NI 31-103 - Registration Requirements
Summary of Comments received by June 30, 2007

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List of Commenters (private individuals not included)

Advanta Mortgage Corp.
Advocis
AGF Funds Inc.
AIM Trimark Investments
AIMA Canada
Aird & Berlis LLP
Alan W. McFarlane Associates
Alberta Providence Financial Inc.
Alexander Capital Group Inc.
Assante Wealth Management
Association of Canadian Compliance Professionals
ATB Investment Services Inc.
Aveiro Investment Corp.
Banque Nationale du Canada
Barclays Global Investors Canada Limited
BlackHedge Capital Inc.
Blackmont Capital Inc.
BluMont Capital
BMO Investments Inc.
BMO Nesbitt Burns Inc.
Borden Ladner Gervais LLP
Brandes Investment Partners & Co.
Burgeonvest Securities Limited
Cambridge Corporate Development Inc.
Can Terra Developments Inc.
Canada Pension Plan Investment Board
Canada's Venture Capital & Private Equity Association
Canadian Advocacy Council
Canadian Association of Accredited Mortgage Professionals
Canadian Bankers Association
Canadian Listed Company Association
Canadian Trading and Quotation System Inc.
Canfin Financial Group
Cardinal Capital Management, Inc.
CareVest Capital Inc.
Certified General Accountants Association of Alberta
Certified General Accountants of Canada
Chambre de la sécurité financière
Chartwell Asset Management Inc.
CIBC
Cirplus Futures Inc.
Citrine Investment Services Ltd.
Claremont Advisors Ltd.
Cluster Asset Management Inc.
CMV Financial Corp.
Computershare Trust Company of Canada
Coniston Investment Corp.
Cooper Pacific Mortgage Investment Corporation
Crosbie & Company Inc.
Crown Properties International Corporation
CSI Global Education Inc.
Dan Hallett & Associates Inc.
Davies Ward Phillips & Vineberg LLP
Davis-Rea Ltd.
dcp Financial Management Ltd.
Edward Jones
Elliott & Page Limited
ETS Equities Trading Services Inc.
Exploratus Ltd.
Eyelogic Systems Inc.
Federation of Mutual Fund Dealers
First Canadian Property Investments Ltd.
Fisgard Capital Corporation
Focused Money Solutions Inc.
Franklin Templeton Investments Corp.
Fraser Milner Casgrain LLP
FRPL Finance Ltd.
Futures Industry Association
Genesis Land Development Corp.
Genesis Limited Partnerships on behalf of Genesis Land Development Corp.
Gestion Universitas
Goodmans LLP
Gowling Lafleur Henderson LLP
Greystone Managed Investments Inc.
Gryphon Investment Counsel Inc.
Heathbridge Capital Management Ltd.
Highstreet Asset Management Inc.
Hillsdale Investment Management Inc.
Hogan & Greenfield Design/Build Ltd.
HughesLittle Investment Management Ltd.
IBK Capital Corp.
IGM Financial Inc.

