Notice

Regulation to amend Regulation 31-103 respecting Registration Requirements and Exemptions* and *Policy Statement to Regulation 31-103 respecting Registration Requirements and Exemptions

and

Regulation to amend Regulation 33-109 respecting Registration Information* and *Policy Statement to Regulation 33-109 respecting Registration Information

Introduction

The Canadian Securities Administrators (the CSA or we) are implementing amendments (the Amendments) to *Regulation 31-103 respecting Registration Requirements and Exemptions* (Regulation 31-103), *Policy Statement to Regulation 31-103 respecting Registration Requirements and Exemptions* (Policy Statement 31-103) and the forms under Regulation 31-103 as well as to *Regulation 33-109 respecting Registration Information* (Regulation 33-109), *Policy Statement to Regulation 33-109 respecting Registration Information* (Policy Statement 33-109) and related forms under Regulation 33-109. The amendments are subject to approvals, including ministerial approvals.

Regulation 31-103 came into force on September 28, 2009 and introduced a new national registration regime that is harmonized, streamlined and modernized. We indicated in the July 17, 2009 notice of publication that we would propose amendments to Regulation 31-103, Policy Statement 31-103, Regulation 33-109 and Policy Statement 33-109 together with related forms (collectively, the Regulation) if investor protection, market efficiency or other regulatory concerns arose. On June 25, 2010 we published proposed amendments for comment (the June 2010 Proposal) following our monitoring of the implementation of the Regulation and our continuing dialogue with stakeholders about questions and concerns that have arisen in respect of their practical experience working with the Regulation. We are now implementing these amendments.

We think the effect of these amendments, which range from technical adjustments to more substantive matters, will enhance investor protection and improve the day-to-day operation of the Regulation for both industry and regulators. In addition we believe that these changes will provide greater clarity of our intentions.

Comments on the June 2010 Proposal

We received 32 comment letters on the June 2010 Proposal, and thank everyone who provided comments. Copies of the comment letters are posted on the following websites:

www.lautorite.qc.ca
www.osc.gov.on.ca

We made changes to certain of the amendments which were proposed in the June 2010 Proposal. We also made various minor changes to Regulation 31-103 to standardize drafting in similar provisions, in order to give better effect to our original intent. We concluded that these changes do not require the CSA to publish the Regulation for another comment period.

A description of the key changes made to the Regulation is attached to this Notice as Appendix A. A summary of comments received on June 2010 Proposal, together with our responses, is attached to this Notice as Appendix B.

Adoption of the Amendments

Provided all necessary approvals are obtained, including ministerial approvals, the Amendments will come into force on July 11, 2011. Additional information about the adoption processes for some jurisdictions is provided in Appendix C of this Notice.

List of appendices

This Notice also contains the following appendices:

- Appendix A *Summary of changes to the Regulation*;
- Appendix B *Summary of comments and responses on the June 2010 Proposal*;
- Appendix C *Adoption of the Regulation*;

A blackline version of the Regulation reflecting changes to the Regulation is available on some CSA websites.

Where to find more information

The Regulation is available on websites of CSA members, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
www.gov.ns.ca/nssc
www.nbsc-cvmnb.ca
www.osc.gov.on.ca
www.sfsc.gov.sk.ca

Questions

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

Sophie Jean
Analyste expert en réglementation – pratiques de distribution
Autorité des marchés financiers
Tel: 514-395-0337, ext. 4786
Toll-free: 1-877-525-0337
sophie.jean@lautorite.qc.ca

Lindy Bremner
Senior Legal Counsel, Capital Markets Regulation
British Columbia Securities Commission
Tel: 604-899-6678
1-800-373-6393
lbremner@bcsc.bc.ca

Navdeep Gill
Legal Counsel, Market Regulation
Alberta Securities Commission
Tel: 403-355-9043
navdeep.gill@asc.ca

Curtis Brezinski
Acting Deputy Director, Legal and Registration
Saskatchewan Financial Services Commission
Tel: 306-787-5876
curtis.brezinski@gov.sk.ca

Chris Besko
Legal Counsel, Deputy Director
The Manitoba Securities Commission
Tel. 204-945-2561
Toll Free (Manitoba only) 1-800-655-5244
chris.besko@gov.mb.ca

Leigh-Ann Ronen
Legal Counsel, Compliance and Registrant Regulation
Ontario Securities Commission
Tel: 416-204-8954
lronen@osc.gov.on.ca

Brian W. Murphy
Deputy Director, Capital Markets
Nova Scotia Securities Commission
Tel: 902-424-4592
murphybw@gov.ns.ca

Jason L. Alcorn
Legal Counsel
New Brunswick Securities Commission
Tel: 506-643-7857
Jason.Alcorn@gnb.ca

Katharine Tummon
Superintendent of Securities
Prince Edward Island Securities Office
Tel: 902-368-4542
kptummon@gov.pe.ca

Craig Whalen
Manager of Licensing, Registration and Compliance
Office of the Superintendent of Securities
Government of Newfoundland and Labrador
Tel: 709-729-5661
cwhalen@gov.nl.ca

Louis Arki, Director, Legal Registries
Department of Justice, Government of Nunavut
Tel: 867-975-6587
larki@gov.nu.ca

Donn MacDougall
Deputy Superintendent, Legal & Enforcement
Office of the Superintendent of Securities
Government of the Northwest Territories
Tel: 867-920-8984
donald.macdougall@gov.nt.ca

Frederik J. Pretorius
Manager Corporate Affairs (C-6)
Dept of Community Services
Government of Yukon
Tel: 867-667-5225
Fred.Pretorius@gov.yk.ca

April 15, 2011

4

Appendix A

Summary of Changes to the Regulation

This appendix describes the key changes we made to *Regulation 31-103 respecting Registration Requirements and Exemptions* (Regulation 31-103), *Policy Statement to Regulation 31-103 respecting Registration Requirements and Exemptions* (Policy Statement 31-103), *Regulation 33-109 respecting Registration Information* (Regulation 33-109), *Policy Statement to Regulation 33-109 respecting Registration Information* (Policy Statement 33-109) as well as the forms under Regulation 31-103 and Regulation 33-109 (the Forms) (collectively, the Amendments). Provided all necessary approvals are obtained, the Amendments will come into force on July 11, 2011.

This appendix contains the following sections:

1. Title of Regulation 31-103 and Policy Statement 31-103
2 Definitions
3 Clarity of disclosure to clients
4. Responsibility of the firm for the conduct of the individuals it sponsors
5. Business trigger for trading and advising
6. Mobility exemption
7. Registration requirements for individuals
8. Categories of registration for firms
9. Exemptions from the requirement to register
10. Membership in a self-regulatory organization (SRO)
11. Internal control and systems
12. Financial condition
13. Client relationships
14. Handling client accounts
15. Transition
16. Form 31-103F1 *Calculation of Excess Working Capital*
17. Form 31-103F2 *Submission to Jurisdiction and Appointment of Agent for Service*
18. Appendix B *Subordination Agreement*
19. Amendments to Regulation 33-109
20. Amendments to Regulation 33-109 forms

In this appendix, we reference the sections of Regulation 31-103 except where otherwise indicated. We refer to the amendments published for comment on June 25, 2010 as the June 2010 Proposal.

1. Title of Regulation 31-103 and Policy Statement 31-103

We added *ongoing registrant obligations* to the title of Regulation 31-103 and Policy Statement 31-103. The title is now *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. We believe, as stated in the notice published on June 25, 2010, that this change will better reflect the breadth and scope of Regulation 31-103 and Policy Statement 31-103, which includes initial registration and requirements for registrants on an ongoing basis.

2. Definitions

We clarified paragraph (d) of the permitted client definition in section 1.1. We also added a definition of Chief Compliance Officers Qualifying Exam as this exam is now an alternative to the PDO Exam for chief compliance officers.

3. Clarity of disclosure to clients

There are a number of client disclosure requirements in Regulation 31-103. We consolidated our guidance on clear and meaningful disclosure to clients throughout the Policy Statement 31-103 in a general principle in section 1.1 of Policy Statement 31-103, setting out our expectation that registered firms present information to clients in a clear and meaningful manner in order to ensure clients understand the information presented. This requirement is based on the obligation of all registrants to act fairly, honestly and in good faith when dealing with clients.

4. Responsibility of the firm for the conduct of the individuals it sponsors

We proposed in June 2010 to add guidance, in section 3.4 of the Policy Statement 31-103, on the firm's responsibility to ensure compliance with ongoing requirements. This includes firms ensuring that their registered individuals are proficient. We now provide more general guidance on the firm's responsibility regarding their registered individuals in section 1.3 of Policy Statement 31-103, which sets out our view that a registered firm is responsible for the conduct of their registered individuals.

The registered firm

- must undertake due diligence before sponsoring an individual to be registered to act on its behalf; and

- has an ongoing obligation to monitor and supervise its registered individuals in an effective manner.

