NATIONAL INSTRUMENT 31-103
REGISTRATION REQUIREMENTS

NOTICE AND REQUEST FOR COMMENT

PROPOSED NATIONAL INSTRUMENT 31-103
REGISTRATION REQUIREMENTS

PROPOSED COMPANION POLICY 31-103CP
REGISTRATION REQUIREMENTS

PROPOSED AMENDMENTS TO
MULTILATERAL INSTRUMENT 33-109 *REGISTRATION INFORMATION*

Table of Contents

INTRODUCTION

BACKGROUND

OVERVIEW OF THE REGISTRATION REGIME

SUBSTANCE AND PURPOSE OF THE RULE

SUMMARY OF THE KEY FEATURES OF THE RULE
- Part 1: Definitions and Interpretation
- Part 2: Categories of Registration and Permitted Activities
- Part 3: SRO Membership
- Part 4: Fit and Proper Requirements
- Part 5: Conduct Rules
- Part 6: Conflicts
- Part 7: Suspension and Revocation of Registration
- Part 8: Information Sharing
- Part 9: Exemptions from Registration

CHANGES TO REGULATORY FRAMEWORK IN QUÉBEC

TRANSITION

PROPOSED FORMS UNDER MI 33-109 REGISTRATION INFORMATION

OTHER ISSUES

DESCRIPTION OF OSC PROPOSALS FOR LEGISLATIVE AMENDMENTS

HEAD OF AUTHORITY

ANTICIPATED COSTS AND BENEFITS

ALTERNATIVES CONSIDERED

UNPUBLISHED MATERIALS

REQUEST FOR COMMENTS

HOW TO PROVIDE YOUR COMMENTS

APPENDIX A – CONSEQUENTIAL AMENDMENTS TO NATIONAL INSTRUMENTS

APPENDIX B – SUMMARY OF LEGISLATIVE AMENDMENTS PROPOSED BY OSC IN CONNECTION WITH PROPOSED NI 31-103 REGISTRATION REQUIREMENTS

INTRODUCTION

The Canadian Securities Administrators (the **CSA** or **we**) are seeking comment on proposed National Instrument 31-103 *Registration Requirements* (the **Rule**) and proposed Companion Policy 31-103 *Registration Requirements* (the **Companion Policy**). The Rule introduces harmonized registration requirements across all CSA jurisdictions. The Companion Policy provides guidance on how the CSA will interpret or apply the Rule and related securities legislation.

This Notice, the Rule and accompanying materials seek comment on proposed changes to securities laws including matters that are now dealt with in the *Securities Act* (Ontario) and changes to the Act that may be proposed by the Ontario Securities Commission (**OSC**). At this time, the Ontario government has not reviewed these legislative proposals and has made no decision to proceed with them. Accordingly, the legislative proposals are subject to change as a result of the consultation process and as a result of review by the government. They will only become law if they are passed by the Legislative Assembly of Ontario.

The Rule would be implemented as:

- a rule in each of Alberta, British Columbia, Manitoba, Newfoundland and Labrador, Nova Scotia, New Brunswick, Ontario and Prince Edward Island
- a regulation in each of Québec, the Northwest Territories, Nunavut and the Yukon Territory
- a commission regulation in Saskatchewan.

The text of the Rule and Companion Policy[1] will be available on websites of CSA members, including:
www.albertasecurities.com
www.bcsc.bc.ca
www.gov.ns.ca/nssc
www.lautorite.qc.ca
www.nbsc-cvmnb.ca
www.osc.gov.on.ca
www.sfsc.gov.sk.ca

National and multilateral CSA instruments and local regulations and rules governing registration and registrants will be repealed or amended as necessary. Appendix A sets out some of the CSA instruments which we will be proposing be amended or repealed in consequence of the Rule.

We are also seeking comment on proposed amendments to Form 33-109F1 *Notice of Termination* and Form 33-109F4 *Application for Registration of Individuals and Permitted Individuals* and on a new proposed form, Form 33-109F6 *Application for Registration as a Dealer, Adviser or Investment Fund Manager for Securities and/or Derivatives* (collectively the **Forms**). The Forms will also be available on the websites of CSA members as mentioned above.

We are publishing the Rule, the Companion Policy and the Forms for comment for 120 days. The comment period will expire on June 20, 2007.

We invite comment on these materials generally. In addition, we have asked a number of questions in shaded boxes throughout this Notice for your specific consideration.

BACKGROUND

The CSA Registration Reform Project

The Rule is one phase of the CSA Registration Reform Project (the **Project**), to harmonize, streamline and modernize the registration regime across Canada. The Project's objective is to create a flexible and administratively efficient regime with reduced regulatory burden. In addition to the development and implementation of the Rule, the Project has three other phases:

- the National Registration System (**NRS**) (implemented in April, 2005)
- the implementation of core client relationship principles through self-regulatory organization by-laws (to be published for comment in 2007)

[1] Some jurisdictions may also be publishing a table of concordance on their website mapping the current registration requirements to the proposed registration requirements.

- amendments to the National Registration Database (**NRD**) instruments to create efficiencies (to be implemented early in 2007).

Industry consultations

Throughout the development of the Rule, the CSA have sought to keep stakeholders informed about the issues being considered and proposals being developed. The Project has a dedicated website[2] on which information relating to the Project was published including two papers on the proposal for registration reform. Industry consultations were held in British Columbia, Alberta, Ontario and Québec at various times over the past two years to seek feedback on the issues being considered and proposals being developed. The CSA would like to thank all those who participated in the consultations. This participation was extremely helpful in the development of the Rule.

Business trigger for registration

An integral part of the registration regime is the registration trigger.[3] In all jurisdictions, except Québec (which already has a "business trigger" for dealing in securities), the current registration trigger is a "trade trigger"[4] for dealing in securities but a "business trigger"[5] for advising in securities.

We propose that all CSA jurisdictions extend the business trigger to both of:

- dealing in securities, and
- advising in securities.

The result is that anyone who is "in the business" of one or more of these activities must register. We also propose to extend the requirement to be registered to those who manage investment funds.

We propose that the following factors be considered when assessing whether an activity is conducted as a business:

- undertaking the activity, directly or indirectly, with repetition, regularity, or continuity
- being, or expecting to be, remunerated or otherwise compensated for undertaking the activity
- soliciting, directly or indirectly, others in connection with the activity
- acting as an intermediary, or otherwise inducing reliance by others on the person or company, in connection with the activity
- producing, intending to produce, or being capable of producing, profit
- holding oneself out, directly or indirectly, as being in the business of the activity.

We intend to monitor experience with the business trigger for a period of time (1-2 years) and then assess whether we should weight the criteria.

The business trigger is not intended to capture individuals who are buying and selling securities for their own account and who do not have direct access to a marketplace (excluding those who have dealer-sponsored access).

The objective of the business trigger proposal is to improve the registration process. We propose a business trigger regime because we think it is simpler and more flexible than the trade trigger regime. It will simplify the statutory registration exemptions by eliminating, for example, the need for statutory exemptions based on occasional trades and reduce the need for

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2 Please see www.rrp-info.ca. The proposal papers published on the website discuss in greater detail the policy basis for the proposals set out in the Rule.

3 The registration trigger identifies the activities that require registration.

4 For example, paragraph 25(1)(a) of the *Securities Act* (Ontario) provides:

> No person or company shall trade in a security ... unless the person or company is registered as a dealer ...