Independent Financial Brokers
Independent Mortgage Brokers Association of Ontario
Independent Planning Group Inc.
Industrial Alliance Insurance and Financial Services Inc.
Integra Capital Limited
Interior Equities Corp.
Investment Adviser Association
Investment Counsel Association of Canada
Investment Dealers Association of Canada
Investment Industry Association of Canada
Investment Technology Group, Inc.
Irwin, White & Jennings
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Keystone Real Estate Investment Corp.
KMC Capital Inc.
KnowledgeSuites Inc.
KPMG Corporate Finance Inc., Deloitte & Touche Corporate Finance Canada Inc., Ernst & Young Orenda Corporate Finance Inc. and PricewaterhouseCoopers Corporate Finance Inc.
Legacy Associates Inc.
Limited Market Dealers Association of Canada
Loewen & Partners Corporate Services Inc.
Managed Funds Association
Mandate National Mortgage Corporation
Mark Silverthorn Barrister and Solicitor
McLean Budden Limited
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Mouvement des caisses Desjardins
Mutual Fund Dealers Association of Canada
Nascorp Capital Inc.
Northwest Law Group
Ombudsman
Optimal Models and Decisions Inc.
Osler, Hoskin & Harcourt LLP on behalf of The Goldman Sachs Group, Inc.
Osprey Capital
Pacific Spirit Investment Management Inc.
Pan Asset Management Ltd.
Paradigm Mortgage Corporation
Park Place Communities Ltd.
Patient Capital Management Inc.
Phillips, Hager & North Investment Management Ltd.
Portfolio Management Corporation
Premiere Canadian Mortgage Corp.
Prestigious Properties Canada Four Inc.
Primerica
Proforma Capital Inc.
Prospectors & Developers Association of Canada
Pur Investing Inc.
Quantum Financial Service (Canada) Ltd.
Questrade, Inc.
R. A. Floyd Capital Management Inc.
RBC Financial Group
Real Estate Council of Alberta
Real Property Association of Canada
Reliable Mortgages Investment Corporation
Resolute Funds Limited
Schinnour Matkin & Baxter
Scotia Capital Inc.
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Scotia Securities Inc.
Securities Industry and Financial Markets Association
Securities Law Subcommittee (Business Law) Ontario Bar Association
Solaris Capital Advisors Inc.
Spectrum Brands Canada, Inc.
Squirrel Inn Inc.
Stikeman Elliott LLP
T.I.P. Wealth Manager Inc.
Tacita Capital Inc.
TD Securities
Tetrem Capital Partners Ltd.
The Canadian Institute of Chartered Accountants
The Investment Funds Institute of Canada
The Manitoba Securities Commission
The RESP Dealers Association of Canada
The Sitefinders Group of Companies
The Society of Management Accountants of Canada
Tradex Management Inc.
Trapeze Asset Management Inc.
UBS Investment Management Canada Inc.
Unity Investments Inc.
Van Arbor Asset Management Ltd.
Vertex One Asset Management Inc.
Wellington Financial LP
Worldsource Financial Management Inc.

NI 31-103 - Registration Requirements
Summary of Comments on the February 20, 2007 CSA consultation[1]

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	GENERAL COMMENTS		
1.	**General Support**	Numerous commenters expressed support for National Instrument 31-103 – *Registration Requirements* (the **proposed Rule**) as a means to harmonize and streamline the registration regime and improve investor protection.	The Canadian Securities Administrators (the **CSA or we**) thank the commenters for their support. The CSA believe that this is an extremely important initiative that will fundamentally improve the registration regime by modernizing, harmonizing and streamlining registration requirements across Canada. The amendments made to the proposed Rule in response to the comments the CSA received were made in a manner that endeavours to not only respond to the comments but to continue to meet the objective of modernizing, harmonizing and streamlining the registration regime.
2.		A few commenters expressed support for "national" rules and a single securities regulator in Canada. In their view, the "passport" system, while worthwhile, will be no substitute for a national commission.	The mandate of the Registration Reform Project (the **Project**) does not extend to these matters.
3.		Commenters suggest that the two regulatory initiatives, Passport and Registration Reform, need to be coordinated and should cover all Canadian jurisdictions with unique sets of rules and policies. Initiatives such as these require significant effort by securities regulators and the industry to adapt systems and processes to new registration requirements. The commenters would strongly urge the securities regulators to adopt such initiatives in a coordinated fashion with all members of the CSA.	The CSA is very conscious of the effect that regulatory changes have on stakeholders and part of the purpose of the Project was to consolidate a number of existing registration reform initiatives into one single initiative and thereby reduce the number of times stakeholders have to implement changes. However, the Passport initiative is separate from the Project and has not been adopted by all CSA jurisdictions. On March 28, 2007, members of the CSA (passport jurisdictions), other than the Ontario Securities Commission (the **OSC**), published for comment proposed National Instrument 11-102 *Passport System* and its related form and Companion Policy (**CP**). Also on March 28, 2007, the OSC published Notice 11-904 Request for Comment regarding the Proposed Passport System

[1] This summary of comments relates to comments received by June 30, 2007.

