on a proprietary basis).

C. Part 2 - Categories of Registration and Permitted Activities

Investment Fund Manager Registration

In section 2.8 of the Companion Policy, the CSA indicate that an investment fund manager need not register in every jurisdiction where a fund is distributed. The provision also indicates that if an investment fund manager directs the management of funds from locations in more than one jurisdiction, it must register in each of them. We suggest the CSA clarify further what activities constitute "directing the management" of the funds. We believe the investment manager should be registered only in the jurisdictions where its head office is located or where most of its senior management are located and suggest further clarification that "directing the management" of a fund would not include a wholesaling and marketing office.

Marketing and Wholesaling Activities of Investment Fund Managers

We believe that fund managers that engage in marketing and wholesaling activities should not be required to be registered as a dealer, as long as its funds are distributed through registered securities dealers. In our view, this matter should also be clarified in the related commentary contained in the Companion Policy.
In particular, section 2.8.1 of the Companion Policy provides that, in general, investment fund managers will have to register as a dealer if they carry on marketing and wholesaling activities such as advertising the funds to the general public, or promoting the fund to registered dealers or distributing the fund to registered dealers. We note,

however, that the CSA later acknowledges that fund managers do not have to register as a dealer if their marketing and wholesaling activities are incidental to their activities as an investment fund manager, which appears to contradict the previous commentary. In our view, the Companion Policy should be revised to reflect the position that fund managers that engage in marketing and wholesale activities should not be subject to dealer registration where its funds are distributed through registered securities dealers.

Exemption from Dealer Registration for Advisers

In general, section 2.2 of the Proposed Instrument provides that the dealer registration requirement will not apply to a registered adviser that buys or sells a security of a pooled fund administered by the adviser for a fully-managed account that is created and managed by the adviser. We believe that such exemption should also be extended to trades in securities of a pooled fund that are administered by an affiliate of the adviser, and that such exemption should be "self-executing" with no regulatory notification required in terms of reliance by advisers upon the exemption. We also believe that the term "pooled fund" should be defined in order to clarify that it includes mutual funds that are reporting issuers or alternatively that this term be replaced with "investment fund" that has already been defined under securities legislation.

Associate Advising Representatives

Subsection 2.8(1) requires that an associate advising representative of a registered adviser must not advise in securities unless, before providing the advice, the advice is approved by an advising representative designated by the adviser. We note that, for certain individuals, the associate advising position is a career destination and therefore such individuals often have many years of experience. In these cases, we do not believe that pre-approval by an advising representative is warranted. Section 2.7 of the Companion Policy appears to contemplate that this approach may be acceptable based on, among other things, an individual's level of experience. We would appreciate that this matter be confirmed and further clarified in the Companion Policy.

We further note that the Companion Policy indicates that the associate advising representative category may also be appropriate for "an individual who has a client relationship role that includes specific advice, but who is not managing clients' portfolios without supervision". The associate advising representative proficiency requirements include investment management experience which we believe are unduly onerous. While individuals who are acting in a client relationship role may provide advice to the client, this advice is in the manner of explaining the client's portfolio, its performance and related products, which does not require the individual to have specific investment management expertise. In many instances, managed client portfolios are simply based on model portfolios which may in turn be comprised of mutual fund securities. We do not believe that registration as an associate advising representative is necessary for the individual providing the client serving function.

D. Part 3 – SRO Membership

To avoid duplication and inconsistencies with applicable MFDA rules, we believe that the following provisions in the Proposed Instrument should also be referenced in subsection 3.3(1) for MFDA member firms:

- section 4.20 (subordination agreement - notice requirement) which is covered by MFDA Rule 3.1 and Member Regulation Notice MR0033, and which would otherwise result in inconsistent rules and dual reporting to the MFDA and the applicable securities regulator;
- section 4.24 (global financial institution bonds) which is covered by MFDA Rule 4.7;
- sections 5.15 and 5.16 (recordkeeping) which is covered by MFDA Rule 5;
- section 5.20 (semi-annual trade confirmations for certain automatic plans) which is covered by MFDA Rule 5.4.2;
- section 5.22 (statements of account and portfolio) which is covered by MFDA Rule 5.3;
- sections 5.28 to 5.32 (complaint handling) which is covered by MFDA Rule 2.1 and Policies 3 and 6, and which would otherwise result in dual reporting to the MFDA through METS and to the applicable securities regulatory authority; and
- section 6.1 (conflicts of interest) which is covered by MFDA Rule 2.1.4.

Further, as a general matter, we believe that it is extremely important that the CSA and the applicable SROs, including the IDA and the MFDA, continue to work in partnership to develop a harmonized regulatory framework for applicable members.

