NOTICE OF AND REQUEST FOR COMMENT ON

PROPOSED *REGULATION TO AMEND REGULATION 31-103 RESPECTING REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS*

PROPOSED *REGULATION TO AMEND REGULATION 33-109 RESPECTING REGISTRATION INFORMATION*

PROPOSED *REGULATION TO AMEND REGULATION* 52-107 *RESPECTING ACCEPTABLE ACCOUNTING PRINCIPLES AND AUDITING STANDARDS*

AND PROPOSED AMENDMENTS TO POLICY STATEMENTS

December 5, 2013

Introduction

The Canadian Securities Administrators (the CSA or we) are seeking comments on proposals to amend the current regulatory framework for dealers, advisers and investment fund managers.

We are proposing amendments, which range from technical adjustments to more substantive matters, the purpose of which is to promote stronger investor protection by resolving ambiguities and clarifying our intentions, which will enhance compliance. In our view, the proposed amendments will also create efficiencies for industry and regulators.

The documents affected by these proposed amendments are as follows:

- *Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations* (Regulation 31-103),
- *Policy Statement to Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations* (Policy Statement 31-103 or the Policy Statement),
- *Regulation 33-109 respecting Registration Information* (Regulation 33-109) and its appended forms (Forms),
- *Policy Statement to Regulation 33-109 respecting Registration Information* (Policy Statement 33-109),
- *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards* (Regulation 52-107), and
- Policy Statement to Regulation 52-107 respecting *Acceptable Accounting Principles and Auditing Standards* (Policy Statement 52-107).

We refer to Regulation 31-103, Policy Statement 31-103, Regulation 33-109, Policy Statement 33-109 and the Forms as the “Regulations”.

Background

Regulation 31-103 came into force on September 28, 2009 and introduced a new national registration regime that is harmonized, streamlined and modernized. Since implementation, we have monitored the operation of the Regulations and have had continuing dialogue with

stakeholders about questions and concerns they and we have had with working with the Regulations.

Substance and purpose

The proposed amendments represent both general improvements to the registrant regulatory framework and specific measures to deal with problems which have been identified. The objective of the amendments is to promote stronger investor protection by resolving ambiguities and clarifying our intentions which will enhance compliance and create internal and external efficiencies.

For example, we propose amendments to:

- Part 8 *Exemptions from the requirement to register* of Regulation 31-103 by codifying a sub-adviser exemption, as well as a short-term debt exemption, and amending certain existing exemptions in addition to interpretative guidance on certain exemptions in Policy Statement 31-103,

- limit the activities that may be conducted under the exempt market dealer category of registration to address concerns with the activities of certain foreign broker dealers in Canada,

- enhance and clarify proficiency requirements for registrants,

- streamline and clarify the filing requirements for notices under sections 11.9 [*Registrant acquiring a registered firm's securities*] and 11.10 [*Registered firm whose securities are acquired*] of Regulation 31-103,

- provide additional guidance relating to conflicts of interest in relation to registered representatives that serve on the boards of reporting issuers or have outside business activities, and

- update and improve certain Forms.

We are soliciting comments on all of the proposed amendments, as well as on some additional proposals that are discussed in this Notice (they are set out in shaded boxes for ease of reference).

The comment period will end on **March 5, 2014.**

Contents of this Notice

This Notice consists of the following sections

1. Summary and purpose of the proposed amendments to Regulation 31-103 and Policy Statement 31-103
2. Summary and purpose of the proposed amendments to Regulation 33-109, Policy Statement 33-109 and the Forms
3. Other consequential amendments
4. Alternatives considered and on-going work
5. Request for comments
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1. Summary and purpose of the proposed amendments to Regulation 31-103 and Policy Statement 31-103

The amendments we propose include proposals to

- give effect to omnibus / blanket relief orders relating to exam requirements for individuals registered when Regulation 31-103 first came into force, as described in CSA Staff Notice 31-315 *Omnibus / blanket orders exempting registrants from certain provisions of Regulation 31-103 respecting Registration Requirements and Exemptions*

- impose additional experience requirements for chief compliance officers (CCO) of dealer firms