5. Business trigger for trading and advising

We clarified, in section 1.3 of Policy Statement 31-103 (under the heading *Factors in determining a business purpose)*, the guidance on incidental activities in respect of mergers and acquisitions specialists. We expect that if these specialists also engage in capital raising from prospective investors (including private placements), they will need to consider whether they are in the business of trading and require registration.

6. Mobility exemption

We codified in section 2.2 of Policy Statement 31-103 the guidance that we previously published in the *Frequently Asked Questions* (FAQ) published on February 5, 2010.

7. Registration requirements for individuals

(a) Proficiency requirements (sections 3.1 to 3.14)

i. Time limits on examination requirements (section 3.3)

Further to our June 2010 Proposal, we removed the requirement in section 3.3(2)(a) that an individual be registered for any 12 month period during the 36-month period prior to applying for registration in order to qualify for the exemption from the time limitations placed on examinations. Instead, section 3.3(2)(a) now requires an individual to have been registered in the same category in any jurisdiction of Canada *at any time* during the 36-month period before the date of his or her application for registration.

We clarified that periods of suspension will not be included for purposes of calculating the period of time a person has been registered in respect of the time limits for the validity of the examinations. We also added guidance on the 36-month time limit on examinations in section 3.3 of Policy Statement 31-103.

We amended section 3.3 to delete the reference to the examinations formerly provided in section 45 of Policy Statement Q-9 *Dealers, Advisers and Representatives*, since this is already covered in the grandfathering provisions in section 16.10(1) of Regulation 31-103.

ii. Proficiency – initial and ongoing (section 3.4)

We amended section 3.4 to provide that the proficiency principle for dealing, advising and associate advising representatives *includes* understanding the key features of the securities that are recommended by the individual. Guidance has been added in Policy Statement 31-103 to indicate that the proficiency principle applies notwithstanding any suitability exemption, including the exemption in section 13.3(4) in respect of permitted clients.

Guidance has also been added to confirm that it is the responsibility of a registered firm to ensure that their registered individuals are proficient at all times.

iii. Recognition of the Chief Compliance Officers Qualifying Exam (sections 3.6, 3.8, 3.10, 3.13 and 3.14)

The Chief Compliance Officers Qualifying Exam is now an alternative to the PDO Exam for chief compliance officers.

iv. Removal of the requirement to pass the Canadian Securities Course Exam for holders of the CFA Charter (sections 3.13 and 3.14)

The requirement to pass the Canadian Securities Course Exam has been removed from section 3.13 and 3.14, in cases where the individual has earned the CFA Charter.

v. Alternative proficiency for representatives of mutual fund dealers and exempt market dealers (sections 3.5 and 3.9)

We amended sections 3.5 and 3.9 to provide the following alternative proficiency for representatives of mutual fund dealers and exempt market dealers: the individual will meet the proficiency requirement if he or she has earned a CFA Charter and has 12 months of relevant securities industry experience in the 36-month period before applying for registration.

vi. Codification of the transitioned proficiencies

The proficiencies which are the object of the transition provisions in sections 16.9(2) and 16.10(1) have been codified in Part 3.

vii. Additional proficiency guidance

Guidance has been added in Policy Statement 31-103 to confirm that the proficiency requirements in Part 3 do not apply to approved persons of the Investment Industry Regulatory Organization of Canada (IIROC) because these individuals are required to meet the proficiency requirements mandated by the IIROC rules. We also updated Appendix C - *Proficiency requirements* of Policy Statement 31-103 for individuals acting on behalf of a registered firm to reflect the changes to the proficiency requirements of the Regulation 31-103 (as outlined above).

(b) Review by the CSA of alternative proficiencies

We stated in the July 17, 2009 notice of publication that "the CSA would assess new examinations that are submitted for approval. We will review the Regulation on a periodic basis and codify the recognition of additional examinations as they are approved by the CSA". Due to an ever increasing number of policy initiatives and other priorities

requiring substantial staff involvement, the recognition of additional examinations or the inclusion of alternative or local proficiency requirements in the Regulation 31-103 are not anticipated this year. The CSA will reconsider this decision next year, taking into consideration its other priorities.

(c) Restrictions on acting for another registered firm (section 4.1)

In the June 2010 Proposal we included in section 4.1 of Regulation 31-103 a new sub-paragraph (1)(b), which would prohibit an advising, associate advising and dealing representative from being registered with another registered firm. We have retained this provision. However, in order to assist firms in filing exemptive relief applications, we have amended section 4.1 so that a registered firm, as opposed to an individual, now has the obligation to ensure that an individual who acts on its behalf does not, at the same time, act as (a) an officer, partner or director of another registered firm that is not an affiliate of the first-mentioned registered firm, or (b) a dealing, advising or associate advising representative of another registered firm.

We included a grandfathering provision for individuals who were dually registered before the coming into force of the amendments to section 4.1. Guidance has been added to Policy Statement 31-103 indicating the factors that will be taken into account when reviewing exemption applications.

8. Categories of registration for firms

(a) Mutual fund dealers (section 7.1)

We repealed the exceptions for Québec and British Columbia in section 7.1(2)(b)(ii) and 7.1(3), in order to harmonize with the other CSA jurisdictions. All mutual fund dealers in Canada are now authorized to act as dealers in respect of the securities listed in section 7.1(2)(b).

(b) Investment fund managers (section 7.3 of Policy Statement 31-103)

We added guidance in Policy Statement 31-103 to address the situation where the board of directors or the trustee(s) of a fund are directing the business, operations or affairs of an investment fund. In these situations, the fund itself may be considered the investment fund manager and therefore required to register in the investment fund manager category.

We also added guidance on the registration of investment fund managers in the context of fund complexes and groups to clarify that we expect exemption applications to be made by investment fund managers that have delegated the management of the fund function to a registered affiliate. We included guidance on the factors we will consider in respect of these exemption applications. We repealed the guidance on limited partnerships in view of this new guidance.

9. Exemptions from the requirement to register

(a) Exemptions from dealer registration

i. Trades through or to a registered dealer (section 8.5)

We amended Policy Statement 31-103 to provide additional examples in order to clarify further the use of this exemption.

ii. Investment fund trades by adviser to managed accounts (section 8.6)

We eliminated the restriction in this exemption relating to non-prospectus qualified investment funds. Regulation 31-103 now provides an exemption from

dealer registration for an adviser trading in the securities of an investment fund to managed accounts of the adviser's clients, if the adviser acts as the adviser and investment fund manager of the investment fund.

iii. Plan administrator (8.16)

We deleted the definition of "control person" in section 8.16 since that expression is defined in securities legislation.

iv. International dealer (section 8.18)

We amended section 8.18 to:

- include an express restriction on the use of this exemption, which is only available if the permitted client is a Canadian permitted client, as defined in section 8.18;

- change the prescribed contents of the notice to clients required under section 8.18(4) as was proposed in the June 2010 Proposal, and restate the requirement to give annual notice to the regulator or, in Québec, the securities regulatory authority under section 8.18(5); and

- add a new subsection 8.18(7) to provide an adviser registration exemption for the person relying on the section 8.18 dealer registration exemption. This exemption is restricted to advice provided to the client in connection with trading activity permitted under section 8.18, and does not extend to a managed account of a client.

We had proposed to repeal, in the June 2010 Proposal, subsection 8.18(6) that provides that in Ontario, the obligation to provide the yearly notice to the regulator does not apply to a person that complies with the filing and fee payment requirements applicable to an unregistered exempt international firm under Ontario Securities Commission Rule 13-502 *Fees*. We are not making this change.

Subsections 8.18(6) and 8.26(6), as they appeared in the June 2010 Proposal, have been removed. Upon further consideration we have decided not to proceed with this change.

(b) Exemptions from adviser registration

International adviser (section 8.26)

We amended section 8.26 to mirror those changes made to the international dealer exemption (section 8.18) in respect of

- the restriction on the use of the exemption, which is only available if the permitted client is a Canadian permitted client, as defined in section 8.26; this definition is identical to the one in section 8.18, except that it excludes paragraph (d) of the definition of "permitted client" in section 1.1;

- the contents of the notice to clients;

- the annual notice to the regulator or, in Québec, the securities regulatory authority;

- maintaining subsection 8.26(6) as it appears in the current law in respect of an unregistered exempt international firm's ability to meet the yearly notice requirement to the regulator in Ontario by complying with certain filing and fee payment requirements; and

- the removal of subsection 8.26(6) as it appeared in the June 2010 Proposal.

We also clarified in paragraph 8.26(4)(d) our intent that the adviser's aggregate consolidated gross revenue is to be determined as at the end of its most recent financial year-end.

Finally, we included guidance in Policy Statement 31-103 on what we consider to be permissible incidental advice on Canadian securities by international advisers relying upon the exemption under section 8.26.

10. Membership in a self-regulatory organization (SRO)

We reorganized the drafting of the exemptions in Part 9 for:

- IIROC members that are also registered as investment fund managers; and

- members of the Mutual Fund Dealers Association of Canada (MFDA) that are also registered as exempt market dealers, scholarship plan dealers or investment fund managers.