E. Part 4 - Fit and Proper Requirements

Relevant Experience

In section 4.4 of the Companion Policy in relation to relevant experience, the relevant investment management experience under section 4.11 should also include the references to relevant experience under section 4.2 of the Proposed Instrument.

Time Limits on Examination Proficiency

We appreciate that the CSA recognizes that setting time limits for applying for registration after examinations or educational programs are completed imposes somewhat arbitrary limitations on qualified individuals applying for registration. This is evidenced by subsection 4.4(2) of the Proposed Instrument, which allows additional time to register once an examination or program has been completed. However, we believe this extension does not go far enough. Individuals who work in the securities industry tend to complete the Canadian Securities Exam and the Chartered Financial Analyst programs

early in their careers and obtain valuable work experience afterwards. We strongly recommend that the CSA recognize this fact and consider eliminating the 36-month time limit for applying for registration entirely in situations where the individual has been employed continuously in the securities industry since completing the exam or program.

Proficiency Requirements – Investment Fund Manager - Chief Compliance Officer

Paragraph 4.15(b) of the Proposed Instrument requires the individual to have passed the Canadian Investment Funds Exam, the Canadian Securities Exam, or the Investment Fund in Canada Exam, passed the PDO Exam and have "worked for a registered investment fund manager for 5 consecutive years, including for three consecutive years in a compliance capacity".

We ask the CSA to consider revising the reference to "registered investment fund manager" to refer simply to an "investment fund manager" or to implement a transition period for this requirement. For a period of 5 years after implementation, no individuals will qualify under this section since there will not be any registered investment fund managers until after the effective date of the Proposed Instrument. In addition, we submit that the "consecutive year" requirement is not necessary and imposes a higher standard than what is imposed on other registrants. For example, the proficiency requirements for the chief compliance officer of a portfolio manager do not include such a "consecutive year" obligation.

Capital Requirements

We believe that further clarification is required in relation to the capital requirements set forth in section 4.18 of the Proposed Instrument. In this regard, it is somewhat unclear whether the provision requires the filing of monthly working capital reports with the applicable securities regulator or whether the requirement is intended to require the firm to prepare the report solely for internal purposes to ensure that excess working capital is not less than zero. Similarly, with respect to subsection 4.27(2), we believe that further guidance is required as to whether the audit report contemplated by that provision is to be delivered to the applicable securities regulator directly without it also being delivered concurrently to the firm. Lastly, we note that paragraphs 4.28(1)(a), 4.29(a) and subsection 4.30(1) should clearly reference "audited" financial statements (as is set forth in subsection 4.32(2)).

Net Asset Value Adjustments

We ask the CSA to reconsider the requirement under section 4.30 of the Proposed Instrument to deliver to the regulator a description of *any* net asset value ("NAV") adjustment made during the fiscal year or quarter on the basis that this is unnecessary and unduly onerous given the review that already occurs both by the manager and a fund's auditor, as well as the reporting to the investment fund's independent review committee of items that may constitute a conflict of interest. This will effectively result in a third level of oversight with the compliance costs that would be associated with such filings. If

reporting is deemed necessary, annual reporting of NAV adjustments should be sufficient.

F. Part 5 - Conduct Rules

Providing Relationship Disclosure Information

While we agree with the general objective of section 5.4 of the Proposed Instrument to ensure that clients fully understand the services that they can expect to receive from a registered firm through the disclosure of relationship disclosure information ("RDI"), we are concerned with the prescriptive approach the CSA has adopted in outlining what registrants need to disclose to their clients. We believe that registrants should have greater flexibility with respect to how they disclose information pertaining to their client relationships, and would prefer that the CSA take a more principles-based approach to relationship disclosure. We believe that the CSA should continue to consider the comments received from industry participants and all relevant stakeholders (including those received through the SRO rule development process), and to actively consult with the SROs, so that a balanced and consistent approach to these issues can be achieved.

We note that subsection 5.4(1) of the Proposed Instrument contemplates that the RDI must be provided to clients before the registrant first purchases or sells a security for a client or advises the client to purchase, sell or hold a security. We also note that section 10.7 of the Proposed Instrument provides a six-month transition period for existing registrants. Once the transition period has lapsed, registrants will be required to provide the RDI to both existing and new clients. We do not believe that firms should be required to provide the RDI to existing clients as it seems unnecessary to deliver this type of disclosure to clients who already have a relationship with their firm (and its representatives) and who will have discussed many of the points outlined in the RDI.