- amend the activities exempt market dealers are permitted to conduct

- provide a general prohibition that a registrant cannot rely on exemptions to conduct activities that its registration permits

- provide an exemption for sub-advisers and exempt registered sub-advisers from certain registrant obligations

- incorporate into the Policy Statement some of the guidance currently contained in CSA Staff Notices and Multilateral Policies, including:

    - CSA Staff Notice 31-332 *Relevant Investment Management Experience for Advising Representatives and Associate Advising Representatives of Portfolio Managers*

    - CSA Staff Notice 31-326 *Outside Business Activities*

    - Multilateral Policy 34-202 *Registrants Acting as Corporate Directors*

- provide a more streamlined mechanism for the filing of notices under sections 11.9 and 11.10 of Regulation 31-103

- make various drafting changes to the Regulations and clarifications to the guidance in the Policy Statement in order to give better effect to our original intent and to codify staff administrative practice that is in keeping with the original intent of Regulation 31-103

- give effect to blanket rulings and staff positions concerning the international dealer and international adviser exemptions

- provide an exemption from the dealer registration requirement for trades in short-term debt

- provide guidance concerning the requirement to register for start-up entities, and

- extend certain exemptions to circumstances that are consistent with the original policy intent of the Regulations

The following is a summary of the more significant proposed amendments and additional matters for which we would like to receive comments. We follow the same order as the provisions in Regulation 31-103 and Policy Statement 31-103.

Part 1 Interpretation

(a) Section 1.1 [Definitions of terms used throughout this Regulation]

We propose to add a definition of "principal regulator" in section 1.1 [*Definitions of terms used throughout this Regulation*] of Regulation 31-103.

(b) Section 1.3 [Information may be given to the principal regulator]

We propose revisions to clarify most deliveries and submissions required under Regulation 31-103 may be made to the principal regulator.

(c) Section 1.3 [Fundamental concepts] of Policy Statement 31-103

We propose additional guidance in section 1.3 of Policy Statement 31-103 to clarify the application of the business trigger to start-up entities.

We have proposed amendments to the guidance on venture capital and private equity in order to clarify when venture capital and private equity investing activities may trigger the requirement to register.

Issue for comment:

Section 1.3 of Policy Statement 31-103 contains guidance on a number of fundamental concepts that form the basis of the registration regime, including the "business trigger" for determining when an individual or firm may be considered "in the business" of trading or advising and therefore subject to a registration requirement. This guidance is largely principles-based and reflects case law and regulatory decisions that have interpreted the business trigger test for securities matters. It is intended to accommodate legitimate start-up issuers who may otherwise have concerns about some of the existing language in section 1.3 of Policy Statement 31-103. This added guidance takes into account the enforcement cases that have dealt with "business trigger" issues where certain issuers have engaged in illegal distributions of securities with no legitimate business objectives.

We have proposed some additional guidance in section 1.3 of Policy Statement 31-103 to clarify the application of the business trigger test to start-up issuers. We understand that some start-up issuers may be concerned that they are required to register as a dealer since their early stage business may not appear to qualify as an active non-securities business. The additional guidance is intended to make it clear that a start-up issuer will be considered to have an active non-securities business and therefore will not be required to register if it has a bona fide business plan and is raising capital to advance that plan.

We invite specific comment on whether the additional guidance in section 1.3 of Policy Statement 31-103 is sufficiently clear and workable to assist start-up issuers in determining whether their activities trigger the requirement to register. Would this additional guidance be difficult to apply in your specific circumstance and if so what concerns do you have?

If you believe the guidance is not sufficiently clear or workable, how can we improve this guidance? How can we address the interest of start-up issuers in raising capital while ensuring that issuers whose primary business purpose is issuing their own securities remain subject to the business trigger?