Regulation 31-103 now has two distinct sections, section 9.3 and 9.4, which distinguish the exemptions that are available on the basis of whether or not the member of IIROC or the MFDA is registered in another category. This clarifies our intent with respect to the exemptions for SRO members.

We added an exemption from section 13.12 for MFDA members. This change was made on the basis that the MFDA has a member rule prohibiting lending to clients except in very limited circumstances.

Finally, we added an exemption from section 13.15 for SRO members. This change was made on the basis that the SROs have their own rules on complaint handling. We remind registrants in Québec that to the extent they deal with a client in Québec, they must comply with sections 168.1.1 to 168.1.3 of the *Securities Act* (Québec) in all cases.

We may publish further amendments to Regulation 31-103 for comment in the near term.

11. Internal control and systems

(a) Elements of an effective compliance system (section 11.1 of Policy Statement 31-103)

We included in Policy Statement 31-103 the enhanced guidance on internal controls that was proposed in the June 2010 Proposal.

(b) Designating an ultimate designated person (UDP) (section 11.2)

We amended section 11.2 of Regulation 31-103 by adding in section 11.2(2)(a) that if the firm does not have a chief executive officer (CEO), the firm may designate, as its UDP, an individual acting in a capacity similar to a CEO. We also amended section 11.2(2)(c) to clarify our intent that the officer in charge of a division of the firm may be designated as the firm's UDP, but only to the extent that the firm has significant other business activities. Usually, a firm will have only one UDP.

We included in Policy Statement 31-103 the enhanced guidance on the UDP designation that was proposed in the June 2010 Proposal.

(c) Record-keeping (section 11.5 of Policy Statement 31-103)

We clarified the guidance in Policy Statement 31-103 to the effect that we expect registered firms to maintain notes of communications with clients, whether oral or written, that could have an impact on the client's account or the client's relationship with the firm. We remind registered firms that while we do not expect them to save every voicemail or e-mail, or to record all telephone conversations with clients, we do expect registered firms to maintain records of all communications relating to orders received from their clients.

(d) Registrant acquiring a registered firm's securities or assets (section 11.9) and Registered firm whose securities are acquired (section 11.10)

We deleted the reference to *amalgamations, mergers, arrangements, reorganizations or treasury issues* in section 11.9(3)(a) and section 11.10(3) and the reference to listed securities in section 11.9(3)(b) set out in the June 2010 Proposal as these references may be unduly restrictive.

In addition, we have amended section 11.9(3)(a) and section 11.10(3) to clarify our intent in respect of when we expect to receive a notice under these provisions.

Section 11.10 of Policy Statement 31-103 now includes guidance on our expectations as to the timing of the prior notice of a proposed acquisition. We expect this notice to be sent as soon as the registered firm knows or has reason to believe such a transaction is going to take place.

12. Financial condition

(a) Capital requirements (section 12.1)

We added a new subsection (5) in section 12.1 in order to provide that a registered firm that is a member of IIROC and that is also registered as an investment fund manager is not required to comply with the requirements of section 12.1 if certain conditions relating to the registered firm's minimum capital and the filing of the IIROC Form 1 *Joint Regulatory Financial Questionnaire and Report* are met. The registered firm will be required to file this form with the regulator or, in Québec, with the securities regulatory authority in addition to filing with IIROC.

Following the same policy rationale, we added a new subsection (6) to section 12.1 in order to provide that a mutual fund dealer that is a member of the MFDA and that is also registered as an exempt market dealer, scholarship plan dealer or investment fund manager is not required to comply with the requirements of section 12.1 if certain conditions relating to the registered firm's minimum capital and the filing of the MFDA Form 1 MFDA *Financial Questionnaire and Report* are met. The registered firm will be required to file this form with the regulator in addition to filing with the MFDA.

We also added guidance in section 12.1 of Policy Statement 31-103 on the exclusion of related party debt from a firm's working capital, which can only occur when the firm and the lender enter into a subordination agreement and file this agreement with the regulator or, in Québec, with the securities regulatory authority.

(b) Subordination agreements (section 12.2)

We added guidance in section 12.2 of Policy Statement 31-103 to clarify the requirements relating to subordination agreements. In addition, we lengthened the delivery requirement from 5 days to 10 days.

(c) Insurance (sections 12.3, 12.4 and 12.5)

We did not make the amendments to sections 12.3(2), 12.4(3) and 12.5 as set out in the June 2010 Proposal but we added guidance in Policy Statement 31-103 on

- the coverage limits; and
- the fact that insurance requirements are not cumulative for firms registered in several categories.

We confirm, in response to several inquiries received, that firms only need to maintain insurance coverage for the highest amount required.

(d) Delivering financial information (sections 12.12 and 12.14)

We made changes to sections 12.12 and 12.14, which correlate with the changes made to the capital requirements for registered firms that are SRO members and are also registered in other categories of registration. These changes will allow these firms to file their respective SRO form with the regulator or, in Québec, with the securities regulatory authority instead of filing the Form 31-103F1.

(e) Transition to IFRS – financial years beginning January 1, 2011

Regulation 31-103 was amended on January 1, 2011 in order to update the accounting terms and references in the Regulation to reflect the fact that, for financial years beginning on or after January 1, 2011, there has been a changeover to International Financial Reporting Standards (IFRS) in Canadian Generally Accepted Accounting Principles (Canadian GAAP) for publicly accountable enterprises.

We remind registrants that the amendments that came into force on January 1, 2011 only apply to periods relating to financial years beginning *on or after* January 1, 2011. Absent an exemption, registrants delivering financial statements and interim financial information relating to financial years beginning before January 1, 2011 will be required to comply with the versions of Regulation 31-103 and Regulation 33-109 in force prior to January 1, 2011, which contain the existing Canadian GAAP terms and phrases.

Foreign registrants should consult *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards* (Regulation 52-107) as acceptable accounting principles other than IFRS may apply instead.

13. Client relationships

(a) Know your client (section 13.2)

We have increased the 10% threshold in section 13.2(3)(b)(i) to a 25% threshold, which is consistent with omnibus/blanket orders issued by each of the members of the CSA on November 5, 2010. We provide guidance in Policy Statement 31-103 on how the obligations in sections 13.2(3) should be met.

We amended section 13.2(7) to codify the parallel blanket/omnibus orders issued by each of the CSA members on November 5, 2010 providing relief from the requirement in section 13.2(2)(b) to take reasonable steps to establish whether a client is an insider of a reporting issuer or any other issuer whose securities are publicly traded. Section 13.2(2)(b) does not apply to a registrant in respect of clients for which the registrant trades only the securities referred to in sections 7.1(2)(b) and 7.1(2)(c), namely mutual fund and scholarship plan securities.

(b) Restrictions on certain managed account transactions (section 13.5)

We did not amend section 13.5 as we had indicated in the June 2010 Proposal. Specifically, we did not delete the word *registered* before the word *adviser*, and we did not expand the provision to apply to IIROC members that conduct advising activities. Although we believe that these provisions should apply to all advisers without distinction as to whether or not they are IIROC members, we did not make these changes in view of the comments we received from IIROC members which indicated that there may be significant unintended consequences in respect of trades made from IIROC members' inventory accounts. We are reviewing the regime applicable to IIROC members and we may publish proposed amendments for comments in the future.

To address these issues, we added guidance in Policy Statement 31-103 with respect to trades made from the inventory account of registered dealers that are members of IIROC and that conduct advising activities (IIROC advisers) to managed accounts. We expect IIROC advisers to have policies and procedures that sufficiently mitigate the conflicts of interest inherent in such transactions.

We also provided guidance in Policy Statement 31-103 regarding activities that are not prohibited by section 13.5 and clarified the consent requirements.

(c) Disclosure when recommending related or connected securities (section 13.6)

We clarified paragraph (b) by also referring to a mutual fund, scholarship plan, educational plan or educational trust that is managed, as an investment fund manager, by an affiliate of the registered firm.

(d) Referral arrangements (sections 13.7 to 13.11)

We amended sections 13.8, 13.9 and 13.10 in accordance with the June 2010 Proposal, in order to

- clarify section 13.8 by stating that a registered firm, or a registered individual whose registration is sponsored by the registered firm, must not participate in a referral arrangement with another person unless certain conditions are met;

- clarify the contractual agreement requirements: our intent is that only the registered firm is required to be a party to a written agreement;

- provide in paragraph (b) of section 13.8 that the registered firm is required to record all referral fees, but deleted the words "on its records" in favour of additional guidance on keeping records of referral fees;

- in section 13.9, provide that the registered firm, and not the individual registrant, is held to the due diligence requirement with respect of the qualifications of the person to whom the referral is made; and

- in section 13.10 of Regulation 31-103 we replaced the words *referral arrangement* with *agreement* to better reflect our intent.

We amended the guidance on referral arrangements in Policy Statement 31-103 to indicate that registered firms are responsible for monitoring and supervising all of their referral arrangements. We also added new guidance indicating our view that the receipt of an unexpected gift of appreciation would not fall within the scope of a referral arrangement.