We further note that paragraph 5.4(3)(b) of the Proposed Instrument requires that the RDI include 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. It is unclear as to the level of detail required under the Proposed Instrument and we are somewhat concerned as to the possible need to continually update the information relating to the firm's product and service offerings. It is our view that any requirement beyond a brief description of the types of products and services offered at the time the information is delivered would become unwieldy and prohibitively difficult and costly for firms to update from an operational perspective. We also note that if all products and services must be described it may be counter-productive to the objective of providing clear and concise information to clients in relation to their investment needs. In addition, we are of the view that describing specific products offered in a standardized RDI may be inappropriate in circumstances where specific products are not suitable for certain investors.

We also note that the RDI is to include, among other things, a description of the costs the client will pay in making and holding investments and the compensation paid to the registered firm in relation to the different types of products that the client may purchase. While we are supportive of ensuring that clients are aware of the general costs associated

with making and holding various investments in connection with products that are commonly purchased, we believe that meaningful disclosure to clients is currently available in connection with specific investment products in the product offering document disclosure and/or marketing materials provided by issuers. In addition, given that not all clients will purchase all types of investment products, providing a description of all of the costs that a client may incur for all types of investment products may be counter-productive.

"Know-your-Client" and Beneficial Ownership

The Proposed Instrument will mandate for non-SRO member firms the requirement to collect beneficial ownership information for clients that are not individuals. Pursuant to subsection 5.3(2), the registrant will be required to establish the nature of the client's business and the identity of any individual who is a beneficial owner (directly or indirectly) of more than ten per cent of the client. We recognize that the proposed requirement is largely consistent with the comparable beneficial ownership identification requirement for IDA member firms. Pursuant to IDA Regulation 1300.1(b), IDA member firms are required to ascertain the identity of any natural person owning (directly or indirectly) more than ten per cent of an account for a corporation or similar entity.

Notwithstanding the existence of similar IDA requirements, we believe that the threshold requirement for identification for non-SRO member firms (and indeed SRO member firms to that extent that the requirements may be fully aligned) should be set at the greater than twenty-five per cent level which we note is consistent with the recent amendments to the federal anti-money laundering ("AML") legislation under Bill C-25 (which is to amend Canada's *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*). Such AML requirement is to come into force later this year in June 2008 and we believe it is a sufficiently rigorous standard applicable to registered securities firms in relation to their non-individual client accounts.

We believe, however, that it would be beneficial for the CSA to further consider the scope of the exemptions available under the comparable IDA beneficial ownership requirements. In particular, in our view, the CSA should consider providing an exemption for registered firms with respect to their clients that are financial institutions (or similar entities) subject to a satisfactory regulatory regime in the country in which it is located (as prescribed by IDA Regulation 1300.1(c)). In this regard, the IDA exemption would appear to be somewhat broader than the applicable exemption in the Proposed Instrument as currently set forth in subsection 5.3(7). We further note that the IDA provides useful guidance in terms of the application of the beneficial ownership requirements for trust accounts.

Record-keeping

The re-proposed record-keeping regime in Part 5, Division 3 would require registered firms to maintain "relationship records" for seven years from the date the person or

company ceases to be a client of the registered firm. This protracted time period is also very broad in scope in terms of the types of documents that must be maintained by registrants, including records of oral communications and perhaps more troublesome, the RDI that is required to be provided to clients under section 5.4 (and which may now be included across multiple documents provided by firms as appropriate to facilitate the client's understanding of such information). We believe that requiring firms to maintain such documentation for the entire time the individual is a client plus a period of seven years thereafter, particularly with respect to longstanding clients, is unduly onerous and unnecessary. We strongly recommend that registered firms should not be required to maintain RDI-related documentation for the applicable seven-year period and believe that it is sufficient for registered firms to maintain the current version of the applicable documents (or, with respect to former clients, the most recent version of the documents) for record-keeping purposes.

Further, we note that, given the ambiguity in the classification of "activity records" and "relationship records" as such terms are defined in subsection 5.16(5) of the Proposed Instrument, it is difficult to determine the applicable retention period and the scope of the documents to be retained. Under subsection 5.16(4) of the Proposed Instrument, firms are required to maintain activity records and relationship records for the time periods prescribed in that provision. However, we believe that this is very difficult to implement from a practical perspective.

For example, we note that, in accordance with paragraph 5.12(2)(l) in relation to the types of records that must be maintained, firms must maintain records that include, but are not limited to, records that "document correspondence with clients". This requirement is extremely open-ended and leads to many difficulties in terms of classification. We believe that further guidance is warranted on the key types of documents that must be retained by firms for the applicable retention period with some flexibility to enable firms to retain additional items as they determine appropriate. Otherwise, firms will be required to retain all client correspondence notwithstanding that they may not constitute activity records or relationship records.

