NOTICE OF PUBLICATION

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

REGULATION TO AMEND REGULATION 33-109 RESPECTING REGISTRATION INFORMATION

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

AND RELATED POLICY STATEMENTS

October 16, 2014

Introduction

We, the Canadian Securities Administrators (CSA) are adopting amendments (the Amendments) to the current regulatory framework for dealers, advisers and investment fund managers.

The texts affected by the Amendments are as follows:

- *Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("Regulation 31-103") and its forms
- *Policy Statement to Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("Policy Statement 31-103")
- *Regulation 33-109 respecting Registration Information* ("Regulation 33-109") and its 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")
- *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, Regulation 52-107, Policy Statement 52-107 and the forms as the "Regulation". In conjunction with the Amendments, some jurisdictions are also making consequential and housekeeping amendments to various national, multilateral and local instruments and policies. You can find the text of the Amendments in the annexes to this Notice and on the websites of some CSA jurisdictions, including

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
http://nssc.novascotia.ca/
www.fcnb.ca
www.osc.gov.on.ca
www.fcaa.gov.sk.ca

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

The Amendments have been, or are expected to be, adopted by each member of the CSA. In some jurisdictions, ministerial approvals are required for the implementation of the Amendments. If all necessary ministerial approvals are obtained, the Amendments and the consequential and housekeeping amendments come into force on January 11, 2015.

List of annexes

This Notice contains the following annexes:

- Annex A – Summary of changes to the Regulation
- Annex B – Summary of comments on the December 2013 Proposal and responses
- Annex C – List of commenters
- Annex D – Adoption of the Regulation

Substance and purpose

The Amendments represent both general improvements to the registrant regulatory framework and specific measures to deal with problems we have identified. They 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 and create efficiencies for industry and regulators.

Background

We published proposed amendments for comment on December 5, 2013 (the December 2013 Proposal). We made changes to certain of the amendments proposed in the December 2013 Proposal, several of which are in response to the comments. We also made a number of minor drafting changes generally, to clarify and update the Regulation. We concluded that these changes do not require the CSA to publish the Amendments for another comment period.

You can find a description of the key changes we made to the Regulation in Annex A of this Notice.

Summary of written comments received by the CSA

We received 122 comment letters on the December 2013 Proposal, and we thank everyone who submitted comments. A summary of their comments, together with our responses, is in Annex B and the names of the commenters are in Annex C of this Notice.

Copies of the comment letters are available at www.osc.gov.on.ca.

Local matters

All CSA jurisdictions are publishing amendments to or are repealing specified national, multilateral and local instruments and policies. These amendments are described below.

Housekeeping amendments

All CSA jurisdictions except Québec will adopt amendments to reflect the change in the title of Regulation 31-103 from "*Registration Requirements and Exemptions*" to "*Registration Requirements, Exemptions and Ongoing Registrant Obligations*" that came into force on July 11, 2011. Québec is not required to make these housekeeping amendments because of specific legislation (*An Act Respecting the Compilation of Québec Laws and Regulations* (Québec)). Ontario is not a party to *Regulation 11-102 respecting Passport System*; therefore it will not adopt the housekeeping amendment to that regulation. The housekeeping amendments are published with this Notice in local jurisdictions.

Extension of short-term debt blanket orders

All CSA jurisdictions except Ontario issued local orders in the past exempting certain financial institutions from the dealer registration requirement for trades in short-term debt. The terms of those orders have been incorporated in section 8.22.1 of the Regulation 31-103, which will come into force on July 11, 2015. The local orders, which are scheduled to expire on December 31, 2014, have been extended until section 8.22.1 of the Regulation 31-103 comes into force. The amendments relating to these orders are published with this Notice.

Questions

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

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Annex A

Summary of changes to the Regulation

This annex summarizes the Amendments. We reference the sections of the Regulation except where otherwise indicated. This annex contains the following sections:

1. Amendments to Regulation 31-103 and Policy Statement 31-103
2. Amendments to Regulation 33-109 and Policy Statement 33-109
3. Amendments to Regulation 52-107 and Policy Statement 52-107

If all necessary ministerial approvals are obtained, the Amendments will come into force on January 11, 2015.