			(the **Notice**), outlining the reasons for not taking part in the second phase of the passport system of securities regulation. In the Notice, the OSC articulated its position with respect to securities regulatory reform. The OSC will not adopt National Instrument 11-102 – *Passport System*. However, the OSC is participating in developing the proposed interface between the passport jurisdictions and Ontario to make the securities regulatory system as efficient and effective as possible for market participants.
4.		A commenter suggests that the proposed Rule appears to be about harmonizing and streamlining regulation which the CSA supports, but there should be more focus on protecting investors.	The CSA believe that modernizing, harmonizing and streamlining the registration regime as outlined in the proposed Rule benefits all investors.
5.	**General Opposition**	A few commenters expressed a view that the proposed Rule is anti-competitive or self-serving.	To the extent the proposed Rule could be considered to create barriers to entry for some stakeholders, the CSA believe that the potential barriers created are appropriate in fulfilling the mandate of securities legislation to protect investors and foster fair and efficient markets.
6.		A commenter is of the view that the registration requirements are completely contrary to the basic expectation of government involvement in the marketplace. The commenter comments that the changes will limit the entrance of new participants into the investment management business and increase the frictional costs of doing business.	To the extent the proposed Rule could be considered to create barriers to entry for some stakeholders, the CSA believe that the potential barriers created are appropriate in fulfilling the mandate of securities legislation to protect investors and foster fair and efficient markets.
7.		A commenter is concerned that the proposed registration trigger (the **Business Trigger**) has overlooked key attributes of the structure and functioning of Canada's capital markets. The commenter expresses the view that rules developed from the perspective of one industry (large dealers and advisers) can overlook the impact the rules will have on smaller firms and the exempt market.	In developing the proposed Rule the CSA have considered all sizes of registrants and where appropriate requirements are based on a formula which takes into account different sizes and business models.
8.	**Enforcement**	A few commenters suggest that the key to success or failure of the proposed Rule is enforcement. The commenters suggest that the proposed Rule should be accompanied with robust and uniform enforcement efforts across the country in the interests of better protecting investors.	We agree with the comment.
9.	**Publicity and Process of Proposed Changes**	Several commenters recommend that the working group for the proposed Rule should not only have been composed of staff of the securities regulators and Self-Regulatory Organizations (**SRO** or **SROs**).	The rule-making process differs across the CSA jurisdictions. Generally, the rule-making authority and process is set out in the securities legislation. The CSA have however taken significantly more steps to seek input from stakeholders during the Project than required to do under statutes because of the magnitude and

			importance of the Project. Examples of this are: 1. A dedicated website for the Project which was launched on June 8, 2005; 2. Publication of two concept papers on the website prior to the official public comment period; 3. Consultations by CSA with representation from a very wide variety of industry participants to discuss the proposals in the concept papers; 4. Numerous presentations on the proposals by CSA staff at public conferences prior to the official public comment period; 5. Providing for a 130-day comment period which is well in excess of the 90-day requirement; 6. Open-invitation information sessions during the official public comment period in British Columbia, Alberta, Saskatchewan, Ontario, Québec and New York that were attended by more than 600 stakeholders; 7. A CSA webcast. In addition, we are publishing for comment the proposed Rule for a 90 day period, form February 29, 2008 to May 30, 2008. The CSA encourages all stakeholders to provide comments during this period.
10.		A commenter suggests that posting the proposed Rule on the websites of securities regulators invites more industry participants than investors. The commentator encourages the CSA to engage more proactive mechanisms to reach retail investors in the assessment of the proposed Rule.	The public comment process is outside the mandate of the Project but we acknowledge the comment and do endeavour in all projects to consult, where appropriate, with all relevant stakeholders.
11.	**Global Harmonization**	A few commenters urged the CSA to extend its efforts to include harmonization of rules at the international level. One commenter also suggested that the CSA work towards developing a system of mutual recognition for firms that are regulated by the United States Financial Industry Regulatory Authority (**FINRA**), formerly, the National Association of Securities Dealers (NASD), the UK Financial Securities Authority (**FSA**) and other comparable securities regulatory authorities.	We have endeavoured to ensure that the proposed Rule reflects international norms wherever possible. Through the participation of some of its members in the International Organization of Securities Commissions (**IOSCO**), the Council of Securities Regulators of the Americas (**COSRA**) and the North American Securities Administrators Association (**NASAA**), the CSA support international efforts to coordinate securities regulatory matters worldwide. One example of coordination with international initiatives is Part 6 of the proposed Rule relating to conflicts of interest, which takes into account recent IOSCO proposals on the matter. The CSA are supportive of recently announced interest in mutual recognition by the United States Securities and Exchange