Similarly, we believe that the commentary in section 5.5 of the Companion Policy should be revised. As currently drafted, it states that, "in most circumstances", "all email, regular mail, fax and other written communication with clients" as well as "notes of oral communication" are to be retained. We believe it would be helpful for the CSA to set out a more precise list of items that need to be retained (irrespective of format). In this regard, MFDA Rule 5 can be considered as guidance for the development of such list, and a more principles-based approach can be adopted for additional items. We continue to be concerned about an overly-broad requirement imposed on firms to retain all e-mails, records of oral discussions, etc. if they have no direct bearing on the client relationship from an activity or relationship perspective.

Lastly, in relation to "activity records", we continue to be very concerned with the requirement for firms to maintain records of oral communications in respect of a purchase or sale of a security for seven years from the date of the action. We assume that

this obligation would require firms to maintain notes made by investment representatives in the course of dealing with their clients. However, it is less clear how this would apply, if at all, to the taping of client conversations over the telephone. We would appreciate further guidance on this matter.

Transition Periods

We believe that the CSA should provide a sufficient transition period (of a minimum of twelve months) to enable firms to comply with the new requirements. Developing and/or enhancing existing systems will require a significant amount of time and resources on behalf of the firm. We believe that the inclusion of a transition period is consistent with the accommodations that the CSA has provided with respect to the phased-in implementation of other requirements under the Proposed Instrument, including the new proficiency requirements, the RDD, the complaint handling regime and the rules governing referral arrangements.

Insurance Requirements

As we (and others) noted in our previous comment letter, we believe that the CSA should clarify to what extent such insurance coverage can be shared amongst related entities of registered firms. We recommend that for subsidiaries of significantly capitalized financial institutions that purchase sizeable insurance policies that include coverage for their subsidiaries that this coverage be deemed sufficient with no capital penalty. We also note that no deductible limits or any guidance on fronting policies have been specified in the re-proposed requirements. It is not clear what the CSA's policy reasons were for not choosing to address or discuss these issues in any meaningful way. We would appreciate clarification of these matters.

In addition, we also note that section 4.25 of the Proposed Instrument continues to refer to the obligation of registered firms to provide regulatory notification of any "change in, claim made under or cancellation of any insurance policy ...". We believe that some form of significance test or materiality threshold should be included in the provision given that this will be burdensome for registrants and securities regulators alike to administer. To address possible differences in interpretation as to what constitutes a material change or claim to an insurance policy, we would suggest that a monetary threshold and/or further guidance be provided by the CSA.

Complaint Handling

Characterization of "Client Complaints"

We strongly believe that the CSA's proposed complaint handling regime set forth in Part 5, Division 6 of the Proposed Instrument should not apply to IDA and MFDA member firms. As many have commented, there is currently an established process for such SRO firms to address and appropriately resolve client complaints.

We note that the Proposed Instrument provides an exception from the new requirements in Division 6 for registered firms in Québec that comply with the applicable complaint handling provisions of the *Securities Act* (Québec) (we recognize that the Companion Policy would continue to apply to Québec registered firms as guidance in accordance with section 5.12.1 of the Companion Policy). However, it is not clear why IDA and MFDA member firms are not also provided with a similar exception given that they are subject to a detailed complaint notification regime prescribed by IDA Policy No. 8 and MFDA Policy Nos. 3 and 6, respectively.

SRO member firms under IDA Policy No. 8 and MFDA Policy Nos. 3 and 6 are only required to notify the SROs of certain types of client complaints (i.e. client complaints of a "non-service" versus an administrative nature only). We believe that, to the extent that the CSA works with the applicable SROs to harmonize the Proposed Instrument with the applicable SRO rules, this more limited description of a client complaint (which more appropriately focuses on a registrant's regulatory misconduct) should be adopted for all registrants and reflected in the Proposed Instrument. We further note that registered firms in Québec are exempt from the complaint handing requirements if they comply with the requirements under the Autorité des marchés financiers ("AMF") (sections 168.1 to 168.1.3 of the *Securities Act* (Québec)). The definition of "complaint" under these requirements specifically excludes initial expressions of dissatisfaction by a client where the issue is settled in the ordinary course of business. Only in the event that the client remains dissatisfied, and such dissatisfication is escalated to be reviewed and dealt with at a higher level within the firm, are such complaints reportable under the AMF regime. We believe that a consistent approach should be adopted across Canada whereby complaints exclude basic service complaints which are resolved in the ordinary course of business. Moreover, we believe that the proposed complaint handling regime should not result in any redundant reporting obligations to CSA members and SROs (as applicable) and should be harmonized.

Lastly, we continue to believe that the CSA should clarify (perhaps in the Companion Policy) whether such reporting only applies to complaints originating from a client versus other parties who may contact the firm to voice their complaints (e.g. such as a client complaining about actions of another client of the firm and/or general industry issues). In our view, the scope of the complaint handling regime should generally not be extended to these circumstances.