Amendments to Regulation 31-103 and Policy Statement 31-103

Part 1 Interpretation

Section 1.1 [definitions of terms used throughout this Regulation]

We have added definitions for the following terms in section 1.1:

- designated rating
- designated rating organization
- DRO affiliate
- principal regulator
- sub-adviser

Section 1.3 [information may be given to the principal regulator]

We clarified the delivery and submission requirement under Regulation 31-103, by providing that deliveries and submissions may generally be made to the principal regulator.

Section 1.3 [fundamental concepts] of Policy Statement 31-103

We added guidance in section 1.3 of Policy Statement 31-103 to clarify the application of the business trigger to start-up entities. This guidance acknowledges that issuers may not actively carry on their activities during their start-up stage, and provides indications on, among other things, active solicitation through directors, officers and other employees of the issuer.

We also amended the guidance on venture capital and private equity to clarify when venture capital and private equity investing activities may trigger the requirement to register.

Part 3 Registration requirements – individuals

Section 3.3 [time limits on examination requirements]

We amended section 3.3 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 changes 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 or Newfoundland and Labrador as a dealing representative of a limited market dealer when Regulation 31-103 came into force. We intend to repeal the existing orders granting the relief when the Amendments come into force.

Sections 3.6 [mutual fund dealer – chief compliance officer], 3.8 [Scholarship plan dealer – chief compliance officer] and 3.10 [exempt market dealer – chief compliance officer] – chief compliance officer experience requirements for mutual fund dealers, scholarship plan dealers and exempt market dealers

We amended section 3.6, section 3.8 and section 3.10 of Regulation 31-103 to add an experience component to the proficiency requirements for chief compliance officers of dealer firms. This now forms part of the proficiency requirement for chief compliance officers of dealers, in line with the proficiency requirements applicable to chief compliance officers of portfolio managers and investment fund managers.

Sections 3.11 [portfolio manager – advising representative] and 3.12 [portfolio manager – associate advising representative] – Relevant investment management experience

We included guidance in Policy Statement 31-103 about what we may consider to be relevant investment management experience, which should be considered by registered firms in the following situations:

- making hiring decisions
- preparing and reviewing applications to be submitted

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

Section 4.1 [restriction on acting for another registered firm]

We clarified the scope of section 4.1 by taking into account multi-jurisdictional registration. We will consider all of the individual's employment activities, including outside business activities, with one or more registered firms in any jurisdiction of Canada.

Part 7 Categories of registration for firms

Section 7.1 [dealer categories] – exempt market dealers

We amended section 7.1 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). Exempt market dealers are now prohibited from trading freely tradeable exchange-traded securities off marketplace unless there is reliance on a further exemption. We clarified the guidance in the Policy Statement to indicate what activities exempt market dealers can, and cannot, engage in.

Subsection 7.1(5) will come into force on July 11, 2015.

Part 8 Exemptions from the requirement to register

We amended Part 8 of Regulation 31-103 as follows:

New 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 added new sections 8.0.1, 8.22.2 and 8.26.2. These sections prohibit a registrant from relying on exemptions in Part 8 of Regulation 31-103 if they are registered in the local jurisdiction to conduct the activities. This prohibition does not apply to exemptions under local securities legislation.

Section 8.5 [trades through or to a registered dealer]

We amended section 8.5 in relation to the exemption for trades made through a registered dealer, by removing the word "solely" which had created ambiguities, and by clarifying which acts in furtherance of the trades contemplated under this exemption are permitted. We added a condition so that the 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.

New section 8.5.1 [trades through a registered dealer by registered adviser]

We added a new section 8.5.1 which provides an exemption from the dealer registration requirement for registered advisers. This clarifies that incidental trading activities by registered advisers do not require registration as a dealer, as long as the trades are executed through a dealer registered in a category that permits the trade or a dealer operating under an exemption from the dealer registration requirement. We have revised the Policy Statement to reflect this change. The version published for comment did not distinguish between Canadian and foreign dealers.

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

We clarified subsection 8.15(2) by providing that the exemption does not apply in Alberta, as an equivalent exemption is contained in the *Securities Act* (Alberta).

Sections 8.18 [international dealer] and 8.26 [international adviser]

We have removed the definition of "Canadian permitted client" in these sections and reverted to the use of the term "permitted client", as defined in section 1.1.

Section 8.20 [*exchange contract – Alberta, British Columbia, New Brunswick and Saskatchewan]*

We amended section 8.20 to harmonize its application with the changes made to section 8.5 [*trades through or to a registered dealer*] and to limit its general application.