Part 3 Registration requirements – individuals

(d) Section 3.3 - Time limits on examination requirements

We propose amendments to section 3.3 of Regulation 31-103 to codify relief from section 3.3 [*Time limits on examination requirements*] in respect of examinations and programs in sections 3.7 [*Scholarship plan dealer – dealing representative*] if the registrant was registered as a dealing representative of a scholarship plan dealer when Regulation 31-103 came into force. These proposed amendments will also codify relief from section 3.3 in respect of examinations and programs in section 3.9 [*Exempt market dealer – dealing representative*] if the registrant was registered in Ontario and Newfoundland and Labrador as a dealing representative of a limited market dealer when Regulation 31-103 came into force. We plan to repeal the existing orders granting the relief if these proposed amendments come into force.

(e) CCO experience requirements for mutual fund dealers, scholarship plan dealers and exempt market dealers

We propose amendments to section 3.6 [*Mutual fund dealer – chief compliance officer*], section 3.8 [*Scholarship plan dealer – chief compliance officer*] and section 3.10 [*Exempt market dealer – chief compliance officer*] of Regulation 31-103 to add an experience component to the proficiency requirements for chief compliance officer of dealer firms. This proposed amendment results from our findings during compliance reviews of dealer firms and aligns with the requirement that registered individuals must not perform any activity that requires registration unless they also have the experience that a reasonable person would consider necessary to perform the activity competently.

In the course of compliance reviews, we have identified a number of dealer firms that have CCOs who are not adequately performing their responsibilities, and this deficiency is often associated with a finding that the CCO does not have the relevant experience. By adding the experience component for CCOs of dealers, we would be harmonizing the proficiency requirements with those applicable to CCOs of portfolio managers and investment fund managers.

(f) Sections 3.11 [Portfolio manager – advising representative] and 3.12 [Portfolio manager – associate advising representative] – Relevant investment management experience

We propose to include guidance in Policy Statement 31-103 about what we may consider to be relevant investment management experience to provide industry with greater clarity and information. This guidance should be considered by registered firms when making hiring decisions, deciding whether an individual should apply for registration as an advising representative or an associate advising representative, and when preparing and reviewing applications to be submitted.

This guidance is based on our review of applications for registration as advising representatives or associate advising representatives since Regulation 31-103 came into effect. For specific examples, we refer you to the CSA Staff Notice 31-332 *Relevant Investment Management Experience for Advising Representatives and Associate Advising Representatives of Portfolio Managers* published on January 17, 2013.

Part 4 Restrictions on registered individuals

(g) Section 4.1 [Restriction on acting for another registered firm]

We propose to amend section 4.1 of Regulation 31-103 to clarify its scope. We consider the conflicts of interest that are potentially generated by dual registration to be significant. As part of the review of each individual's fitness for registration, we consider all of the individual's

employment activities, including outside business activities, with one or more registered firms in any jurisdiction of Canada.

The legislative intent of the dual registration prohibition set out in section 4.1 of Regulation 31-103 is to put the onus on firms, which often operate in multiple jurisdictions, to bring to the regulators' attention circumstances where conflicts of interest are potentially generated by dual registration. This proposed amendment codifies our original intent that the prohibition applies to a firm registered in any jurisdiction of Canada, and not only a firm registered in the local jurisdiction.

Part 7 Categories of registration for firms

(h) Section 7.1 [Dealer categories]

Further to CSA Staff Notice 31-333 *Follow-up to Broker Dealer Registration in the Exempt Market Dealer Category,* we propose amendments to section 7.1 [*Dealer categories*] in order to restrict the activities that exempt market dealers may conduct and prohibit exempt market dealers from conducting brokerage activities (trading securities listed on an exchange in foreign or Canadian markets).

In addition, we are clarifying that exempt market dealers are prohibited from trading freely tradeable exchange-traded securities off marketplace. This prohibition is to ensure consistency with marketplace rules of the Investment Industry Regulatory Organization of Canada (IIROC) which prohibit an investment dealer from trading freely tradeable exchange-traded securities off marketplace.

We are also clarifying in the Policy Statement that exempt market dealers may only underwrite securities in limited circumstances. For example, an exempt market dealer may participate in a private placement of securities of a reporting or non-reporting issuer, but may not participate in an underwriting of a prospectus-offered security.

