POLICY STATEMENT TO REGULATION 31-103 RESPECTING REGISTRATION REQUIREMENTS

PART 1 DEFINITIONS AND INTERPRETATION

1.1. Introduction

This Policy Statement sets out how the Canadian Securities Administrators (the CSA or we) interpret or apply the provisions of *Regulation 31-103 respecting Registration Requirements* (Regulation 31-103) and related securities legislation.

Registrants should refer to securities legislation of their local jurisdiction and to other CSA regulations for additional requirements that may apply to them. Registrants must also comply with applicable self-regulatory organization (SRO) requirements.

1.2. Definitions

Unless defined in Regulation 31-103, terms used in Regulation 31-103 and this Policy Statement have the meaning given to them in local securities legislation or in *Regulation 14-101 respecting Definitions*. In Regulation 31-103, "day" has its ordinary meaning, except where business days are specified. All references in this Policy Statement to sections, Parts and Divisions are to Regulation 31-103, unless otherwise noted.

1.3. Business trigger for registration[1]

As a starting principle, anyone who is in the business of trading[2] or advising in securities should be subject to the registration requirement, regardless of the type of security, the name used to describe the business or how the business is organized.

The following section describes the factors that are relevant in determining whether a person is trading or advising in securities for a business purpose. For the most part, they are taken from case law and regulatory decisions that have interpreted the business purpose test in the context of securities matters.

We look at the type of activity and whether it is conducted as a business when determining whether the registration requirement applies to the person conducting the activity.

The first step is to assess whether the activity is:

- trading in securities;
- advising in securities, or
- acting as an investment fund manager.

We will always consider a person that is acting as an investment fund manager to be conducting that activity as a business. Registration will therefore be required unless an exemption has been provided.

If the activity is trading or advising in securities, further analysis is required to assess whether the activity is conducted as a business. We consider the factors set out below, among others.

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[1] The discussion in this section does not apply in Manitoba, where the trade trigger for dealer registration will continue to apply without change.

[2] In Québec, "trading in securities" also refers to distributing a security or any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of those activities.

In general, any person that performs the activities discussed in paragraphs (a) or (b) is in the business of trading or advising in securities. No one of the activities in paragraphs (c), (d) and (e) will necessarily determine whether a person is in the business of trading or advising in securities.

(a) Directly or indirectly holding oneself out as being in the business of the activity

Merely holding oneself out as being willing to engage in trading or advising in securities is sufficient to be engaged in the business for the purposes of securities legislation. This is because holding out induces the client to rely on the dealer or adviser.

Engaging in practices similar to those used by registrants also reflects a business purpose. Examples include promoting securities and making disclaimers or stating by any other means that the person will buy or sell securities. Carrying on any of these activities at the start-up stage may be considered carrying on a business.

(b) Acting in an intermediary capacity or as a market maker

Acting in an intermediary capacity between a seller and a buyer of securities or making a market in securities constitutes trading for a business purpose.

(c) Directly or indirectly carrying on the activity with repetition, regularity or continuity

Frequent transactions are a common indicator that a person is engaged in a business. We consider a person who regularly trades or advises in any manner that could produce profits to be engaged in a business. The activity does not have to be the person's sole or even primary endeavour for that person to be in the business. However, whether a person has other sources of income and how much time the person spends on the activity are also relevant factors.

(d) Being, or expecting to be, remunerated or otherwise compensated for the activity

Receiving, or expecting to receive, compensation for carrying on the activity, whether transaction or value based, reflects a business purpose. It does not matter if the person actually receives compensation or what form the compensation takes. Having the capacity or the ability to carry on the activity to produce profit is also a relevant factor.

However, carrying on an activity with no expectation of compensation may suggest that it is not for a business purpose.

(e) Directly or indirectly soliciting others in connection with the activity

Contacting others to solicit securities transactions or to offer advice reflects a business purpose. Solicitation includes contacting others by any means, including advertising that proposes buying or selling securities or participating in a securities transaction, or that offers services or advice for these purposes.

We do not consider an entity setting up a website for third parties to post information on investment opportunities, such as a bulletin board, to be in the business of advising or trading in securities if that entity has no other role in any trades that may take place between parties who use the bulletin board.

1.4. Applying the business trigger factors

This section explains how the business trigger factors might apply to some common situations.

1.4.1. Securities issuers

In general, securities issuers with an active non-securities business are not also in the business of trading in securities, even when distributing their own securities directly to investors. This is because, even when taking raising capital into account, most issuers:

- trade in securities infrequently;
- are not remunerated, or do not expect to be remunerated, for trading in securities;
- do not act in an intermediary capacity;
- do not produce, or intend to produce, distinct profit from trading in securities;
- do not hold themselves out as being in the business of trading in securities.

However, securities issuers may be in the business of trading securities if they:

- regularly trade in securities;
- hold themselves out as being in the business of trading in securities;
- employ or otherwise contract with persons to perform activities on their behalf that are similar to those performed by a registrant (other than underwriting in the normal course of a distribution or trading for their own account);

Section 8.3 provides securities issuers whose activities fall within the business trigger with an exemption from the dealer registration requirement if they distribute their securities:

- solely for their own account;
- solely through a registered dealer that is registered in the appropriate category.

Securities issuers are in most cases subject to the prospectus requirements in securities legislation. Regulators have the discretionary authority to require an underwriter for a prospectus distribution.

1.4.2. Mortgage investment companies

Mortgage investment companies (MICs) are securities issuers. In many cases, they are in the business of trading in securities and are therefore required to register in an appropriate dealer category.

While MICs can have various business models, they typically:

- solicit investors actively;
- trade in securities frequently;
- do not expect to be remunerated for issuing their own securities to investors, but may act as intermediaries to the extent that their business model is based on obtaining a return on the further investment of their investors' funds in securities (the mortgages);
- select mortgage investments, rather than develop the underlying real estate;

- only allow investors to withdraw their capital by exercising redemption rights through the MIC.

1.4.3. Venture capital

A wide range of potentially registerable activities can be described as "venture capital" investing. While we cannot give specific guidance for every possible situation, we have found that considering the expectations and reliance of investors can be particularly relevant when applying the business trigger factors to venture capital.

For example, whether the general partner (GP) of a limited partnership (LP) that acquires securities would have to register as an adviser depends on:

- the application of the business trigger factors to the business purpose of the LP;
- the types of services the GP provides to the LP;
- the expectations of the limited partners.

If the purpose of the LP is to invest in a trading portfolio of securities and the limited partners are relying on the GP's expertise in selecting the securities and deciding when to buy and sell them, we would require the GP to register as an adviser.

If the limited partners are relying on the GP for expertise other than providing advice on selecting investments in securities, we may not require the GP to register as an adviser. This would be the case where a GP's role is to select small private companies that the GP will actively manage and develop. We would view the purchase and eventual sale of the securities as incidental to the GP's activities on behalf of the LP.

1.4.4. Principal trading activities

Trading for own account

In most instances, we would not consider persons to be in the business of trading in securities if their main or sole trading activity is trading for their own account. For example, individuals, day traders and pension funds that regularly buy or sell securities for their own account, through a registered dealer or otherwise, would not need to register.

Applying the business trigger factors discussed in section 1.3 of this Policy Statement, these persons would not be in the business of trading securities because they:

- are not remunerated for undertaking the activity;
- do not solicit others in connection with the activity;
- do not act as an intermediary, or
- do not hold themselves out as being in the business of trading in securities.

Trading for a registered firm

Principal trading carried on by a registered firm is inherently different from that carried on by a business that is not otherwise required to register. Registered firms and those who trade on their behalf have a unique position in, and direct access to, the markets. They also have obligations to clients. There is often the potential for conflicts of interest in these circumstances.