5 For example, paragraph 25(1)(c) of the *Securities Act* (Ontario) provides:

> No person or company shall act as an adviser unless the person or company is registered as an adviser ...

and subsection 1(1) of the *Securities Act* (Ontario) defines "adviser" as:

> "... a person or company engaging in or holding himself, herself or itself out as engaging in *the business* of advising others as to the investing in or the buying or selling of securities" [emphasis added].

exemptive relief applications for transactions such as business reorganizations.[6] Changing to a business trigger for dealing in securities will also bring our registration requirement in line with the requirement in other countries with modern securities legislation.[7]

Implementation of the business trigger for the registration of dealers

Each CSA jurisdiction currently sets out the registration trigger in its Securities Act. Most of the CSA jurisdictions propose to implement the business trigger for dealers through legislative amendments. British Columbia and Manitoba intend to implement the business trigger through an exemption from the existing trade trigger requirement.[8]

In addition to the implementation of the business trigger, legislative amendments or rules are needed to implement aspects of the Rule which will be discussed in more detail under the summary of the key features of the Rule. Other amendments or rules being recommended by most of the CSA jurisdictions include:

- amendments to detailed registration provisions in the legislation which relate to provisions included in the Rule
- new provisions to require registration of investment fund managers and key compliance/supervisory positions in all categories of firm registration, namely the ultimate designated person and chief compliance officer
- a harmonized requirement for registrants to deal fairly, honestly and in good faith with their clients and in their clients' best interests
- new (or amended) rule-making heads of authority to allow implementation of the Rule.

OVERVIEW OF THE REGISTRATION REGIME

Proposed legislative amendments, the Rule, the Companion Policy, changes to NRD and consequential amendments to some national and local instruments and repeals of other instruments all work together to create a comprehensive scheme for highly harmonized registration requirements across all CSA jurisdictions.

Legislation

The legislation continues to set out the core elements of the registration regime. These include:

- the requirement for firms and individuals to be registered if conducting activity requiring registration
- the ability of the securities regulatory authority or regulator, as applicable,[9] to impose terms and conditions on a registrant
- the surrender of a registration
- the ability of the securities regulatory authority or the regulator to revoke or suspend a registration.

Rule

The Rule sets out principles and prescriptive requirements associated with the core elements in the legislation. For example, the Rule contains the fit and proper requirements that must be met by an individual seeking registration, the conduct requirements that a registered firm and individual must meet in the course of carrying on activities requiring registration and exemptions from the requirement to be registered.

Companion Policy

The Companion Policy sets out the CSA's interpretation of the registration requirements and expectations on how registrants will comply with these requirements.

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6 Currently, applications for registration relief are often made because a trade does not fit completely within a statutory exemption. Relief is generally granted in these cases since they do not cause regulatory concerns.

7 The United States, the United Kingdom, Australia, Hong Kong and Singapore all use a business trigger.

8 British Columbia, for instance, is proposing to adopt a new registration exemption that would exempt persons that are not in the business of dealing in securities from the requirement to be registered to trade.

9 The ability to impose terms and conditions on a registrant is at the Commission level in some jurisdictions and at the Director level in other jurisdictions.

Related instruments

Many registration requirements currently found in national and local instruments have been moved into the Rule. As a result, many of these instruments will be repealed. Other instruments will need to be amended to reflect the policy changes proposed by the Rule.

Ongoing harmonization

The CSA are very committed to the ongoing harmonization of the registration requirements. We will establish a process to ensure consistency in decision making across the CSA jurisdictions. We are also committed to the ongoing harmonization of CSA requirements with the requirements of self-regulatory organizations (**SRO**) where appropriate.

SUBSTANCE AND PURPOSE OF THE RULE

The purpose of the Rule is to harmonize, streamline and modernize the registration regime across the CSA jurisdictions. The registration requirements provide protection to investors from unfair, improper or fraudulent practices, and thereby enhance capital market integrity.

When we reviewed current legislative requirements and considered modifying or adding requirements, we:

- looked at the nature and scope of the market problems or risks
- considered whether regulatory intervention is needed to eliminate or minimize the market problems or risks
- considered what regulatory solutions might best address the market problems or risks
- attempted to reduce regulatory burden and increase regulatory efficiency where possible.

The proposed registration regime being implemented through the Rule and the related consequential amendments include a number of significant changes, including:

- the introduction of a business trigger for dealer registration (Québec's legislation includes this concept currently)
- investment fund manager registration
- registration of an ultimate designated person and a chief compliance officer
- the introduction of an exempt market dealer registration category and the elimination of registration exemptions for capital-raising and safe securities.[10]

The Rule itself:

- consolidates and harmonizes in a single national instrument, requirements and restrictions governing registration and registrants that exist in various acts, regulations, rules, notices and administrative practices across all the CSA jurisdictions
- modernizes many registration requirements
- streamlines and harmonizes registration categories
- consolidates exemptions from the dealer and adviser registration requirement that are currently contained in various statutes, regulations, rules and discretionary orders.

SUMMARY OF THE KEY FEATURES OF THE RULE

Part 1: Definitions and Interpretation

Part I of the Rule identifies terms that are defined for purposes of the Rule.

[10] This is a change in all CSA jurisdictions except Ontario and Newfoundland and Labrador.

Part 2: Categories of Registration and Permitted Activities

Part 2 of the Rule identifies the categories of registration for firms and individuals. This part also sets out, by way of exemptions, the advising activities that a dealer may carry on and the dealing activities an adviser may carry on.

Harmonized and streamlined categories

We have harmonized the firm and individual categories across all the CSA jurisdictions. A few new categories have been added but overall the number of categories has been significantly reduced. This simplifies the application process for registration in multiple jurisdictions and reduces regulatory burden.

Registration in more than one category

Firms carrying on more than one type of activity requiring registration will generally be required to obtain registration in each of the applicable categories.[11] It is our intention to make multiple registrations as administratively efficient as possible for registrants. A firm that is registered in more than one category will need to comply with the requirements of all the categories in which it is registered. However, capital and insurance requirements are not cumulative for a firm holding multiple registrants: for these requirements, the most stringent would apply.

New firm categories

Exempt market dealer is a new category of registration for all jurisdictions.[12] Exempt market dealers will be restricted to dealing in prospectus-exempt securities and with persons to whom prospectus-exempt distributions can be made.[13] It is similar to the existing limited market dealer category in Ontario and Newfoundland and Labrador except that the category of registration will now be subject to additional fit and proper and conduct requirements.

Question #1: What issues or concerns, if any, would your firm have with the proposed fit and proper and conduct requirements for exempt market dealers? Please explain and provide examples where appropriate.

In Ontario and Newfoundland and Labrador, the majority of firms registered as limited market dealers will become exempt market dealers.[14] There are however some firms currently registered as limited market dealers which operate under a business model that staff does not believe constitutes carrying on the business of dealing in securities and would therefore no longer require registration. For example, we would not consider a firm that provides merger and acquisition advisory services to a company but does not participate in the distribution of securities to be in the business of dealing in securities.

British Columbia is considering not adopting this category[15] because it is concerned that requiring registration of persons who are in the business of dealing in the exempt market will have a negative impact on the province's venture capital raising business. British Columbia is also not convinced that there is a market problem in this area in British Columbia that is addressed by the registration requirement.

Question #2: The British Columbia Securities Commission seeks comments on the relative costs and benefits in British Columbia of harmonizing with the other CSA jurisdictions to create an exempt market dealer category and in doing so, eliminating the registration exemptions for capital-raising transactions and the sale of those securities, referred to in some jurisdictions as "safe securities" (i.e. government guaranteed debt).

Restricted dealer is a new category of registration for all jurisdictions. This category is intended to accommodate limited dealing activities that do not fall within the other firm categories.[16] The restrictions and requirements, including fit and proper requirements on initial application for registration, that apply to a person registered in the category will depend on the activity being carried on and will be set out in terms and conditions attached to the registration. We propose to monitor the use of this

[11] Currently, some CSA jurisdictions do not have any firms registered in multiple categories.