			Commission (**SEC**).
12.	**Harmonized Application of New Rules**	A few commenters express concern that individual jurisdictions may decide to opt out of some parts or the entire proposed Rule. The commenters are also concerned about the potential lack of uniformity in the application of the requirements under the proposed Rule. They suggested that the CSA should establish a mechanism by which any party that believes it has identified an inconsistent application of the rules between securities regulators can submit the inconsistency for arbitration between the jurisdictions. The commenters further suggest that it would also be important to require that the CSA Chairs be responsible for responses to any such submissions and that registration staff not be empowered to vet incoming submissions.	The CSA agree with the commenters on the need to ensure an ongoing harmonized approach to the application and interpretation of the proposed Rule across the CSA jurisdictions. In conjunction with the implementation of the proposed Rule, we intend to propose training for CSA staff, developing a CSA committee that will consider implementation issues and assessing what other specific processes would be useful to ensuring an ongoing harmonized approach.
13.	**Legislative Amendments**	Several commenters are of the view that because of the comprehensiveness and technical nature of the proposed Rule, it would be very useful to see draft legislative changes as early in the process as possible.	Each jurisdiction is addressing the necessary legislative amendments in accordance with their local processes. Since legislative amendments are ultimately within the mandate of the Legislature the process for these amendments is not the same as a commission's rule-making process. Some jurisdictions will be publishing a local notice setting out the proposed or completed legislative amendments. For those jurisdictions which are not yet in a position to publish their legislative amendments we have attempted wherever possible to provide as much information as possible to assist industry in understanding what those amendments will include.
14.		Several commenters expressed concern that the Business Trigger should be included in the proposed Rule and not in the local legislation of individual jurisdictions. These commenters suggest that keeping the registration trigger itself in the local legislation defeats the goal of national uniformity as it may allow for differences among the CSA jurisdictions. Some of these commenters did not see the need for any local rules or regulation.	Legislative drafting principles in each jurisdiction dictate the location of various registration requirements. However, in all jurisdictions legislative drafting principles require that the requirement to be registered be contained in the Act. We are committed to ensuring an ongoing harmonized approach to the application of the business trigger and is developing or expanding current CSA committees to address this.
15.	**New SRO Rules**	A commenter notes that both the Investment Dealers Association of Canada (the **IDA**) and Mutual Fund Dealers Association of Canada (**MFDA**) will be publishing proposed rules which will supplement the proposed Rule, and urged the CSA to publish an explanation of what those new SRO rules will cover and how they will interact with the proposed Rule.	The CSA have an established protocol for receiving public comment on proposed SRO by-laws. During that process we will include discussion, where appropriate, on the interaction of the proposed Rule and the proposed SRO by-laws.
16.	**References to SROs**	A commenter suggests that references to the MFDA or IDA should	Not all jurisdictions "recognize" SROs. In any event, we are of the