Handling of Client Complaints

Section 5.12.5 of the Companion Policy, as currently drafted, requires that "registered firms should ensure that the CCO and appropriate supervisors are aware of all complaints". In our view, requiring an individual CCO of a registered firm to be made personally aware of every complaint would be excessively burdensome. As an alternative, we would recommend that the CSA consider implementing an approach along the lines of recently instituted MFDA Policy requirements. MFDA Policy No. 3 sets out that "each Member must put procedures in place so that senior management is made aware of complaints of serious misconduct and of all legal actions". Further, MFDA Policy No. 6 sets out that "a Member shall designate a compliance officer at its head office (or another person at head office) to whom reports made by Approved Persons ... shall be submitted."

Dispute Resolution Mechanism

Section 5.29 provides that a registered firm must participate in an independent dispute resolution service for client complaints relating to any trading or advising activity of the firm or its representatives. We believe that the provision should be clarified to specify that a firm is only required to participate in such a forum if the client complaint cannot be resolved directly by the firm. Further, we believe that the CSA should clarify which bodies would constitute an acceptable dispute resolution service for non-SRO member firms. In this regard, we believe that RBC's Office of the Ombudsman (and similar dispute resolution mechanisms at large financial institutions) would be sufficient for these purposes and we ask that this be confirmed in the Proposed Instrument.

G. Part 6 - Conflicts of Interest

As we have noted above, the proposed conflicts of interest requirements set forth in Part 6 represents a favourable development in terms of limiting the types of conflicts that registrants must identify and address. We believe that the original proposal requiring registered firms to deal with actual and potential conflicts as between other entities and as between clients was not a reasonable standard to impose on firms and their representatives. Although improved, we continue to have a number of additional comments and concerns regarding the re-proposed conflict of interest provisions and the accompanying commentary.

While we can appreciate why the CSA has adopted a "principles-based" approach to addressing conflicts, we believe that the provision as currently drafted remains extremely broad and overreaching. In particular, we believe that some form of materiality threshold should be adopted in subsection 6.1(1) of the Proposed Instrument Moreover, we note that the provision still requires registered firms to not only identify "existing" conflicts, but also conflicts that the registered firm, acting reasonably, "would expect to arise" between the firm (including its representatives) and its clients. We believe that this subjective standard is problematic for a number of reasons. First, firms and their representatives are quite limited in their ability to identify potential conflicts of interest

that they may have with each of their clients. Second, we are concerned that the imposition of this subjective assessment may have the unintended effect of increasing the risks of litigation by plaintiffs bringing forward claims on the basis of hindsight and that firms "should have known" about a potential conflict. We believe that the CSA should revise the conflict provisions accordingly, and provide additional examples (including on an ongoing basis by way of staff notice or similar guidance) to enable firms to better assess the types of conflicts that are to be contemplated and addressed by this proposed regime.

Lastly, notwithstanding the revisions to the conflict provisions in Part 6, the commentary in the proposed Companion Policy (section 6.2.3) appears to imply that registered firms would be required to respond to conflicts of interest that may arise as between a registered firm's clients, and obligate firms to implement "internal systems" to evaluate the balance struck between such competing client interests. We recognize and understand the obligation of firms and their representatives to be fair in their dealing with clients, but we believe it is overly burdensome and unrealistic to impose such a requirement on firms to address these matters in all circumstances given their limited knowledge in many cases of what these conflicts between clients may be. Further, it is not clear what "internal systems" firms are expected to develop, implement and maintain in order to comply with this requirement, particularly within large registered firms that engage in a broad range of financial advisory services for diverse clients dispersed across multiple jurisdictions. We strongly recommend that the CSA limit the scope of the proposed conflicts regime and adopt a more balanced approach to these issues.

Prohibition on Managed Account Transactions

Section 6.2 of the Proposed Instrument, which prohibits certain managed account transactions, appears to be similar to the restrictions that are currently set out in section 118 of the *Securities Act* (Ontario) (the "OSA") and subsection 115(6) of the Regulation under the OSA and the corresponding provisions in the other provincial securities legislation. We believe that it is critical for the CSA to grandfather all existing relief under the Proposed Instrument so that the parties of the various existing industry-wide conflict of interest relief decisions need only give notice of the relief they are currently relying on and how it applies to their funds. Grandfathering should also extend to those jurisdictions that don't currently have these conflict provisions, to ensure that further industry-wide relief applications do not have to be filed in these jurisdictions once the new restrictions come into effect. Not to grandfather existing relief would necessitate the filing of further industry-wide conflict of interest relief applications in all jurisdictions. We do not believe this is necessary or the intended result, especially given that existing relief was only recently granted after extensive consultations and deliberations with the CSA.