[12] We propose to repeal registration exemptions for capital-raising transactions and the sale of certain securities, referred to in some jurisdictions as "safe securities", currently in NI 45-106 *Prospectus and Registration Exemptions* in conjunction with the move to a business trigger and the proposed exempt market dealer category. Under a business trigger, persons or companies that are not in the business of dealing in securities will be able to do capital-raising transactions without being registered as a dealer or involving a registrant, subject to prospectus requirements.

[13] Exempt market dealers will be able to deal in prospectus qualified securities as well when dealing with persons to whom prospectus-exempt distributions can be made such as accredited investors.

[14] Transition provisions are being worked on as well as NRD mapping requirements in order to make the transition from the current categories to the new categories as efficient as possible.

[15] The British Columbia Securities Commission, in taking this position, has relied on comments from stakeholders and internal research on its exempt market.

[16] For example, a real estate securities dealer in British Columbia would become a restricted dealer.

category to see if business structures develop which warrant the creation of a type of restricted dealer through a rule rather than reliance on terms and conditions.

Restricted portfolio manager is a new category of registration for all jurisdictions. A restricted portfolio manager is restricted to advising others with respect to specified securities, types or classes of securities or specified industries. This new approach will better accommodate advisers with specialties who do not have the proficiency required for portfolio manager registration or who do not require full portfolio manager registration.

This category is being proposed because regulators recognize the increasing role that specialized advice has in today's securities industry and that the regulatory risks associated with expert advice can be adequately addressed through registration with tailored terms and conditions. The restrictions and requirements that apply to a person registered in this category will depend on the advising activity being carried on and will be in terms and conditions applied to the restricted portfolio manager's registration. A restricted portfolio manager will be permitted to provide discretionary management for its clients for those securities in which it is permitted to advise pursuant to the terms and conditions on its registration.

Investment fund manager is a new category of registration for all jurisdictions. This registration requirement applies to managers of all investment funds (e.g. domestic, foreign, reporting issuers and non-reporting issuers) other than private investment clubs. A fund manager will register in the CSA jurisdiction in which the fund is located.

Risks that have been identified which are particular to fund managers include:

- incorrect or untimely calculation of net asset value
- incorrect or untimely preparation of financial statements and reports
- incorrect or untimely provisions of transfer agency or record-keeping services
- conflicts of interest between the fund manager and the investors.

The registration of fund managers will:

- allow regulators to directly regulate fund managers instead of imposing registration type requirements on mutual fund issuers
- impose requirements to ensure that fund managers have the resources to adequately carry out their functions, or to adequately supervise the functions if they are outsourced, to provide proper services to security holders in compliance with all applicable legal requirements
- provide a framework for avoiding and managing conflicts.

Question #3: Registration for managers of all types of investment funds (other than private investment clubs) is proposed. Are there managers of funds for which the risks identified are adequately addressed in some other way and therefore registration as a fund manager may not be necessary? If so, please describe the situation.

New individual categories

Ultimate Designated Person and Chief Compliance Officer

We propose two new individual categories of registration for all types of registered firms:

(i) the Ultimate Designated Person (**UDP**)

(ii) the Chief Compliance Officer (**CCO**).

The UDP must be the senior officer in charge of the activity of the firm requiring registration, such as the chief executive officer or president (or the functional equivalent of these positions), and will be responsible for ensuring that policies and procedures for the discharge of the registrant's obligations under securities legislation are developed and implemented. The CCO will be responsible for the day-to-day monitoring of the registrant's adherence to its compliance policies and procedures. The UDP and the CCO may be the same person or different people depending on the size and structure of the firm. Proficiency requirements are prescribed for the CCO.

The registration of these individuals is a new requirement in all jurisdictions though it is similar to designation requirements that the Investment Dealers Association of Canada (**IDA**), the Ontario Securities Commission (**OSC**), and the Autorité des marchés financiers (**AMF**) currently impose on certain registrants.[17]

The purpose of registering these individuals is to:

- promote a firm-wide culture of compliance
- give the regulators tools to deal directly (rather than indirectly through the firm) with individuals who are not fit and proper for their responsibilities or who cease to be fit and proper, such as by imposing terms and conditions on the individual's registration or revoking a registration
- ensure that persons performing compliance functions have the requisite proficiencies.

Question #4: Registration of the UDP and CCO is proposed. As well, we propose that the UDP be the senior officer in charge of the activity carried on by a firm that requires the firm to register. What issues or concerns, if any, would your firm have with these registration requirements? Do you think the registration of the UDP and CCO contributes to or detracts from a firm wide culture of compliance? Please explain.

Associate Advising Representative

The individual registration category for an associate advising representative for a portfolio manager which currently exists in some CSA jurisdictions is proposed for all jurisdictions. This category is primarily an apprentice category for individuals who are seeking full adviser registration but do not meet the experience or education requirements. It will also accommodate individuals who work for a portfolio manager and are in charge of client relationships but who do not perform portfolio management for clients.

Question #5: The Rule proposes an associate advising representative category for portfolio managers but not for restricted portfolio managers because the restricted portfolio manager category is intended for individuals who have expertise in a specific industry. Is the concept of an associate advising representative useful in the context of a restricted portfolio manager? If so, why?

Reduction in number of non-registered individuals

A consequential amendment that we intend to propose in connection with the Rule is to change the definition of "non-registered individuals"[18] in Multilateral Instrument 33-109 *Registration Information* by narrowing it so it applies only to senior executives (i.e. chief executive officer, chief financial officer, chief operating officer and persons performing the functional equivalent to these positions) and directors (i.e. mind and management of the firm). This will significantly reduce the number of filings by non-registered individuals since filings will no longer be required by individuals who have officer titles but do not form part of the mind and management of a firm.

Question #6: We discussed but have not proposed registration of senior executives and directors (i.e. the mind and management) of a firm. Registration would assist the regulators in being able to deal directly with this group of people rather than indirectly through the firm. Please provide us with comments on what positions in a firm should be considered part of the mind and management and what issues or concerns you or your firm would have with registration of individuals in those positions.

Categories not being continued

We have eliminated the security issuer category. We expect that many firms currently registered as a security issuer would not be caught by the business trigger. If, however, an issuer is in the business of dealing in securities, then registration as a dealer, such as an investment dealer or an exempt market dealer, will be required.

We have eliminated the securities adviser category. We do not intend to register persons who only provide generic advice (i.e. advice that is not directed to a particular investor). We believe that the regulatory risks associated with the giving of generic advice are better dealt with through anti-fraud provisions and disclosure requirements regarding conflicts of interest and are considering whether amendments to existing requirements or new requirements are needed.

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[17] The new provisions in Québec securities legislation are not yet in force.

[18] There is a proposal to change the term "non-registered individual" to "permitted individual" which is in the process of being approved by the CSA and may come into force during the comment period on the Rule.

We have eliminated the investment counsel category. Almost all advisers are currently registered as portfolio managers. Advisers will either be portfolio managers or restricted portfolio managers. Both categories of adviser will be permitted, but not required, to provide discretionary advice.

The category of international dealer in Ontario and Newfoundland and Labrador and the category of international adviser in Ontario have been eliminated. Under the Rule, persons who currently fall into these categories will become exempt from registration in all CSA jurisdictions, subject to conditions that generally mirror the conditions currently imposed on these categories. The move to an exemption means that the protections offered by registration no longer extend to clients of international dealers and international advisers. Consequently, the types of clients that they are permitted to have under the Rule has been narrowed somewhat from those permitted under the current registration categories. While not all CSA jurisdictions currently have an international dealer or international adviser category, some jurisdictions have granted discretionary relief to international dealers and international advisers on terms and conditions similar to but not identical to the exemptions proposed in the Rule.

