

## **COMPANION POLICY**

### **33-102**

## **REGULATION OF CERTAIN REGISTRANT ACTIVITIES**

### **PART 1 DISCLOSURE**

#### **1.1 Leverage Disclosure**

**Leverage Disclosure** - Registrants are reminded that leveraging is an important factor to consider when determining suitability and when fulfilling other obligations to clients. National Instrument 33-102 Regulation of Certain Registrant Activities (the "National Instrument") in no way implies that the provision of the leverage disclosure statement referred to in section 2.1 of the National Instrument fulfils the registrant's ongoing duties to its clients. There may be circumstances when a registrant, as part of the registrant's general responsibilities, should remind investors about the risks of purchasing securities using in whole or in part borrowed money.

#### **1.2 Borrowed Money**

**Borrowed Money** - Section 2.1 of the National Instrument requires that leverage disclosure be provided to a retail client when a registrant makes a recommendation to a retail client to purchase securities using in whole or in part borrowed money, or otherwise becomes aware of a retail client's intent to purchase securities using in whole or in part borrowed money. This requirement applies whether or not the borrowed money was specifically borrowed for the purpose of purchasing the securities.

#### **1.3 Client acknowledgement**

**Client acknowledgement** - The acknowledgements of a retail client referred to in subsections 2.1(2) and 6.2(2) of the National Instrument may be obtained by a registrant in a number of ways, including requesting the retail client's signature, requesting that the retail client initial an initial box or requesting that the retail client place a check in a check-off box. It is the responsibility of the registrant to draw the client's attention to the disclosure. The acknowledgement must be specific to the information disclosed to the retail client (i.e. disclosure regarding the risks of using leverage to purchase securities or the description of the nature of securities) and must confirm that the retail client has read the relevant information.

#### **1.4 Exemption for Margin Accounts**

**Exemption for Margin Accounts** - Section 2.2 of the National Instrument exempts registrants from the requirement to provide additional leverage disclosure to retail clients opening a margin account. The exemption is provided because the by-laws, rules, regulations or policies of an SRO may already require that clients with

margin accounts acknowledge receipt of leverage disclosure in the account opening form.

## 1.5 Electronic Means

**Electronic Means** - All disclosure or consents required by the National Instrument may be delivered by electronic means and are subject to the provisions of all applicable federal or provincial legislation governing the delivery of electronic documents. Reference should also be made to National Policy 11-201 Delivery of Documents by Electronic Means.

## PART 2 COMPLIANCE AND SUPERVISORY ACTIVITIES

### 2.1 Registrant Premises

**Registrant Premises** - Securities legislation requires that a registrant designate one officer or partner, known as a compliance officer, to be responsible for ensuring compliance by the registrant and its registered personnel with securities legislation and the registrant's written procedures for dealing with its clients. Any office or branch office of the registrant may be designated by the registrant as its central location for a local jurisdiction.

### 2.2 Registrant Responsibility to Prevent Client Confusion

**Registrant Responsibility to Prevent Client Confusion** - The registrant is responsible for ensuring that clients understand with which legal entity they are dealing, especially if more than one financial service firm is carrying on business in the same location, and the products being sold to them. The client may be informed through various methods, including signage and disclosure. Registrants are reminded of the obligation to carry on all registrable activities in the name of the registrant. Contracts, confirmations and account statements, among other documents, should contain the full legal name of the registrant.

### 2.3 Supervision of Sub-branches

**Supervision of Sub-branches** - The Canadian securities regulatory authorities permit the operation of sub-branch offices of registrants in certain circumstances. The activities of registrants operating within a sub-branch office are generally supervised by a branch manager in a location other than the sub-branch. The Canadian securities regulatory authorities are of the view that such supervision is appropriate in most circumstances. However, the Canadian securities regulatory authorities will consider the facts on a case-by-case basis to ensure that an appropriate level of supervision is in place.

