**AMENDMENTS TO *POLICY STATEMENT TO REGULATION 31-103 RESPECTING REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS***

**1.** Section 13.4 of the *Policy Statement to Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations* is amended by replacing the subheading "***Individuals who have outside business activities***" and the 6 paragraphs that follow with the following:

"***Individuals who have activities outside of the sponsoring firm***

*(a) Firm oversight of outside activity and reportable outside activity*

The regulator will take into account and require reporting of certain outside activities of a registered individual when assessing that individual's application for registration or continuing fitness for registration, as well as the firm's fitness for registration. Please see the *Policy Statement to Regulation 33-109 respecting Registration Information* for more information.

Registered firms, on the other hand, are required to have policies and procedures to identify and address material conflicts of interest and risks arising from all outside activities that their registered individuals may participate in. This assessment by registrants should not be limited to only the outside activities reportable by registered firms to regulators. In particular, registered firms and registered individuals must determine whether an outside activity is a conflict of interest and determine whether the conflict of interest is material in the circumstances. Please refer to other areas in section 13.4 of this Policy Statement for more information.

*(b) Conflicts and other risks arising from outside activities*

Registered individuals' activities outside of their sponsoring firm may impact a registered individual's and a registered firm's ability to deal fairly, honestly and in good faith with their clients and to meet their obligations as a registrant, and may give rise to risks in the following areas:

- Outside activities may create material existing or potential conflicts of interest between a registered individual and the registered individual's clients, for example, because the compensation they receive for these activities, or the nature of the relationship between the individual and the outside entity, may cause some registered individuals to put their interests ahead of their clients' interests.

- Outside activities could interfere with the registered individual's ability to properly carry out the registrable activities. For example, if the outside activity requires the registered individual to work full-time during day-time hours, this could lead to insufficient time to properly service clients or to properly carry out the registrable activities, including remaining current on securities law and product knowledge.

- Outside activities could lead to client confusion, particularly where the outside activity relates to financial services (such as financial and estate planning, tax preparation, insurance, mortgage brokerage). The client may view the outside activity as part of the registered firm's activities. This may occur where the same premises, email address, business cards, mailing address, or telephone numbers are used. The outside business activity could expose the registered firm to complaints and litigation.

- When a registered individual in a position of influence deals with or advises clients or potential clients who may be susceptible to that influence, investor protection concerns arise. For example, the registered individual may use the position of influence to cause another individual to become a client or the other individual may be persuaded to purchase a security based upon their opinion of the registered individual and not upon the merits of the security or the other individual's investment needs and objectives. Such registrants must comply with additional requirements set out in section 13.4.3.

- The outside activity may be prohibited by law or regulation. For example, section 4.1 prohibits a registered individual from acting for another registered firm in certain circumstances and section 11.8 prohibits tied selling.

- Where a registered individual has outside activities, the individual may improperly use information obtained from the registered firm in the outside activity. Clients may have only provided confidential information for the purposes of dealing with the registered individual at the registered firm and not for use in the outside activity. If this information is privileged, confidential or insider information, the registered individual's use of this information in the outside activities may impact the registered firm's ability to comply with securities laws.

- Outside activities may reveal registrable activities being carried on by the registered individual outside of the registered individual's firm or with other unregistered persons. They may also reveal non-compliance with securities laws or otherwise objectionable conduct.

In order to be able to assess the conflicts and other risks, we expect registered firms to establish a reporting mechanism that requires their registered individuals to report their outside activities. Before approving any outside activities, registered firms are required to consider existing or potential material conflicts of interest and other risks that arise from outside activities. If the firm cannot properly address a material conflict of interest in the best interest of the client and manage the risks in accordance with prudent business practices, it should not permit the outside activity.

In addition, registered individuals are required to promptly report to their sponsoring firm any material conflict which arises between a registered individual and the registered individual's client in accordance with subsection 13.4.1(2). The registered individual must avoid carrying out the outside activities if controls are not enough to address the conflict in the best interest of clients and must not engage in the outside activity until the registered firm has given its approval for the outside activity.

*(c) Monitoring and supervising individuals' outside activities*

A registered firm is responsible for monitoring and supervising their registered individuals. This includes the activities outside of their sponsoring firm that the registered individuals participate in.

Monitoring and supervising registered individuals' outside activities helps registered firms meet their regulatory obligations, including:

- compliance with the requirement to operate an effective compliance system under section 11.1;

- the conflicts of interest provisions set out in section 13.4; and

- the restrictions on clients set out in section 13.4.3.