Part 8 Exemptions from the requirement to register

We are proposing amendments to the following registration exemptions:

(i) Proposed sections 8.0.1, 8.22.2 and 8.26.2 – removal of exemptions for registrants for activities that can be conducted under their registration

We propose to add new sections 8.0.1, 8.22.2 and 8.26.2 to Regulation 31-103, which would prohibit registrants from relying on exemptions in Part 8 of Regulation 31-103 to conduct activities their registration permits. We expect registrants to conduct their activities under their category of registration, in full compliance with securities legislation, including the requirements in Regulation 31-103.

When registrants conduct certain activities in reliance on exemptions, there are concerns relating to client confusion and the firm applying different conduct and oversight rules to the activities. For example, certain jurisdictions currently do not allow firms registered in the exempt market dealer category to concurrently rely on the international dealer exemption because this activity may present concerns with respect to client confusion, oversight issues, maintenance of books and records, or know-your-client obligations.

Issue for comment:

We invite comments on whether these amendments will result in registered representatives needing relief from proficiency requirements in certain circumstances.

We specifically invite comments on whether this proposed amendment should apply to all of the referenced exemptions and how it may impact the current business models of registrants.

We also specifically invite comments from registrants on whether, in the case of any specific exemptions, they will face difficulty in complying with the proposed amendment and why.

(j) Section 8.5 [Trades through or to a registered dealer]

We propose changes to section 8.5 [*Trades through or to a registered dealer*] of Regulation 31-103 in relation to the exemption for trades made through a registered dealer. To achieve a harmonized interpretation of section 8.5, we have removed the word "solely" which we considered to be ambiguous and propose this amendment to clarify which acts in furtherance of the trades contemplated under this exemption are permitted. We have added a condition to confirm that this exemption is not available if the person relying on the exemption solicits or contacts any person that is a purchaser in relation to the trade. We have revised the Policy Statement to reflect these changes and to include examples relating to the use of the exemption.

(k) Proposed section 8.5.1 [Trades through a registered dealer by registered adviser]

We also propose to add a new section 8.5.1 [*Trades through a registered dealer by registered adviser*] which provides an exemption from the dealer registration requirement for registered advisers. This clarifies that incidental trading activities by advisers do not require registration as a dealer, provided the trades are executed through a registered dealer. We have revised the Policy Statement to reflect this change.

(l) Section 8.15 [Schedule III banks and cooperative associations – evidence of deposit]

We propose to amend subsection 8.15(2) to clarify the exemption does not apply in Alberta, as an equivalent exemption is contained in the *Securities Act* (Alberta).

(m) Sections 8.18 [International dealer] and 8.26 [International adviser]

We propose amendments to sections 8.18 [*International dealer*] and 8.26 [*International adviser*] of Regulation 31-103. We propose to remove the definition of "Canadian permitted client" in these sections and revert to the use of the term "permitted client", as defined in section 1.1 of Regulation 31-103.

Effective July 11, 2011, amendments to Regulation 31-103 came into effect that incorporated a new definition of "Canadian permitted client" in sections 8.18 [*International dealer*] and 8.26 [*International adviser*] of Regulation 31-103 and imposed conditions on the use of these exemptions related to this new restrictive definition. Prior to these amendments, the conditions in these exemptions related to the less restrictive definition of "permitted client". After we published the amendments, it was brought to CSA staff's attention that the new definition of "Canadian permitted client" may be more restrictive than we intended.

As a result, all CSA members, other than the OSC, issued parallel orders that allow a person to rely on these exemptions as if the term "Canadian permitted client" read "permitted client".

Although the OSC did not issue an order, they confirmed that there was no public interest in pursuing an enforcement action for failure to comply with the "Canadian permitted client" condition where the international dealer or adviser complied with the "permitted client" condition.

We have reviewed this issue and are now proposing to revise sections 8.18 [*International dealer*] and 8.26 [*International adviser*] of Regulation 31-103 to revert back to the less restrictive "permitted client" conditions in these exemptions that were in force prior to July 11, 2011.

Issue for comment:

We are considering revisions to other conditions in section 8.18 [*International dealer*] of Regulation 31-103. We specifically invite comments on whether or not the condition in paragraph 8.18(3)(d) of Regulation 31-103 should be removed or revised to only apply when the international dealer is dealing with an investment dealer under paragraph 8.18(2)(e) or (f).