Aside from the issue of grandfathering, further clarification is requested on how these provisions will interact with the conflict of interest provisions that will remain in various provincial securities legislation once the Proposed Instrument is implemented. Given the fact that section 6.2 incorporates language from certain existing provisions but also

contains some important modifications, it would be beneficial to obtain clarification on how this provision will work with various other conflict restrictions that are still in effect. We believe it is important for the CSA to take a comprehensive approach when implementing any new conflict of interest provisions such as those found in section 6.2 to ensure that the new provisions will serve to clarify and simplify applicable restrictions and that all potentially duplicative inconsistent or overlapping restrictions (such as section 111, 118, and 115(6) in the OSA and other similar provisions in other provincial securities legislation) have been considered and addressed by either amending or removing such provisions from securities legislation concurrently.

Referral Arrangements

As is currently drafted, the rules governing referral arrangements will apply to referrals that are made as between a registered firm and another affiliated and/or related party (an "Internal Referral"). We do not believe that the referral arrangement requirements should apply in these circumstances, unless it is not apparent that the referral arrangement is to an affiliated and/or related party. Given that the client is already aware of the fact that the entities are related, the same issues and considerations do not apply when a client is referred to an apparently unrelated party.

For example, in particular as it applies to large financial institutions such as RBC, if a client is referred from one "RBC" entity to another, we as a matter of course given the obvious relationship between the parties believe that clients expect that such Internal Referral is to be made on a completely unbiased basis. Accordingly, extensive detailed disclosure may not be necessary in such circumstances. Moreover, the applicable due diligence requirement set forth in section 6.14 would not readily apply in such circumstances where the parties are affiliated and/or related. For these reasons, we believe that these types of Internal Referral arrangements should be excluded from the scope of the rules.

Further, we also believe that the client disclosure requirements (as is set forth in paragraphs 6.13(c) and (g), respectively) relating to "any conflicts of interest" resulting from the referral arrangement and "any other information that a reasonable client would consider important in evaluating the referral arrangement" is too broad and unclear. We suggest that paragraph 6.13(c), if retained, should be limited to "any <u>known material</u> conflicts", and that further guidance should be provided by the CSA as to the nature of the conflicts contemplated by the provision. In our view, the requirement that registrants disclose any information that a reasonable client would consider important is too vague to practically implement.

We believe that disclosure to clients of the parties to the referral arrangement, a brief description of the services to be provided by each party, and the method of calculating the referral fees (and the amount, to the extent that this can be reasonably determined) is sufficient information to enable clients to assess the appropriateness of referral arrangements. Lastly, regarding subsection 6.13(2), we believe that registrants should

only be required to provide to clients "material" or "significant" changes (versus "any change") to the information previously provided to them pursuant to subsection 6.13(1).

Issuer Disclosure Statement

We believe that the requirement for registered firms to provide issuer disclosure statements to clients in connection with security recommendations (section 6.5) and advising activities (section 6.6) is impractical. In particular, for large full service dealer firms frequently engaged in underwritings, the list of connected issuers is constantly changing and would require firms to continuously update their issuer disclosure statements which is impractical and difficult to administer from an operational perspective. We also note that, in many cases, given the ambiguity in the definition of "connected issuer", it is not uncommon for a determination to be made by the issuer (in conjunction with applicable counsel) that the issuer "may be a connected issuer" of the registered firm(s) participating in the underwriting.

We believe that such related issuer and connected issuer information should be available to clients upon request and/or be accessible to clients by reference to the registered firm's website or other similar means. Under this approach, registered firms would be required to inform clients how they may obtain such information through account opening or other related documentation.

Recommendations

We note that section 6.5 of the Proposed Instrument, which restricts registered firms from making certain recommendations in relation to securities of a related issuer or connected issuer of the firm, would appear to replace section 228 of the regulations under the OSA and comparable provisions under the securities legislation across Canada. Certain financial institutions such as the Royal Bank of Canada have obtained exemptive relief under section 233 of the regulations to permit them to issue research reports in relation to their securities subject to certain conditions. We do not believe that the new provision will or should compromise the exemptive relief that has already been obtained and would appreciate confirmation from the CSA on this point.

Limitations on Advising

In relation to section 6.6, as currently drafted, there appears to be an absolute prohibition for registered firms to trade the securities of related issuers and connected issuers with respect to clients' managed accounts. We question whether this was intended and strongly recommend that this restriction be removed. Further, we believe that the requirement to obtain a written annual consent from the client as was originally proposed (and reflects the current requirement in certain jurisdictions) is unduly onerous as it is practically difficult to administer. We believe that providing advance disclosure to clients that such trading activity may take place for fully-managed accounts is sufficient.