Existing categories that have not been used or rarely been used will be deleted – for example the financial intermediary dealer and foreign dealer categories in Ontario, the investment contract brokerage category in Québec and the exchange contracts dealer category in British Columbia[19] and Alberta.

We have also renamed some of the existing categories. For example, limited market dealers in Ontario and Newfoundland and Labrador will become exempt market dealers. Transition issues are discussed later on in this Notice.

Permitted advising activities for dealers

The Rule contains an exemption from the adviser registration requirement for a registered dealer who provides non-discretionary advice which is necessary to support its dealing activities. This exemption recognizes that dealing in securities necessarily involves an aspect of advising which is not incidental to, but part of, the business of dealing. This is a change from the current exemption in most jurisdictions which refers to advising activities that are incidental to a dealer's primary business.

We will maintain the current exemption for IDA members who give discretionary advice to fully-managed accounts in accordance with IDA by-laws.[20]

Permitted dealing activities for advisers

The Rule includes an exemption from the dealer registration requirement for a registered adviser who deals in units of its in-house pooled funds with *bona fide* fully-managed accounts managed by the adviser as part of its portfolio management for those accounts. We have included an anti-avoidance provision which, together with the referral arrangement restrictions in Part 6 of the Rule, is intended to clarify the limited circumstances in which the exemption is available. The prospectus requirements applying to the distribution of the units have not been changed.[21]

Question #7: The proposed exemption applies to advisers who are actively advising and managing their clients' fully-managed accounts. The exemption has not been extended to advisers dealing in securities of their own pooled funds with third parties. If there are circumstances in which you think it would be appropriate to extend the exemption to third parties please describe.

Part 3: SRO Membership

As today in most CSA jurisdictions, the Rule requires investment dealers to be members of the IDA and mutual fund dealers to be members of the Mutual Fund Dealers Association of Canada (**MFDA**) or, in Québec, a member of a self-regulatory organization that is recognized for the purpose of regulating mutual fund dealers.

Certain requirements in the Rule (e.g. proficiency and solvency requirements) will not apply to members of SROs and their registered individuals. Requirements for these areas will be prescribed by the applicable SRO.

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19 In British Columbia and Alberta it is expected that in the future, exchange contract dealers will operate as investment dealers and become members of the Investment Dealers Association of Canada.

20 Mutual Fund Dealers Association of Canada rules currently prohibit discretionary managed accounts but the MFDA is considering proposing rule amendments to allow such accounts subject to conditions in which case amendments to the Rule to provide an exemption for members of the MFDA similar to that proposed for IDA members would be considered.

21 In Ontario, advisers are reminded that the prospectus exemption for distributions to accredited investors in sec. 2.3 of NI 45-106 does not apply to a portfolio manager acting for a fully managed account in the purchase of a security of an investment fund as a result of paragraph (q) of the definition of "accredited investor" in sec. 1.1 of NI 45-106.

Part 4: Fit and Proper Requirements

Fit and proper requirements are designed to ensure the suitability of individuals or firms for registration. The cornerstones of the registration fit and proper requirements are:

- proficiency – only qualified persons can deal in securities, advise, or manage investment funds
- integrity – registrants are subject to business conduct rules and are held accountable for their securities related activities
- solvency – registered firms must be financially viable.

Division 1 – Proficiency

We have harmonized proficiency requirements for individuals registered with firms that are not SRO members. We have also modernized proficiency requirements by moving from course-based to exam-based requirements wherever possible. We recognize that many individuals have already completed college or university courses that prepare them for industry exams. Requiring further coursework is an unnecessary regulatory burden.

As mentioned above, proficiency requirements for SRO members will be set out in SRO by-laws.[22] This will permit flexible and timely responses to new proficiency needs as industry develops new products.

The currency of exams for proficiency requirements has been modified. The general requirement is that the required exam must be completed within 36 months of the date of applying for registration. If the exam was completed more than 36 months before applying for registration the exam will be current if the individual was registered or had relevant experience for 12 months during the 36 months preceding registration. We also recognize that individuals can gain relevant experience in various ways. Consequently, we have not prescribed what constitutes relevant experience. Instead, we have provided guidance on what we consider to be relevant experience in the Companion Policy.

Advisers will have two options to choose from to meet the proficiency requirements. One option is the CFA Charter which, in our experience, is the proficiency most often acquired by portfolio managers who act for institutional clients. The other option is the Canadian Investment Management designation plus four years of relevant investment management experience. This proficiency is, in our experience, the one most often acquired by portfolio managers who act for retail clients.

Division 2: Solvency Requirements

We regulate a firm's solvency by imposing capital and insurance requirements. The requirement to maintain a minimum level of capital is one of the tools that a regulator uses to monitor its market participants. The capital formula, as a regulatory tool, enables the regulator to achieve the following objectives:

- provide protection against insolvency due to liabilities exceeding the realizable value of assets
- provide protection to client assets and minimize disruption to clients
- ensure liquidity of a firm
- allow the regulators sufficient time to intervene to facilitate an orderly wind down, if necessary
- serve as a signal to the regulator that the market participant may have potential problems
- help in the assessment of the integrity of market participants and their fitness for registration.

The primary objective of an insurance requirement is to protect against the loss of property with a view to:

- protecting clients' assets
- protecting the firm's own assets.

[22] The MFDA will be responsible for setting the proficiency requirements for individuals carrying on activity requiring registration for its members but the registration of those individuals will continue to be done by the securities regulatory authority or regulator, as applicable, in each jurisdiction.

Capital requirements

The Rule contains harmonized minimum capital requirements for non-SRO registered firms,[23] including exempt market dealers and investment fund managers. Registered firms with multiple registrations will need to be aware of the requirements for each category of registration they have. The capital requirements have been modernized and reflect a more risk-based approach which is consistent with the approach taken by SROs. It is also an approach which, we believe, better reflects the risks inherent in current business models and the differences in internal controls across registered firms.

Other key changes to the proposed capital requirements include:

- an increase in minimum capital requirement for most non-SRO registered firms (but generally no change for portfolio managers that hold client assets)
- an increase in the frequency of filings for most non-SRO registered firms
- an enhanced capital calculation formula to better reflect the business model of a firm.

In addition, firms must prepare capital calculations and financial statement filings on an unconsolidated basis.

Insurance

The Rule sets out modernized insurance requirements for non-SRO registered firms. For some advisers there will be no change in the requirements. Insurance requirements for SRO members are set out in the SRO by-laws. The method of calculating insurance has changed and is now based on a formula and not a flat amount.

Question #8: The Rule requires dealers, advisers and fund managers to have Financial Institution Bonds. In cases where the owners of the firm also carry out the operations and registerable activity of the firm, usually in small firms, are these bonds prohibitively costly to obtain and will the bonds provide coverage if they are obtained in these situations?

Division 3: Financial Records

The Rule harmonizes and modernizes the current requirements for non-SRO registered firms to appoint an auditor and deliver financial information on a periodic basis.

Part 5: Conduct Rules

Part 5 consists of eight divisions dealing with the conduct of a registrant.

Division 1: Account opening and know-your-client

This division consolidates existing requirements applicable to opening an account for a client (other than account opening documentation, which is discussed in Division 2) and assessing suitability for a client. It also contains an express requirement that a registrant must take reasonable steps to ensure that a proposed purchase or sale is suitable for the client with reference to the client's circumstances.

Question #9: We propose that some requirements of Division 1 not apply to clients that are accredited investors as defined in NI 45-106 *Prospectus and Registration Exemptions*. Is it appropriate to exclude this group, or any other group, of clients from the account opening requirements?

Division 2: Relationship Disclosure

The SROs are currently drafting rules to implement the client relationship principles with respect to account opening documentation. The Rule will impose similar requirements for accounts that non-SRO registered firms open for clients other than accredited investors.