New section 8.20.1 [exchange contract trades through or to a registered dealer – Alberta, British Columbia, New Brunswick and Saskatchewan]

In response to comments, we have added this section to parallel new section 8.5.1 [*trades through a registered dealer by registered adviser*] for exchange contracts in Alberta, British Columbia, New Brunswick and Saskatchewan.

New section 8.22.1 [Short-term debt]

We added a new exemption that contains the same conditions as the parallel orders issued by all CSA members except Ontario, with a new condition limiting the use of the exemption to trades with permitted clients. The definitions used in the exemption correspond to amendments made to other regulations as a result of the implementation of *Regulation 25-101 respecting Designated Rating Organizations*.

We plan to repeal the existing orders when this new exemption comes into force, allowing for a six-month transition period.

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*.

Section 8.22.1 will come into force on July 11, 2015.

Section 8.24 [IIROC members with discretionary authority]

We added guidance in Policy Statement 31-103 on the adviser registration exemption that is available to members of the Investment Industry Regulatory Organization of Canada (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.

Section 8.26 [international adviser]

We amended paragraph 8.26(4)(b) to harmonize its application with paragraph 8.26.1(2)(b).

New section 8.26.1 [international sub-adviser]

We added a new section 8.26.1 to codify the current relief from the adviser registration requirement for certain non-resident sub-advisers, which has been 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. In response to comments, we removed the proposed chaperoning conditions.

Section 8.28 [capital accumulation plan exemption]

We clarified our intent that the exemption for capital accumulation plans is only available to plan sponsors and plan service providers in respect of activities relating to a capital accumulation plan. We removed the 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 added a new section 8.26.2 [*general condition to investment fund manager registration requirement exemptions*] prohibiting 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

Sections 11.9 [registrant acquiring a registered firm's securities or assets] and 11.10 [registered firm whose securities are acquired]

We amended Regulation 31-103 and Policy Statement 31-103 to streamline and clarify the process for reviewing the notices required under sections 11.9 and 11.10, by allowing 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). The principal regulator will share the notice with the other regulators, and will coordinate the review with them.

We clarified which securities and asset 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. Certain exceptions to the notice requirement are repealed since they are no longer relevant or required.

We added guidance in Policy Statement 31-103 for acquirers or acquired firms in the preparation of the acquisition notices, with suggestions on the information to be included in these notices.

We 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

Section 12.2 [notifying the regulator or the securities regulatory authority of a subordination agreement]

We amended section 12.2 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. These changes are reflected in the Policy Statement and Form 31-103F1.

Section 12.12 [delivering financial information – dealer]

We amended subsection 12.12(3) to clarify when an exempt market dealer is exempt from the requirement to deliver financial information under subsection 12.12(2).

Section 12.14 [delivering financial information – investment fund manager]

We added Form NI 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. In response to comments, we made several changes to this form.

Part 13 Dealing with clients – individuals and firms

Section 13.4 [identifying and responding to conflicts of interest]

We added guidance in Policy Statement 31-103 about conflicts of interest in relation to registered representatives that serve on the boards of reporting issuers or have outside business activities. CSA Staff Notice 31-326 *Outside Business Activities* issued on July 15, 2011 and Multilateral Policy 34-202 *Registrants Acting as Corporate Directors*, amended effective September 28, 2009, will be repealed.

New section 13.17 [exemption from certain requirements for registered sub-advisers]

We added section 13.17 to exempt 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 necessary in a sub-advisory arrangement, or if necessary, are customized to the relevant business needs and agreed to contractually. In response to comments, we removed the proposed chaperoning conditions.

2. Amendments to Regulation 33-109 and Policy Statement 33-109

Drafting changes

We have made various drafting changes to Regulation 33-109 and the forms and clarifications to the guidance in Policy Statement 33-109, to 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 added 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 made amendments throughout Regulation 33-109, Policy Statement 33-109 and the forms relating to the use of this new defined term.

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 previous disclosures. We amended section 2.3 [r*einstatement*] 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 added 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 amended Item 14 of Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals* to clarify what disclosures are required.

Principal regulator for foreign firms

We amended Item 2.2(b) of Form 33-109F6 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 have also included new guidance in section 3.1 of Policy Statement 33-109 relating to this amendment.