In addition, principal trading can have a significant impact on a firm's financial viability, which introduces systemic risks. It is therefore appropriate that individuals who

conduct principal trading for a registered firm be subject to the registration requirement, even if they do not trade for clients.

1.4.5. Activities not commonly in the business of trading or advising in securities

One-time activities

In general, we do not require registration for trading activities:

- by an individual or other person that is acting as a trustee, executor, administrator, personal or other legal representative;
- relating to selling goods or supplying services between affiliated companies;
- relating to the sale of a business.

In some cases, these are one-time activities that do not reflect a business purpose. In other cases, the overall activities may be of a business nature, but trading or advising in securities is incidental to the primary purpose of the business.

Incidental activities

Activity that is incidental to the primary business of a firm may suggest that there is no business purpose in the activity in itself.

For example, merger and acquisition specialists advising the parties to a transaction between corporations are not normally required to register as advisers in connection with that activity, even though the transaction may result in trades in securities. The business purpose in this example is to effect the transaction. Any advice with respect to trades in the securities is incidental to that purpose and is limited to the parties to the transaction.

In general, professionals such as lawyers, accountants, engineers, geologists and teachers, who provide advice in the normal course of their professional operations, are not in the business of advising in securities. For the most part, any advice they may give will be incidental to their professional activities. However, in each case it is important to consider the advising activity with reference to the business trigger factors.

Normally, these professionals are not in the business of advising securities because they do not:

- repeatedly advise in securities;
- receive separate remuneration for their advising services;
- solicit clients on the basis of their advising services;
- hold themselves out as being in the business of advising in securities.

However, we would consider a professional to be in the business of advising in securities if securities advice is a primary reason for the client's relationship with the professional. This is the case if the professional regularly provides advice on securities and solicits clients based on these advising services.

PART 2 CATEGORIES OF REGISTRATION

2.1. General

Securities legislation distinguishes among investment fund managers and categories of dealers and advisers.

The categories of registration for firms serve two main purposes:

- to specify the type of business that the firm may conduct and, therefore, the types of business that the firm is not registered to conduct and may not carry on;

- to provide a framework for the requirements the registrant must meet.

Individual categories set out the qualifications necessary for an individual to perform particular roles on behalf of a registered firm.

This Part explains categories of registration that were introduced in Regulation 31-103.

2.2. Exempt market dealer

Section 2.1 restricts an exempt market dealer to trading in:

- securities distributed under an exemption from the prospectus requirement;

- securities distributed under a prospectus despite the fact that a prospectus exemption was available;

- securities that, if the trade were a distribution, may have been distributed under an exemption from the prospectus requirement, or

- any security, if the trade is (i) on behalf of a client of the exempt market dealer, (ii) the security was acquired by the client in a circumstance for which there would be a prospectus exemption if the trade formed part of a distribution, and (iii) the trade is with a registered dealer.

For example, an exempt market dealer may trade in prospectus-qualified securities with accredited investors. Also an exempt market dealer can, under subsection 2.1(1)(d)(i)C), trade in a security if such trade does not constitute a distribution within the meaning of Regulation 45-106 provided that, if it were a distribution, it could have been made under an exemption from the prospectus requirement.

2.3. Restricted dealer

This category permits specialized dealers that would not necessarily qualify for unrestricted dealer registration to carry on business under terms and conditions imposed by the local regulator. We will only register restricted dealers if there is a compelling case for permitting the proposed trading to take place outside of one of the other registration categories.

For example, an issuer might use this category if it must register because it is in the business of trading in securities but cannot rely on the exemption in section 8.3. In this case, the regulator would restrict the issuer's registration to trading in securities of its own issue and exclusively for its own account.

Terms and conditions for restricted dealers will be coordinated among the CSA jurisdictions.

2.4. Trading in securities – exemption for advisers

Firms that are registered advisers routinely create pooled funds as a way to efficiently invest money deposited to their clients' accounts. In doing so, they enter into the business of trading in securities because this trading activity is more than incidental to their business as advisers. However, requiring an adviser that has bona fide fully-managed accounts to also register as a dealer would not achieve any material benefits from a regulatory point of view.

The exemption in section 2.2 relieves a registered adviser that is actively managing its clients' accounts with discretionary authority from having to register as a dealer to distribute units of its pooled funds into the clients' accounts. The exemption is available both to registered advisers and those who qualify for the international portfolio manager exemption under section 8.15.

There is an anti-avoidance provision in subsection 2.2(2). The exemption is not intended to apply to an adviser that operates an investment fund as a core or principal business activity. This may be the case if an adviser:

- has only a small number of funds into which most of its client accounts are invested;
- dedicates more time to managing its funds than managing client accounts;
- focuses on designing and managing its funds, rather than on understanding the investment needs of its clients and tailoring the fully-managed portfolios to their needs.

In this situation, advisers should consider whether the prospectus requirement and the requirement to register as an investment fund manager apply.

2.5. Advising in securities

Those who provide specific advice are required to register as an adviser. Specific advice is tailored to the needs and circumstances of the client and concerns one or more specific securities. The most obvious example of specific advice is discretionary account management.

Section 8.14 contains an exemption from registering as an adviser for those who provide generic advice. Generic advice is not tailored to the needs and circumstances of the person receiving the advice, although it may refer to specific securities.

Generic advice about specific securities may be delivered through investment newsletters and articles in general circulation newspapers and magazines or through websites, e-mail, internet chat rooms and bulletin boards, as long as it does not claim to be tailored to the needs and circumstances of any recipient.

Generic advice can also be given at conferences. However, if a purpose of the conference is to solicit specific securities transactions, we may consider the advice to be specific or may consider the individual giving it to be engaged in trading activity in that the real purpose of the advice is to generate trades by members of the audience.

2.6. Restricted portfolio manager

The advising activities of a restricted portfolio manager are limited by terms and conditions that the regulator imposes on its registration. This category is intended to permit persons to advise in specific securities, classes of securities or the securities of a class of issuers.

For example, an individual who has extensive expertise in oil and gas issuers, but does not have the prescribed proficiency of a portfolio manager advising representative

might be registered as an advising representative of a restricted portfolio manager whose terms and conditions on registration permit it to advise solely in securities of oil and gas issuers.

Terms and conditions for restricted portfolio managers will be coordinated among the CSA jurisdictions.

2.7. Associate advising representative

An individual who does not meet the education and experience requirements for registration as an advising representative may be registered as an associate advising representative. This category is primarily intended to be an apprentice category for individuals who intend to become full advising representatives but who do not meet the education or experience requirements.

This category allows an individual to work at a registered adviser while completing the proficiency requirements for an advising representative. For example, it would allow a former advising representative to work in an advising capacity while acquiring the relevant working experience that is required for an advising representative under section 4.11.

However, there is no requirement for an associate advising representative to subsequently register as a full advising representative. This category accommodates, for example, an individual who has a client relationship role that includes specific advice, but who is not managing clients' portfolios without supervision.

As required by section 2.8, advice provided by an associate advising representative must be approved by an advising representative. The appropriate processes for approving the advice of an associate advising representative will depend on the circumstances, including the individual's level of experience. The registered firm must:

- document its policies and procedures for meeting these obligations and maintain specific records where advice is approved, as provided in sections 5.15 and 5.23;

- notify the regulator of the designation of an advising representative for approving the advice of an associate no later than the 5th business day following the date of the designation.

2.8. Investment fund manager

Investment fund manager is defined in section 2.6 as "a person that is permitted to direct the business, operations and affairs of an investment fund". An investment fund manager generally organizes the fund and contractually accepts responsibility for its management and administration. It does not act as a portfolio manager for the fund.

