NOTICE OF FINAL RULE

UNDER THE SECURITIES ACT
NATIONAL INSTRUMENT 33-102
REGULATION OF CERTAIN REGISTRANT ACTIVITIES

On June 25, 2001, the Minister of Finance approved National Instrument 33-102 Regulation of Certain Registrant Activities (the "National Instrument"). The National Instrument comes into force on August 1, 2001.

In addition, *Principle of Regulation 1 -Re:Distribution of Mutual Funds by Financial Institutions, Principle of Regulation 2- Re: Full Service and Discount Brokerage Activities of Securities Dealers in Branches of Related Financial Institutions* and *Principle of Regulation 3- Re: Activities of Registrants Related to Financial Institutions* will be revoked as of August 1, 2001.

Related amendments to subsection 209(1), clause 209(10)(a), subsection 219(1) and section 229 of Regulation 1015 of the Revised Regulations of Ontario, 1990 made under the Securities Act were filed as O.Reg. 273/01 on July 10, 2001 and are expected to be published in the Ontario Gazette on July 28, 2001.

The National Instrument is published in Chapter 5 of the Bulletin.

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REGULATION OF CERTAIN REGISTRANT ACTIVITIES

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NATIONAL INSTRUMENT 33-102
REGULATION OF CERTAIN REGISTRANT ACTIVITIES

PART 1 DEFINITIONS

1.1 Definitions - In this Instrument,

(a) "**recognized SRO"** means an SRO that is recognized as a self-regulatory organization by the securities regulatory authority; and

(b) **"retail client"** means

i) an individual, unless the individual has a net worth exceeding $5 million, or

ii) a person or company, other than an individual, unless the person or company has total assets or annual revenues exceeding $10 million

but does not include

iii) a Canadian financial institution, or

iv) a person or company registered under Canadian securities legislation.

PART 2 LEVERAGE DISCLOSURE

2.1 Leverage Disclosure

(1) When a registrant opens an account for a retail client or when a registrant makes a recommendation to a retail client to purchase securities using in whole or in part borrowed money, or otherwise becomes aware of a retail client's intent to purchase securities using in whole or in part borrowed money, the registrant shall deliver to the retail client, before the retail client purchases those securities, a written disclosure statement in substantially the following words:

> Using borrowed money to finance the purchase of securities involves greater risk than a purchase using cash resources only. If you borrow money to purchase securities, your responsibility to repay the loan and pay interest as required by its terms remains the same even if the value of the securities purchased declines.

(2) Before executing an order on behalf of a retail client purchasing securities who to the knowledge of the registrant is using in whole or in part borrowed money in connection with the purchase, the registrant shall obtain an acknowledgement from the retail client that specifically refers to the written disclosure statement required by subsection (1) and confirms that the retail client has read the written disclosure statement.

(3) A registrant is not required to comply with subsections (1) and (2) if:

(a) the registrant has delivered the written disclosure statement required by subsection (1) to the retail client and the client has delivered an acknowledgement within the six month period prior to the registrant making the recommendation for purchasing securities by using in whole or in part borrowed money, or otherwise becoming aware of a retail client's intent to purchase securities using in whole or in part borrowed money, or

(b) the registrant is subject to and complies with the leverage disclosure by-laws, rules, regulations or policies of a recognized SRO.

2.2 Exemption for Margin Accounts - Section 2.1 does not apply to purchases of securities by a retail client on margin if the client's margin account is maintained with a registrant that is a member of a recognized SRO

and the margin account is operated in accordance with the by-laws, rules, regulations or policies of the recognized SRO.

PART 3 DISCLOSURE OF CONFIDENTIAL RETAIL CLIENT INFORMATION

3.1 Application of this Part – This Part does not apply to a registrant registered under securities legislation in Québec with respect to its dealings with retail clients in Québec.

3.2 Consent Required - A registrant shall hold all information about a retail client confidential and shall not disclose the information to any third party, except as expressly permitted or required by law or the by-laws, rules, regulations or policies of a recognized SRO, unless, before disclosing the information,

(a) the registrant provides at least the following information to the retail client to whom the information pertains:

(i) the name of the third party or a description of the class of third party to which the information will be disclosed;

(ii) the nature of the relationship between the registrant and the third party;

(iii) the nature of the information that will be disclosed;

(iv) the intended use of the information by the third party, including whether the third party will disclose the information to others;

(v) a statement that the retail client has the right to revoke the consent referred to in paragraph (b), and the effect of the revocation; and

(vi) a statement that the retail client's consent under paragraph (b) is not required as a condition of the registrant dealing with the retail client, except in circumstances described in section 3.3; and

(b) the retail client provides consent to the specified disclosure of the confidential client information.