## PART 3 RECORD KEEPING

### 3.1 Third Party Access to Information

**Third Party Access to Information** - All registrants have a duty to maintain proper books and records and to ensure that there are proper safeguards in place to ensure that there is no unauthorized access to information, particularly confidential client information. If the registrant maintains books and records in a central location to which employees of a third party have access, the registrant should be particularly vigilant in ensuring these safeguards are implemented and effective.

## **PART 4 RETAIL CLIENT CONSENT**

### **4.1 Application of Part 3 of the National Instrument**

**Application of Part 3 of the National Instrument** - Part 3 of the National Instrument does not apply to a registrant registered under securities legislation in Québec with respect to its dealings with retail clients in Québec. These registrants must comply with *An Act Respecting the Protection of Personal Information in the Private Sector*, R.S.Q., c. P-39.1 regarding the protection of personal information of their clients.

### **4.2 Obtaining Retail Client Consent**

**Obtaining Retail Client Consent** - The retail client consent referred to in paragraph 3.2(b) of the National Instrument may be obtained by a registrant in a number of ways, including requesting the retail client's signature, requesting that the retail client initial an initial box or requesting that the retail client place a check in a check-off box.

### **4.3 Providing Consent**

**Providing Consent** - Subsection 3.2(b) of the National Instrument states that the client must "provide consent" to the disclosure of the confidential information. It is the view of the Canadian securities regulatory authorities that a retail client provides consent if the retail client takes positive steps to provide the consent required. Upon implementation of the National Instrument, a registrant that uses a "negative option" to obtain consent to disclose the confidential information does not comply with the requirement to obtain consent. For example, a retail client who does not check a check-off box or initial an initial box cannot be presumed to "provide consent" to the transfer of the information to a third party.

### **4.4 Consent by Existing Retail Clients**

**Consent by Existing Retail Clients** - The Canadian securities regulatory authorities recognize that registrants have existing clients that have already provided consent for the disclosure of confidential information. An existing retail client is considered to have provided consent under subsection 3.2(b) if the retail client:

- (a) has provided consent, either positively or negatively, to the registrant to disclose confidential client information prior to the implementation of the National Instrument, and
- (b) is provided with a notice that contains
  - (i) the disclosure required in subsection 3.2(a) of the National Instrument, and

- (ii) a statement of the right of the retail client to withdraw his or her consent.

This notice should be provided to all existing retail clients within 90 days of the implementation of the National Instrument.

## 4.5 Timing of Retail Client Consent

**Timing of Retail Client Consent** - Consent to the disclosure of confidential retail client information is to be obtained by the registrant when the information is collected (i.e. upon account opening). However, in certain circumstances, consent with respect to the disclosure of the information should be sought after the collection of the information if the registrant wants to provide the information to a third party not previously identified or if the use by the third party was not initially disclosed.

## PART 5 PRODUCTS AND SERVICES

### 5.1 Opening an Account

**Opening an Account** - The Canadian securities regulatory authorities note that the "products or services" referred to in section 3.3, section 4.1 and section 5.1 of the National Instrument include the opening of an account.

## PART 6 RELATIONSHIP PRICING

### 6.1 Relationship Pricing

**Relationship Pricing** - The Canadian securities regulatory authorities are aware that industry participants offer financial incentives or advantages to certain clients, a practice that is commonly referred to as relationship pricing. The tied selling provision in Part 5 of the National Instrument is intended to prevent certain abusive sales practices and is not intended to prohibit relationship pricing or other beneficial selling arrangements similar to relationship pricing. By way of example, the Canadian securities regulatory authorities are of the view that Part 5 of the National Instrument would not be contravened in a case where a financial institution offered to make a loan to a client on more favourable terms or conditions than the financial institution would otherwise offer to the client as a result of the client's agreement to acquire securities of mutual funds that are sponsored by the financial institution. They are of the view that Part 5 of the National Instrument would be contravened, however, if the financial institution refused to make the loan unless the client acquired securities of mutual funds that are sponsored by the financial institution, where the client otherwise met the financial institution's criteria for making loans.

(Voir également la décision 2001-C-0176)

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