(e) Lending to clients (section 13.12)

We added Policy Statement 31-103 guidance confirming that direct lending to clients (margin) is reserved to IIROC members and addressing the application of this provision to certain leveraged products.

(f) Disclosure when recommending the use of borrowed money (section 13.13)

We have removed an exception from the disclosure requirements required when a registrant recommends the use of borrowed money to purchase securities. The exception only applied to members of IIROC and the MFDA. Members of IIROC and the MFDA are now fully exempt from these requirements as their rules adequately cover the same regulatory risks.

(g) Complaint handling (section 13.15 of Policy Statement 31-103)

We adopted the guidance that was proposed in the June 2010 Proposal. The guidance covers what the firm's complaint handling policies and procedures should include, recommendations as to the manner of responding to verbal complaints and complaints in writing, as well as the timeframe within which the complaint should be dealt with.

(h) Dispute resolution service (section 13.16)

We did not make the changes we proposed to section 13.16 to list the specific matters that require independent dispute resolution, following the comments we received on this proposal. We therefore maintained the existing requirement to provide such services for any trading or advising activity.

The transition period for the coming into force, for all registrants except those registered in Québec, of section 13.16 has been extended from September 28, 2011 to September 28, 2012 in section 16.16. The extension of this transition period will allow the CSA to further consider this regime in light of a number of questions we have received. Considering the importance of this provision in respect of investor protection, we may publish proposed amendments for comments in the future.

We remind firms registered in Québec that this transition period is not applicable to them because they have been, and continue to be, subject to sections 168.1.1 to 168.1.3 of the *Securities Act* (Québec) since 2002.

14. Handling client accounts

(a) Relationship disclosure information (section 14.2)

Section 14.2(2)(j) has been amended to reflect the fact that not all registered firms are currently required to comply with section 13.16 as they may be relying on the transition period (as amended in section 16.16). This transition period does not apply to firms registered in Québec and to firms registered after September 28, 2009.

(b) Notice to clients by non-resident registrants (section 14.5)

We amended section 14.5 by adding an exception to the requirement to provide the risk notice to clients in a jurisdiction if the firm has its head office in Canada and is registered in the local jurisdiction. In response to comments received, Regulation 31-103 no longer refers to a physical place of business.

We further amended section 14.5 in order to make the contents of the risk notice to clients consistent with the notice which must be given by dealers and advisers relying on the exemptions provided in sections 8.18 and 8.26 respectively. Firms are not

required to send a new notice as amended to existing clients, since the amendments are not retroactive.

(c) Content and delivery of trade confirmation (section 14.12)

We amended section 14.12 as follows:

- section 14.12(1) now allows the registered dealer to deliver trade confirmations to a registered adviser acting for the client if the client consents in writing;

- section 14.12(3) now expands the exceptions to the requirement in section 14.12(1)(h) to a security of a mutual fund that is established and managed, as an investment fund manager, by the registered dealer or an affiliate of the dealer, where the names of the dealer and the fund are sufficiently similar to indicate that they are affiliated or related;

- new subsection (5) requires a registered investment fund manager to send a trade confirmation to a security holder when the investment fund manager executes a redemption order received directly from the security holder; and

- new subsection (6) clarifies that we did not intend for subsection (5) to apply to an adviser, that is also an investment fund manager, relying on the dealer registration exemption in section 8.6.

We included additional guidance in Policy Statement 31-103 in respect of a registered dealer outsourcing the delivery of trade confirmations to an investment fund manager.

(d) Confirmations for certain automatic plans (section 14.13)

We removed the condition to send a trade confirmation semi-annually to a client where the registered dealer relies on the exemption from sending a trade confirmation as the client already receives a quarterly or annual account statement showing the same information under section 14.14.

(e) Account statements (section 14.14)

We amended section 14.14 to provide that

- a mutual fund dealer (upon certain conditions) need not send an account statement on a monthly basis (section 14.14(2.1));

- where there is no dealer of record, the investment fund manager is expected to send account statements at least once every 12 months (section 14.14(3.1)); and

- a scholarship plan dealer (upon certain conditions) need not send quarterly account statements (section 14.14(6)).

We included additional guidance in Policy Statement 31-103 in respect of a registered firm's ability to outsource the delivery of account statements and the valuation of securities by third-party pricing providers for the purpose of account statements.

We did not make the proposed amendments to section 14.14 of Regulation 31-103 that would have required that securities be valued using fair value. Section 14.14 continues to refer to market value.

15. Transition

We extended certain transition periods to September 28, 2012:

- temporary exemption for Canadian investment fund manager registered in its principal jurisdiction (section 16.5);

- temporary exemption for foreign investment fund managers (section 16.6); and

- complaint handling in respect of dispute resolution services (section 16.16), except in Québec.

16. Form 31-103F1 *Calculation of Excess Working Capital*

We made technical adjustments to this form, including

- terminology changes in accordance with Regulation 52-107 that reflect Canada's changeover to IFRS. This includes adding a definition of fair value for the purpose of valuing securities in the Form 31-103F1 which aligns with a registrant's requirement to value securities in financial statements in accordance with Canadian GAAP applicable to publicly accountable enterprises under Regulation 52-107;

- clarification that the insurance deductible refers to the insurance maintained in accordance with Part 12;

- addition of new guidance notes to the form;

- revising the list of designated exchanges; and

- inclusion of new margin rates for mortgages. These new margin rates apply to all mortgages not in default. If a firm is registered in Ontario, or in any jurisdiction of Canada *and* Ontario, these new margin rates apply only to mortgages insured under the *National Housing Act* (Canada) and conventional first mortgages. If a firm is registered in any jurisdiction in Canada *except* Ontario, the new margin rates and insurance requirements apply to all mortgages.

17. Form 31-103F2 *Submission to Jurisdiction and Appointment of Agent for Service*

We included a requirement to provide the international firm's NRD number, if applicable, and contact information for their chief compliance officer.

18. Appendix B *Subordination Agreement*

To add clarity, we amended section 4 of the subordination agreement to provide a 10-day prior notice to the securities regulatory authority of full or partial repayment of the loan, in accordance with section 12.2. We remind registrants that related party debt must be excluded from a firm's working capital on Form 31-103F1, unless the firm and the lender have executed a subordination agreement.

19. Amendments to Regulation 33-109

(a) Definition of permitted individuals

We clarified the definition of permitted individual in section 1.1 of Regulation 33-109 and added guidance in Policy Statement 33-109 indicating that a permitted individual may or may not be a registered individual.

(b) Timelines for filing

We amended all provisions setting out the filing timelines of notices. Where a notice was previously required to be filed in 7 days it is now required to be filed within 10 days.

(c) Voluntary resignation

We added the words "resigned voluntarily" in section 2.3(2)(b) to correlate with Form 33-109F7 *Reinstatement of Registered Individuals and Permitted Individuals*.

(d) Termination of employment

Further to our June 2010 Proposal, we revised section 4.2(1)(b) of Regulation 33-109 so that the information in item 5 [*Details about the termination]* must be completed in all cases of termination, unless the termination was due to the death of the individual.

(e) Use of forms

We added additional guidance in Policy Statement 33-109 regarding the use of the forms.

20. Amendments to Regulation 33-109 forms

(a) Technical changes and updating contact information

We made certain technical changes to the following forms to update contact information and add clarity:

- Form 33-109F1 *Notice of Termination of Registered Individuals and Permitted Individuals*
- Form 33-109F3 *Business Locations Other than Head Office*
- Form 33-109F5 *Change of Registration Information*
- Form 33-109F7 *Reinstatement of Registered Individuals and Permitted Individuals*

(b) Form 33-109F2 *Change or Surrender of Individual Categories*

In addition to technical changes, updating contact information and clarifications, we amended Form 33-109F2 in order to add a question on relevant securities industry experience in Item 4 – *Adding categories.*

(c) Form 33-109F4 Registration *of Individuals and Review of Permitted Individuals* (Form 33-109F4)

In addition to technical changes, updating contact information and clarifications, we amended Form 33-109F4 in order to:

- add a question on relevant securities industry experience in Item 8 – *Proficiency*;
- add questions relative to the CFA Charter and the CIM designation in Schedule E – *Proficiency (Item 8)*;
- add questions on relevant securities industry experience in Schedule F – *Proficiency (Items 8.3 and 8.4)*; and
- add a question in Schedule G - *Current employment, other business activities, officer positions held and directorships (Item 10)* with respect to the name of the person at the sponsoring firm who has reviewed and approved the multiple employment or business related activities or proposed business related activities.

We added guidance in Policy Statement 33-109 on Item 18 *Agent for service* to clarify that there is no distinct form which is prescribed under Regulation 33-109 for the appointment of an agent for service for use by individuals, and that the form used by the registered firm constitutes an acceptable format to the regulator.