Administering an investment fund may include information gathering, performance reporting and handling client assets. The fund, trust or company broadly delegates these responsibilities to the investment fund manager under a management agreement. Most agreements allow the fund manager to sub-delegate these responsibilities to other service providers. An investment fund manager remains fully liable for any sub-delegated responsibilities.

We do not expect an investment fund manager to register in every jurisdiction where a fund is distributed. Investment fund managers are required to register only in the jurisdiction where the person that directs the management of the fund is located, which in most cases will be where their head office is located. However, if an investment fund manager directs the management of funds from locations in more than one jurisdiction, it must register in each of them. If an investment fund manager is located outside Canada, there is no requirement for it to be registered in Canada, unless it is directing the management of a fund from inside Canada.

2.8.1. Marketing and wholesaling activities of investment fund managers

In general, investment fund managers will have to register as a dealer if they carry on marketing and wholesaling activities, such as:

- advertising the fund to the general public;
- promoting the fund to registered dealers;
- distributing the fund to registered dealers which then sell securities of the fund to investors.

Investment fund managers do not have to register as a dealer if their marketing and wholesaling activities are incidental to their activities as an investment fund manager. In this case:

- the marketing and wholesaling activities must relate to investment funds managed by the investment fund manager, not a third party, and
- the funds must be distributed to investors through a dealer, not directly by the investment fund manager.

2.9. Chief compliance officer and ultimate designated person

Sections 2.9 and 2.10 require registered firms to designate a chief compliance officer (CCO) and ultimate designated person (UDP). The CCO and UDP must be registered and perform the compliance functions prescribed in sections 5.24 and 5.25.

While the CCO and UDP have specific compliance functions, they are not solely responsible for compliance – it is the responsibility of the firm as a whole. A good compliance system will include provisions for alternates designated to act in the absence of the UDP or CCO.

2.9.1. UDP

The UDP is the chief executive officer or sole proprietor of the registered firm, or the senior officer responsible for the division in the firm that carries on the activity that requires registration. The role of the UDP is to lead the compliance efforts of the firm. This involves promoting a culture of compliance and overseeing the effectiveness of the firm's compliance system. The UDP is not necessarily required to be involved in the day-to-day management of the compliance group. There is no proficiency requirement for the UDP.

2.9.2. CCO

The CCO is an operating officer whose role is to lead the monitoring component of the registered firm's compliance system. This includes establishing or keeping up-to-date policies and procedures for the firm's compliance system, and managing the firm's compliance monitoring activities and compliance reporting according to those policies and procedures. The CCO may, in the firm's discretion, also have authority to take supervisory action to resolve compliance issues.

The CCO must meet the applicable proficiency requirements set out in Part 4. There is no requirement for any other compliance staff to be designated or registered unless they are also advising or trading. The CCO may determine what knowledge and skills are necessary or desirable for individuals who report to the CCO.

A firm that is registered in multiple categories is only required to have one CCO. In this case, the CCO must meet the most stringent of the proficiency requirements of the firm's various categories of registration.

In especially large firms, the scale and kind of activities undertaken by different operating divisions may warrant the designation of more than one CCO. We will consider applications, on a case-by-case basis, for situations where the CCO of one registered firm may act as the CCO of another registered firm.

2.9.3. The same person as UDP and CCO

The appropriate size and structure of a registered firm's compliance group will depend on the size and scope of the firm's operations. The UDP and the CCO may be the same person, if that person meets the requirements for both registration categories. In our view, separating the functions is the best practice, but we recognize that this might not be practical for some registered firms.

2.9.4. UDP or CCO as adviser or dealer

The UDP and CCO may also be registered in trading or advising categories. For example, a small registered firm might conclude that one individual can adequately function as UDP and CCO, while also conducting advising and trading activities. A large registered firm with diverse operations may require a large team of compliance professionals with several divisional heads of compliance reporting to a CCO dedicated entirely to a compliance role.

2.10. Multiple registrations

2.10.1. Multiple firm categories

A firm may carry on trading activities in several types of securities. In this case, it must register in all applicable dealer categories as set out in section 2.1. For example, a mutual fund dealer may only trade in prospectus-exempt securities if it also registers as an exempt market dealer. Similarly, a portfolio manager that manages an investment fund may have to register as a portfolio manager and an investment fund manager.

2.10.2. Multiple individual categories

An individual who performs more than one activity requiring registration on behalf of a registered firm must register in all applicable categories. For example, an advising representative of a portfolio manager who is also the firm's CCO must register in the categories of advising representative and CCO. This individual must meet the proficiency requirements of both registration categories.

2.10.3. Individual registered in a firm category

In some cases, an individual may be registered in both a firm and individual category. For example, a sole proprietor who is registered in the firm category of portfolio manager will also be registered in the individual category of advising representative.

2.10.4. Multiple registration categories: solvency requirements

The solvency requirements for firms, as set out in Part 4, Division 2, are not cumulative. If a firm is registered in multiple categories, it must meet the highest capital requirement of its various categories of registration.

2.10.5. Multiple registration categories: conduct requirements

When a firm or individual registered in multiple categories carries on a registerable activity, it must comply with the conduct requirements that apply to that activity. For example, in most circumstances, a registrant in the categories of exempt market dealer and mutual fund dealer must comply with the relationship disclosure requirements in section 5.4 before recommending a mutual fund trade to a permitted client. However, when the

registrant is trading an exempt security to a permitted client, the registrant does not have to comply with the relationship disclosure requirement.

PART 3 SRO MEMBERSHIP

3.1. Requirement for SRO membership

A person applying for registration as an investment dealer must be a member of the Investment Dealers Association of Canada (IDA). An individual applying for registration as a representative of a registered investment dealer must be an approved person of the IDA.

Except in Québec, a person applying for registration as a mutual fund dealer must be a member of the Mutual Fund Dealers Association of Canada (MFDA) and an individual applying for registration as a representative of a mutual fund dealer must be an approved person of the MFDA.

Mutual fund dealers (except those registered in Québec only), investment dealers and their registered individuals will be automatically suspended under sections 7.3 or 7.4 if they do not maintain their status as members or approved persons in good standing with the applicable SRO.

PART 4 FIT AND PROPER REQUIREMENTS

4.1. General

The regulator will not register an applicant if the applicant does not appear to be fit and proper, or "suitable", for registration. Every registrant has an ongoing requirement to maintain suitability for registration. The regulator may review a registrant's suitability at any time.

Securities legislation gives the regulator discretionary authority to impose terms and conditions on a registration. The regulator will impose terms and conditions if it determines that an applicant or registrant is suitable only for restricted registration. The regulator may suspend or revoke the registration if it determines that a registrant has become unsuitable for registration.

There are three fundamental criteria for assessing a person's suitability for registration:

(a) Integrity

The applicant or registrant must display integrity and be of honest character.

(b) Proficiency

Applicants must meet the applicable education and experience requirements prescribed by securities legislation and demonstrate knowledge of securities legislation. Registrants must also ensure that they develop and maintain a level of knowledge and ethics training that keeps pace with new products and services that they may offer.

(c) Solvency

The regulator will assess the overall financial situation of the applicant or registrant. Depending on the circumstances, the regulator may consider the registrant's or applicant's contingent liabilities. An applicant that is insolvent will be considered unsuitable for registration. An applicant that has a history of bankruptcy usually will not be suitable for registration. If a registrant becomes bankrupt or insolvent, the regulator may take that into account when assessing the registrant's continuing suitability, as further discussed in section 4.6 of this Policy Statement.

The regulator will also consider whether an individual's ability to discharge the responsibilities of a registrant might be affected by:

- other employment or partnerships;
- service as a member of a board of directors;
- potential conflicts of interest.