[23] Capital requirements for SRO members will be set by the SRO.

Question #10 What issues or concerns, if any, would your firm have with the proposed relationship disclosure requirements? Is this type of requirement appropriate for some or all types of accredited investors? If so, what information would be useful to have in the relationship disclosure document?

Division 3: Client Assets

This section sets out and harmonizes safekeeping and segregation of funds requirements (currently in the securities legislation in some jurisdictions). This division also introduces a prohibition on non-SRO registered firms providing margin to clients. Providing margin is prohibited to this group of registered firms due to the nature of the businesses carried on by non-SRO firms. The proposed capital and insurance requirements for non-SRO firms do not take into account the risks associated with providing margin.

Division 4: Record Keeping

Currently, most jurisdictions prescribe the specific records that registrants must keep. We have replaced prescriptive lists with a general obligation for registrants to maintain an effective record-keeping system. This approach recognizes that records that are relevant for one firm may not be relevant for another. The Companion Policy includes guidance on the sorts of records a firm must maintain.

The Rule requires that registered firms keep their records in a durable and intelligible form, capable of being easily accessed and printed. This requirement accommodates both new recordkeeping technologies and a regulator's need to access records.

Division 5: Account activity reporting

Confirmations

The Rule harmonizes and modernizes[24] the current requirements found in securities legislation for registered dealers to send confirmations of trades to clients. The Rule recognizes that often client orders are filled through multiple trades and on multiple marketplaces and therefore permits aggregated information on a confirmation.

The Rule introduces in all CSA jurisdictions the disclosure option set out in subsections 71.1(6) and (7) of Alberta Securities Commission Rules for clients trading in securities of mutual funds, scholarship plans, educational plans and educational trusts under automatic payment plans, automatic withdrawal plans or contractual plans. These sections give registered dealers the option of providing clients with a semi-annual summary of trades following the initial issuance of a trade confirmation.

Question #11: Is the prescribed content for a confirmation the appropriate type of information?

Streamlined Statements of Account and Portfolio

We have modified the requirement for registered dealers and portfolio managers to issue statements of account or portfolio to clients at specified times. Firms may aggregate information and reduce the frequency of delivery provided the information is available to the customer upon request and without additional charge.

Division 6: Compliance

Principle-based compliance regime

Compliance is a firm-wide responsibility. We have sought to reinforce firm-wide responsibility by setting out a general compliance obligation in the Rule. Registered firms must establish and enforce a system of controls and supervision that ensures the firm's compliance with all applicable requirements of securities legislation. These are not new requirements. However, the Rule adopts a principle-based approach to these requirements because experience suggests that this is a better way to accommodate the diversity in size and scope of our industry participants.

Registration of UDP and CCO

As discussed above, the Rule introduces the UDP/CCO system. While the UDP and CCO are responsible for carrying out specific activities, this does not mean that they are the only members of a firm that are responsible for compliance. The Rule requires a registered firm to give the UDP and CCO direct access to the board of directors of the firm or the partnership at such times as either of them may independently deem necessary. Compliance is the responsibility of everyone in a firm.

[24] We've attempted to capture in the Rule some of the discretionary relief relating to confirmations that has been granted in some CSA jurisdictions.

Branch managers

Consistent with the move away from prescriptive compliance requirements, we have removed prescribed requirements relating to branch offices and branch managers from the Rule. Firms must consider their branch supervision requirements as part of the principle-based requirement to have an adequate supervision system which effectively achieves compliance with regulatory requirements. In addition, SRO members will continue to be subject to applicable requirements of their SRO, including those relating to branch offices and branch managers.

Division 7: Complaint Handling

The Rule contains a requirement that registered firms implement policies and procedures to address client complaints. This is a new requirement in most CSA jurisdictions. This requirement is in response to comments received from investors about the need for responsive complaint handling processes. A firm's policies and procedures must provide for the recording and investigation of complaints and for the resolution of disputes concerning the firm's products or services. The Rule also contains a complaint reporting requirement that will provide securities regulatory authorities with important information for assessing market conduct practices, compliance by firms as well as their risk profile for supervision purposes. We have included guidance in the Companion Policy about what constitutes a satisfactory complaints handling system. This guidance is based on the existing regime in Québec.

We have included a general obligation on a firm to effectively and fairly deal with complaints. This obligation is supported by a requirement that a non-SRO firm participate in a dispute resolution service[25] which is similar to the requirements of the SROs.

Division 8: Non-resident registrants

Division 8 only applies to non-resident registrants. We have removed Canadian incorporation requirements. The conditions of registration that apply to resident registrants also apply to non-resident registrants. However, there are additional requirements in the Rule applicable to non-residents. These requirements incorporate portions of OSC Rule 35-502 *Non-Resident Advisers* and terms and conditions currently imposed by some CSA jurisdictions on the registration of non-resident registrants.

Part 6: Conflicts

Consolidation and modernization of conflict of interest provisions

Under current securities legislation, conflict of interest provisions are scattered throughout statutes, regulations and rules. The Rule consolidates, harmonizes and modernizes conflicts provisions across all CSA jurisdictions.

The Rule sets out an over-arching principle that registered firms must identify and deal with all conflicts. There are prescriptive requirements for those conflicts that we believe must be dealt with in a particular manner (i.e. avoidance or disclosure). This is a new approach for all CSA jurisdictions.

Question #12: The Rule requires a registered firm to identify and deal with all conflicts. Would a materiality concept be appropriate within the requirement or should that be dealt with at the firm level within the firm's policies?

We provide guidance in the Companion Policy about how registrants may satisfy the over-arching principle and the tools (e.g. structural mechanisms, disclosure and avoidance) that may be useful to deal with conflicts of interest.

Adviser fees no longer restricted

CSA jurisdictions currently prohibit an adviser from charging transaction-based fees. We believe this prohibition was originally intended to prevent excessive transactions being done within a client's account to generate fees. Consistent with most foreign jurisdictions, we propose to remove the prohibition which will mean that advisers will be free to decide how they want to charge their clients. The risk that the original prohibition was intended to address will now be addressed through expanded disclosure of conflict of interest requirements in the Rule and the relationship disclosure requirements. For example, advisers will be able to move to a transaction-based fee structure (and be on equal footing with dealers), but their clients must receive disclosure about the basis upon which advisers are charging fees.

The Rule also modernizes and streamlines the existing provisions relating to statement of policies and limitations on trading, advising and recommendations.

[25] In Québec, the AMF acts as a dispute resolution service.

Acquisition of registrants

We have modified the requirements which apply to the acquisition of a registrant. The requirements now apply to anyone (not just another registrant) proposing to acquire a registrant. This modification allows the securities regulatory authorities the opportunity to address ownership issues which affect a firm's suitability for registration before transactions are completed.

Referral arrangements

The CSA have identified a number of issues and regulatory risks relating to referral arrangements through the course of compliance field reviews and enforcement cases including:

- *conflict of interest* - there is a risk that the referrer will only refer clients to a registrant that pays for the referral or to the registrant that pays the highest referral fee
- *client awareness* - a client expects advice that is in the client's best interest and is not influenced by the referrer's own financial interest
- *client confusion* - without adequate disclosure, clients may be confused about who they are dealing with and who to approach for advice
- *referrer performing activities requiring registration* - there is a risk that a referrer lacking the appropriate proficiency or registration may engage in activity requiring registration (e.g. dealing in or advising on securities)
- *supervision and oversight* - some of the referral arrangements observed during compliance field reviews are informal arrangements that a salesperson has entered into without the dealer's knowledge or approval.

The Rule attempts to address these issues and to minimize the risks relating to referral arrangements. The Rule requires registrants to:

- manage and disclose conflicts of interest
- disclose information about referral arrangements that a reasonable investor would consider important in order to evaluate the referral arrangement
- establish clear lines of responsibility for compliance with securities legislation.

