APPENDIX B

SUMMARY OF CHANGES TO THE 2008 PROPOSAL

This appendix describes the key changes we made to the 2008 Proposal. References to changes are to NI 31-103, unless otherwise noted. The blackline of changes in Appendix C sets out all of the changes we made to the 2008 Proposal.

REORGANIZATION OF THE INSTRUMENT

We reorganized the Instrument to allow registrants to better understand, and comply with, the registration requirements. We now clearly distinguish between the requirements applicable to individuals and to firms. This should allow individuals and firms to more easily answer the following two key questions:

1. Do I need to be registered?

2. If so, what requirements do I have to meet?

We reorganized the Rule into four functional areas:

- individual registration
- firm registration
- business operations
- client relationships

We also reordered and renumbered the Companion Policy in accordance with the Rule. The section numbers in the Companion Policy are identical to those of the Rule, to allow for easy reference.

COMPANION POLICY GUIDANCE ON BUSINESS TRIGGER

We revised the guidance on the business trigger for dealer registration to better articulate our interpretation of what it means to be in the business of trading. We made the following changes.

Changes to Companion Policy guidance on the business trigger		
Deletions	**Addition**	**Clarifications**
• Reference to the business trigger test for investment fund managers because the business trigger is not part of the legislative trigger for investment fund manager registration. • Discussion of trading for one's own account. This reflects the addition of an exemption for trades through a registered dealer. • Discussion of principal trading at registered firms. The concerns expressed in our previous publication are more appropriately managed by the registered firm's internal controls. • Discussion of mortgage investment companies.	• Expanded guidance on venture capital.	• The list of business trigger factors is not exhaustive. • Some of the business trigger factors apply only to trading activities. • We will not automatically assume that an individual or firm acting as an intermediary is necessarily in the business of trading in securities.

DEFINITIONS

We added or revised the following definitions.

Changes to definitions	
New definitions	**Revised definition**
• Debt security • Eligible client • Sponsoring firm • Subsidiary	• Permitted client – see discussion below.

Permitted client

We made selected conforming changes to elements of the definition of "permitted client" that derive from the definition of "accredited investor" in NI 45-106 *Prospectus and Registration Exemptions* (NI 45-106).

We also broadened the permitted client definition by:

- changing the threshold for corporations from shareholders' equity of least $100 million, to a person or company other than an individual or an investment fund, that has net assets of at least $25 million as shown on its most recently prepared financial statements
- including partnerships and other business organizations (we now use the language "person or company" instead of "corporation"), foreign governments and agencies, and wholly-owned subsidiaries of Canadian pension plans
- designating as a permitted client vehicles that other permitted clients may use for their investing, as long as no non-permitted client also uses that vehicle for investing
- adding guidance to the Companion Policy that is derived from Companion Policy 45-106 CP about matters such as when and how to assess qualification as a permitted client

INDIVIDUAL REGISTRATION

Proficiency requirements

We made the following changes to the proficiency requirements:

Changes to proficiency requirements		
Deletion	**Additions**	**Clarifications**
• 36-month time limit on examinations for individuals who have been continuously employed in the securities industry. • A portfolio manager chief compliance officer can no longer qualify for that category by having been previously registered as a portfolio manager advising representative.	• Training is included in the proficiency principle. • Proficiency requirements for chief compliance officers of exempt market dealers. • The Exempt Market Products Exam, an alternative examination for representatives of exempt market dealers. It is also available to chief compliance officers of exempt market dealers.	• The 36-month time limit on examinations applies to Québec representatives of mutual fund dealers and scholarship plan dealers who have passed the examinations prescribed by Policy Q-9, *Dealers, Advisers and Representatives.* • Experience timelines have been clarified and unified. They may be cumulative.

	• The Mutual Fund Dealers Compliance Exam, an alternative examination, for chief compliance officers of mutual fund dealers. • The PDO Exam plus the qualifications of a portfolio manager advising representative for a portfolio manager chief compliance officer • A portfolio manager chief compliance officer qualifies to be an investment fund manager chief compliance officer	• Chief compliance officers are subject to the proficiency principle.

Exemption for individuals carrying out investment fund manager activities

We have never contemplated that individuals other than UDPs and CCOs of investment fund managers would have to register for activities carried out on behalf of a registered investment fund manager. However, for technical reasons, we added an exemption in the Instrument for these individuals.

FIRM REGISTRATION

Exempt market dealers

We eliminated the distinction between exempt market dealers that handle, hold, or have access to client assets and those that do not. We believe that all of the capital, insurance and conduct requirements are relevant and necessary whether or not an exempt market dealer handles, holds, or has access to client assets.