4.2. IDA proficiency requirements

Part 4 does not prescribe proficiency requirements for investment dealer representatives who are approved by the IDA. The IDA prescribes the minimum entry and ongoing proficiency requirements for dealing representatives of its members. Accordingly, subsection 3.1(2) requires that a dealing representative of an investment dealer must be approved by the IDA. However, satisfying IDA proficiency requirements is a key factor for the regulator in determining suitability of these individuals.

4.3. Examination-based proficiency requirements

Part 4 prescribes examination-based, rather than course-based, education requirements, where possible. For example, an applicant is not required to complete the Canadian Securities Course but must pass the Canadian Securities Examination. It is up to the individual to determine what courses or other preparation, if any, is appropriate for him or her.

4.4. Relevant experience

The regulator will consider granting an exemption from any of the prescribed proficiency requirements in Part 4, Division 1 if it is satisfied that an individual has qualifications or relevant experience that are equivalent to, or more appropriate in the circumstances, than the prescribed proficiency requirements.

The 12 and 24 months of relevant experience referred to in subsection 4.4(2) and sections 4.11 and 4.12 respectively does not have to be consecutive. It can be a cumulative total during the 36-month period before the date the individual applied for registration.

Relevant experience under subsection 4.4(2) may include experience from working in:

- a registered dealer or registered adviser;
- an investment fund manager firm;
- related investment fields, such as investment banking, securities trading on behalf of a financial institution, securities research, portfolio management, investment advisory services or supervision of those activities;
- legal, accounting and consulting practices related to securities legislation;
- providing other professional services to the securities industry;
- a securities-related business in a foreign jurisdiction.

Relevant investment management experience under section 4.11 may include employment:

- as a registered dealing representative with a registered dealer firm;
- under the supervision of:

- an unregistered investment manager of a Canadian financial institution;

- an adviser that is registered in another jurisdiction of Canada or a foreign jurisdiction, or

- an adviser that is not required to be registered under the laws of the jurisdiction in Canada or foreign jurisdiction where the adviser carries on business.

4.5. Restricted dealer and restricted adviser – proficiency for representatives

The regulator will decide on a case-by-case basis what education and experience are required for registration as:

- a dealing representative or CCO of a restricted dealer;

- an advising representative or CCO of a restricted adviser.

The regulator will determine these requirements when it assesses the individual's suitability for registration.

4.6. Bankruptcy or insolvency after registration

The regulator will review the circumstances of a registrant's bankruptcy or insolvency on a case-by-case basis. If the regulator finds evidence that activities, such as unethical conduct or gross error in business judgment, led to the bankruptcy, it may suspend or terminate the registrant's registration. In other situations, the regulator may impose terms and conditions on the registrant's registration, such as close supervision of the individual and delivering progress reports to the regulator.

4.7. Capital and insurance requirements

Initial and ongoing capital requirements are intended to ensure a registered firm can meet the demands of its counterparties and, if necessary, wind down its business in an orderly fashion without loss to its clients. Registrants must calculate their excess working capital using Form 31-103F1, *Calculation of excess working capital*. Excess working capital must never be less than zero.

Registrants are also required to maintain bonding or insurance that provides for a "double aggregate limit" or a "full reinstatement of coverage".

A double aggregate limit provision covers the registrant for twice the amount of the single loss limit for any number of losses in the year. The coverage for any one loss may not exceed the single loss limit. For example, if an adviser maintains a financial institution bond of $50,000 with a double aggregate limit, the adviser's coverage is $50,000 for any one claim and $100,000 for all claims during the year.

A full reinstatement of coverage provision means that the policy has no total loss limit. However, the total claimed for any one loss cannot exceed the amount of the policy's single loss limit. For example, if an adviser maintains a financial institution bond of $50,000 with a full reinstatement of coverage provision, the adviser's maximum coverage is $50,000 for any one claim and there is no limit to the total amount that can be claimed under the bond.

4.7.1. Capital, insurance, and client assets

The capital and insurance requirements applicable to an exempt market dealer, and the insurance requirements applicable to an adviser, depend in part on whether the dealer or

adviser handles, holds or has access to client assets, including cheques or similar instruments. This is the case when the dealer or adviser:

- holds clients' securities certificates or cash for any period of time;
- has the authority (e.g. power of attorney) to withdraw funds or securities from clients' accounts;
- accepts funds from clients (e.g. a cheque made payable to the registrant);
- handles client cheques in transit (e.g. a cheque made payable to a third-party issuer);
- accepts clients' funds from a custodian (e.g. clients' funds are deposited in the registrant's bank accounts prior to issuing a cheque to the clients);
- acts in the capacity of a trustee for clients;
- holds, as a nominee, trustee or agent or in any other capacity, or has access to, the client funds or securities;
- has authority to debit client accounts to pay bills other than investment management fees.

4.8. Financial records

Subsection 4.32(1) requires registered firms to prepare financial statements in accordance with generally accepted accounting principles, except that the statements are to be prepared on an unconsolidated basis.

Section 5600 of the CICA Handbook provides guidance for auditors signing an audit report concerning financial statements prepared in accordance with regulatory or legislative requirements.

4.9. Criminal charges

If a registrant is charged with a crime, in particular fraud or theft, the regulator may take action to suspend the registration without waiting for the results of the criminal proceedings. The regulator will normally consider the facts giving rise to criminal charges in a hearing that is closed to the public. In these cases, the registrant's right to a fair trial before the criminal courts outweighs the desirability of adhering to the principle that all hearings be open to the public.

4.10. Foreign head office

When determining whether a firm whose head office is in a foreign jurisdiction is, and remains, suitable for registration, we will consider:

- whether the firm maintains registration or regulatory organization membership that is appropriate for the securities business being carried out in the foreign jurisdiction;
- whether the firm continues to engage in the securities business for which the registration or membership is required in the foreign jurisdiction.

The registered firm must notify the regulator in accordance with *Regulation 33-109 respecting Registration Information* (Regulation 33-109) of any change in this information.

PART 5 CONDUCT RULES

5.1. Account opening and recordkeeping

Each record required under subsection 5.2(1) and section 5.15 should clearly indicate the person and the account to which the record refers. Information in a record can cover only the accounts of the same accountholder or group. For example, registrants should obtain separate information for an individual's personal accounts and for accounts of a legal entity that the individual wholly owns or jointly holds with another party. Registrants should also obtain all required proxy documents.

Where applicable, the financial details should note whether the information is for an individual client or a family. This includes spousal income and net worth. The financial details for legal entity accounts should note whether the information refers to the entity or the owner(s) of the entity.

Investment knowledge or experience for multi-party or legal entity accounts should note whose investment knowledge or experience is being described.

If a client is opening more than one account, the investment objectives and risk tolerance should indicate whether they apply to a particular account or to the client's whole portfolio across accounts.

All information relating to suitability should be in a form that makes it usable in the registered firm's supervision systems.

If the registered firm permits clients to complete new account forms themselves, the forms should use language that is clear and avoids terminology that may be unfamiliar to unsophisticated clients.

5.2. Know-your-client

The know-your-client (KYC) obligation in section 5.3 is an exercise in due diligence that protects the client, the registrant and the integrity of the capital markets. KYC forms the basis for investment suitability determinations and identifying, among other things, violations of trading rules and persons that may want to trade illegally.

Registrants should collect the following information about clients that are not individuals:

- the nature of the client's business or other purposes of the entity;
- control structure;
- beneficial ownership.

If it is unduly difficult for a registrant to determine beneficial ownership, as part of determining identity as required by subsection 5.3(1), the registrant should consider carefully why this might be so and whether it would be appropriate to closely scrutinize account activity until the beneficial owners are identified or to decline to accept the client.