Question #13: Is our description of the risks of referral arrangements complete and accurate? If not, what is missing?

Part 7: Suspension and Revocation of Registration

Permanent registration

The Rule and the proposed legislative amendments implement the concept of permanent registration in all CSA jurisdictions.[26] Once granted, registration will remain effective until it is suspended or revoked as a result of a triggering event. Triggering events include an intervention by the regulator or securities regulatory authority, failure to pay annual fees, an individual ceasing to have a sponsoring firm, and the regulator's or securities regulatory authority's acceptance of a request to surrender registration. The Rule also clarifies the implications of suspended registration, as well as the procedural aspects of reinstatement.

Automatic reinstatement

In order to address industry concerns about delays in processing transfers, the Rule introduces the concept of automatic reinstatement (sometimes referred to as a transfer) of individual registration in all CSA jurisdictions. As is the case today, an individual who leaves his or her sponsoring firm will be automatically suspended. However, if the individual finds a new sponsoring firm within 90 days, the suspension will be lifted automatically so that he or she can begin working at once without waiting for regulatory approval. This system is currently in place in Québec.

[26] Permanent registration already exists in Saskatchewan and Québec.

Proposed legislative amendment to give regulator power to intervene

We are proposing that the regulator have discretionary power[27] to revoke or suspend a registration or impose terms and conditions on registration at any time when the regulator makes a determination that a registrant no longer meets the fit and proper requirements or that their continued registration is objectionable. The power of the regulator to revoke or suspend a registration at any time is a new concept in most jurisdictions. Under current securities legislation in most jurisdictions, the regulator is generally limited to one opportunity (e.g. renewal time) to intervene to revoke or suspend registration. At most other times, action must be taken through the securities regulatory authority (i.e. the Commission). The revocation, suspension or imposition of terms and conditions on registration will be subject to the registrant's right to an opportunity to be heard and right of appeal to the securities regulatory authority.

Terminations

A related amendment to NI 33-109 *Registration Information* introduces a revised Form 33-109F1 (Notice of Termination). The notice now includes a list of questions designed to elicit more information from a former sponsoring firm that will be relevant to the regulator's assessment of an individual's continued fitness for registration. The revisions to the notice of termination are in conjunction with the move to permanent registration and automatic reinstatements and will assist the regulator or securities regulatory authority, as applicable, in deciding whether a registration should be suspended because the individual is no longer fit and proper or because the registration has become objectionable.

Part 8: Information Sharing

The Rule contains a requirement that a registered firm disclose information about a former registered individual to another registrant that is considering hiring the individual if the information is relevant to an assessment of whether the individual is suitable for registration. This is a new requirement in all CSA jurisdictions. We view this requirement as important because sponsoring firms have an obligation to conduct due diligence before hiring individuals who will be conducting activities requiring registration.

Part 9: Exemptions from Registration

As a result of adopting the business trigger the number of registration exemptions needed will be significantly reduced. We do not propose to continue with the registration exemptions for capital-raising transactions and the sale of securities referred to in some jurisdictions as "safe securities" (i.e. government guaranteed debt) on the basis that those who are in the business of dealing in securities, regardless of the type, should be registered as a dealer. Many of the existing dealer registration exemptions that are based on a trade trigger are not necessary under a business trigger because they apply to a person that is not in the business of dealing in securities or a transaction that is not being done as part of a business of dealing in securities. For example, the exemption for trades between an individual and their RRSP is not necessary under the business trigger because the individual is not in the business of dealing in securities. The adviser registration exemptions are substantially the same as those that currently exist because, as mentioned, the adviser registration trigger is already based on being in the business of advising in securities.

Most of the exemptions that we propose in the Rule are based on the rationale that there is another regulatory regime in place that adequately addresses the regulatory risk associated with the dealing or advising activity. An example of this is the exemption for dealing in mortgages by a registered mortgage broker.

NI 45-106 Prospectus and Registration Exemptions (NI 45-106)

Currently, NI 45-106 contains the national prospectus and registration exemptions. We propose that the registration exemptions in NI 45-106, which are based (except for the adviser exemptions) upon a trade trigger for registration, be repealed and replaced with the exemptions set out in the Rule, which are based upon a business trigger for registration. For purposes of requesting comment on the proposed registration exemptions, we have set them out in the Rule rather than as an amendment to NI 45-106. The proposed registration exemptions do not affect the prospectus exemptions contained in NI 45-106.

[27] This will be accomplished in different ways; some jurisdictions may do legislative amendments to give the regulator the power while others may delegate power from the securities regulatory authority to the regulator.

Question #14: One objective of NI 45-106 was to have all exemptions in one instrument. As mentioned, we have included the registration exemptions in the Rule for purposes of obtaining comments on the exemptions that are being proposed under a business trigger. Would you prefer the registration exemptions remain in NI 45-106 or be moved into the Rule?

Exemption for international dealers and international advisers

As discussed above, the Rule contains exemptions for international dealers and international advisers. These exemptions are based on the international dealer and international adviser categories that currently exist in Ontario as well as on exemptions for non-resident advisers in OSC Rule 35-502 *Non-Resident Advisers*. The exemptions will only be available to companies that have no establishment, officers, employees or agents in Canada, and who carry on the business of dealing in or advising on securities in a foreign jurisdiction. The exemption allows international dealers and international advisers to deal with a prescribed list of clients for limited purposes which is narrower than the list of clients a registered international dealer or a registered international adviser has access to currently in Ontario.

Mobility exemption

We have revised and included in the Rule the mobility exemptions for registrants in MI 11-101 *Principal Regulator System* (MI 11-101). Today, MI 11-101 does not apply in Ontario. The revised exemption would apply in all CSA jurisdictions. It narrows the definition of "eligible client" to an existing client who has moved from one jurisdiction to another and that client's spouse and children. The registrant relying on the exemption would also be able to continue dealing with a personal holding company and a family trust of the client. The caps on assets under management in the local jurisdiction have also been removed.

CHANGES TO REGULATORY FRAMEWORK IN QUÉBEC

In Québec, the new regime created by the Rule will have significant consequences on the regulatory framework which currently applies not only to registrants governed by the Securities Act but also to those registrants governed by the Act respecting the Distribution of Financial Products and Services (the **Distribution Act**).

We are also seeking comment on these consequence (summarized below) in order to determine the most efficient way to achieve regulatory harmonization. The impacts on the current regulatory framework are summarized below.

Current regulatory framework

In Québec, dealers and advisers are subject to the Securities Act, whereas mutual fund firms, scholarship plan firms and investment contract firms are subject to the Distribution Act. The regimes under these two acts are substantially different.

Mutual fund firms are not required to be members of an SRO, and are under the direct supervision of the AMF. They are not required to maintain a financial institution bond, as dealers and advisers are required under the Securities Act, but must maintain professional liability insurance.

Mutual fund representatives, scholarship plan representatives and investment contract representatives (collectively, the **Distribution Act representatives**) must be members of the Chambre de la sécurité financière (**CSF**), an SRO governed by the Distribution Act. The mandate of the CSF is to ensure that Distribution Act representatives comply with the code of ethics adopted under the Distribution Act and with ongoing proficiency requirements. The CSF has disciplinary jurisdiction over the Distribution Act representatives.

Mutual fund firms, scholarship plan firms and investment contract firms must contribute to the Fonds d'indemnisation des services financiers, the compensation fund established pursuant to the Distribution Act, which provides financial compensation to investors who are victims of fraudulent tactics or embezzlement committed by firms or Distribution Act representatives.