		be changed to say “a recognized SRO” to avoid the need to amend the proposed Rule should the names of the SROs change.	view that referring to SROs by name provides a clarity that outweighs any inconvenience that might result from having to amend the proposed Rule in the event of a name change.
17.	**Harmonizing Regulation of Exchange Traded Futures**	A few commenters recommend that it is important to harmonize and streamline the regulation of exchange-traded futures across Canada. While the commenters understand the regulatory and statutory challenges in this area, they noted that the overall effectiveness of the proposed Rule would be diminished if the rules regulating futures were not harmonized with the securities rules. The commenters recognize the work being done in the futures area by the Ontario Commodity Futures Act Advisory Committee and by the Autorité des marchés financiers (**AMF**) and urge the CSA and others to work towards harmonizing the Canadian rules.	We are not at this time undertaking a national initiative on exchange-traded futures.
18.	**Non-Canadian Investment and Non-Canadian Market Participants**	Several commenters find that the significant changes in the proposed Rule for offshore investment vehicles are not necessary to protect Canadian investors and would negatively impact investors by restricting options. These commenters suggested, for a variety of reasons, that the proposed exemptions for international dealers and international advisers are too restrictive to serve the intended purpose and may represent a significant reversal of recent positive developments in the Canadian capital markets, including the elimination by the federal government of “foreign property” restrictions on Canadian pension and retirement plans. These commenters noted that there have been no major compliance or regulatory issues regarding non-resident dealers and advisers in the Canadian markets.	Several commenters suggested that, for a variety of reasons, the proposed exemptions for international dealers and international advisers were too restrictive to serve their intended purpose. The CSA find these arguments persuasive and we have re-assessed our approach to these exemptions. In doing so, we have sought to balance the desirability of allowing Canadian investors access to foreign securities offerings and foreign expertise against the need to retain an appropriate level of regulatory oversight over foreign participants in Canadian capital markets and maintain a level playing field for Canadian registrants. We anticipate that under the revised proposals, international dealers and advisers will be able to operate with an adequate level of access to Canadian investors with less regulatory burden than under the alternative of becoming registrants. Additionally, for those international dealers and advisers who have a full service oriented business model, the CSA has made non-resident registration more accessible.
19.	**Existing Exemptive Relief**	Several commenters were concerned that the CSA need to provide specific guidance on how the proposed Rule will impact the various exemptive relief orders that have been granted in the past with respect to regulatory requirements that will be materially changed. In particular, the commenters have asked for clarification on which exemptive relief orders will remain valid and which will be invalidated as a result of the proposed Rule.	The adoption of the business trigger will make some existing discretionary exemptive relief unnecessary because the entity that obtained the relief may not be in the business of trading and therefore no relief is required. For some other exiting relief orders, the applicable requirements have been changed under the proposed Rule and relief will no longer be required. For example, relief from a residency requirement will no longer be needed because there are no residency requirements in the proposed Rule.

			We have also drafted into the proposed Rule common discretionary relief that has been granted by the CSA. For example, the proficiency for advisers reflects exemptions from the current adviser proficiency requirements that are commonly granted. Other existing relief orders will be assessed on a case-by-case basis.
20.		A commenter notes that the OSC has granted exemptions from Ontario Regulation section 213(1) – *Non-Resident Ownership* for non-resident limited market dealers and questioned whether such relief will still be available to exempt market dealers in the future.	Under the proposed Rule the Canadian incorporation requirements have been eliminated. A section has been added to the proposed Rule which contains specific requirements for non-resident registrants.
21.	**Prospectus Exemptions**	A commenter believes that the proposed Rule appears to cut back on the prospectus exemptions currently available in National Instrument 45-106 – *Prospectus and Registration Exemptions* (**NI 45-106**).	The proposed Rule deals only with registration exemptions. No changes to the prospectus exemptions are being suggested under the proposed Rule.
22.	**Delegation of Registration to SROs**	A commenter expressed uncertainty with respect to the delegation of registration duties to the SROs. The commenter noted that there are inconsistent approaches throughout the country with respect to SRO delegation and that there are practical implications for such inconsistencies. The commenter urged the CSA to consider this issue in the context of the proposed Rule and aim towards harmonization of delegations to SROs across Canada.	The delegation of registration duties to SROs is not within the mandate of the Project. The CSA is not, at this time, contemplating harmonizing SRO delegation across all jurisdictions but may consider it in the future.
23.	**Capital Accumulation Plans**	A commenter notes that in October 2005 the CSA published a proposal to incorporate a registration exemption in respect of capital accumulation plans into NI 45-106. The commenter asked why that proposed exemption was not included in the proposed Rule.	The prospectus and registration exemptions for capital accumulation plans was being considered in the context of proposed amendments to NI 45-106 which is a separate CSA project. The decisions from that project will be incorporated in the proposed Rule as appropriate.
24.	**Fair Dealing Model**	A commenter is disappointed that more of the ideas of the Fair Dealing Model were not included in the proposed Rule.	Part of the Project includes the implementation of core client relationship principles through SRO by-laws and through similar requirements in the proposed Rule for non-SRO registrants. The client relationship principles include transparency of the client relationship, transparency of performance reporting and transparency of cost and conflicts of interest. The client relationship principles were taken from core principles in Ontario's Fair Dealing Model Proposal in January 2004 and from British Columbia's proposed legislation. The proposed Rule includes requirements relating to disclosure of the client relationship that will apply to all registrants. The CSA believe that the implementation of the remaining core