To determine suitability, registrants should, at a minimum, collect the following information about each client:

- investment objectives;
- investment knowledge and experience;
- risk tolerance;

- investment time horizon;
- current investment holdings;
- employment status;
- income level;
- net worth.

Under subsection 5.3(4), registrants are required to make reasonable efforts to keep the KYC information of their clients current. Registrants should at all times have a reasonable basis for believing that they are acting on current KYC information.

We would interpret "current" in the context of the obligation to have sufficiently up-to-date information to support a suitability determination. This means, for example, that a portfolio manager with discretionary authority should update its client's KYC information frequently, but a dealer who only occasionally recommends trades to a client would only be expected to ensure that client's KYC information is up-to-date at the time of a recommendation.

5.3. Relationship disclosure information

5.3.1. Content of relationship disclosure information

The relationship disclosure information required under section 5.4 is not required to take the form of a separate document specially prepared for this purpose. The requirement may be met by providing a client with separate documents which, together, give the client the prescribed information. A registered firm should also provide its clients with any other information that the registered firm determines is necessary to clearly set out essential relationship information.

5.3.2. Promoting client understanding

Registered firms should promote their clients' understanding of the relationship and encourage their clients to:

- provide full and accurate information to the firm and the registered individuals acting on behalf of the firm;
- promptly inform the firm of a change to any information that could reasonably result in a change to the types of investments appropriate for the client, such as a change to the client's income, investment objectives, risk tolerance, time horizon or net worth;
- carefully review all account documentation, sales literature and other documents provided by the firm;
- understand the potential risks and returns on investments;
- ask questions and request information from the firm to resolve questions about the account, transactions, investments or the relationship with the firm or a registered individual acting on behalf of the firm;
- pay for securities purchases by the settlement date;
- regularly review portfolio holdings and performance;

- consult professionals, such as a lawyer or an accountant, for legal or tax advice, where appropriate.

A client's ability to meet some of these expectations will depend to some extent on the quality of the information provided by the firm.

5.4. Suitability of investments

To meet the obligation in section 5.5 to determine suitability of an investment for a client, registered individuals must understand all products that they are trading for, or recommending to, the client. This includes the structure, features and full costs of each product and any eligibility requirements (for example, whether the product is restricted to accredited investors).

Under subsections 5.5(3) and 5.5(4), there is no obligation to make a suitability determination for certain clients who are deemed not to need or want the protections that a suitability determination provides. Permitted clients are treated differently depending on the type of registrant who is trading or advising. For example, exempt market dealers are not required to determine suitability for permitted clients because of the nature of the business relationship. However, nothing precludes an exempt market dealer from providing a suitability determination if a permitted client asks for one.

Under subsection 5.5(5), permitted clients of other registrants may waive suitability determinations. Registrants should ensure that these clients are fully informed of the consequences of waiving suitability before they do so. Registrants should properly document and retain the waiver in their record-keeping system.

Section 3.3 also provides exemptions from the investment suitability obligation for SRO members. These exemptions generally apply to discount broker activity or to certain institutional clients.

5.5. Recordkeeping – general

In most circumstances, registered firms should maintain the following records to satisfy subsection 5.15(1)(a):

- material contracts;
- reconciliations of bank statements and securities positions;
- notes of oral communications with a client;
- all e-mail, regular mail, fax and other written communications with clients.

5.6. Activity and relationship records

5.6.1. Activity records

Activity records record information about buy or sell transactions, referrals, margin transactions and any other activities relating to a client's account.

They include records of all actions leading to trade execution, settlement and clearance, such as trades on exchanges, alternative trading systems, over-the-counter markets, debt markets, and distributions and trades in the prospectus-exempt market.

Examples of activity records are:

- trade confirmation statements;
- summary information about account activity;

- communications between a registrant and its client about particular transactions;

- records of transactions resulting from securities a client holds, such as dividends or interest paid, or dividend reinvestment program activity.

In determining whether a record is an activity record, firms should also consider the recordkeeping requirements in *Regulation 23-101 respecting Trading Rules*.

A trade should be reported in the currency in which it was executed. Where foreign currency is executed through a Canadian account, the exchange rate should be reported to the client.

A sub-adviser to an adviser or a dealer executing trades directed by an adviser or another dealer should consider the other registrant to be its client for purposes of providing activity records.

5.6.2. Relationship records

Relationship records record information about a registered firm's relationship with its client and relationships that any representatives have with that client.

Relationship records include:

- communication between the firm and its clients, such as:
  - disclosure provided to clients;
  - agreements between the registrant and its clients;
- account opening information;
- change of status information provided by the client;
- disclosure and other relationship information provided by the firm;
- margin account agreements;
- communications that do not relate to a particular transaction;
- conflicts records.

5.7. Third party access to records

Registered firms should have proper safeguards in place to ensure that there is no unauthorized access to information, particularly confidential client information. Registered firms should be particularly vigilant if they maintain books and records in a location that employees of a third party can access.

5.8. Complying with recordkeeping requirements

Registered firms should consider conducting regular internal tests to determine whether their records comply with applicable securities legislation.

The regulator or the securities regulatory authority is authorized under securities legislation to access, examine and take copies of a registered firm's records. The regulator or the securities regulatory authority may conduct regular and spot compliance reviews of registered firms.

5.9. Compliance system

5.9.1. Purpose of compliance system

The purpose of the compliance system mandated under section 5.23 is to protect both clients and registrants, which contributes to greater investor confidence and participation in our capital markets. An effective compliance system provides reasonable assurance that the registered firm is meeting, and will continue to meet, all requirements of applicable securities laws and SRO rules.

A registered firm's compliance system should:

- ensure that everyone in the firm, including the board of directors or partners, management, employees and agents (whether or not they are registered) understands the standards of conduct for their role;
- be reasonably likely to identify non-compliance at an early stage;
- provide effective mechanisms for correcting non-compliant conduct in a timely manner.

Compliance is a firm-wide responsibility. The existence of the UDP and CCO, and in larger registered firms, a dedicated compliance monitoring group and individuals inside or outside that group with specific compliance and/or supervisory responsibilities, does not relieve others in the firm of the obligation to report and act on compliance issues.

5.9.2. Elements of an effective compliance system

Registered firms must operate an effective compliance system in order to remain suitable for registration. An effective compliance system has two inter-related elements: day-to-day supervision and systemic monitoring.

Day-to-day supervision includes:

- identifying specific cases of non-compliance;
- taking action to remedy them;
- minimizing the risk of non-compliant behaviour in key areas of the registered firm's operations.

Minimizing risk usually involves activities such as approving new account documents, monitoring and in some cases, approving transactions, approving marketing material and preventing inappropriate use or disclosure of non-public information.

Systemic monitoring involves assessing, advising on and reporting on the effectiveness of the registered firm's compliance system. This includes ensuring that day-to-day supervision at the firm is reasonably effective in identifying compliance deficiencies and promptly remedying them. It also includes ensuring that policies and procedures are kept up to date and that everyone at the firm generally understands and complies with them.

More specific components of an effective compliance system include:

- the visible commitment of senior management and the board of directors or partners;
- sufficient resources to operate effectively;
- detailed written policies and procedures that:

- set out the firm's standards of conduct for regulatory compliance;

- set out the systems for monitoring and enforcing compliance with those standards;

- clearly outline who is expected to do what, when and how;

- are readily accessible by everyone who is expected to know and follow them;

- are kept up to date with changes in regulatory requirements and the firm's business practices;

- the designation of individuals to monitor the firm's compliance, identify any incidents of non-compliance and take supervisory action to correct them, including those assigned to fill those positions temporarily during absences (all of these individuals must have the qualifications and authority to carry out the responsibilities assigned to them);

- training to ensure that everyone at the firm understands the standards of conduct and his or her role in the compliance system, including ongoing communication and training on changes in regulatory requirements or the firm's policies and procedures;

- records of activities conducted to identify and correct compliance deficiencies;

- where compliance deficiencies have been identified, records of the action taken to remedy them.