(n) *Section 8.20 [Exchange contract – Alberta, British Columbia, New Brunswick and Saskatchewan*

The section 8.20 [*Exchange contract – Alberta, British Columbia, New Brunswick and Saskatchewan*] exemption applies in Alberta, British Columbia, New Brunswick and Saskatchewan. The regulators in these jurisdictions are proposing changes to section 8.20 in order to harmonize its application with proposed changes to section 8.5 [*Trades through or to a registered dealer*] and to clarify the drafting to limit its general application.

(o) *Proposed section 8.22.1 [Short-term debt]*

All CSA members except Ontario have issued parallel orders that provided the dealer registration requirement does not apply to trades in short-term debt by specified financial institutions. We propose a new exemption in Regulation 31-103 that contains the same conditions as these blanket orders, including that the short-term debt instruments have a designated rating. In addition, we have added a new condition, limiting the use of the exemption to trades with permitted clients. We examined the use of the current orders and determined that generally the trading occurs with persons that meet the definition of a permitted client.

We believe that permitted clients generally have sufficient investment knowledge or resources to obtain expert advice, and accordingly may not need or wish to have the same level of protection as other investors. Finally, we have used new definitions in the exemption that correspond to amendments made to other regulations as a result of the implementation of *Regulation 25-101 respecting Designated Rating Organizations*.

We propose to retain the condition relating to the securities traded under this exemption having prescribed credit ratings. However, prior to adoption, we may amend or remove this condition based on the outcome of work in this area by other CSA committees.

Although the exemption is only available when all of the conditions are met, when the conditions cannot be met, the trade can likely be conducted through a registered dealer. Most financial institutions have affiliations or relationships with registered dealers.

We plan to repeal the existing orders when this new exemption comes into force.

In Ontario, there are alternate exemptions from the dealer registration requirement that are available for trading in short-term debt instruments, such as the exemptions in section 35.1 of the

Securities Act (Ontario) and section 4.1 of Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions*.

(p) Section 8.24 [IIROC members with discretionary authority]

We propose to add guidance in Policy Statement 31-103 on the adviser registration exemption that is available to members of IIROC (or dealing representatives acting on their behalf) that act as advisers to a client's managed account. The guidance clarifies that this exemption is available for all managed accounts, including where the client is a pooled fund or investment fund.

(q) Proposed section 8.26.1 [International adviser]

Currently, relief from the adviser registration requirement for certain non-resident sub-advisers is available in Ontario under Ontario Securities Commission Rule 35-502 [*Non-Resident Advisers*], in Québec under decision N° 2009-PDG-0191 and in other jurisdictions on a discretionary basis. We propose to harmonize our approach to this relief by including a new exemption in proposed section 8.26.1 [*International sub-adviser*] of Regulation 31-103.

(r) Section 8.28 [Capital accumulation plan exemption]

In the July 17, 2009 CSA Notice announcing our intention to adopt Regulation 31-103, we indicated that we were including the exemption in section 8.28 from the investment fund manager registration requirement on a temporary basis while we monitored the situation. We now propose to include this exemption on a permanent basis. We propose to clarify our intent that the exemption is only available to plan sponsors and plan service providers in respect of activities relating to a capital accumulation plan.

We have removed a condition in the exemption that the person does not act as an investment fund manager other than for an investment fund that is an investment option in a capital accumulation plan. The intention of this condition was to prohibit the exemption from being used if the person was otherwise required to be registered as an investment fund manager. We are proposing a new section 8.26.2 [*General condition to investment fund manager registration requirement exemptions*] which will prohibit the use of this exemption where the person is registered as an investment fund manager. If the activities of a plan sponsor or service provider that require investment fund manager registration are not solely related to capital accumulation plans, they will be required to register.