Other amendments

We made other amendments to Regulation 33-109 and forms:

Permitted individual

We amended the definition of "permitted individual" to clarify that it includes trustees, executors and other legal representatives that have direct or indirect control of more than 10% of the voting securities of a firm.

Forms 33-109F4 and 33-109F7 in format other than NRD format

We broadened the instructions in the forms so that an applicant who has questions about the form can consult with a legal adviser with securities law experience, rather than one with only securities regulation experience.

3. Amendments to Regulation 52-107 and Policy Statement 52-107

We amended 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.

We have also made a housekeeping amendment in paragraph 2.1(2)(a) to reflect the previous change to the title of Regulation 31-103.

ANNEX B

SUMMARY OF COMMENTS ON THE DECEMBER 2013 PROPOSAL AND RESPONSES

This annex summarizes the written public comments we received on the December 2013 Proposal and our responses to those comments.

This annex contains the following sections:

1. Introduction

2. Responses to comments received on the Regulation31-103 and the Policy Statement

3. Responses to comments received on Regulation 33-109 and its forms

We received no comments on the amendments to Regulation 52-107 and Policy Statement 52-107.

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

1. Introduction

Drafting suggestions

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

Categories of comments and single response

In this annex, we consolidated and summarized the comments and our responses by the general theme of the comments. We have included section references for convenience.

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

Personal corporations

Many commenters requested the ability to use personal corporations for their dealing representative activities. The comments are beyond the scope of the Amendments.

Definition of permitted client [section 1.1]

A commenter suggested we include a number of entities that are not currently captured in the definition but merit consideration as “permitted clients”. The comment is beyond the scope of the Amendments.

Application of the business trigger to start-ups [section 1.3 of the Policy Statement]

We received a number of comments about the application of the business trigger to start-up companies and companies that do not yet have an active business, as well as their directors, officers, employees and professional service providers. We revised the guidance as a result, but note that frequency is a factor in determining whether trading activity is for a business purpose.

Proficiency

Chief compliance officers of exempt market dealers [section 3.10]

Some commenters recommended additional proficiency requirements for chief compliance officers (CCOs) of exempt market dealers. Other commenters indicated their view that the 12 months of relevant securities experience requirement is not tailored to exempt market dealers and that, from a perspective of personnel, the requirement would constitute a barrier to entry.

In our view, the experience requirement for CCOs of exempt market dealers is consistent with the proficiency principle articulated in section 3.4 of the Regulation. The CCO of a dealer firm must have the education, training

and experience that a reasonable person would consider necessary to perform the activity competently, and the ability to design and implement an effective compliance system. We carefully considered the 12 months of relevant securities experience requirement in light of comments received, and concluded that it aligns with our mandate to provide protection to investors and to foster fair and efficient capital markets and confidence in the capital markets. Some commenters requested guidance on CCOs acting for more than one exempt market dealer and lawyers acting as CCOs. The comments are beyond the scope of the Amendments.

One commenter suggested continuing education requirements and proficiency requirements for chief financial officers. The comments are beyond the scope of the Amendments.

Relevant investment management experience [sections 3.11 and 3.12]

Two commenters asked for a review of the registration categories for client relationship managers who do not carry out portfolio management activities and may work for a different business unit. The review of registration categories is beyond the scope of the Amendments.

Commenters also asked for additional guidance on career development for associate advising representatives. The Regulation does not mandate the associate advising representative category as an apprenticeship category. Our understanding is that some firms register employees as associate advising representatives so they can perform a variety of tasks, not necessarily because they wish to become advising representatives. Some firms register an individual as an associate advising representative, who will work at the firm while completing proficiency requirements (for example, completing prescribed exams or gaining additional experience), which are needed to seek registration as an advising representative.

In all instances, the experience must be relevant to the registration category sought and cannot be limited to a subset of duties that the individual is permitted to engage in by the firm. Investors should be able to expect that an individual acting on behalf of the portfolio manager when providing advice or exercising discretionary authority meets the proficiency requirements for this category. Firms can implement a number of measures to ensure that their employees are qualified for registration as associate advising representatives or advising representatives, for example:

- screen and hire individuals who are qualified for the registration category (for example, when recruiting an individual, conduct due diligence on their previous securities experience)

- develop individuals internally by encouraging them to engage in a wider variety of activities under supervision (for example, research and analysis of securities)

The guidance set out in the Policy Statement aims to strike a balance by providing greater clarity while maintaining flexibility to allow us to continue to carefully assess applications for registration on a case-by-case basis.