3.3 Prohibition to Require Consent as a Condition - No registrant shall require a retail client to consent to the registrant disclosing confidential information regarding the retail client as a condition, or on terms that would appear to a reasonable person to be a condition, of supplying a product or service, unless the disclosure of the information is reasonably necessary to provide the specific product or service that the retail client has requested.

3.4 Consent not Required – Despite section 3.2, a registrant does not need to obtain retail client consent to disclose confidential retail client information

(a) for audit, statistical or record-keeping purposes;
(b) to a law enforcement agency, securities regulatory authority or self-regulatory organization;
(c) for the collection of a debt owed by the client; or
(d) to a barrister or solicitor for the purpose of obtaining legal advice.

PART 4 SETTLING SECURITIES TRANSACTIONS

4.1 Settling Securities Transactions - No registrant shall require a person or company to settle that person's or company's transaction with the registrant through that person's or company's account at a Canadian financial institution as a condition, or on terms that would appear to a reasonable person to be a condition, of supplying a product or service, unless this method of settlement is reasonably necessary to provide the specific product or service that the person or company has requested.

PART 5 TIED SELLING

5.1 Tied Selling - No person or company shall require another person or company

(a) to invest in particular securities, either as a condition or on terms that would appear to a reasonable person to be a condition, of supplying or continuing to supply products or services; or

(b) to purchase or use any products or services, either as a condition or on terms that would appear to a reasonable person to be a condition, of selling particular securities.

PART 6 DISCLOSURE IN RESPECT OF SECURITIES RELATED ACTIVITIES IN A CANADIAN FINANCIAL INSTITUTION

6.1 Application of Part 6 - This Part applies only to registrants conducting securities related activities in an office or branch of a Canadian financial institution.

6.2 Disclosure

(1) When a registrant opens an account for a retail client, a registrant shall deliver a written disclosure statement that the registrant is a separate entity from the Canadian financial institution and, unless otherwise advised by the registrant, securities purchased from or through the registrant

(a) are not insured by a government deposit insurer,

(b) are not guaranteed by a Canadian financial institution, and

(c) may fluctuate in value.

(2) At the time that the account is opened, the registrant shall obtain an acknowledgement from the retail client that specifically refers to the written disclosure statement required by subsection (1) and confirms that the retail client has read the written disclosure statement.

PART 7 EXEMPTION

7.1 Exemption

(1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

PART 8 EFFECTIVE DATE

8.1 Effective Date - This Instrument comes into force on August 1, 2001.

COMPANION POLICY 33-102CP
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COMPANION POLICY 33-102CP
REGULATION OF CERTAIN REGISTRANT ACTIVITIES

PART 1 DISCLOSURE

1.1 **Leverage Disclosure** - Registrants are reminded that leveraging is an important factor to consider when determining suitability and when fulfilling other obligations to clients. National Instrument 33-102 Regulation of Certain Registrant Activities (the "National Instrument") in no way implies that the provision of the leverage disclosure statement referred to in section 2.1 of the National Instrument fulfils the registrant's ongoing duties to its clients. There may be circumstances when a registrant, as part of the registrant's general responsibilities, should remind investors about the risks of purchasing securities using in whole or in part borrowed money.

1.2 **Borrowed Money -** Section 2.1 of the National Instrument requires that leverage disclosure be provided to a retail client when a registrant makes a recommendation to a retail client to purchase securities using in whole or in part borrowed money, or otherwise becomes aware of a retail client's intent to purchase securities using in whole or in part borrowed money. This requirement applies whether or not the borrowed money was specifically borrowed for the purpose of purchasing the securities.

1.3 **Client acknowledgement -** The acknowledgements of a retail client referred to in subsections 2.1(2) and 6.2(2) of the National Instrument may be obtained by a registrant in a number of ways, including requesting the retail client's signature, requesting that the retail client initial an initial box or requesting that the retail client place a check in a check-off box. It is the responsibility of the registrant to draw the client's attention to the disclosure. The acknowledgement must be specific to the information disclosed to the retail client (i.e.

disclosure regarding the risks of using leverage to purchase securities or the description of the nature of securities) and must confirm that the retail client has read the relevant information.

1.4 **Exemption for Margin Accounts** - Section 2.2 of the National Instrument exempts registrants from the requirement to provide additional leverage disclosure to retail clients opening a margin account. The exemption is provided because the by-laws, rules, regulations or policies of an SRO may already require that clients with margin accounts acknowledge receipt of leverage disclosure in the account opening form.

1.5 **Electronic Means** – All disclosure or consents required by the National Instrument may be delivered by electronic means and are subject to the provisions of all applicable federal or provincial legislation governing the delivery of electronic documents. Reference should also be made to National Policy 11-201 Delivery of Documents by Electronic Means.

PART 2 COMPLIANCE AND SUPERVISORY ACTIVITIES

2.1 **Registrant Premises** - Securities legislation requires that a registrant designate one officer or partner, known as a compliance officer, to be responsible for ensuring compliance by the registrant and its registered personnel with securities legislation and the registrant's written procedures for dealing with its clients. Any office or branch office of the registrant may be designated by the registrant as its central location for a local jurisdiction.