(d) Form 33-109F6 *Firm Registration* (Form 33-109F6)

In addition to technical changes, updating contact information and clarifications, we amended Form 33-109F6 in order to:

- clarify what we mean by "jurisdiction", "jurisdiction of Canada" and "foreign jurisdiction" and that the questions in Part 4 –*Registration History* and *Part 7 – Regulatory Action* are to be answered in respect of any jurisdiction of Canada and any foreign jurisdiction. In other parts of Form 33-109F6, references to "jurisdictions" or "jurisdiction of Canada" refer to all provinces and territories of Canada;

- clarify the audited financial statement requirements in section 5.13; and

- state that the information provided in Part 7 - *Regulatory Action* and Part 8 – *Legal Action* is limited to the last 7 years, which is consistent with the regulator's or, in Québec, the securities regulatory authority's administrative practice with respect to the Form 33-109F6 as required under Part 6.1 of Regulation 33-109 (namely, the transitional F6). We remind registrants that, as outlined in Part 9 - *Certification*, all information must be provided to the best of the applicant's knowledge and after reasonable inquiry.

Appendix B

Summary of Comments and Responses on the June 2010 Proposal

This appendix summarizes the written public comments we received on the proposed amendments to *Regulation 31-103 respecting Registration Requirements and Exemptions* (Regulation 31-103), *Policy Statement to Regulation 31-103 respecting Registration Requirements and Exemptions* (Policy Statement 31-103), the forms under Regulation 31-103 and *Regulation 33-109 respecting Registration Information* (Regulation 33-109), *Policy Statement to Regulation 33-109 respecting Registration Information* (Policy Statement 33-109) as well as the forms under Regulation 33-109 (the Forms) (collectively, the Regulation) as published on June 25, 2010 (the June 2010 Proposal). It also sets out our responses to those comments.

This appendix contains the following sections:

1. Introduction

2. Responses to comments received on the Regulation 31-103 and the Policy Statement 31-103

3. Responses to comments received on Regulation 33-109 and related Forms

Please refer to Appendix A *Summary of changes to the Regulation* for the details of the changes we made in response to comments.

1. Introduction

(a) Drafting suggestions

We received a number of drafting comments on the Regulation. While we incorporated many of these suggestions, this document does not include a summary of the drafting changes we made.

(b) Categories of comments and single response

In this document, we consolidated and summarized the comments and our responses by the general theme of the comments.

(c) Comments beyond the scope of the June 2010 Proposal

We do not provide a response to comments received beyond the scope of the June 2010 Proposal. We provided responses to certain of these comments in the context of prior consultations. In other cases, we are continuing our work and may publish notices or proposed amendments for comment in the future.

2. Responses to comments received on the Regulation 31-103 and the Policy Statement 31-103

(a) IFRS fair value for the valuation of securities

We received several comments on proposed section 1.4, which would have required that registrants determine the *fair value* of securities in accordance with IFRS. The commenters indicated that there would be a significant operational impact on registrants in respect of this requirement. We did not make the proposed amendments.

We however added a definition of fair value in Form 31-103F1 *Calculation of Excess Working Capital* (Form 31-103F1) for valuing securities. The use of fair value in the Form 31-103F1 is in line with a registrant's requirement to value securities in financial

statements in accordance with Canadian GAAP applicable to publicly accountable enterprises under the new *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards* (Regulation 52-107). This alignment is necessary as a registrant's financial statements form the basis of the information reported on Form 31-103F1.

In response to comments indicating that *Regulation 81-106 respecting Investment Fund Continuous Disclosure* (Regulation 81-106) already provides an appropriate method for calculating the net asset value of certain mutual fund securities, the valuation of these securities in the Form 31-103F1 is based on the net asset value (NAV) as determined in accordance with Regulation 81-106.

(b) Proficiency requirements

i. Time limits on examination requirements

One commenter expressed the view that section 3.3 should be included in Part 9 of Regulation 31-103 as a provision from which IIROC members would be excepted, since the commenter is of the view that section 3.3 conflicts with IIROC Rule 2900. We disagree. Part 3 of Regulation 31-103 does not apply to IIROC approved persons, and therefore there is no need to exempt IIROC approved persons from the time limits on examination requirements. This is stated in the Policy Statement 31-103.

We received a comment agreeing with the proposed amendments to exclude holders of the CFA Charter and the CIM designation from the requirement of retaking their courses, however, the commenter suggested that this should be conditional upon their designation continuing to be "current" with either the CFA Institute (for the CFA designation) or CSI Global Education Inc. (for the CIM designation), and that the individual be in good standing with the organization that has granted the designation.

In response to this comment, we

- amended Policy Statement 31-103 to clarify that we may consider the revocation, or other limitation on the use of the CFA Charter or the CIM designation in the assessment of continued suitability for registration; and

- amended Item 8.1 *Course or examination/designation information and other education* in Schedule E – *Proficiency* of Form 33-109F4 *Application for registration of individuals and review of permitted individuals* by adding questions on the CFA Charter and the CIM designation to verify that these designations are in good standing.

We remind registered individuals in Policy Statement 31-103 that they are required to notify us of any change in the status of the CFA Charter or the CIM designation within 10 days of the change, by submitting Form 33-109F5 *Change of Registration Information* in accordance with *Regulation 31-102 respecting National Registration Database*.

ii. Proficiency principle

We received several comments on the inclusion in section 3.4 of the requirement to understand the structure, features and risks of each security that is recommended by the individual registrant. The commenters expressed the view that the proposed addition to section 3.4, which is a principle-based provision

- is redundant since the requirement to understand the structure, features and risks of each security (also known as the "know-your-product" requirement) already forms part of the requirement to perform registrable activities competently;

- would be more appropriately characterized as a suitability requirement; and

- appears to be already incorporated as a suitability requirement in section 13.3 of Regulation 31-103.

We amended section 3.4 to provide that the proficiency principle *includes* the requirement to understand the structure, features and risks of each security that is recommended by the individual. We do not believe this proficiency principle is redundant with the know-your-product requirement that forms part of the suitability obligations.

We added guidance in Policy Statement 31-103 to indicate that the proficiency principle, including knowledge and understanding of the securities that are recommended by the individual, applies notwithstanding the suitability exemption in respect of permitted clients in section 13.3(4).

iii. Chief Compliance Officers Qualifying Exam

We received a comment to the effect that the Chief Compliance Officers Qualifying Exam is an adequate proficiency requirement which should be available for chief compliance officers of exempt market dealers and investment fund managers. The Chief Compliance Officers Qualifying Exam is an IIROC approved exam. We amended sections of Part 3 of the Regulation 31-103 so that this alternative proficiency requirement applies to the chief compliance officers of exempt market dealers and investment fund managers, as well as the chief compliance officers of mutual fund dealers, scholarship plan dealers and portfolio managers.

iv. Experience requirements for advising representatives

One commenter expressed the view that, as currently stated, the requirements in section 3.11 appear to be different for individuals holding the CFA Charter as compared to individuals having the CIM designation, while the intent of the CSA, according to the commenter, was that they be essentially similar. We disagree and did not make the proposed change to section 3.11. Unlike the CIM designation, there are experience requirements, in addition to examination requirements, that need to be fulfilled in order to obtain the CFA Charter.

v. Proficiency requirements for chief compliance officers of portfolio managers

One commenter stated that the addition of the word *also* in section 3.13(b)(ii) has the effect of making cumulative the requirement of 5 years experience at a Canadian financial institution and the requirement of having worked at an investment dealer or adviser for 12 months. In response, we confirm that both of these requirements need to be satisfied and the amendment to section 3.11 is for clarification only. A registrant may meet this proficiency requirement *concurrently* if, within a 5 year period, the registrant was able to meet both requirements outlined above.

One commenter stated that section 3.14(b)(i) of Regulation 31-103 should include the Exempt Market Products Exam as one of the alternate proficiency requirements, which would allow the chief compliance officer of an exempt market dealer to qualify as the chief compliance officer of an investment fund manager without gaining additional industry-specific proficiency. We disagree. These are very different categories, and while there is a correlation between investment fund manager registration and mutual funds, the same cannot be said of exempt market dealer registration and mutual funds.

vi. Proficiency requirements for dealing representatives of mutual fund dealers and exempt market dealers

We clarified our intention to allow dealing representatives of mutual fund dealers and exempt market dealers to meet the proficiency requirements in sections 3.5 and 3.9 by the individual having earned a CFA Charter and 12 months of relevant securities industry experience in the 36-month period before applying for registration.

(c) Restrictions on acting for another registered firm

We received numerous comments on our proposal to prohibit individuals from acting as a dealing or advising representative of more than one registered firm. The proposed amendment has been viewed by commenters as

- causing an unnecessary restriction in a situation where a registrant is owned by two shareholders, each holding 50% of the registrant (as the registrant is not technically an affiliate of either 50% shareholder);

- ignoring the fact that valid business reasons exist for dual registration as long as individuals have sufficient time to carry out their duties and are not in a conflict of interest which cannot be managed; and

- ignoring the fact that in circumstances where a firm's operational structure necessitates multiple legal entities, it is often appropriate and necessary for firms to register individuals with different firms.

We were therefore requested to remove this restriction or, in the alternative, add an exception for affiliated firms.