Alternative course providers [Part 3 Division 2]

Several commenters suggested we broaden the current examination options. While the CSA recognizes that more work needs to be done to identify potential improvements to proficiency requirements for registered individuals, that work is beyond the scope of the Amendments.

One commenter proposed that relief from registration requirements be more transparent by, for example, posting a notice on the regulator's website. This would provide precedents and information about alternative experience and proficiencies that have been considered acceptable. The comment is beyond the scope of the Amendments.

Exempt market dealer activities

Participation in prospectus offerings [section 7.1]

The comments indicate that the words "whether or not a prospectus was filed in respect of the distribution" in subparagraph 7.1(2)(d)(i) and language in the Policy Statement may have been interpreted broadly by some market participants to allow exempt market dealers to be involved in prospectus offerings. As a general matter, we believe the appropriate dealer registration category for participating in prospectus offerings is the investment dealer category. We do not believe, as a matter of policy, that it makes sense to allow the exempt market dealer category to develop further into a competing platform for issuers that wish to make prospectus offerings. The CSA intends to examine further what activities an exempt market dealer should be permitted to conduct and may propose further amendments in the future. These further amendments may make a distinction between firms registered as both

portfolio managers and exempt market dealers that may want to participate in prospectus offerings of investment funds, and other exempt market dealers. In the interim, we are not making any changes to subparagraph 7.1(2)(d)(i).

In response to other comments, we also revised the language in the Policy Statement to make it consistent with the wording in subsection 7.1(5) and explained that exempt market dealers must not participate in a resale of securities traded on a marketplace unless the transaction requires reliance on a further exemption from the prospectus requirement.

Acts in furtherance of trade and referrals

Registered dealers or dealing representatives may engage in acts in furtherance of a trade that are limited to referring a client trade, in a security they are not permitted to trade under their category of registration to a dealer registered in a category that permits the trade. The referring dealer may not engage in any other acts in furtherance of the trade, including making statements about the merits of the security or making recommendations or otherwise representing to the purchaser that the security is suitable for the purchaser.

We added guidance in section 13.8 of the Policy Statement to describe some activities exempt market dealers may, and may not, engage in.

Prime brokerage

A commenter requested guidance on the regulation of international prime brokerage activities. The issue of prime brokerage is beyond the scope of the Amendments. We encourage firms to refer to the guidance in section 1.3 of the Policy Statement to assess whether registration is required.

Transition

In response to comments that a transitional period was necessary to allow for changes in business models, we propose a six-month transition period before amendments to subsection 7.1(5) prohibiting exempt market dealer activity in marketplace securities become effective.

Investment fund complexes [section 7.3 of Policy Statement]

One commenter asked for clarification about the Policy Statement guidance on investment fund complexes. We confirm that simply setting up a fund as a limited partnership does not require the general partner to seek exemptive relief. Whether the general partner of a fund structured as a limited partnership is an investment fund manager is a question of fact. The trigger for investment fund manager registration is a functional one based on the activities carried out. If the general partner is actively involved in the direction of the business, operations or affairs of the fund, then registration (or relief) will be required.

To clarify instances where more than one investment fund manager may require registration within a fund group, we have revised the language in section 7.3 of the Policy Statement under the heading **Investment fund complexes or groups with more than one investment fund manager**. This is a fact-specific analysis based on the activities carried out by the various entities within the group to determine which entity (or entities) is acting as an investment fund manager.

We have also removed the factors we will consider in granting relief. Although these factors may be relevant, whether relief is appropriate will also be fact-specific.

Exemptions from the requirement to register [Part 8]

Prohibition on use of exemptions while registered [sections 8.01, 8.22.2 and 8.26.2]

Some commenters thought the prohibitions were too wide. We point out that the prohibitions only apply to exemptions in the Regulation for activities the firm would be permitted to carry out under its category of registration. A mutual fund dealer, for example, could rely on the exemptions in section 8.15 and 8.21 of the Regulation, because these sections provide exemptions for trades in securities a mutual fund dealer is not permitted to trade under its category of registration.

The prohibitions do not apply to exemptions provided by legislation, such as subsection 3(4) of the *Securities Act* (Québec).