H. Part 10 - Transition

In our view, the CSA should provide sufficient time to enable registered firms and their representatives to comply with the proposed new requirements. As currently drafted, the Proposed Instrument will provide firms with six months from the entry into force of the Proposed Instrument to develop systems and/or undertake significant enhancements to existing systems, prepare new documentation and update their detailed policies and procedures to address, among other things, the rules relating to complaint handling, referral arrangements and the provision to clients of the relationship disclosure document-type information. Firms would also have to adopt "internal systems" to address the new requirements around conflict resolution. We believe that firms will be required to dedicate substantial time and resources in order to meet the challenges of implementing the new rules, and that the transition period should be extended to twelve months as many commenters have suggested.

In our view, the CSA should consider providing extended time frames in relation to the new proficiency requirements so as to allow individuals to satisfy the proficiency requirements in their applicable category of registration. In particular, we believe that individuals should be provided with at least twelve months (versus the proposed six-month period) to complete the Canadian Securities Exam for individual registrants of exempt market dealers. We believe that this is a more appropriate means to facilitate the transition of the new proficiency requirements especially in light of the fact that such representatives will be dealing in the exempt market with sophisticated investors. We note, by way of comparison, that the CSA will afford representatives of scholarship plan dealers a twelve-month transition period.

As we have noted above, we also believe that the CSA should provide registered firms with sufficient lead time (of at least twelve months) with respect to the proposed recordkeeping requirements. The development of such systems will require intensive efforts and coordination of "back-office" personnel engaged in systems development, as well as appropriately educating the firm's "front-line" representatives and support staff of the new requirements.

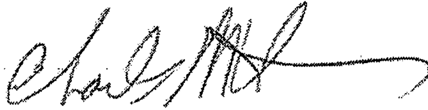
I. Forms

We have outlined in the Appendices to this letter our comments in relation to the proposed forms.

CONCLUDING REMARKS

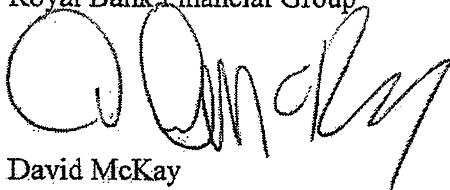
Thank you for providing us with the opportunity to comment. We would be pleased to discuss our comments further with you. If you have any questions or require further information, please do hesitate to contact the undersigned.

Yours sincerely,



Charles M. Winograd
Chairman and Chief Executive Officer
RBC Dominion Securities Inc

George Lewis
Group Head, Wealth Management
Royal Bank Financial Group



David McKay
Group Head, Canadian Banking
Royal Bank Financial Group

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

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

APPENDIX "A"

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

Item	Comments
General – Instructions	• The CSA should consider drafting Reference Guides/Instructions for the Form 31-109F4 (and other forms within the 33-109 series). FINRA provides detailed Instructions for each of their Uniform Applications and have proven to be an excellent resource to both firms and registrants. The Instructions include definitions to the terms contained in the forms and provide guidance on what is intended to be captured in each section of the form.
Item 1 – Name	Question 3 – Business Names: • Consider removing the requirement to disclose team names on the Form 33-109F4 as this item can be addressed by the firm having policies and procedures in place in managing the use of team names.
Item 3 – Personal information	• Consider removing the requirement to disclose colour or eyes, colour of hair, height and weight, or otherwise provide explanations regarding the use of this information by the regulators.
Item 8 – Proficiency	• Consider that wording be amended under "Other" to include all "post-secondary education, degrees and diplomas <u>that are relevant to or required for this application</u>". This information has not been tracked since the launch of NRD in 2003 and it adds additional items that need to be tracked by the Registrations Department (e.g. confirmation of exact completion date, original proof of completion).
Item 8 – Proficiency	• Consider adding after the CFA Institute (formerly AIMR).
Item 9 – Location of employment	• Both the Unique Identification Number and the Branch Transit Number/Cost Center Number should be labelled "optional" for consistency.
Item 10 – Current Employment	• Recommend adding the following

	checkboxes: Maternity/Parental Leave (from-to); Long-Term Leave (from–to)
Item 10 – Current Employment	Schedule G: • The disclosure of employment activities with the sponsoring firm should be separate from the disclosure of the other business activities.
Item 14 – Criminal Disclosure	• Questions (c) and (d) should be removed as this information should be captured on the Form 33-109F6.