5.9.3. Setting up a compliance system

It is up to each registered firm to determine the most appropriate compliance system for its operations. For example, in some firms, the compliance-monitoring group may be authorized to take supervisory action, but in others it may not. Policies and procedures alone do not make an acceptable compliance system.

Registered firms should consider their size, scope of operations, products, types of clients or counterparties, risks and compensating controls, and any other relevant factors. Some of the elements noted in section 5.9.2 of the Policy Statement may be unnecessary or unworkable in smaller registered firms. However, all registered firms must have systems, policies and procedures to ensure they comply with the regulatory requirements under subsection 5.23(2).

We encourage firms to meet or exceed industry best practices to assist them in complying with regulatory requirements. The CSA or its member regulators may from time-to-time publish recommendations for best practices for various categories of registration. The SROs also do this for their members.

5.9.4. Supervision

Managers or others designated by their registered firm with authority to supervise specified registered individuals have a responsibility on behalf of the firm to take all reasonable measures to ensure that each of these individuals:

- acts honestly and in good faith toward clients;

- complies with securities legislation and firm policies and procedures;

- maintains an appropriate level of proficiency on an on-going basis.

The effectiveness of a registered firm in identifying and remedying compliance deficiencies is an important element in assessing its continuing suitability for unrestricted registration.

5.10. Outsourcing

Registrants may only outsource non-core "back office" activities that are not registerable. Outsourcing can be a cost-effective alternative to the registered firm conducting those operations in-house. It can also be a way to access specialized expertise that would otherwise be unavailable. However, registered firms are fully liable and accountable for all functions that they outsource to a service provider. A written, legally binding contract should include the expectations of the parties to an outsourcing arrangement.

Prudent business practice requires registered firms to conduct a due diligence analysis of prospective third-party service providers to assess their reputation, financial stability, relevant internal controls and overall ability to deliver the services. This includes third-party service providers that are affiliates of the firm.

Registered firms should:

- ensure that third-party service providers have adequate safeguards for keeping information confidential and, where appropriate, disaster recovery capabilities;

- conduct ongoing reviews of the quality of outsourced services;

- develop business continuity plans for the possibility that third-party service providers may not deliver their services in a satisfactory manner, which could lead to disruption of a firm's business and negative consequences for its clients;

- note that other legal requirements, such as privacy laws, may apply when entering into outsourcing arrangements.

The regulator, the registered firm and the firm's auditors should have the same access to the work product of a third-party service provider as they would if the firm performed the activities. We expect firms to ensure that this access is provided and to include a provision for it in their contractual arrangements if necessary.

5.11. Responsibility to prevent client confusion

As part of its duty toward clients, registrants should ensure that their clients understand which legal entity they are dealing with, especially if more than one financial services firm is carrying on business in the same location. Registrants may use various methods, including signage and disclosure, to differentiate themselves. A registrant should carry on all registerable activities in the name of the registrant. Contracts, confirmation and account statements, among other documents, should contain the full legal name of the registrant.

5.12. Client complaints

5.12.1. Firms registered in Québec

Registered firms in Québec comply with Division 6 if they comply with sections 168.1.1 to 168.1.3 of the Québec *Securities Act*, which has provided a substantially similar regime since 2002.

The following guidance applies to firms registered in any jurisdiction, including Québec.

5.12.2. Definition of complaints

A complaint may be made orally or in writing. A matter is a complaint if it:

- is a reproach against a registered firm;
- identifies a real or potential harm that a person has experienced, or may experience, because of the actions of a registered firm or it representatives;
- is a request for the registered firm to take remedial action.

Registered firms must document and effectively and fairly respond to every complaint, not just those relating to possible violations of securities legislation. An effective complaint system deals with all formal and informal complaints or disputes internally or refers them to the appropriate external person or process in a timely and fair manner.

5.12.3. Dispute resolution service

Registered firms must participate in an independent dispute resolution service for complaints relating to any trading or advising activity of the firm or its representatives.

Registrants should be fully aware of all applicable processes for dealing with complaints. They should disclose to all clients all dispute resolution mechanisms available for pursuing different types of complaints. Dispute resolution mechanisms include those prescribed by the applicable SRO.

In Québec, registrants must inform each complainant, in writing and without delay, that if the complainant is dissatisfied with the handling of the complaint or with the outcome, the complainant may request the registrant to forward a copy of the complaint file to the Autorité des marchés financiers. A copy of the complaint file must, upon request by a complainant, be forwarded to the Autorité des marchés financiers which examines the complaint and may, if it considers it appropriate, act as a mediator if the parties agree.

5.12.4. Disclosure of complaints

Some registrants are also registered or licensed to do business in other sectors, such as insurance. These registrants should inform their clients of the complaint resolution mechanisms for each sector in which they do business and how to use them.

5.12.5. Handling of complaints

Registered firms should acknowledge receipt of the complaint to the complainant within 10 business days.

Sales supervisors or compliance staff should handle the complaint promptly. In most cases, registered firms should provide a substantive response to a complaint within three months of receiving it.

Registered firms should ensure that the CCO and appropriate supervisors are aware of all complaints. They should also ensure that procedures are in place to inform senior management about all complaints of serious misconduct and of all legal actions.

Registered firms should document all complaints made against them and their representatives, and all legal actions or other dispute resolution proceedings relating to these complaints. They should keep a current record of complaints, and retain it for seven years from the date of the complaint.

Complaint records should include the following information:

- date of the complaint;
- nature of the complaint;
- complainant's name;
- name of the person who is the subject of the complaint;
- financial product or service that is the subject of the complaint;
- date and nature of the decision made about the complaint.

PART 6 CONFLICTS OF INTEREST

6.1. Definition of conflict of interest

6.1.1. General

Conflicts of interest are circumstances where the interests of different parties, such as the interests of clients and those of a registrant, are inconsistent or divergent. This definition of conflicts of interest is not intended to capture inconsequential matters.

The obligations in section 6.1 apply to all conflicts of interest, even when there is a specific section that also applies to the conflict.

6.2. Responding to conflicts of interest

6.2.1. Mechanisms

When responding to any conflict of interest, registrants should consider their standard of care for dealing with clients.

Registrants will generally use three mechanisms to respond to conflicts of interest:

(a) Avoidance

Registrants should avoid all conflicts of interest that are prohibited by law. If a conflict of interest is not prohibited by law, registrants should avoid it if it is sufficiently contrary to the interests of a client that there can be no other reasonable response.

(b) Control

If a registered firm does not avoid a conflict of interest, it should consider what internal structures or policies and procedures it should use or have to respond to the conflict of interest reasonably.

(c) Disclosure

If a registrant does not avoid the conflict of interest, it must consider if it is required to disclose the conflict.

6.2.2. Consistency

Registrants should apply consistent criteria when responding to similar types of conflicts of interest.

6.2.3. Conflicts of interest between clients

If there is a conflict of interest between a registered firm's clients, the firm should be fair to all clients. Firms should have internal systems to evaluate the balance struck between these interests.

For example, there can be a conflict of interest between the interests of investment banking clients, who want the highest price, lowest interest rate or best terms in general for their issuances of securities, and the interests of the retail clients who will buy the product. The firm should consider whether the product meets the needs of retail clients and is competitive with alternatives available in the market.