All exempt market dealers are required to submit annual financial statements to regulators. In recognition of their different business model, exempt market dealers are not required to submit interim financial statements to regulators.

Investment fund managers

We made the following changes to investment fund manager registration:

Changes to investment fund manager registration	
Deletion	**Additions**
• The cumulative capital requirement if the firm is registered as both a portfolio manager and an investment fund manager that trades its own non-prospectus qualified funds.	• A temporary two-year exemption for investment fund managers whose head office is located outside Canada. • For investment fund managers whose head office is located in Canada, a temporary two-year exemption from registration in any province or territory where the head office is not located. • An exemption from the investment fund manager registration requirement for capital accumulation plans. This exemption will be available on a temporary basis while we monitor the situation. It will be available to the extent the plan is only required to be registered as an investment fund manager because the investment fund is an investment option in a capital accumulation plan.

Exemptions from the requirement to register

General changes to exemptions regime

For ease of reference, most of the registration exemptions are in the Rule. We have renamed the Rule to *Registrant Requirements and Exemptions* to reflect this change. NI 45-106 will become primarily a prospectus exemption rule.

Dealer exemptions

We have added a number of new exemptions since the 2008 Proposal, most of which re-state exemptions that existed in NI 45-106:

- individuals acting for investment fund managers - this exemption is new, and has no predecessor exemption in NI 45-106
- person or company not in the business of trading in British Columbia, Manitoba and New Brunswick
- trades through or to a registered dealer
- additional investments in investment funds if initial purchase before September 14, 2005
- private investment club
- exchange contracts - applicable in Alberta, British Columbia, Saskatchewan and New Brunswick
- small security holders selling and purchase arrangements
- capital accumulation plan exemption - this exemption is new, and has no predecessor exemption in NI 45-106
- private investment fund - loan and trust pools - this exemption is new, and has no predecessor exemption in NI 45-106

Sub-adviser exemption

We have not carried forward the sub-adviser exemption in the final version of the Rule. This change is temporary. The exemption will remain in section 7.3 of OSC Rule 35-502 *Non Resident Advisers*, and discretionary relief on a similar basis will still be granted in other jurisdictions. We made this change to give us an opportunity to review the exemption taking into account the regulatory responses to cross-border activity.

Portfolio managers trading their own pooled funds

We clarified the Companion Policy discussion about the dealer exemption for portfolio managers trading their own non-prospectus qualified funds.

International dealers and advisers

Firms relying on the international dealer and international adviser exemptions will have to provide annual notice to regulator that they are using the exemption instead of notice when they stop using the exemption.

In Ontario, the requirement for international advisers acting as the portfolio manager of an investment fund to disclose in offering documents the difficulty of relying on enforcement rights will remain in OSC Rule 35-502. We will monitor its use and may propose its adoption in a National Instrument at a later date.

BUSINESS OPERATIONS

Record-keeping

We made the following changes to record-keeping requirements:

Changes to record-keeping requirements	
Deletion	**Clarification**
• The distinction between activity records and relationship records. A single retention period of seven years from the date a record is created applies to these records.	• Guidance in the Companion Policy on the records that must be kept and on electronic storage of records.

Account opening documentation

We deleted the requirement to maintain account opening documentation. It was redundant because registered firms are required to maintain this information under the record keeping provision in the Rule.

Acquisition of a registered firm's securities or assets

We revised the requirement to provide notice of the intention to acquire a registered firm's securities or assets. This is to ensure that acquisitions with the potential to give rise to regulatory concerns, including holding companies of registered firms, are reviewed.

Solvency

We made the following changes to the solvency requirements:

Changes to solvency requirements	
Deletions	**Addition**
• Requirement to calculate working capital monthly. • Cumulative capital requirement for firms that are registered as both portfolio managers and investment fund managers that trade their own non-prospectus qualified investment funds.	• Guidance in the Companion Policy on factors that can affect how frequently a firm should calculate its working capital.

Audits and financial reporting

We made the following changes to audit and financial reporting requirements:

Changes to audit and financial reporting requirements	
Deletion	**Revision**
• Requirement for a registered firm to direct an auditor to conduct an audit or review.	• "Quarterly financial information" changed to "interim financial information", to ensure consistency with International Financial Reporting Standards (IFRS).

CLIENT RELATIONSHIPS

KYC and suitability

Identification of insiders

We limited the requirements to identify insiders to those who are insiders of reporting issuers and issuers whose securities are publicly traded.