The rationale for the prohibitions is to ensure that registrable activity carried out by a registrant complies with securities law. Allowing registered firms to conduct some of their activity under an exemption could create client confusion, raise oversight issues, and may impact the firm's continued fitness for registration or its ability to manage its business risks. We agree there is less risk when the activities are in different jurisdictions from the jurisdiction in which the firm is registered. We have amended the section to prohibit reliance on an exemption in the local jurisdiction in which the firm is registered.

One commenter questioned how this applies to the ability or inability of an IIROC dealer to set up a separate exempt market dealer firm. The Amendments are not intended to impact that ability or inability.

Trades through or to a registered dealer [sections 8.5 and 8.5.1]

Some commenters felt the restriction against solicitation or direct contact was impractical, given how business is conducted. We point out that the exemption is only intended to permit acts in furtherance of a trade that do not involve soliciting or direct contact in relation to that trade. Meetings with clients that do not involve acts in furtherance of that trade and presentations about brands or strategies with no mention of specific securities may not be solicitation or direct contact in relation to that trade.

This exemption is only necessary if a person is in the business of trading. We encourage reference to section 1.3 of the Policy Statement, which sets out guidance on when a person is in the business of trading, to determine if their activities trigger the registration requirement. Depending on the circumstances, transmission, negotiation and settlement of documentation and client relations or administrative type contact may not amount to being in the business of trading.

In response to a comment, we added section 8.20.1 to mirror the exemption with respect to exchange contracts.

International dealer and international adviser [sections 8.18 and 8.26]

Commenters were generally in favour of reverting to the pre-2011 use of "permitted client" rather than the more restrictive "Canadian permitted client".

One commenter thought the existing exemption posed a risk to the Canadian securities industry if a foreign dealer failed to act in accordance with safeguards in Canadian regulation. We think the terms of the exemption are appropriate for the activity it permits.

One commenter suggested permitting dealers relying on the international dealer exemption to trade inter-listed securities. The comment is beyond the scope of the Amendments.

Short-term debt [section 8.22.1]

Commenters did not feel the restriction of the exemption to permitted clients only was warranted. Since an examination of the use of current exemption orders revealed that this type of trading generally occurs with permitted clients, we think it is an appropriate limitation.

A commenter felt a transition period would be necessary to address the practical implications of the amendments; we agree, and there will be a six-month transition period.

Sub-adviser [sections 8.26.1 and 13.17]

Commenters felt the "chaperoning" requirement was unnecessary. We agree, and have removed the requirement that was proposed in paragraphs 8.26.1(1)(c) and 13.17(2)(c).

One commenter requested guidance about the due diligence to be conducted for affiliated sub-advisers. We expect registered firms to exercise sufficient due diligence to ensure they are meeting their obligations to their clients, including their suitability obligations. The due diligence should also be sufficient to ensure a sub-adviser is meeting its obligations to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

Acquisition of a registered firm's securities or assets [sections 11.9 and 11.10]

IIROC members

One commenter considered the requirements unnecessary for IIROC members. We do not agree. An IIROC member is still a registrant under securities legislation and is not exempt from the application of sections 11.9 and 11.10.

The review of acquisition notices by the regulators is based on different criteria from those of IIROC. Acquisition notices give regulators an opportunity, before transactions are completed, to address ownership issues that could affect a firm's continued fitness and suitability for registration.

Internal reorganizations

One commenter was concerned that the removal of the exceptions that were in paragraph 11.9(3)(a) and subsection 11.10(3) would require notices of internal reorganizations. The amendments are consistent with the outcome we seek, which is that only initial acquisitions of 10% tranches are subject to regulatory approval. Filing with the principal regulator only is designed to simplify the process and reduce delays.

Estate freezes and other tax-driven transactions

A commenter requested further clarification in connection with estate freezes and other tax-driven transactions whose effective date may precede the filing date. We recommend that in such cases the notice be filed as soon as possible and include a description of the effective date and all relevant information.

Acquisition of foreign registrants

Some commenters expressed concern about the requirement for notices about acquisitions of a foreign registrant. This change was made so that the regulator would have notice of acquisitions that may have an impact on the local firm's continuing fitness for registration, for example, staffing resources and compliance.