6.3. Avoiding conflicts of interest

Some conflicts of interest are so contrary to another person's interest that a registrant cannot use controls and/or disclosure to respond to them. In these cases, the registrant should avoid the conflict, stop providing the service or stop dealing with the client. A registered firm's conflicts management policies and procedures should allow the firm and its staff to identify conflicts of interest that should be avoided.

If a registrant allows serious conflicts of interest to continue, there is a high risk of harm to clients or to the market. Registrants should determine the level of risk a conflict of interest raises. If the risk of harming a client or the integrity of the markets is too high, the conflict needs to be avoided.

6.4. Controlling conflicts of interest

6.4.1. General

Depending on the conflict of interest, registered firms may control the conflict using methods such as:

- assigning a different representative to provide the service to the particular client;
- creating a group or committee to review, develop or approve responses;
- monitoring market activity;
- blocking certain internal communication with information barriers.

6.4.2. Organizational structures

Registered firms should ensure that their organizational structures, reporting lines, and physical layout enable them to control conflicts of interest effectively.

For example, the following situations would likely raise a conflict of interest:

- advisory staff reporting to marketing staff;
- compliance or internal audit staff reporting to a business unit;
- registered representatives and investment banking staff in the same physical location.

Robust information barriers may help registered firms control these types of conflicts of interest.

6.4.3. Remuneration

Registered firms should consider whether any particular benefits, compensation or remuneration practices are inconsistent with their obligations to clients, especially if the firm relies heavily on commission-based remuneration.

6.4.4. Multiple roles for individuals

Conflicts of interest can arise when representatives serve on a board of directors. Examples include conflicting fiduciary duties owed to the company and to a registered firm or client, possible receipt of inside information and conflicting demands on the representative's time.

Registered firms should consider:

- requiring their representatives to seek permission from the firm to serve on the board of directors of a public issuer or restricted issuer;

- having policies for board participation that identify the circumstances where the activity would not be in the best interests of the firm and its clients.

6.4.5. Outside business activities

When individuals are involved in outside business activities, conflicts of interest can arise, for example, from any associated compensation or because of the nature of the relationship between the individual and the outside entity. Before approving any of these activities, registered firms should consider potential conflicts of interest. If the firm cannot properly control a potential conflict of interest, it should not permit the outside activity.

6.5. Disclosing conflicts of interest

6.5.1. General

Registered firms should make appropriate disclosure of conflicts of interest to their clients. While disclosure alone will often not be enough, it is an integral part of responding to conflicts of interest. Registered firms should ensure that their clients are adequately informed about any conflicts of interest that may affect the services the firm provides to them. Generic disclosure is unlikely to satisfy the registered firm's obligations to respond to conflicts properly.

Disclosure about conflicts of interest should:

- be prominent, specific, clear and meaningful to the client, so that the client can understand the conflict of interest and how it could affect the service the client is being offered;

- usually occur before or when the service is provided, so that the client has a reasonable amount of time to assess it.

Registered firms should ensure that they do not:

- give partial disclosure that misleads their clients;

- obscure conflicts of interest in overly detailed disclosure.

6.5.2. Timing

Registered firms should disclose a conflict of interest to their clients before an action, such as a transaction occurs. If it is impossible to do so, the registered firm should disclose the conflict to its clients as soon as possible afterwards.

6.5.3. When disclosure is inappropriate

There are some situations in which disclosing a particular conflict of interest is inappropriate. Examples include conflicts of interest that involve confidential or commercially sensitive information, or that amount to "inside information" under the insider trading provisions.

In these situations, registered firms will need to assess whether they can provide any disclosures and whether there are mechanisms to respond to the conflict of interest adequately. The firm may have to decline to provide the service to avoid the conflict of interest.

Registered firms may disclose material, non-public information only if it is in the necessary course of business. Otherwise, it would be considered "tipping". Registered firms should have specific procedures for responding to conflicts of interest that involve inside information.

6.6. Registrant relationships

The regulator may exercise his or her discretion to register an individual as a dealing, advising or associate advising representative of a registered firm and as a representative of another affiliated registered firm.

6.7. Issuer disclosure statement

The nature of the relationship between a registered firm and a related issuer and, in the course of a distribution, a connected issuer, can vary. The requirement to describe the nature of those relationships can be satisfied by describing, as applicable:

- an ownership interest;
- an overlap of individuals;
- a commercial interest;
- a family relationship;
- any other relevant interest.

To satisfy the requirement to describe a connected issuer in the course of a distribution, registered firms may find it useful to provide examples of connected issuers and a description of the nature of the relationship with the firm.

The description of the nature of these relationships in the issuer disclosure statement should not be boilerplate disclosure that could apply to any registrant. The description should be tailored to the particular registered firm, so that the description is meaningful to the firm's clients.

6.8. Allocating investment opportunities fairly

If the investment process involves allocating investment opportunities, an adviser's fairness policy should, at a minimum, disclose the method used to allocate:

- price and commission among clients when trades are bunched or blocked;
- block trades and initial public offerings among client accounts and among clients that are partially filled, such as pro-rata.

The adviser's fairness policy should also address any other situation where investment opportunities must be allocated.

6.9. Acquiring securities or assets of a registered firm

For purposes of section 6.8, the book of business of a registered firm would be "a substantial part of the assets" of the registered firm.

6.10. Relationship pricing

We are aware that industry participants offer financial incentives or advantages to certain clients. This practice is commonly referred to as "relationship pricing".

The tied selling provision in section 6.10 is intended to prevent certain abusive sales practices. It is not intended to prohibit relationship pricing or other beneficial selling arrangements similar to relationship pricing.

In our view, section 6.10 would be contravened if, for example, a financial institution refused to make a loan unless the client acquired securities of mutual funds that are sponsored by the financial institution, and the client otherwise met the financial institution's criteria for making loans.

6.11. Referral arrangements

6.11.1. Application

Section 6.11 defines "referral arrangement" in broad terms. The definition is not limited to referrals for providing financial services or services requiring registration. It also includes receiving a referral fee for providing a client name and contact information to a person.

A party to a referral arrangement may need to be registered depending on the activities that party carries out. Registrants cannot use a referral arrangement to assign or contract out of their regulatory obligations.

"Referral fee" is also broadly defined. It includes sharing or splitting any commission resulting from the purchase or sale of a security.

6.11.2. Clients

A client who is referred to a person becomes the client of that person for the purposes of the trading or advising services provided under the referral arrangement.

The person receiving the referral must be registered in an appropriate category or must undertake trading or advising activities under an applicable registration exemption. Section 6.14 requires the registrant making the referral to satisfy itself that this is the case.

The registrant receiving a referral must meet all of its obligations as a registrant toward its referred clients, including know-your-client and suitability determinations.

Registrants involved in referral arrangements should manage any related conflicts of interest in accordance with the applicable provisions of Part 6, Division 1. For example, if the proposed referral fee seems excessive in relation to the service to be provided, the registered firm should assess whether this may create a conflict that could motivate its representatives to act contrary to their duties toward their clients.

6.11.3. Written agreement

The requirement in section 6.12 that parties to a referral arrangement set out its terms in a written agreement is intended to ensure that each party's roles and responsibilities are made clear.

We expect referral arrangements to include:

- the roles and responsibilities of each party;
- limitations on any party to the referral arrangement that is not a registrant to ensure that it is not engaging in any activities requiring registration;
- the method of calculating the referral fee and, to the extent possible, the amount of the fee;
- the disclosure to be provided to referred clients;
- who provides the disclosure to referred clients;
- who is responsible for communicating with referred clients.

Registered firms are required to be parties to referral agreements entered into by their representatives. This ensures that they are aware of these arrangements so they can adequately supervise their representatives and monitor compliance. This does not preclude the individual registrant from also being a party to the agreement.