2.2 **Registrant Responsibility to Prevent Client Confusion** - The registrant is responsible for ensuring that clients understand with which legal entity they are dealing, especially if more than one financial service firm is carrying on business in the same location, and the products being sold to them. The client may be informed through various methods, including signage and disclosure. Registrants are reminded of the obligation to carry on all registrable activities in the name of the registrant. Contracts, confirmations and account statements, among other documents, should contain the full legal name of the registrant.

2.3 **Supervision of Sub-branches** - The Canadian securities regulatory authorities permit the operation of sub-branch offices of registrants in certain circumstances. The activities of registrants operating within a sub-branch office are generally supervised by a branch manager in a location other than the sub-branch. The Canadian securities regulatory authorities are of the view that such supervision is appropriate in most circumstances. However, the Canadian securities regulatory authorities will consider the facts on a case-by-case basis to ensure that an appropriate level of supervision is in place.

PART 3 RECORD KEEPING

3.1 **Third Party Access to Information** - All registrants have a duty to maintain proper books and records and to ensure that there are proper safeguards in place to ensure that there is no unauthorized access to information, particularly confidential client information. If the registrant maintains books and records in a central location to which employees of a third party have access, the registrant should be particularly vigilant in ensuring these safeguards are implemented and effective.

PART 4 RETAIL CLIENT CONSENT

4.1 **Application of Part 3 of the National Instrument –** Part 3 of the National Instrument does not apply to a registrant registered under securities legislation in Québec with respect to its dealings with retail clients in Québec. These registrants must comply with *An Act Respecting the Protection of Personal Information in the Private Sector,* R.S.Q., c. P-39.1 regarding the protection of personal information of their clients.

4.2 **Obtaining Retail Client Consent** - The retail client consent referred to in paragraph 3.2(b) of the National Instrument may be obtained by a registrant in a number of ways, including requesting the retail client's signature, requesting that the retail client initial an initial box or requesting that the retail client place a check in a check-off box.

4.3 **Providing Consent** – Subsection 3.2(b) of the National Instrument states that the client must "provide consent" to the disclosure of the confidential information. It is the view of the Canadian securities regulatory

authorities that a retail client provides consent if the retail client takes positive steps to provide the consent required. Upon implementation of the National Instrument, a registrant that uses a "negative option" to obtain consent to disclose the confidential information does not comply with the requirement to obtain consent. For example, a retail client who does not check a check-off box or initial an initial box cannot be presumed to "provide consent" to the transfer of the information to a third party.

4.4 **Consent by Existing Retail Clients –** The Canadian securities regulatory authorities recognize that registrants have existing clients that have already provided consent for the disclosure of confidential information. An existing retail client is considered to have provided consent under subsection 3.2(b) if the retail client:

(a) has provided consent, either positively or negatively, to the registrant to disclose confidential client information prior to the implementation of the National Instrument, and

(b) is provided with a notice that contains

(i) the disclosure required in subsection 3.2(a) of the National Instrument, and

(ii) a statement of the right of the retail client to withdraw his or her consent.

This notice should be provided to all existing retail clients within 90 days of the implementation of the National Instrument.

4.5 **Timing of Retail Client Consent** - Consent to the disclosure of confidential retail client information is to be obtained by the registrant when the information is collected (i.e. upon account opening). However, in certain circumstances, consent with respect to the disclosure of the information should be sought after the collection of the information if the registrant wants to provide the information to a third party not previously identified or if the use by the third party was not initially disclosed.

PART 5 PRODUCTS AND SERVICES

5.1 **Opening an Account** - The Canadian securities regulatory authorities note that the "products or services" referred to in section 3.3, section 4.1 and section 5.1 of the National Instrument include the opening of an account.

PART 6 RELATIONSHIP PRICING

6.1 **Relationship Pricing** - The Canadian securities regulatory authorities are aware that industry participants offer financial incentives or advantages to certain clients, a practice that is commonly referred to as relationship pricing. The tied selling provision in Part 5 of the National Instrument is intended to prevent certain abusive sales practices and is not intended to prohibit relationship pricing or other beneficial selling arrangements similar to relationship pricing. By way of example, the Canadian securities regulatory authorities are of the view that Part 5 of the National Instrument would not be contravened in a case where a financial institution offered to make a loan to a client on more favourable terms or conditions than the financial institution would otherwise offer to the client as a result of the client's agreement to acquire securities of mutual funds that are sponsored by the financial institution. They are of the view that Part 5 of the National Instrument would be contravened, however, if the financial institution refused to make the loan unless the client acquired securities of mutual funds that are sponsored by the financial institution, where the client otherwise met the financial institution's criteria for making loans.