			principles are positive for investors and will continue to work with the SROs on the development of these requirements and amend the proposed Rule in the future accordingly.
25.	**Fund Manager Registration**	A commenter believes that registration of fund managers is a positive development as this commenter had serious reservations about the limitations of National Instrument 81-107 – *Independent Review Committee for Investment Funds* (**NI 81-107**). The commenter welcomes any regulatory improvements in fund governance.	Except as indicated otherwise the conflicts of interest provisions in Part 6 of the proposed Rule, these provisions will apply to fund managers. Appropriate consequential amendments to NI 81-107 will be implemented at the same time that NI 31-103 comes into force.
26.		Another commenter believes that the investment fund manager category is unnecessary as funds are already regulated in several ways: 1. fund advisers are registered as portfolio advisers; 2. funds are regulated as issuers; and 3. funds are organized as trusts, corporations or partnerships that are governed accordingly by law.	The registration requirement for fund managers in the proposed Rule address the specific activities associated with the fund manager's role which are unique to the fund manager. The majority of the existing requirements applicable to funds are product-related requirements and not registration-related requirements. We are reviewing existing fund-related requirements in rules such as NI 81-102 and will address any duplicative registration-related requirements arising between the proposed Rule and the existing fund-related rules.
27.	**Regulation of Banks**	A few commenters expressed concern that the adoption of the proposed business trigger combined with the elimination of registration exemptions in NI 45-106 raises serious jurisdictional issues concerning the regulation of banks. The commenters note that Canadian chartered banks have been and continue to be active participants in both domestic and international debt markets because of the ability to commit the capital necessary to compete in these markets. The commenters commit large amounts of capital to trading in domestic debt markets and are primary dealers in government bonds and treasury bills for the Bank of Canada, as well as significant dealers in provincial bonds and commercial paper. These trading activities are conducted under the exemptions for "safe securities". The commenters submit that these exemptions are necessary to avoid duplication in the regulatory oversight of banks. At a minimum, the commenters would like to see draft amendments and a comment period for any proposed amendments to NI 45-106 and submit that the general reference to eliminating the registration exemptions "based upon a trade trigger for registration" is not sufficient to fully analyze and comment on this aspect of the proposed Rule.	Concerning federally regulated financial institutions, the application of securities legislation to these entities is not set out in the same way in all jurisdictions. In Ontario, the Hockin-Kwinter Accord sets out the understanding on the respective responsibilities of the federal and provincial governments concerning the securities-related activities of federal financial institutions. The exemption regime that currently exists for federally regulated financial institutions in Ontario will continue under the proposed regime. The other jurisdictions will continue to follow their existing practices concerning the securities-related activities of federally regulated financial institutions.

		A commenter further expressed misgivings about the possible reach of the Project. By removing most of the current exemptions and in some cases through the application of the business trigger concept, the proposed Rule may require banks to register as *Exempt Market Dealers* or *Restricted Dealers* and comply with corresponding proficiency requirements. This, in the commenter's opinion, could subject activities of banks that are regulated at the federal level, to inappropriate and duplicative provincial regulation, particularly in regard to deposit products such as index-linked Guaranteed Investment Certificates (**GICs**) and principal-protected notes (**PPNs**).	
28.	**Business Trigger**	A number of commenters support the move to a business trigger for dealers. These note that international standards for licensing of market participants in the securities industry are almost universally based on 'carrying on a business'. Other commenters stated that the principles-based business trigger will also significantly reduce the number of registration exemptions, resulting in a more streamlined and simple basis for registration. One commenter believes that the business trigger is a significant improvement in aligning regulation with actual industry practice and will be a significant contribution to harmonizing regulation across the country.	We acknowledge the comments. The comments indicate many of the reasons we are proposing the business trigger for dealers.
29.		A commenter, while supporting the business trigger as the registration requirement, is concerned that the definition currently captures issuers selling their own securities and trying to raise capital and therefore are not actual intermediaries or in the business of dealing in securities. As raising small amounts continually may be a preferred business model for some issuers, frequency should not be determinative for the "in the business" test and creates an un-level playing field which catches the regular capital raisers but not potentially larger one-time project issuers. This will disadvantage regular issuers by requiring them to use an intermediary or to be registered and collect the know-your-client (**KYC**) information and conduct suitability assessments while those who raise capital less frequently will not be required to do so.	No single "in the business" criteria, including frequency, is necessarily determinative. The business trigger is not intended to capture an issuer, such as an industrial manufacturer, whose business is not trading in securities. For example, an industrial manufacturer that occasionally goes to market to raise funds for the manufacturing business is not, if we apply the guidance provided in the Companion Policy (**CP**), in the business of trading or trading in securities. If an issuer is continually going to the market then that factor will need to be considered in light of the issuer's overall business activities. An assessment will need to be made as to whether the issuer is in the business of trading or is in a non-securities-related business. Perhaps the issuer is in more than one type of business. The proposed Rule contains a registration exemption for issuers who conclude they are in the business of trading in securities, but this exemption is only available if the issuer trades through a registered dealer.
30.		A commenter recommends that the business trigger should not require dealer or branch staff, who are currently unlicensed, to register. The commenter finds the current operating distinction	The proposed Rule sets out the categories for individuals who are acting for a registered dealer. Generally it is intended to include the same individuals who are required to be registered under the