Part 11 Internal controls and systems

(s) Sections 11.9 [Registrant acquiring a registered firm's securities or assets] and 11.10 [Registered firm whose securities are acquired]

We propose amendments to Regulation 31-103 and Policy Statement 31-103 in order to streamline and clarify the process for reviewing the notices required under sections 11.9 and 11.10 of the Regulation 31-103. The proposed amendments would allow for the acquisition notices to be filed with the principal regulator of the registered firm. Notices must be filed with the principal regulator of the acquirer and the target registered firm (where the principal regulator is the same for both the acquirer and the target firms, then only one notice needs to be filed with the principal regulator). We propose that the principal regulator will share the notice with the other regulators, and will coordinate the review with them. Although all of the regulators having received the notice retain the power to object to the acquisition, we believe that the proposed amendments will facilitate both the filing and the review process.

We propose to clarify which share acquisitions are subject to the notice requirement, namely an initial acquisition of a direct or indirect ownership interest, beneficial or otherwise, in 10% or more of the voting securities of a firm registered in Canada or in any foreign jurisdiction. We therefore propose to repeal certain exceptions to the notice requirement, in both sections 11.9 and 11.10, considering that these exceptions would no longer be relevant or required.

We propose to add guidance in Policy Statement 31-103 to guide acquirers or acquired firms in the preparation of the acquisition notices, with suggestions on the information that should be included in these notices. We also remind IIROC dealer members that they are subject to sections 11.9 and 11.10 and therefore are required to file these notices with the applicable CSA regulators, despite the fact that IIROC has its own review and approval process.

Part 12 Financial condition

(t) Section 12.2 [Notifying the regulator or the securities regulatory authority of a subordination agreement]

We have noticed that a number of firms are not delivering subordination agreements to their principal regulator as required. We have also noticed that a number of firms are excluding current related party debt, which has been subordinated, from line 5 of the Form 31-103F1 [*Calculation of Excess Working Capital*], which we find to be unacceptable. We want to clarify our requirements for the delivery of subordination agreements to the principal regulator before the debt can be excluded in the firm's working capital calculation. We also want to clarify that only subordinated long term (and not current) related party debt can be excluded from the working capital calculation.

We propose amendments to section 12.2 [*Notifying the regulator or the securities regulatory authority of a subordination agreement*] of Regulation 31-103 to clarify the requirements relating to subordination agreements and the exclusion of non-current related party debt subordinated under these agreements from the calculation of excess working capital on Form 31-103F1. We have revised the Policy Statement and Form 31-103F1 to reflect these changes and the reasons for them.

(u) Section 12.12 [Delivering financial information – dealer]

In response to inquiries relating to the obligations of exempt market dealers to deliver financial information, we propose to amend subsection 12.12(3) of Regulation 31-103 to clarify when an exempt market dealer is exempt from subsection 12.12(2).

(v) Section 12.14 [Delivering financial information – investment fund manager]

We propose a new form, Form 31-103F4 *Net Asset Value Adjustments* on which an investment fund manager will report net asset value (NAV) adjustments as required by section 12.14 of Regulation 31-103. With this proposed new form requirement, we seek to harmonize and streamline the information provided by investment fund managers about NAV errors and adjustments by specifying which items of disclosure must be covered and the level of detail to be provided to regulators.

Part 13 Dealing with clients – individuals and firms

(w) Section 13.4 [Identifying and responding to conflicts of interest]

We propose additional guidance in Policy Statement 31-103 relating to conflicts of interest in relation to registered representatives that serve on the boards of reporting issuers or have outside

business activities. If we adopt this guidance, we plan to repeal previous guidance issued on these subjects, specifically:

- CSA Staff Notice 31-326 *Outside Business Activities* issued on July 15, 2011
- Multilateral Policy 34-202 *Registrants Acting as Corporate Directors*, amended effective September 28, 2009

(x) Proposed section 13.17 [Exemption from certain requirements for registered sub-advisers]

We also propose a new section 13.17 [*Exemptions from certain requirements for registered sub-*adviser] to Regulation 31-103 that exempts a registered adviser who is acting as a sub-adviser to a registered adviser or registered dealer from certain client obligations which may not be required in a sub-advisory arrangement, or if required, are customized to the relevant business needs and agreed to contractually (including, for example, requirements related to identifying and responding to conflicts of interest, referral arrangements, complaints, disclosure to clients about the fair allocation of investment opportunities, notice to clients by non-resident registrants, and account statements).