This is not proposed to be changed following the adoption of the Rule, except for investment contract firms which will be transitioned in the category of restricted dealers and will no longer be held to such contribution. Following the adoption of the Rule, mutual fund representatives and scholarship plan representatives will continue to contribute to the compensation fund.

<u>Summary of regulatory impacts and changes in Québec</u>

Transition to the Securities Act

In order to achieve the harmonization objective of the Rule, mutual fund firms, scholarship plan firms and investment contract firms, as well as their representatives, will no longer be governed by the Distribution Act. They will be subject to the requirements of the Securities Act, pursuant to which the Rule will be adopted.

Under the Rule, Québec mutual fund firms will be transitioned in the category of mutual fund dealer, scholarship plan firms will be transitioned in the category of scholarship plan dealer and investment contract firms will be transitioned in the category of restricted dealer.

New requirements for mutual fund dealers

For mutual fund firms in Québec, the transfer to the Securities Act and the adoption of the Rule will have the following important consequences:

- upon the coming into force of the Rule, mutual fund dealers will be required to maintain minimum capital, and to calculate such capital, in the amount and in the manner prescribed by the MFDA
- they will be held to a financial institutional bond and will no longer be required to maintain professional insurance
- their representatives will be held to the proficiency requirements set forth by the MFDA; this does not represent a major change from the current regime. However, the Placements des particuliers (CEGEP) examination will no longer be accepted for these representatives.

SRO membership for mutual fund dealers in Québec

The exceptions from certain requirements for SRO members provided in section 3.3 of the Rule may not apply to Québec mutual fund firms at the time of the adoption of the Rule, since the MFDA is not an SRO recognized in Québec. However, the Rule provides that mutual fund dealers must be members of an MFD SRO (as defined in the Rule).

The AMF will carry on extensive public consultations in early 2007 to discuss with mutual fund dealers and other interested parties in Québec, the question of the MFD SRO in Québec and the most efficient way to achieve regulatory harmonization.

TRANSITION

Registrants impacted by changes in requirements will need to make a transition to the new requirements. We are considering what are appropriate transition times for each of the changed requirements and welcome your comments on this issue.

Concerning the proposed restrictions on referral arrangements, we propose to give registrants with existing referral arrangements a transition period of 120 days following implementation of the Rule to comply with that part of the Rule.

Question #15: Is 120 days sufficient to allow registrants with existing referral arrangements to comply with the Rule? If not, what length of time is sufficient? Please explain.

PROPOSED FORMS UNDER MI 33-109 REGISTRATION INFORMATION

We have proposed one new form (a firm registration form) and amendments to two existing forms (the individual registration form and the notice of termination form) under MI 33-109 *Registration Information*.[28]

In an effort to reduce the regulatory burden of multi-jurisdictional registration the new form is a harmonized firm registration form which is based on the various firm registration forms currently used across the CSA jurisdictions. This form also incorporates information previously requested through administrative practices in various jurisdictions.

Amendments have been made to the notice of termination form to support the proposal for permanent registration and more efficient transfers. The individual registration form has been amended primarily to clarify questions that were unclear to users of the form.

OTHER ISSUES

Incorporated salespersons

The CSA have not reached a decision on the request by industry to permit salespersons for registered firms to operate through incorporated entities. We intend to address this issue in 2007.

[28] MI 33-109 *Registration Information* is in the process of becoming a national instrument.

Annual fee payment date

Question #16: A matter not dealt with in the Rule but one which relates to registrants and NRD is the annual fee payment date. Comments have been made by some industry participants that a December 31 fee payment date is problematic and that a May 31 fee payment date would be better. Please comment on whether a May 31 or December 31 annual fee payment date is better for your firm.

DESCRIPTION OF OSC PROPOSALS FOR LEGISLATIVE AMENDMENTS

As part of its initiative to harmonize and streamline securities law in Canada, some CSA members are also seeking or will be seeking their government's consideration for certain securities act amendments. A summary of the amendments that the OSC plans to propose for consideration in Ontario is attached as Appendix B to this Notice.

The OSC welcomes comments on the Act amendments being considered.

At this time the Ontario government has not reviewed these legislative proposals and has made no decision to proceed with them. Accordingly, the legislative proposals are subject to change as a result of the consultation process and as a result of review by the government. They will only become law if they are passed by the Legislative Assembly of Ontario.

HEAD OF AUTHORITY

In Ontario, the OSC is seeking amendments to the *Securities Act* (Ontario) to provide it with the requisite authority to make certain provisions in the Rule. The remaining provisions are made under the authority of the following paragraphs of subsection 143(1) of the *Securities Act* (Ontario): 1, 2, 3, 4, 5, 7, 8, 13, 18, 25, 31, 33, 34, 35, 39, 39.1, 45, 47, 50 and 56.

ANTICIPATED COSTS AND BENEFITS

We believe that the overall benefits of the proposed registration regime will substantially outweigh the costs. Given that the securities regulation regime of the jurisdictions are not harmonized today, the specific costs and benefits will vary from jurisdiction to jurisdiction. Nonetheless, the common benefits of the proposed harmonized registration regime across all CSA jurisdictions include:

- harmonization of individual and firm registration categories, fit and proper requirements, conduct requirements and exemptions which creates efficiencies for regulators, for NRD and for industry
- reduction in regulatory burden through adoption of a permanent registration regime and streamlined transfer procedures
- the introduction of a business trigger which is intended to require registration for those who present regulatory risk because they are engaging in business in the securities industry and not require it for those who may be doing a trade (by definition) but who do not present regulatory risk – this could reduce the number of statutory registration exemptions required and consequently reduce the exemptive relief applications that have been needed in the past for transactions or trades that do not present regulatory risk but do not fall within the wording of the statutory exemptions
- increased investor protection through the introduction of
    - relationship disclosure requirements
    - referral arrangement restrictions
    - complaint handling procedures, and
    - enhanced conflicts and compliance requirements
- new exemptions which will reduce regulatory burden for international registrants.

Some of the costs associated with the proposed registration regime, depending on the jurisdiction, include:

- obtaining and maintaining registration for exempt market dealers and investment fund managers
- increased capital and insurance requirements for some registrants.

ALTERNATIVES CONSIDERED

No alternatives to the Rule were considered.

UNPUBLISHED MATERIALS

In proposing the revised version of the Rule, we have not relied on any significant unpublished study, report or other written materials.

REQUEST FOR COMMENTS

We welcome your comments on the Rule, the Companion Policy and the Forms and on our general approach to registration reform. As well, we have raised specific issues for you to comment on in the shaded boxes of this Notice.

We request your participation and input in this comment process and thank you in advance for your comments.

HOW TO PROVIDE YOUR COMMENTS

You must submit your comments in writing by June 20, 2007. If you are not sending your comments by email, you should also send a diskette containing the submissions (in Windows format, Microsoft Word).

Please address your comments to all of the CSA member commissions, as follows:

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

Please send your comments **only** to the addresses below. Your comments will be forwarded to the remaining CSA jurisdictions.

John Stevenson
Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario
M5H 3S8
Fax (416) 593-2318
Email: jstevenson@osc.gov.on.ca

Anne-Marie Beaudoin
Directrice du secrétariat
Autorité des marchés financiers
Tour de la Bourse
800, square Victoria
C.P. 246, 22 étage
Montreal, Québec
H4Z 1G3
Fax: (514) 864-8381
Email: consultation-en-cours@lautorite.qc.ca

ALL COMMENTS WILL BE MADE PUBLICLY AVAILABLE

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period. We will post all comments to the OSC website at www.osc.gov.on.ca and to the AMF website at www.lautorite.qc.ca to improve the transparency of the policy-making process.