The conflicts of interest that are potentially generated by dual registration are considered significant by the CSA. As part of the review of each individual's fitness for registration, we consider all of the individual's activities. The fact that the individual may be acting for affiliated registered firms is not determinative in our view.

We amended section 4.1, however, to provide that the registered firm should ensure that their representatives do not act on behalf of more than one registered firm. This should facilitate the filing of exemption applications on behalf of several individuals who do act on behalf of more than one registered firm.

Please note that we grandfathered individuals who were dually registered before the coming into force of the amendments to section 4.1.

(d) Categories of registration - firms

Investment fund manager

One commenter described a structure of an affiliated group of funds that in their view would avoid the requirement to register more than one investment fund manager within the group. In response, we clarified in the Policy Statement 31-103 that each investment fund manager is required to be registered, even where there is more than one investment fund manager within an affiliated group of funds. Investment funds organized as multiple entities within a fund complex are required to register, absent exemptive relief having been granted. Having a management agreement in place that delegates all or substantially all of the investment fund manager functions to an affiliate is only a factor we would consider in reviewing an application for exemptive relief, it is not determinative.

We received a submission that, in the context of fund complexes or groups, a general partner, trustee or board of directors of a corporation does not necessarily engage in "investment fund manager activities" and as such this entity is not required to be registered as an investment fund manager. The commenter also stated that only one investment fund manager per fund should be registered given the possibility of delegating to a registrant activities that require registration. The commenter views this as being consistent with the guidance for limited partnerships set out in section 7.3 of Policy Statement 31-103. The commenter also believes that the principle of delegation in section 7.3 should be equally applicable to trustees and corporations such that multiple registrations should not be necessary if the trust or corporation in question enters into a contract with a registered (or qualified) investment fund manager.

In response to the comment, we clarified the guidance on the requirement to register when the fund is part of a group or fund complex. We expect exemption applications to be made by investment fund managers that have delegated the management of the fund function to a registered affiliate, and we included guidance on the factors we will consider in respect of these exemption applications. We repealed the guidance on limited partnerships in view of this new guidance.

(e) Exemptions

i. Trades to or through a registered dealer

In response to requests for clearer guidance on the availability of this exemption in certain circumstances, we amended the Policy Statement 31-103 to address additional situations that demonstrate the appropriate use of this exemption.

ii. Investment fund trades by advisers to managed accounts (formerly Adviser – non-prospectus qualified investment fund)

One commenter expressed the view that an adviser that uses funds sub-advised by either affiliated or external portfolio managers would not be able to rely on this exemption when placing trades, including rebalancing trades on behalf of its managed account clients. We note that in these circumstances exemptive relief may be requested.

iii. International dealers

We were requested to amend section 8.18 to permit foreign fund managers to rely on the international dealer exemption if they are permitted to sell the securities of their foreign funds in their home jurisdictions without registration as a dealer. We believe that it would be more appropriate to consider this issue in the context of an exemptive relief application.

We received comments on the requirement that was proposed in the June 2010 Proposal on the Canadian residency requirement for permitted clients. We included a definition of Canadian permitted client and added an express restriction in this respect.

We also received several comments expressing the view that subparagraph (e) and (f) are not redundant and should not be repealed. Given the unintended consequences of this proposed change, as indicated to us by the commenters, we agree and did not repeal these subparagraphs.

We received requests for confirmation as to whether an international dealer or adviser would be required to send existing clients a new notice with the revised wording changes to section 8.18(4)(b) and 8.26(4)(e). We confirm that the requirement has no retroactive effect and that existing clients need not receive the new notice.

We received a request to clarify whether the notice to regulators required by section 8.18(5) is prospective or retrospective. We amended the provision to clarify that the notice must be given if the person relied on the exemption at any time during the 12 month period preceding December 1 of a year.

iv. Dealer without discretionary authority

One commenter expressed the view that the exemption from the adviser registration requirement under section 8.23 is only available to registered dealers and that this creates a regulatory gap for firms relying on dealer registration exemptions, such as the Northwestern exemption orders or the exemption in section 8.8 for investment funds and investment fund managers. We disagree. Giving advice is not permitted under the Northwestern exemption. Accordingly, the regulatory gap referred to by the commenter is not apparent: the adviser exemption is available to registered dealers because they are

registered, and not to persons engaging in dealing activities under the benefit of an exemption. If when acting as a dealer the person triggers the adviser registration requirement, they must register as an adviser unless an exemption is available.

We received a comment suggesting that there should be an exception to the disclosure requirement in section 8.25(3) where "buy, sell, or hold" recommendations are incidental to the main purpose of the publication (for example, where the main purpose is investor education). The commenter believes that the disclosure requirements in subsection 8.25(3) are onerous and impractical. We remind the commenter that disclosure is required by the person providing advice under this exemption only where certain persons have a financial interest or other interest in the security or securities being recommended. These are not new requirements. We do not agree with a distinction in disclosure requirements depending on the main or incidental purpose of the publication.

v. International advisers

One commenter has suggested that the intention of the international adviser exemption has been to provide qualifying clients with access to investment advice on foreign securities, which is often provided by way of global mandates. By their nature global mandates are structured to include some appropriate weighting for Canadian issuers reflecting Canada's relative economic position on a global basis.

While we did not make the change suggested by the commenter, we included guidance in the Policy Statement 31-103 on permissible incidental advice on Canadian securities by international advisers relying upon the exemption under section 8.26. We provide examples of such permissible incidental advice.

We received the same comments and request for clarification on the Canadian residency requirement of permitted clients, the client notice and regulator notice, respectively, as for the international dealer exemption, and our responses are the same.

(f) Exceptions for members of self-regulatory organizations (SROs)

We received a comment recommending that we delay the application of the proposed change to section 9.3(6) in Québec until the adoption of the MFDA-harmonized rules. The commenter states that the proposed amendment to the exemptions found under subsection 9.3(6) may have a significant impact on mutual fund dealers operating in Québec. Paragraph 9.3(6) currently exempts mutual fund dealers in Québec from the same ongoing registrant obligations as those for which MFDA members are exempt, provided that the mutual fund dealer complies with applicable regulations in Québec.

The Autorité des marchés financiers has previously publicly stated that it intends to adopt regulations largely harmonized to those of the MFDA by September 2011. Assuming that the proposed amendments to Regulation 31-103 will be enforced sometime in early 2011, the commenter is of the view that mutual fund dealers operating in Québec will need to comply with some of the ongoing registrant obligations in Regulation 31-103 for a few months, to then be subject to the new MFDA-harmonized rules.

We disagree with the comment. Mutual fund dealers in Québec must comply, since September 28, 2009, with certain sections Regulation 31-103, including section 14.2 and section 14.12. In the case of section 14.2, the Autorité des marchés financiers granted an exemptive relief order on September 1, 2010 to extend to mutual fund dealers in Québec the same transition granted to MFDA members. The amendment to the Regulation 31-103 in respect of the exemption now provided in section 9.4(4) is a clarification of the regime applicable to mutual fund dealers in Québec.

This section now provides that in Québec, the requirements listed in subsection (1) of section 9.4 do not apply to a mutual fund dealer to the extent equivalent requirements to those listed in subsection (1) are applicable to the mutual fund dealer under the regulations in Québec.

We refer in section 9.4(4) to *existing requirements* in Québec. The effect of section 9.4(4) is that existing requirements in Québec apply, and not the corresponding Regulation 31-103 requirement in respect of

- section 12.1 [capital requirements]
- section 12.2 [notifying the regulator of a subordination agreement]
- section 12.3 [insurance – dealer]
- section 12.6 [global bonding or insurance]
- section 12.7 [notifying the regulator of a change, claim or cancellation]
- section 13.3 [suitability]
- section 13.12 [restriction on lending to clients]
- section 13.13 [disclosure when recommending the use of borrowed money]
- section 13.15 [handling complaints]
- subsection 14.2(2) [relationship disclosure information]
- section 14.6 [holding client assets in trust]
- section 14.8 [securities subject to a safekeeping agreement]
- section 14.9 [securities not subject to a safekeeping agreement]

Since there is no equivalent *existing requirement* in Québec, the following sections of the Regulation 31-103, which are included in section 9.4(1), do apply to mutual fund dealers in Québec:

- section 12.10 [annual financial statements]
- section 12.11 [interim financial information]
- section 12.12 [delivering financial information – dealer]
- section 14.12 [content and delivery of trade confirmation]

We received a request to exempt SRO members also registered in other categories from the requirement to file financial statements and working capital forms with regulators. We are not making this requested change at this time. We note that SRO members that are registered in multiple categories may use the forms prescribed by the SROs, on certain conditions. See sections 12.1, 12.12 and 12.14 for requirements on calculating working capital and the delivery of working capital calculations for SRO members that are registered in multiple categories.

(g) Compliance systems

We received a comment to the effect that the guidance provided in the Policy Statement 31-103 is unclear whether systemic monitoring responsibilities can be fulfilled through firm procedures, or whether an “off-the-shelf product” is required. We reiterate that the compliance systems requirements in the regulation are principles–based and we do not mandate how registrants comply with the requirement.