Issue for comment:

We invite specific comment on whether the registered sub-adviser should be exempted from each of the requirements listed in subsection 13.17(1), which we believe are not relevant to this type of business-to-business relationship where an individual investor is not involved, and whether there are other requirements that should also be listed. And if so, why.

2. Summary and purpose of the proposed amendments to Regulation 33-109, Policy Statement 33-109 and the Forms

Drafting changes

We propose various drafting changes to Regulation 33-109 and the Forms and clarifications to the guidance in Policy Statement 33-109. This will also codify staff administrative practice that is in keeping with the original intent of Regulation 33-109, the Forms and Policy Statement 33-109.

Business locations

We propose to add a definition of "business location" in section 1.1 [*Definitions*] of Regulation 33-109 that confirms a business location includes a registered individual's residence if regular and ongoing activity that requires registration is carried out from the residence or if records relating to an activity that requires registration are kept at the residence. We propose amendments throughout Regulation 33-109, Policy Statement 33-109 and the Forms relating to the use of this new defined term.

Specifically, we propose amendments to the certifications provided by registered individuals and their firms in the Forms. The certifications now require confirmation that if a business location is a residence, the individual consents to regulators entering the residence for the administration of securities legislation and derivatives legislation, including commodity futures legislation.

Reinstatement

Currently, individual registrants changing sponsoring firms may be required to file a Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals* if there have been changes to certain disclosures previously given. We propose changes to section 2.3 [*Reinstatement*] of Regulation 33-109 and Form 33-109F7 *Reinstatement of Registered Individuals and Permitted Individuals* to allow the filing of this form even when certain regulatory disclosures have changed.

Reporting changes for individuals

We propose to add a new paragraph 4.1(4)(d) to Regulation 33-109 and guidance in Policy Statement 33-109 that Form 33-109F2 *Change or Surrender of Individual Categories* be used to report a change to any information in Schedule C of Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals*.

Criminal disclosure

We propose to amend Item 14 of Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals* to clarify what disclosures are required. The amendments are intended to give clearer instructions on the requirements.

Principal regulator for foreign firms

We propose amendments to Item 2.2(b) of Form 33-109F6 *Firm Registration* that will, in conjunction with subsection 4A.1(2) of *Regulation 11-102 respecting Passport System*, provide that the selection of a principal regulator for firms that do not have a head office or are not already registered in Canada is the jurisdiction in which the firm expects to conduct most of its activities that require registration as at the end of its current financial year or conducted most of its activities that require registration as at the end of its most recently completed financial year. We also propose new guidance in Policy Statement 33-109 relating to this amendment.

Issue for comment:

We invite specific comment on whether the proposed new test (including related Policy Statement 33-109 guidance) is sufficiently clear and workable for determining the principal jurisdiction for firms that do not have a head office in Canada? The new test is being proposed because the current test may not have been easily applied in the case of all registrants. We would like to know if the new test would be difficult to apply in your specific circumstance and if so what concerns you may have.

Other proposed amendments

We also propose certain technical changes to the Forms to add clarity.

3. Other consequential amendments

Consequential amendments to Regulation 52-107 and Policy Statement 52-107

We are proposing consequential amendments to Regulation 52-107 and Policy Statement 52-107 to clarify that all registrants are subject to Regulation 52-107. We have added guidance in Policy Statement 52-107 to indicate that where a registrant is also an investment fund that is subject to

Regulation 81-106 respecting Investment Fund Continuous Disclosure (Regulation 81-106), the requirements in both Regulation 52-107 and Regulation 81-106 apply to the entity.

4. Alternatives considered and on-going work

The alternative to many of the proposed amendments is to not change the Regulations but continue to issue exemptive relief, whether on an omnibus / blanket basis or on a case-by-case basis, and to issue answers to frequently asked questions (FAQs). We think this alternative would be inappropriate considering the cost of exemptive relief and the immediate need to update the Regulations. Further, this alternative would not address all changes required.