		between licensed and unlicensed staff satisfactory.	current registration regime. The new individual categories that have been added are the Ultimate Designated Person (**UDP**) and the Chief Compliance Officer (**CCO**). These new individual categories are in fact not a direct result of the business trigger but are related to the overall proposal for the supervisory and compliance structure.
31.		A commenter expressed difficulty in determining how far the business trigger concept will extend. For example, the commenter questions whether the business trigger will apply to Research Analysts, Financial Planners, Investment Bankers, Asset Allocation staff and Client Relationship Managers. The commenter suggests the CP is lengthy, and needs to be clarified and elaborated on to give stakeholders the needed guidance. The commenter further questions whether the business trigger is meant to impact non-registered individuals of registered dealer firms who rely on the exemptions provided in sections 34 and 35 of the *Securities Act* (Ontario) (**OSA**) and similar exemptions in some other jurisdictions. The commenter notes that these individuals are not currently required to be registered provided they are dealing solely in the exempt products defined in the OSA, and request clarification that this would not change based under the business trigger concept. Several other commenters support the extension of the business trigger to both dealing in securities and advising in securities. However, these commenters are concerned that the move to a business trigger for registration may create uncertainties with respect to the type of activities, individuals and firms that will require registration. The commenters express the view that the introduction of a business trigger brings with it excess regulatory discretion as to who should register, since deciding whether a person or an entity is "in the business" requires a case-by-case analysis. Although it might be a clear determination to make, after applying the factors of the business trigger, these commenters would like the CSA to clarify that the following individuals and firms do not need to be registered as a result of the business trigger unless they are specifically dealing or advising in securities: banks, bank employees, business advisers, accountants, research analysts, investment bankers (engaged in corporate finance and mergers and acquisitions activities), financial planners and wholesalers who market investment products to dealers. A commenter submits that the proposed criteria for the business trigger effectively establishes a series of open-ended subjective	We have expanded the discussion of the business trigger in the CP to more clearly set out its intended scope. The business trigger for dealers applies to persons or companies who are in the business of trading in securities. The term "trade" or "trading" has not been amended and is the same term used with the current trade trigger. People such as research analysts or financial planners would only be subject to registration if first, they were trading, and second, were in the business of trading. The analysis to determine whether someone is trading under the proposed Rule is the same as the analysis to determine whether someone is trading under the current trade trigger. It is important to remember that a person is only required to be registered when they are "in the business" of "trading in securities". Individuals who trade on behalf of the registered firms will be required to register just as they are under the current regime. In Ontario and Newfoundland and Labrador even individuals who trade for a limited market dealer are required to register. Under the proposed Rule two new individual categories have been added for the UDP CCO. However, these new individual categories are proposed in connection with the compliance and supervisory requirements and not as a result of the move to a business trigger.