(h) Solvency and financial reporting requirements

i. Capital requirements

We received comments that the current requirement that all guarantees, irrespective of their risk and/or character, be included in excess working capital, is unnecessarily onerous. The commenters submit that the interests of the public are best served by an excess working capital calculation that accounts for each of the following factors: (a) the size of the guarantee; (b) the registrant's category; (c) the likelihood the guarantee will be called; and (d) the nature of the guarantee (third-party guarantees versus related-party guarantees).

It is not possible to anticipate all situations suggested by the commenter. The excess working capital calculation has been designed to apply to all non-SRO registrants. Exemptive relief may be available if the requirement to include all guarantees is unduly burdensome.

We were also asked to reflect the non-cumulative nature of the capital requirements for a firm holding multiple registrations. We note that this is already stated in section 12.1 of the Policy Statement 31-103, under the heading *Working capital requirements are not cumulative.*

Finally, one commenter is of the view that there should be an exemption for US broker dealers provided they file the Financial Industry Regulatory Authority, Inc. (FINRA) form. We are not prepared to make this change at this time but will consider exemptive relief applications if certain conditions are met.

ii. Insurance requirements

We were asked to clarify in Form 31-103F1 that the "bonding or insurance policy" refers only to the bonding or insurance the firm must maintain pursuant to Part 12 of Regulation 31-103. We agree with the commenter and amended Form 31-103F1 accordingly.

One commenter has suggested that we amend Appendix A – *Bonding and Insurance Clauses*. The commenter believes that there are always exclusions and terms and conditions in commercially available bonding or insurance that limit coverage to something less than any loss arising from the listed risks. As a result, the commenter stated that strict compliance with these requirements is impossible. We disagree. The clauses in Appendix A are those currently being used in industry.

(i) KYC and suitability

We received comments to the effect that according to section 13.2(7), a registrant who is registered both as a mutual fund dealer (exempt from MFDA membership) and as an adviser would not be exempt from the requirement to establish whether a client is an insider of a reporting issuer.

The commenter believes that compliance with this requirement should depend on the capacity in which the registrant is acting in respect of a particular client and not on the number of categories of registration the firm or the individual holds. We agree and granted new blanket/omnibus relief in November 2010. We amended section 13.2(7) in the June 2010 Proposal accordingly.

(j) Restrictions on certain managed account transactions

We received several comments on the scope and application of section 13.5 for registered dealers that are members of IIROC and who conduct advising activities (IIROC advisers) to managed accounts. One of the commenters is of the view that if an IIROC adviser’s proprietary inventory account is considered to be an "investment portfolio" for the

purposes of section 13.5(2)(b) of Regulation 31-103, the amended section 13.5 of Regulation 31-103 (as published as part of the June 2010 Proposal) would prohibit the IIROC adviser from selling fixed income securities from its inventory account to its discretionary managed account clients. We had not fully considered the impact that the June 2010 Proposal would have on the ability of an IIROC adviser to trade securities from its inventory account.

Therefore, we did not make the change proposed in the June 2010 Proposal. However, we added additional guidance in the Policy Statement 31-103 on this issue.

(k) Referral arrangements

In response to a comment that the definition of referral arrangements is too broad, we again note, as in previous comment responses throughout the consultation process on Regulation 31-103, that this definition is intended by the CSA to be broad, as we are concerned with the business conduct of registered individuals. We however added guidance in the Policy Statement 31-103 indicating our view that the receipt of an unexpected gift of appreciation would not fall within the scope of a referral arrangement.

We received numerous comments on the fact that the provisions in Regulation 31-103 relating to referral arrangements and the rules made by IIROC and the MFDA in order to conform with Regulation 31-103 could result in the unintended consequence of regulating business arrangements of registered individuals acting in the capacity of a licensed insurance agent outside their dealer that are not related to securities-related business.

We confirm, in response to questions raised by commenters, that:

- we do not generally view a syndication arrangement for the offering of securities as a referral arrangement;

- the referral arrangement regime in the Regulation 31-103 does not prescribe that payment of referral fees be made to the firm;

- the requirement to ensure that the required disclosure is provided to clients rests on the registered firm; however, it can be provided by either party provided it is clearly set out in the referral agreement;

- an arrangement to purchase a list of potential clients may be considered a referral arrangement;

- a finder's fee may be considered to be within the scope of the referral arrangement provisions; and

- we reiterate that referral arrangements within the same firm are not generally covered by the regime, however, we expect a registered firm to consider these types of referrals as part of the conflicts requirements in section 13.4.

(l) Loans and margins

We received a comment stating that section 13.12 should be amended to allow loans made by an investment fund manager to a fund where the loan is for the purposes of enabling a fund to temporarily pay for unitholder redemptions and fund expenses. We acknowledge that an investment fund manager that lends money, extends credit or provides margin in certain circumstances may be prohibited from these activities under section 13.12. Accordingly we have provided an exception in section 13.12(2) which allows an investment fund manager to make certain loans Where any conflicts of interest arise in respect of these short-term loans, we expect registrants to manage that conflict.

One commenter has asked that we clarify whether section 13.12 is intended to prohibit a registrant from providing products to its clients that have embedded in them a leverage component. We amended the Policy Statement 31-103 to provide additional guidance on this issue.

(m) Complaint handling

We received requests for clarification on the interface between the Québec regime for complaint handling, including specific questions as to how compliance with the *Securities Act* (Québec) provisions, which is deemed to be compliance with the Regulation 31-103, is affected when the registrant is registered in several jurisdictions.

The Regulation 31-103 provisions on complaint handling are based on the Québec regime. However, Québec cannot adopt in a regulation provisions that are, in substance, already in its legislation. To the extent a registrant deals with a client in Québec, it must comply with sections 168.1.1 to 168.1.3 of the *Securities Act* (Québec) in all cases. When dealing with clients in other jurisdictions, the registrant must meet the Regulation 31-103 requirements. The only substantive difference is that the Autorité des marchés financiers will generally not act as mediator for complaints of clients outside Québec.

We also received comments stating that the guidance in the Policy Statement 31-103 is prescriptive and as such, should be in the Regulation 31-103. We remind commenters that the guidance, which was developed by the CSA together with IIROC and the MFDA, sets out our expectation on what would constitute an effective complaint handling system. The requirement to deal with client complaints provided in the Regulation 31-103 remains a principle-based requirement.

(n) Dispute resolution service

We received comments on the proposed list of complaints in section 13.16. We have not made this change and have maintained the language in the current law.

We have extended, in section 16.16, the transition period for the coming into force, outside Québec, of section 13.16 to September 28, 2012 to allow the CSA to further consider this regime in light of a number of questions we have received. Considering the importance of this provision in respect of investor protection, we may publish proposed amendments for comments in the future.

Commenters have suggested that the SROs amend their rules to provide the same choice of dispute resolution service. We note both IIROC and the MFDA rules mandate membership in the *Ombudsman for banking services and investments* (OBSI), which is consistent with section 13.16 of the Regulation 31-103 since OBSI is considered an independent dispute resolution service. We note that SRO rules may be more prescriptive than the requirements prescribed in the Regulation 31-103.

(o) Relationship disclosure information

A commenter has requested that section 14.2(2)(j) be amended in order to reflect the transition period for the coming into force of section 13.16 [*Dispute resolution service*]. We agree and amended section 14.2(j) accordingly.

(p) Notice to clients by non-resident registrants

We received comments requiring clarifications on the meaning of physical place of business. We also received a comment expressing the view that we should consider revising section 14.5 to exempt all registered firms who have a head office in Canada from the requirement to provide a section 14.5 notice to those of its clients who live in any other Canadian province or territory, regardless of whether the registered firm has a place of business in that Canadian province or territory.

We amended section 14.5 by adding an exception to the requirement to provide the risk notice to clients in a local jurisdiction if the firm has its head office in Canada and is registered in the local jurisdiction. The Regulation 31-103 no longer refers to a physical place of business.

(q) Account activity reporting

i. Trade confirmations

Further to the June 2010 Proposal, we are adding a requirement in section 14.12(5) for investment fund managers to send trade confirmations in certain circumstances. One commenter has expressed the view that section 8.6(1) exempts a portfolio manager from the requirement to register as an exempt market dealer if the portfolio manager acts as adviser and as investment fund manager to a fund, and the trades in units of the fund are with managed accounts of the portfolio manager. The commenter suggested that one unintended consequence of the addition of section 14.12(5) in the June 2010 Proposal is that it reinstates the requirement to send trade confirmations while the Regulation 31-103 exempts the firm relying on the section 8.6 exemption from this requirement. We agree with the commenter and have added a new subsection 14.12(6) which states that the trade confirmation requirement does not apply to trades made in reliance on section 8.6.