Identification of partnerships and trusts

In addition to corporations, registrants must now establish the identity of partnerships and trusts, in accordance with section 13.2(3) of the Rule. We revised the Rule to provide SRO members with an exemption from the requirement in that section because SRO rules set out similar requirements for their members.

KYC information in support of suitability

Registrants do not have to collect this information from permitted clients for the purpose of suitability determination if the client has waived the suitability determination. However, if the registrant is managing the permitted client's investment portfolio on a discretionary basis, they must collect this information.

KYC and suitability guidance in the Companion Policy

We revised the guidance in the Companion Policy to clarify that:

- "gate-keeper" KYC is always required to establish the client's identity, even if a permitted client waives a suitability determination
- depending on the client relationship, the extent of KYC information that a registrant should obtain in support of suitability may differ
- all registrants must know the product they are recommending for the client or on which they are advising the client

Conflicts of interest

The conflict of interest provisions have evolved since they were first published in 2007. We made further changes in response to comments on the 2008 Proposal. In some cases, we returned to proposals in the 2007 Proposal.

Other changes are consistent with the conflicts of interest principle. We have also made some clarifications. The objectives of the changes are to ensure that:

- clients receive meaningful disclosure about conflicts of interest
- unnecessary regulatory burdens are not imposed on registrants

Changes to conflict of interest provisions		
Items moved	**Additions**	**Clarifications**
• Materiality threshold for the principle moved from the Companion Policy to the Rule. • Disclosure about related and connected issuers is now an example of disclosure in the Companion Policy. This is to ensure that the articulated best practices of disclosure will apply. • Registered advisers must deliver a client-friendly description of how opportunities are allocated fairly, and not the actual fairness policies, which may be difficult for clients to understand. Moved within Rule to Part 14 *Handling client accounts – firms.*	• Guidance in the Companion Policy on individuals disclosing material conflicts to their sponsoring firms. • Guidance on managed account transactions in the Companion Policy. • Exemptions from limitations on recommendations include recommendations about investment funds for which a registered firm is an adviser or investment fund manager.	• Used clearer language for the provisions of the section on limitations on certain managed account transactions. We included "investment fund managed by the adviser" in the concept of "investment portfolio managed by the adviser" to ensure we implement the existing interpretation of that section. We also restored the existing idea of "knowingly cause" in that section. • Guidance in the Companion Policy on disclosure to clients clarifies that for disclosure to be meaningful, it should be made "in a timely manner".

Complaint handling

New framework for complaint handling

The CSA is currently working with the SROs on a harmonized framework for the complaint handling regime. This framework is expected to:

- set out standards and timelines for acknowledging, investigating and responding to client complaints, and
- require firms to monitor and report on complaints, so they can detect frequent and repetitive complaints that may, on a cumulative basis, indicate a problem

At this time, we included in the Rule only the provisions that are harmonized according to the framework. We will incorporate the remainder of the complaint handling framework through amendments to the Instrument. The SROs published their proposals in the spring of 2009.

Dispute resolution

We removed the requirement to "participate in an independent dispute resolution service" and we broadened the dispute resolution provision to include "mediation".

Relationship disclosure

We aim to achieve harmonization between CSA and SRO client relationship requirements. Since that project is not yet complete, we included in the Rule only the provisions that are harmonized.

Changes to relationship disclosure provisions	
Addition	**Clarifications**
• A general exemption for all dealers from delivering relationship disclosure information to permitted clients who waive the requirement.	• The relationship disclosure principle has been refined. It will apply to all dealers and advisers. • The detailed relationship disclosure requirements are the minimum to be disclosed by registrants that are not SRO members. SRO rules set out essentially harmonized details for their members.

Nominee name accounts

We added guidance to the Companion Policy that it is good business practice for non-SRO members to hold client assets in client name and not in nominee name. The capital requirements for non-SRO members are not designed to reflect the added risk of holding client assets in nominee name. SRO rules add extra capital requirements and specify approved custodians to address these risks.

Account activity reporting

We made the following changes to the account activity reporting requirements:

Changes to account activity reporting requirements		
Deletions	**Addition**	**Clarification**
• Requirement to report trades otherwise than in trade confirmations. • Mutual fund dealers do not have to provide monthly statements, even if a transaction takes place in the month. • SRO members are not subject to the CSA requirement to deliver trade confirmations because they are subject to SRO rules instead.	• Scholarship plan dealers will deliver annual client statements.	• The contents of all client statements have been harmonized.

Reduction of debit balances

We deleted the requirement on reducing debit balances.

Transition

We extended certain transition periods where it was appropriate to provide registrants with more time to comply with certain sections of the Rule. We have not shortened any of the transition periods published in the 2008 Proposal.