6.11.4. Disclosure to clients

The disclosure of information to clients required under section 6.13 is intended to help clients make an informed decision about the referral arrangement and to assess any conflicts of interest.

In providing the prescribed disclosure, registrants should take reasonable steps to ensure that clients understand:

- which entity they are dealing with;
- what they can expect that entity to provide to them;
- the registrant's key responsibilities to them;
- the limitations of the registrant's registration category and any relevant terms and conditions imposed on its registration;
- the extent of the referrer's financial interest in the referral arrangement;
- the nature of any potential or actual conflict of interest that arises from the referral arrangement.

PART 7 SUSPENSION AND REVOCATION OF REGISTRATION

7.1. General

There is no annual or other renewal requirement for registration. Registration remains effective until it is suspended or terminated by a triggering event. Triggering events for terminating registration include:

- an individual ceasing to have a sponsoring firm;

- the regulator accepting a request from the registrant to surrender registration;
- the regulator suspending or revoking registration.

"Suspension" is a restricted state of registration. A suspended registrant must cease the registerable activity but otherwise remains a registrant, subject to the jurisdiction of the securities regulatory authority. "Reinstatement" means that a suspension on a registration has been lifted. "Revocation" means that a registration has been terminated. As a result, the firm or individual must submit a new application to become a registrant again.

Registrants may be entitled to an opportunity to be heard before a decision is made to suspend or revoke registration.

7.2. Termination of a registered individual

If a registered firm terminates the employment, partnership or agency relationship of a registered individual for any reason (for example, the individual resigns, is dismissed or retires), the firm has five days after the effective date of the individual's termination to file the prescribed notice of termination (Form 33-109F1).

If the notice of termination indicates that the individual resigned or was dismissed for a reason other than retirement or completing a temporary employment contract, the former sponsoring firm has 30 days from the date of termination to file additional prescribed information about the reasons for the termination. This information is necessary for the regulator to determine if there are any concerns about the individual's conduct that may be relevant to his or her ongoing suitability for registration.

7.3. Automatic suspension

An individual must have a sponsoring firm to be an active registrant. Individuals who voluntarily or involuntarily leave their sponsoring firm are automatically suspended, effective on the day that they cease to have the firm's authority to act on its behalf.

If the registration of a firm is suspended or revoked, the registration of each of its individual dealing or advising representatives is automatically suspended. There is no opportunity to be heard in the case of an automatic suspension.

Certain registration categories require registered firms to be a member of a specified SRO. Individuals acting on behalf of SRO member firms may also be required to be an approved person of the SRO. If an SRO revokes or suspends the membership of a registered firm or approval of an individual, the firm or individual's registration in the category requiring SRO membership or approval will be automatically suspended. This will not apply to mutual fund dealers registered only in Québec.

Where an individual been suspended by his or her SRO for reasons that do not involve significant regulatory concerns and the SRO has subsequently reinstated his or her approval, we will reinstate the individual's registration as quickly as possible. An example of this would be the routine suspension of IDA approved persons who have missed a deadline to upgrade their proficiency under IDA rules. The IDA reinstates such individuals' approved person status as soon as the required courses have been completed.

If a firm or individual is registered in multiple categories, the regulator will consider on a case-by-case basis whether to suspend the firm's or individual's other registration(s) or to impose terms and conditions, subject to an opportunity to be heard.

7.4. Reinstatement

If an individual joins a new sponsoring firm within 90 days of leaving registered employment and is seeking registration in the same category as previously held, the

individual's registration will be automatically reinstated, subject to certain conditions set out in Regulation 33-109. This process allows a qualified individual who transfers directly from one sponsoring firm to another to start engaging in activities requiring registration from the first day with the new sponsoring firm.

In other circumstances, a suspended individual who has found a new sponsoring firm will have to apply for reinstatement under the process set out in Regulation 33-109.

Despite automatic reinstatement or any other procedure, maintaining suitability for registration is an ongoing requirement and the regulator has discretionary authority to suspend or revoke an individual's registration or restrict it with terms and conditions at any time. The regulator may do this, for example, if it receives information through the form 33-109F1 Notice of Termination filed by the individual's former sponsoring firm or other sources that causes the regulator to question the individual's continued suitability for registration. In these situations, individuals will be given an opportunity to be heard before a decision is made to suspend or revoke registration or to impose terms and conditions.

7.5. Surrender of registration

If a registrant intends to cease activity requiring registration, it may apply to surrender its registration. A registration is revoked when the regulator gives notice that it has accepted its surrender. The individual or firm remains registered until it receives this notice.

7.5.1. Registered firms

Before accepting a registered firm's surrender, the regulator will require evidence that the firm's clients have been dealt with appropriately. This is not necessary for a registered individual who applies to surrender registration. In this case, the sponsoring firm will continue to be responsible for meeting obligations to clients who may have been served by the individual.

When considering a registered firm's application to surrender its registration, the regulator may consider whether:

- the firm has ceased carrying on activity requiring registration or proposes an effective date within 6 months of the date of the application to surrender (revocation of registration to take effect on or after that date as notified by the regulator);

- the firm has, at the time of filing the application to surrender, satisfied any previously outstanding fees and filings;

- the application to surrender registration:

  - discloses the firm's reasons for ceasing to carry on activity requiring registration;

  - provides satisfactory evidence that the firm has given all of its clients reasonable notice of its intention to cease carrying on activity requiring registration, including an explanation of how it will affect them in practical terms;

  - includes copies of the firm's most recent unaudited financial statements;

  - provides satisfactory evidence that it has given appropriate notice to the SRO, if applicable;

- the regulator has received, or waived receipt of, the following from the firm in satisfactory form, supported by an officer's or partner's certificate and auditor's comfort letter:

- evidence that the firm has resolved all outstanding client complaints (including litigation, judgments and liens) or made reasonable arrangements to deal with and fund any payments relating to them, as well as any subsequent client complaints, settlements or liabilities;

- confirmation that all money or securities owed to clients has been returned or transferred to another registrant, where possible according to client instructions;

- up-to-date audited financial statements;

- evidence that the firm has satisfied the SRO's requirements for withdrawing membership, if applicable.

In determining whether it would be prejudicial to the public interest to accept the surrender of registration, the regulator will refer to all information the registered firm has provided and any other regulatory concerns that relate to the firm, including terms and conditions on registration that have not been met and compliance issues, among other things. The regulator also has the authority to act in the public interest by suspending the registration of a registered firm that has applied to surrender it.

7.5.2. Registered individuals

Registered individuals who want to terminate their registration do not have to apply to surrender it. They may simply resign from their sponsoring firm. However, individuals may choose to apply to surrender registration using Form 33-109F2 if, for example, they are registered in multiple jurisdictions and want to have their registration revoked in one jurisdiction only.

PART 8 EXEMPTIONS FROM REGISTRATION

8.1. International dealers and international advisers

When international dealers or advisers relying on the registration exemptions in subsections 8.15(2) and 8.16(2) stop carrying on business in the jurisdiction, they should give notice by sending an e-mail to the securities regulatory authority in the jurisdiction where they are trading or advising in securities in reliance on the registration exemption as soon as possible after they stop carrying on business in the jurisdiction.

The e-mail addresses of the relevant jurisdictions are listed in Form 31-101F2.

8.2. Mobility exemption

In limited circumstances, the mobility exemption in Part 8, Division 2 allows registrants to continue dealing with clients (and certain of their family members) who move to a different jurisdiction, without registering in that other jurisdiction. The availability of the mobility exemption is triggered when the client moves to another jurisdiction.

The registered firm's compliance system must have appropriate policies and procedures for supervising individual representatives relying on a mobility exemption. Registered firms must also keep appropriate records to demonstrate compliance with the conditions of the mobility exemption.