Financial condition [Part 12]

Net asset value adjustments

Some commenters suggested we add a materiality threshold for reporting net asset value adjustments. We have declined to do so even though most investment fund managers use 0.5% of the net asset value as the materiality threshold. However, we expect investment fund managers to have a policy that clearly defines what constitutes a material error that requires an adjustment. In some cases, 0.5% may not be the appropriate threshold.

One commenter gave detailed comments about Form 31-103F4. We have revised the form where we agreed with those comments.

Exempt market dealer capital requirements

A commenter felt exempt market dealer capital requirements should be aligned with IIROC requirements. The comment is beyond the scope of the Amendments.

Form 31-103F1

A commenter suggested including money market funds from international jurisdictions other than the USA as part of working capital. We disagree with such a broad amendment and will continue to review exemption applications on a case-by-case basis.

Conflicts of interest [section 13.4 of Policy Statement]

Individuals who serve on a board of directors

Having ownership in a holding company is a business activity that requires disclosure, because it allows an individual to perform, control or indirectly influence business activity.

One commenter felt the guidance on acting as a director focused too narrowly on access to confidential information. The guidance in the Policy Statement is intended to deal specifically with a registrant's conflict of interest with respect to confidential information acquired as a director of a reporting issuer. We remind registrants that it is their responsibility to comply not only with securities laws but also with all applicable laws, including for example, corporate or tax laws.

Individuals who have outside business activities

Several commenters felt the new guidance in the Policy Statement was too broad. The disclosure of outside business activities, including positions of power or influence where the activity places the registered individual in contact with clients or potential clients, including positions where the registrant handles investments or monies of the organization, whether the registered individual receives compensation or not, is necessary to allow the firm and the regulator to conduct a meaningful assessment of an individual's fitness for registration, at the time of the application and on an ongoing basis. We require disclosure to ensure protection from unfair, improper or fraudulent practices for investors (and in particular, clients or potential clients who may be vulnerable). The disclosure is connected with the registered individual's work because the registered firm and the individual acting on its behalf are expected to (i) identify conflicts of interest that should be avoided, (ii) determine the level of risk a conflict of interest raises, and (iii) respond appropriately.

A registered firm must take reasonable steps to identify and respond to existing material conflicts of interest. We agree firms are responsible for implementing and monitoring their policies and procedures to ensure conflicts of interest are effectively managed. This includes effectively monitoring the outside activities of their registered and permitted individuals. The Amendments do not prohibit outside business activity; instead, it is up to the registered firm to determine whether there is a potential conflict of interest and whether it can be properly controlled before approving the activity (refusing approval is the last resort).

In the course of our reviews, we have identified firms that did not adequately discharge these obligations. Often, the deficiencies were associated with the firm's finding that the activity did not require disclosure. The activities were a source of potential conflict and included paid and unpaid roles with charitable, social and religious organizations where the individual was in a position of influence or in contact with clients or potential clients, or handled the investments or monies of the organization.

We encourage registered firms to implement, monitor and enforce appropriate policies and procedures to ensure compliance with securities legislation.

The CSA will continue to carefully monitor the disclosure submitted to assess both the suitability of each registered individual and the registered firm's response to existing or potential conflicts of interest.

One commenter suggested passive investments are outside the scope of outside business activity that requires reporting. We agree passive investments need not be disclosed.

3. Responses to comments received on Regulation 33-109, Policy Statement 33-109 and forms

Business location

Comments received suggested the threshold for where records are kept was very low. The definition of "business location" is intended to capture places where a firm conducts its business. This includes where representatives interview and interact with clients, as well as where client records are kept.

If a firm lists a private residence as a business address and it uses that address to conduct its registered business, it is appropriate for the regulator to be able to attend at that residence as part of its oversight of the firm's activities.

We would not consider firm documents or records that can be accessed from a residence as a result of remote online access to be records that are "kept at the residence".

Other comments

We received other comments on Regulation 33-109 and its forms. The comments are beyond the scope of the Amendments.