APPENDIX "B"

Proposed Form 33-109F1 – Notice of Termination

Item	Comments
Item D(1) – Information about the termination	• What termination date should be specified in the circumstances when the registered firm requests a notice period and it is declined by the individual registrant? In this regard, there may be discrepancies between the date that the individual actually physically leaves the firm and when the employment relationship is actually terminated factoring in an appropriate notice period. The differences in date may have implications in terms of facilitating the transfer of the individual's registration, pay, etc. Further guidance would be beneficial.
Item D(2) - Comments regarding the reason for termination	• Suggest re-wording "requested to encourage to do so by the firm" to "permitted to resign." Consider adding "Dismissed in Good Standing" rather than having to check 'NO' for "Dismissed for just cause".
Item E – Further Details	• Response to Comment 609 references "calendar days" while both the Form 33-109F1 and section 4.3(2) of Rule 33-109 indicates 30 business days. For consistency, the filing deadlines should be clearly defined as business days. In addition, we seek clarification as to whether the CSA and the MFDA revise Policy 6 since firms will have 30 business days to file additional information relating to a termination for cause.
Item E (1) – Was the individual charged with any criminal offence?	• Criminal offences are required to be disclosed within 5 business days of the event. If the criminal offence occurred more than 12 months ago, can firms assume that the response to this question be "no" or should all criminal offences be disclosed whether or not they pertained to the termination of the individual and regardless of when the criminal offence occurred?
Item E (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	• We note that there are limitations as to how much can be disclosed in relation to "non-securities related activities" without potentially violating employee privacy.

registrant?	
Item E(10) - Is there any other matter relating to the individual's termination or conduct leading up to it that the firm is aware of and believes is relevant to his or her suitability for registration?	• We believe that firms should not be making any judgments as to what would be relevant to an individual's suitability of registration. This type of questioning could be subjective and vary by firm as to the types of matters that would be relevant to suitability of registration.
Item H – Certification and Signature	• The signature section of Form 33-109F1 should be amended in order to remove the reference to an "authorized signing officer" as the Proposed Instrument intends to only require the registration of "mind and management". As a result, for larger firms, the "mind and management" would not likely be the appropriate individuals to sign a Notice of Termination. We recommend that the CSA consider an "authorized signatory of the firm" in place of "authorized signing officer". The CSA should consider adding an amendment to the Companion Policy by clarifying that an authorized signatory of the firm may be anyone that the firm has determined is authorized to sign firm documents. In the case of Notice of Termination, a branch manager commonly would be authorized to sign-off. In addition, the "Title" of "Authorized signing partner or officer" should be removed. (This comment also applies to all Forms in Rule 33-109).

APPENDIX "C"

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

Item	Comments
General	• If the registered firm is subject to a merger, amalgamation or similar corporate change, is the firm required to complete this form?
Items D and G	• We question the relevance of some of the information that is required to be provided, in Items D and G, including: the requirement to include a business plan for the next five years; a copy of the policies and procedures manual; copy of the firm's standard employment agreement.

APPENDIX "D"

Proposed Form 33-109F7 – Notice of Reinstatement of Registered Individuals and Permitted Individuals

Item	Comments
General – Instructions (bolded in text box)	• Consider that Item 13(1)(a) and Item 13(2)(a) be specifically excluded from the changes that preclude using this form.
Item 1 - Name	• Consider removing the requirement to disclose team names on the Form 33-109F7 as this item can be addressed by the firm having policies and procedures in place in managing the use of team names.
Item 6 – Previous Employment	• Consider removing NRD location number since the new sponsoring firm will not have the ability to search for this information unless it is pre-populated from NRD. We are also requested clarification as to why the former firm's NRD location number is required.
Item 7 – Resignation and terminations	• The wording of the question for Item 7 on the Form 33-109F7 is different that the wording in Item 12 of Form 33-109F4. Was this done intentionally and if so, can the CSA provide clarification as to why the questions have been worded differently?
Item 9 – Location of Employment	• Type of location details on the paper version of the form request for an 'Effective Date' under the "Name of Branch Manager". Can the CSA provide clarification as to why this date is required.
Item 9 – Location of Employment	• Consider rewording "Date on which you will become authorized to act on behalf of the firm..." should be changed to "Start date with your new sponsoring firm".
Acknowledgements, etc.	• Consider removing "etc." • Consider that Item 13(1)(a) and Item 13(2)(a) be specifically excluded from the changes to Regulatory Information.
New sponsoring firm by an authorized partner or officer	• In the third bullet, the new sponsoring firm is required to acknowledge and agree that if an individual who is applying for registration is subject to terms and

	condi tions, those terms and conditions remain in effect and the new sponsoring will assume any ongoing obligations. Will the CSA be publishing terms and conditions online (similar to the Ontario Securities Commission's website) so that the new sponsoring firm is aware of any existing terms and conditions. If terms and conditions will not be available online, will the new sponsoring firm be able to access this information by contacting the respective jurisdictions to find out if any terms and conditions are applicable?