As stated in this Notice, we are continuing to work on the framework for registrant regulation, and anticipate making further proposals to amend the Regulations. Specifically:

- *Section 13.5 [Restrictions on certain managed account transactions]*

  We considered amendments to section 13.5 [*Restrictions on certain managed account transactions*] of Regulation 31-103 to expand the provision to apply to IIROC members that conduct advising activities (IIROC advisers). We are not proceeding with these amendments because we are mindful that there may be significant unintended consequences in respect of trades made from IIROC members' inventory accounts. IIROC members that conduct advisory activities are not necessarily registered in the adviser category; however we are of the view that they should be held to similar standards and restrictions on managed account transactions as portfolio managers.

  We anticipate that IIROC will be examining these issues in a consultation and review process to allow all interested stakeholders an opportunity to comment. We expect this will result in changes to IIROC rules. We continue to expect IIROC members that conduct advisory activities to have policies and procedures that sufficiently mitigate the conflicts of interest inherent in trades made from inventory accounts to managed accounts.

- *Consideration by the CSA of proficiencies*

  Part 3 of Regulation 31-103 establishes general and specific education and experience requirements for individuals who perform an activity that requires registration. Proficiency requirements for registered individuals remain an area of active interest for the CSA, beyond the specific amendments to Part 3 that have been proposed in this Notice. As we continue to monitor and assess the adequacy of current requirements, we may identify further improvements/enhancements that should be pursued.

  Since implementation of the Regulations, we have not been actively working on the recognition of additional examinations or inclusion of alternative proficiency requirements in Part 3 [*Registration requirements - individuals*] of Regulation 31-103. In the near term, we will be developing a process to recognize additional examinations and other proficiency requirements as alternatives to the proficiency requirements. We may consider publishing guidance on the minimum standards and other requirements to be met by educational providers that are interested in developing and administering an alternative examination.

  We will expect that examinations focus and test the skills and knowledge necessary for the category of registration considering the CSA's examination-based model as the baseline level of knowledge necessary for an individual seeking registration. The recognition of any new examinations by the CSA would require the publication for comment of proposed amendments to Regulation 31-103.

- Custody of client assets

  We are considering whether to propose additional regulatory requirements (in Division 3 *Client assets* of Part 14 *Handling client accounts – firms* of Regulation 31-103) to enhance the existing regulatory framework for safeguarding client assets. Regulation 31-103 requirements currently focus mostly on the segregation of client assets and do not establish a detailed custodial regime. In contrast, portfolio assets of mutual funds that are subject to *Regulation 81-102 respecting Mutual Funds* must be held by a custodian that satisfies the requirements of Part 6 [*Custodianship of portfolio assets*] of that regulation. Other institutional investors (e.g., pension funds) are subject to similar "qualified" custodian requirements under other federal or provincial legislation. While Regulation 31-103 does not specify that client assets must be held with an external custodian (except for foreign registered firms), it appears that most registered firms use an external custodian to custody their clients' assets.

  We are reviewing Canadian client asset protection practices, identifying risks to client assets in light of the current industry practices and legal requirements and exploring how to mitigate such risks. We are also considering recent international developments, including changes to custody rules for broker-dealers and investment advisers made by the U.S. Securities and Exchange Commission. We are engaging in preliminary discussions with stakeholders to gather more information and will consider a number of options, which may include proposing amendments in the future.

5. Request for comments

We would like your input on the Regulations and related amendments. We need to continue our open dialogue with all stakeholders if we are to achieve our regulatory objectives to promote strong investor protection while fostering confidence in capital markets and registrants.

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period. All comments will be posted on the Autorité des marchés financiers website at www.lautorite.qc.ca and on the Ontario Securities Commission website at www.osc.gov.on.ca.

Thank you in advance for your comments.

Deadline for comments

Your comments must be submitted in writing by **March 5, 2014**.

Please send your comments electronically in Word, Windows format.

Where to send your comments

Please address your comments to all CSA members, as follows:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission

Superintendent of Securities, Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Registrar of Securities, Nunavut

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

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Questions

Please refer your questions to any of:

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6. Where to find more information

We are publishing the proposed amendments with this Notice. The proposed amendments are also available on websites of CSA members, including:

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