Annex c

List of commenters

1. Aarssen, John
2. Adams, Morgan
3. Advocis, The Financial Advisors Association of Canada
4. Almond, Dinah
5. Altenried, Ralph S.
6. Alternative Investment Management Association – Canada
7. Ameerali, Mark
8. Anderson, Rob
9. Andrews, Miriam
10. Ardill, John
11. AUM Law Professional Corporation
12. Bandoro, Darryl
13. Becker, Yvonne
14. Blix, Sean
15. Blouin, Gaetan
16. Borden Ladner Gervais LLP
17. Boyle, Christopher
18. Brooks, Tesia
19. Buelow, Glenda
20. Cameron, Darris
21. Canadian Foundation for Advancement of Investor Rights
22. Capital International Asset Management (Canada), Inc.
23. Cerson, Douglas J.
24. Chan, Phoebe
25. Comeau, Jack
26. Couture, Eric
27. Craig, Larry
28. Crocker, Ben
29. Cymbalisty, Harvey A.
30. Damme, Ivo
31. Devereaux, Glenn
32. Doran, Shane

33. Duquette, Timothy
34. Edward Jones
35. Edwards, Michael L.
36. Evans, John
37. Fader, Weston
38. Fidelity Investments Canada ULC
39. Furlot, Michael
40. Gillick, Todd
41. Gillrie, Hal D.
42. Girard, Phil
43. Grubb, Scotty
44. Haigh, Curtis A.
45. Haji, Farouk
46. Harris, Kent
47. Haug, Stan
48. Heinrich, Adam S.
49. Houcher, Dan
50. Howell, Michael
51. Hunter, Lorna A.
52. IGM Financial Inc.
53. Invesco Canada Ltd.
54. Investment Adviser Association
55. Investment Industry Association of Canada
56. Janzen, Bill
57. Ketcheson, Bill
58. Kinley, Rob
59. Kinnear, Kevin
60. Kolomijchuk, Yar
61. Kozak, David
62. Krtilova, Alena
63. Lauzon, Paul
64. Lepine, Ron
65. Lizak, Maria
66. Lybbert, Marilyn
67. Macri, Dino

68. Malboeuf, Stephane
69. Maragno, Carl
70. Marshall, Renae
71. Martin-Morrison, Yvonne
72. McArthur, Peter Ian
73. McCabe, Tyler
74. McMann, Sean
75. Miller Thomson LLP
76. Moore, Michael
77. Mouvement des caisses Desjardins
78. National Exempt Market Association
79. Nevison, Laine
80. Nickel, Marvin
81. O'Reilly, Stephen
82. Odam, Denise
83. Okano, James
84. Oliver Publishing
85. Ostapowich, Clayton
86. Petersen, Eric
87. Petersen, Maxine
88. Pineau, Shannon
89. Pinnacle Wealth Brokers Inc.
90. Pollock, Scott
91. Portfolio Management Association of Canada
92. Private Capital Markets Association of Canada
93. Prospectors & Developers Association of Canada
94. Raine, Lee
95. Raintree Financial Solutions
96. Rand, Wesley
97. RBC Dominion Securities Inc.; RBC Direct Investing Inc.; RBC Global Asset Management Inc.; Royal Mutual Funds Inc.; RBC Philips, Hager & North Investment Counsel Inc.
98. Reimer, Wes
99. Rodgers, Klint
100. Samborski, Mark
101. Schnell, Dale
102. Scoville, Curtis

103. Securities Industry and Financial Markets Association
104. Shadlock, Karen
105. Snider, Ted (Theodore)
106. Stanford, Tyler
107. Stewart, Pamela J.
108. Stikeman Elliott LLP
109. Sukkau, Lindsay
110. The Investment Funds Institute of Canada
111. Toic, Zeljko
112. Warnes, Michael
113. Watt, Don
114. Wellwood, Nadine R.
115. Westmacott, A. William (Bill)
116. Wickwire, Peter
117. Wiebe, Kent
118. Wingate, David
119. Yang, Yolanda
120. Zadrey, Ray
121. Zhang, Davis
122. Zurfluh, Darvin

Annex D

Adoption of the Regulation

The amendments to Regulation 31-103, Regulation 33-109 and Regulation 52-107 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, Policy Statement 33-109 and Policy Statement 52-107 will be adopted as a policy in each of the CSA member jurisdictions.

In Ontario, the Amendments and other required materials were delivered to the Minister of Finance on _____, 2014. The Minister may approve or reject the Amendments or return them for further consideration. If the Minister approves the Amendments or does not take any further action, the Amendments will come into force on January 11, 2015.

In Québec, the Amendments are 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. If all necessary approvals are obtained, British Columbia expects the Amendments to come into force on January 11, 2015.