We received a comment expressing the view that 14.12 of the Policy Statement 31-103 should be amended to confirm that the existing documentation is sufficient to satisfy a dealer's outsourcing obligations. In response to this comment, we reiterate that firms may meet their obligations in a variety of ways, and our expectation is that firms ensure they are meeting the requirements to oversee their service providers. The level of oversight and the determination as to whether existing arrangements meet those requirements is up to the firm. We confirm that the guidance on outsourcing is not retroactive.

ii. Account statements

We received informative comments on our consultation on what securities are required to be reported in account statements and on the determination of the value of the securities reported in account statements. We have not made the proposed amendments to section 14.14 of the Regulation 31-103 that would have required that securities be valued using fair value. Section 14.14 continues to refer to market value.

We were asked to provide further clarity for scholarship plan dealers with respect to account reporting, given that these firms are scholarship plan dealers and investment fund managers of scholarship plans. We did not make any change to the Regulation 31-103 or the Policy Statement 31-103, as the dealer has the responsibility to send the account statements, and dual registration does not impact this requirement. The dealer may however outsource this function to the investment fund manager, but the dealer remains responsible for the reporting it outsources. We provide guidance on outsourcing in the Policy Statement 31-103.

On the timelines for providing account statements, we received a comment to the effect that the requirement to deliver monthly statements would apply to the dealer's registration as an exempt market dealer but not to the dealer's registration as a mutual fund dealer creating a misalignment in timing of delivery of statements. Each category of registration has its own requirements, which in certain cases may not align for registrants in multiple registration categories. We expect compliance with the Regulation 31-103 as prescribed for each category.

We were requested to clarify that registered dealers can continue to rely on third-party pricing providers when an observable market price is unavailable. We confirm that third-party pricing providers can be used by registrants to determine valuation of securities where an observable market price is unavailable, provided that there is adequate

oversight of the service providers by the registrant in accordance with the guidance on outsourcing in the Policy Statement 31-103.

We received comments suggesting that registrants should be exempt from the requirement to send account statements where another party is sending a statement. We provide guidance on outsourcing in the Policy Statement 31-103.

3. Responses to comments received on Regulation 33-109 and related Forms

(a) Regulation 33-109

We received a comment that the definition of “permitted individual” in Regulation 33-109 should be revised to clarify that a permitted individual may also be a registered individual. We amended the definition accordingly. We clarified the guidance in Policy Statement 33-109 to confirm that a permitted individual may or may not be a registered individual.

One commenter has stated the CSA should consider extending the deadline from 7 days to 10 business days to report material changes (for example, outside business activities, criminal disclosure, etc.) since it can take time for registered firms to review the individual’s information for completeness and gather the necessary supporting documents prior to reporting the change on the National Registration Database (NRD). We agree that longer timelines for filings are appropriate and changed all 5 business day and 7-day time periods to 10 days. Please note that the revised 10 day period is not 10 business days.

(b) Form 33-109F1 *Notice of Termination of Registered Individuals and Permitted Individuals*

One commenter has asserted that section 4 of Item 5 of Form 33-109F1 (which requires disclosure of "any written complaints, civil claims and/or arbitration notices filed against the individual or against the firm about the individual's securities-related activities…" in the past 12 months) is too broad in its scope. We disagree with the commenter. Written complaints are usually serious enough to warrant disclosure in section 4 of Item 5. We require this information in order to assess continued fitness for registration of the individual.

(c) Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals*

We received several comments on this form:

- one commenter stated that the instructions contained in this form, which advises the applicant to contact the compliance, registration or legal department of the sponsoring firm or a legal advisor if they have any questions relating to the information contained on the application, should be removed. The commenter is of the view that unless the legal adviser is familiar with securities regulations pertaining to disclosures, they could provide the registrant with inappropriate advice. This has occurred on a number of occasions where applicants failed to provide required information based on advice received from an outside legal source. Consequently, we amended the instructions to indicate that the applicant should consult with a legal advisor with securities regulation experience;

- in response to the comment that since “branch manager” is no longer an IIROC category this field should be updated to indicate *Name of Supervisor or Branch Manager*. We agree and made this change;

- one commenter suggested the language in the third section of Item 8.4 of Schedule F be amended to only relate to relevant experience. We disagree. This schedule is meant to capture level of responsibility, how much time has been spent on these activities and the applicant’s continuous education activities. These elements combine to form a description of relevant experience;

- one commenter stated that we should amend paragraph 2 of the guidance notes which advises applicants that they must disclose offences even if an absolute or conditional discharge has been granted (except as per outlined exceptions) or the charge has been dismissed, withdrawn or stayed. The commenter does not believe this is relevant information. We have not changed this paragraph because we believe that, although the charges may no longer be outstanding, they may form part of the assessment of the applicant's fitness for registration;

- we received a comment to the effect that the requirement to provide a listing of all individual creditors included in a bankruptcy or proposal which has been discharged is superfluous and that it should be sufficient to provide the total outstanding amount owing at the time of the bankruptcy or proposal. We disagree. The list of creditors is relevant in assessing the solvency of the applicant;

- we did not amend the form to indicate whether another business activity results in a shared premises situation; and

- in response to the comment that we should append a specific form for the submission to jurisdiction and appointment of agent for service for individuals, we added guidance in Policy Statement 33-109 indicating that the form used by the firm is an acceptable format to the regulator.

(d) Form 33-109F5 *Change of Registration Information*

We agree with the comment that we should add the NRD number and the registration categories of the firm, and have made this change.

(e) Form 33-109F6 *Firm Registration*

We received several comments on the requirements to provide information on "specified affiliates"; commenters stated that they consider the list of specified affiliates to be too broad and onerous to provide this disclosure. We note that, as outlined in Part 9 *Certification*, all information must be provided to the best of the applicant's knowledge and after reasonable inquiry. We acknowledge that this disclosure will vary according to the size of the firm and the number of affiliates. We amended Parts 7 and 8 to limit the information that must be provided to the last seven years in order that this disclosure is less onerous.

We received a request to clarify the meaning of "significant conflicts of interest" in section 6.2 of Form 33-109F6. As this is a principle based requirement, we expect registrants to make this determination according to the nature of the conflict and the size and activities of the firm.

List of commenters

- Advocis
- Alternative Investment Management Association - Canada
- BMO Financial Group's Private Client Group
- Borden Ladner Gervais LLP
- Canadian Bankers Association of Canada
- Canadian Foundation for Advancement of Investor Rights
- Canadian Imperial Bank of Commerce
- Canadian Investor Protection Fund
- Chambre de la sécurité financière (*available on the AMF website only*)
- CI Investments Inc.
- CSI Global Education, Inc.
- Edward Jones
- Exempt Market Dealers Association of Canada
- Fidelity Investments Canada ULC
- Gestion Universitas (*available on the AMF website only*)
- IGM Financial Inc.
- Independent Financial Brokers of Canada
- Investment Funds Institute of Canada
- Investment Industry Association of Canada
- Irwin, White & Jennings counsel to Growth Works Capital Ltd.
- Lycos Asset Management Inc.
- Manulife Securities Incorporated and Manulife Securities Investment Services Inc.
- Mouvement d'éducation et de défense des actionnaires (MÉDAC) (*available on the AMF website only*)
- Mouvement Desjardins (*available on the AMF website only*)
- Mutual Fund Dealers Association of Canada
- Nexus Investment Management Inc.
- Osler, Hoskin & Harcourt LLP
- RBC Dominion Securities Inc.
- RESP Dealers Association of Canada
- Rogers Group Financial
- Stikeman Elliot LLP
- Stonegate Private Counsel

Appendix C

Adoption of the Regulation

The Canadian Securities Administrators (CSA) are implementing amendments (the Amendments) to *Regulation 31-103 respecting Registration Requirements and Exemptions* (Regulation 31-103), *Policy Statement to Regulation 31-103 respecting Registration Requirements and Exemptions* (Policy Statement 31-103), *Regulation 33-109 respecting Registration Information* (Regulation 33-109), *Policy Statement to Regulation 33-109 respecting Registration Information* (Policy Statement 33-109) and related forms (collectively, the Regulation).

The amendments to Regulation 31-103 and to Regulation 33-109 will be implemented as:

- a rule in each of Alberta, British Columbia, Manitoba, Newfoundland and Labrador, Nova Scotia, New Brunswick, Ontario and Prince Edward Island

- a regulation in each of Québec, the Northwest Territories, Nunavut and the Yukon Territory

- a commission regulation in Saskatchewan

The amendments to Policy Statement 31-103 will be adopted as a policy in each of the jurisdictions represented by the CSA.

In Ontario, the Amendments and other required materials were delivered to the Minister of Finance on April 15, 2011. The Minister may approve or reject the Regulation or return it for further consideration. If the Minister approves the Regulation or does not take any further action, the Amendments will come into force on July 11, 2011.

In Québec, the Regulation is adopted as a regulation made under section 331.1 of the *Securities Act* (Québec) and must be approved, with or without amendment, by the Minister of Finance. The Regulation will come into force on the date of its publication in the *Gazette officielle du* Québec or on any later date specified in the Regulation. It is also published in the Bulletin of the Autorité des marchés financiers.

In British Columbia, the implementation of the Amendments is subject to ministerial approval. Provided all necessary approvals are obtained, British Columbia expects the Regulation to come into force on July 11, 2011.