When the regulator reviews how a registered firm monitors and supervises their registered individuals' outside activities, we expect firms to:

- have appropriate policies and procedures to identify material conflicts of interest arising from outside activities and address these conflicts of interest in the best interest of clients, and that include a broad definition of "outside activities";

- require registered individuals to disclose to their firm, and require the firm to review and approve all outside activities prior to the activities commencing;

- have policies and procedures to determine that outside activities do not:

  - involve activities that are inconsistent with securities legislation, IIROC requirements or MFDA requirements, as applicable;

- interfere with the registered individual's ability to perform their regulatory obligations and to update the registered individual's knowledge and training to keep pace with new securities, services and developments in the industry that are relevant to the registered individual's business, and

- interfere with the registered individual's ability to properly service clients.

- provide training or education on outside activities, including the need to report on changes in outside activities and the restrictions on a registered individual who is in a position of influence as to the clients the registered individual can deal with or advise;

- require registered individuals to disclose to any new sponsoring firm, and require that new sponsoring firm to review and approve, all outside activities prior to the registered individual joining the new sponsoring firm;

- assess whether the registered firm has the necessary information and is able to properly supervise and monitor the outside activities;

- maintain records documenting its supervision of its individuals' outside activities and store these records so that they are available for review by regulators;

- take appropriate supervisory actions when the registered firm identifies non-compliance with its policies on outside activities, such as no or late reporting of an outside activity;

- identify existing and reasonably foreseeable material conflicts of interest and take appropriate steps to address such conflicts in the best interest of clients;

- permit only outside activities that do not impair the ability to provide adequate client service, including, where necessary, having an alternate representative available for the client;

- make a determination that the outside activity is consistent with the registrant's duty to deal fairly, honestly and in good faith with its clients;

- implement risk management, including proper separation of the outside activity and the registerable activity;

- assess the exposure of the registered firm to complaints and litigation arising from the outside activities;

- assess whether the registered firm's knowledge of its registered individual's lifestyle is commensurate with its knowledge of the registered individual's activities and stay alert to other indicators of possible fraudulent activity. For example, if information comes to the registered firm's knowledge (including through a client complaint) that a registered individual's lifestyle is not commensurate with the registered individual's compensation by the firm, we would expect the registered firm to make further inquiries to assess the situation.

Failure to fulfil these responsibilities may be taken into consideration in assessing the firm's continued fitness for registration.

Registered firms should consider the following additional practices in relation to the monitoring and supervision of their registered individuals' outside activities:

- using standard forms and/or questionnaires to collect and assess their registered individuals' outside activities;

- having an intake method for registered individuals to disclose these outside activities to the firm;

- providing guidelines that describe what an outside activity is and the types of outside activities that are restricted or prohibited by securities laws or by the registered firm;

- having active involvement of the appropriate staff of the registered firm in the oversight of outside activities;

- performing internet searches or branch reviews to identify non-disclosed outside activities;

- having their registered individuals provide annual certifications for attesting compliance with policies relating to outside activities;

- providing monthly or quarterly reminders to their registered individuals to report changes to their outside activities;

- disclosing outside activities to clients using a standard form that is tailored for each outside activity;

- obtaining acknowledgement from clients that they do not fall within the class of individuals that a registered individual who is in a position of influence may not trade for or advise.

Because the nature of outside activities as well as the individual's registered activities may evolve over time, the registered firm is responsible to monitor and supervise outside activities in such a way that material conflicts are continually addressed in the best interest of clients and the risks are managed in accordance with prudent business practices.".

**2.** The Policy Statement is amended by inserting, after section 13.4.1, the following:

**"13.4.3. Individuals in a position of influence**

When considering the approval of a registered individual's outside activity, registered firms are expected to understand the nature of the activity and determine if the activity puts the registered individual in a position of influence. Additional regulatory requirements apply where the activity of a registered individual is a position of influence. These requirements do not apply where the individual is solely a permitted individual (*i.e.*, the individual is not registered).

A registered firm is expected to have appropriate policies and procedures in place

- to identify all registered individuals who are in a position of influence,

- to provide reasonable assurance that the registered individual does not trade or advise in securities or derivatives with clients who are subject to that influence, and

- to report the position of influence as a reportable activity to regulators.

Where a registered firm has assessed that a position is not a position of influence, we expect registered firms to have documented their assessment at the time the assessment is made and have this documentation available to regulators upon request. Additionally, the conflicts of interest requirements set out in section 13.4 and 13.4.1 continue to apply to these activities. Only the requirements in section 13.4.3 would not apply.

Under section 13.4.3, certain specific roles are considered positions of influence. For example, a leader in a religious organization or other similar organization is a person who provides leadership or guidance on the faith in a recognized capacity in the organizational structure of the faith, such as a priest, deacon, rabbi, cantor or imam. It may be a position appointed by the faith's organization or selected by the congregation. It does not include any person who is responsible for only clerical or administrative duties, or any person who is only a member of the congregation. Other roles within the faith's organization that extend beyond clerical and administrative duties should be assessed on a case-by-case basis as to whether they are positions of influence. If a registered individual is known to the client or potential client through the

registered individual's role as a religious authority figure, it could influence the client's perceptions of the risks of the security or investment strategy, or of the duty of care owed by the registered individual.