QUESTIONS

Please refer your questions to any of the following CSA members:

Marsha Gerhart
Senior Legal Counsel, Registrant Legal Services
Ontario Securities Commission
Tel: (416) 595-8918
mgerhart@osc.gov.on.ca

Shaun Fluker
Legal Counsel
Alberta Securities Commission
Tel: (403) 297-3308
shaun.fluker@seccom.ab.ca

Sophie Jean
Conseillère en réglementation
Surintendance de la distribution
Autorité des marchés financiers
Tel: (514) 395-0558 ext. 4786
sophie.jean@lautorite.qc.ca

Sandy Jakab
Manager, Policy & Exemptions
Capital Markets Regulation
British Columbia Securities Commission
Tel: (604) 899-6869
1-800-373-6393 (in B.C. and Alberta)
sjakab@bcsc.bc.ca

Dean Murrison
Deputy Director, Legal/Registration
Saskatchewan Financial Services Commission
Tel: (306) 787-5879
dmurrison@sfsc.gov.sk.ca

The text of the Rule, Companion Policy and Forms can be found on various CSA member websites. The text of the documents will also be published in a supplement to the Bulletin dated February 23, 2007 (Vol. 30, Issue 8).

February 20, 2007

APPENDIX A – CONSEQUENTIAL AMENDMENTS TO NATIONAL INSTRUMENTS AND POLICIES

The following is a list of some of the national instruments and policies which will, subject to changes made to the Rule as a result of the comment process, be amended or repealed in consequence of the Rule. Other national instruments may be repealed or amended as a result of changes to the Rule due to the comment process. Amendments or repeals of local instruments in each of the CSA jurisdictions will be the subject of separate notices.

National Instrument 14-101 *Definitions*
National Instrument 31-101 *National Registration System*
National Instrument 31-102 *National Registration Database*
National Instrument 33-105 *Underwriting Conflicts*
National Instrument 33-109 *Registration Information*
National Instrument 45-106 *Prospectus and Registration Exemptions*
Multilateral Instrument 11-101 *Principal Regulator System*
National Policy 34-201 Breach of Requirements of Other Jurisdictions
National Policy 34-202 Registrants Acting as Corporate Directors

APPENDIX B – SUMMARY OF LEGISLATIVE AMENDMENTS PROPOSED BY OSC IN CONNECTION WITH PROPOSED NI 31-103 REGISTRATION REQUIREMENTS

The following is a summary of proposed legislative amendments to the *Securities Act* (Ontario) (the **Act**) that could support the Rule. Generally, the proposed amendments relate to certain definitions in the Act and to the registration requirement in section 25 as a result of the proposal to move to a business trigger, and to other sections of Parts XI, XII and XIII of the Act as a result of the proposal to consolidate, to the extent possible, registration requirements in the Rule.

Proposals for legislative amendments to the Act will be delivered to the government for its consideration.

At this time, the Ontario government has not reviewed these legislative proposals and has made no decision to proceed with them. Accordingly, the legislative proposals are subject to change as a result of the consultation process and as a result of review by government. They will only become law if they are passed by the Legislative Assembly of Ontario.

Registration trigger and the meaning of "in the business"

Proposed changes to the registration requirement currently set out in section 25 of the Act could involve two significant amendments to support the move to a business trigger. First, it could require the registration of investment fund managers. Second, it could require registration for dealers who are "in the business of dealing in securities" (similar to the current registration requirement for advisers).

For example, section 25 of the Act could be amended to require registration by a person or company who,

(a) acts as a dealer or as a representative of a registered dealer;

(b) acts as an adviser or as a representative of a registered adviser; or

(c) acts as an investment fund manager.

The definition of "dealer" could be amended to capture the concept of "engaging in the business" that currently exists in the definition of "adviser". For example, the definition of "dealer" could be amended to refer to a person or company engaging in or holding himself, herself or itself out as engaging in the business of dealing in securities.

Other definitions may be needed to support the changes being considered to section 25 of the Act. For example, a definition for "dealing in securities" could include:

(a) trading a security as principal or agent,

(b) acquiring a security as principal or agent and any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of acquiring a security as principal or agent, and

(c) acting as an underwriter.

A provision could be included in the Act to describe what it means to be "in the business" as it relates to the activities of dealing and advising. For example, the extent to which the person or company engages in one or more of the following could be considered when determining if a person or company is in the business:

1. The person or company undertakes the activity, directly or indirectly, with repetition, regularity, or continuity.

2. The person or company is, or expects to be, compensated for undertaking the activity.

3. The person or company acts as an intermediary in connection with the activity.

4. The person or company induces reliance by others on the person or company in connection with the activity.

5. The person or company produces, intends to produce, or is capable of producing, profit.

In addition to the factors set out above the proposed legislative amendments may also include such other factors as are relevant in the circumstances of the particular case. For example, a person or company may be found to be in the business of an activity even if,

(a) the activity is not the sole or primary business or occupation of the person or company; or

(b) the person or company does not maintain a physical presence in connection with the activity.

Other changes to definitions in the Act

Some changes to the definition section in the Act could be needed as a result of the way the categories of registration are set out in the Rule. For example, we believe that the definition of "portfolio manager" and "salesperson" may no longer be necessary.

New Act provisions to support the Rule

The Rule proposes enhanced compliance provisions, for example, the proposed requirement in the Rule for a registered firm to have an ultimate designated person and a chief compliance officer. Act provisions to support these provisions could include a requirement that:

(a) every registered adviser, registered dealer and registered investment fund manager develop and implement policies and procedures for the discharge of the registrant's obligations under Ontario securities law;

(b) every registered adviser, registered dealer and registered investment fund manager designate, from among the individuals listed in the regulations,

(i) an individual who shall ensure that the registrant develops, implements and maintains policies and procedures for the discharge of the registrant's obligations under Ontario securities law; and

(ii) an individual who shall ensure that the registrant's obligations under Ontario securities law are discharged.

The Rule also proposes permanent registration which could involve amendments to the Act to support that proposal and to remove the current concept of annual renewal. For example, section 26(1) of the Act could include a provision allowing the Director to revoke a registration, subject to providing an opportunity to be heard to the registrant, if it is in the public interest to do so.

Amendments to statutory exemptions

The proposal to move to a business trigger could reduce the need for statutory exemptions. As a result, proposed amendments may include changes to the exemptions set out in section 34 [*Exemptions of advisers*] and section 35 [*Exemption of trades*] of the Act.

Other sections of the Act to be repealed or amended

One objective of the Rule is to consolidate, to the extent possible, all registration related requirements in one place. This may necessitate deleting provisions from the Act . An example of this type of requirement is section 36 [*Confirmation of trade*] of the Act.

Other sections of the Act we believe may no longer be necessary as a result of attempts we have made in the Rule to modernize registration requirements. Examples of these include:

- section 39 [*Where dealer is principal*]
- section 40 [*Disclosure of financial interest of advisers and dealers*]
- section 41 [*Disclosure of underwriting liability*]
- section 43 [*Use of name of another registrant*]

Modernization of certain registration requirements could involve amendments to some provisions. For example, sections 44 [*Registration not to be advertised*] and 45 [*Holding out by unregistered person*] of the Act we believe, could be repealed and substituted with the following type of requirements:

(a) a person or company shall not represent that he, she or it is registered under this Act unless the representation is true and, when making the representation, the person or company specifies his, her or its category of registration under this Act and the regulations, and

(b) a person or company shall not make a statement about something that a reasonable investor would consider important in deciding whether to enter or maintain a trading or advising relationship with the person or company if the statement is untrue or omits information necessary to prevent the statement from being false or misleading in the circumstances in which it is made.

Consequential amendments and heads of authority

As to be expected with regulatory reform there could be a number of consequential amendments to the Act that could be needed but which we have not discussed here if the Rule is adopted in the proposed form. Changes to the rule-making heads of authority are also being considered.