An assessment of other positions is required. Registered firms could consider the following non-exhaustive factors to determine whether the outside activity puts the registered individual in a position of influence:

- the degree of influence that the registered individual has through that position due to the functions of the position, the prestige of the position or the training or specialized knowledge required for the position;

- the degree to which a person may be confused as to whether the registered individual is acting in the capacity as a registrant or in another capacity; and

- the degree of susceptibility another person has to the registered individual in that position due to the other person's reliance on or perception of the registered individual's specialized knowledge, expertise, or trustworthiness associated with the role.

If both the degree of influence by the registered individual in the position of influence and the confusion or susceptibility of a person subject to that influence are considered significant, a registered firm is expected to consider the outside activity to be a position of influence.

The determination of whether the registered individual is in a position of influence will be based on the specific facts and will be determined in light of all relevant considerations and the surrounding circumstances. A position that would not normally be a position of influence could be in certain circumstances. We expect firms to be sufficiently aware of their sponsored individual's activities to determine whether a particular activity may rise to the level of a position of influence.

For example, an individual who is a primary care physician would be viewed as being in a position of influence. The physician has specialized medical knowledge and training that patients would not have. Patients see the physician when they are unwell, are reliant on the physician for their health, and may view the physician favourably based on the medical treatment they received, which may make them susceptible to influence. In this scenario, the physician would not be permitted to trade or advise in securities or derivatives with current or ongoing patients of the physician.

However, an assessment of other health care roles is required to determine if it is a position of influence. For example, dentists, optometrists, and technical workers at a medical facility, such as X-ray technicians and data health management coordinators, are not considered to be positions of influence because the degree of susceptibility is not significant.

A caregiver in an assisted living facility may be a position of influence. The caregiver's primary role is to provide care to residents in the assisted living facility, which includes making care decisions. The residents and their family members would be reliant on the caregiver for the quality of care received and would not easily be able to change facilities.

Below are other examples of activities that registered firms may consider as positions of influence due to the influence they carry in their specialized role, coupled with the susceptibility of the persons who receive the services:

- a correctional officer working in the criminal justice system;

- a youth mentor in an organized program;

- social workers who serve a vulnerable client base (e.g., substance abuse programs, mental health care);

- an immigration consultant.

An example of an activity that may not be a position of influence is an instructor for a hobby or recreational course, such as learning to paint or dance, as opposed to a university or college course in finance required for a degree or diploma. While the instructor of a hobby or recreational course may grade students' work, the instructor does not have influence because the course is being taken for recreational or hobby purposes. The students are also not susceptible since the instructor is not grading the students for the purposes of granting a degree or diploma and the students do not rely on the grades for future education and employment opportunities.

Some elected officials, such as school trustees, would also not be considered positions of influence. While they may be influential, generally, they serve a broad base of people and may not use their position unilaterally. Therefore, the degree of susceptibility of their constituents does not rise to the level present in the examples above and in the expressly identified positions set out in paragraphs 13.4.3(2)(a) to (f) of the definition of position of influence.

However, there may be circumstances where an elected official may be in a position of influence. More prominent elected officials might be in a position of influence, as a potential client might be under the impression that specific securities or portfolio advice are being endorsed or approved by a governmental body. In particular, potential clients might view products offered by a prominent elected official to be of lower risk by virtue of the identity of the registered individual. Similarly, the perceived risk of an investment might be influenced if the registered individual is known to the client through the registered individual's role as a caregiver or, as noted above, as a religious authority figure.

A landlord would not be considered to be in a position of influence. While the landlord has power over their tenant in relation to the tenant's ability to continue to rent the accommodation, we would not view the degree of power of the landlord and the degree of susceptibility of the tenant to meet the level of a position of influence.

Individuals who are a liquidator, an executor or trustee of an estate or hold a power of attorney over another person would not, in our view, be in a position of influence. In these cases, the individual has been appointed to act on behalf of an estate or another person. The registered individual's influence is limited only to that estate or person and the individual has a fiduciary duty to act in the best interest of the estate or person. However, there is an inherent conflict of interest for a registrant to have full control or authority over the financial affairs of a client. In our experience, this is almost always a material conflict of interest. SRO rules only permit an individual to act as a liquidator, an executor, trustee, or power of attorney in certain circumstances. Registrants that are members of an SRO must comply with their SRO requirements. Where the individual is not subject to SRO rules, we expect registered firms to have policies and procedures in place such that these conflicts are identified and are either avoided or otherwise addressed in the client's best interest.".