		tests that would technically capture virtually any capital market transaction or relationship that is not expressly excluded from its ambit. The commenter suggests that the test would potentially apply to a host of varied financial services activities, including mergers and acquisitions (**M&A**) transactions, structured products, over-the-counter (**OTC**) derivative hedging activities, full- or part-time proprietary trading activities for persons trading for their own account, etc. The commenter further suggests that the test is much broader than the definition of "market intermediary" under the OSA which currently triggers the dealer registration requirement in Ontario and which, in the commenter's view, has proven to be very problematic to work with particularly in the investment fund or structured product context.	
32.		A commenter expressed general opposition to adopting a business trigger for registration. The commenter argues that the existing trade trigger is well established and provides a level of consistency and predictability. The commenter believes that the introduction of the new business trigger test will no doubt lead to complex legal evaluations with respect to whether a particular securities transaction attracts the registration requirements.	The business trigger for dealers is intended to focus on the activities carried out by an entity as a business and not on any one transaction conducted by an entity. The criteria set out in the CP are intended to help an industry participant analyze its activities and determine whether or not it is in the business of trading.
33.		A commenter is unclear as to whether a buy-side firm, that directly accesses the markets through the services of a registered broker-dealer would be in the "business of dealing" and therefore caught by the business trigger. Clarification on this issue would be welcome.	It is unlikely that a buy-side institution such as a pension fund would be in the business of trading – it would most likely be in the business of providing pensions. However, as in all cases it will necessary to look at all the activities carried on by the entity when analysing whether it is in the business of trading.
34.		A commenter is concerned about whether representatives of a foreign private equity fund, including representatives of a general partner (**GP**) or some other manager of the fund, constitute market intermediaries who require registration as a dealer in Ontario in connection with the sale of fund interests to institutional investors. The minimum subscription amount for these securities is usually $5 million and subscriptions are routinely in excess of $25 million. In the proposed Rule, the commenter observed that it would appear that registration may be required in certain circumstances (i.e. if the fund representative is "in the business of trading securities"). The commenter suggests that so long as a foreign private equity fund and its management are dealing with an institutional accredited investor, there should be a complete exemption from the registration requirements for such trades. The commenter believes there is no benefit to imposing Canadian registration requirements on such transactions and there is no necessity to do	Although this depends on the circumstances, it is likely that most such representatives are currently required to register in Ontario and Newfoundland and Labrador. Under the proposed business trigger, it is clear that those who are in the business of trading securities will be required to register. However, it is also possible, depending on the circumstances that some such representatives would not fall within the criteria for being in the business. In cases where a private equity fund, whether domestic or foreign, is not by definition an investment fund (i.e. neither a mutual fund nor a non-redeemable investment fund) the registration requirements do not apply to it. If however the fund is an investment fund then the registration requirements for the fund manager would apply if the fund manager was located in a CSA jurisdiction. If an investment fund manager is located outside Canada, there is no requirement for the investment fund manager it to be registered in Canada, unless it is directing a fund from inside Canada.

		so since Canadian institutional investors can, and do, protect their own interests in such transactions.	
35.		A commenter believes the business trigger concept requires greater clarification. The commenter suggests that the list of factors are extremely broad and insufficiently clear, and could unintentionally capture a variety of activities that are only incidentally related to the trading of securities. The commenter notes that it is not entirely clear, for example, as to whether M&A and corporate and equity financing activities are captured and whether employees engaged in these activities are required to be registered. These concerns, the commenter further notes, are not restricted to limited market dealers (**LMD**). In short, the commenter believes that the CSA should specify what exactly the business trigger is intended to encompass.	We have revised the discussion in the CP on the application of the business trigger. However, it is important to remember that a person or company is only required to be registered as a dealer if they are "in the business" of "trading".
36.	**Private Equity**	One commenter indicates that it would be useful if the CSA clarified its position with respect to registration requirements for private equity funds. The commenter questioned, for example, whether the CSA is of the view that a GP of a private equity limited partnership (and its staff/representatives) must register as a dealer, adviser and fund manager? The commenter suggests that private equity is an appropriate area to grant a clarifying exemption from the requirement to be registered as: 1. an adviser – because private equity involves the acquisition and management of assets, not the buying and selling of securities (and buying and selling of securities is only incidental to the acquisition and disposition or assets); 2. a dealer – because private equity funds are not "in the business" of trading securities but, rather, in the business of managing assets; and/or 3. a fund manager – because the benefits of such a requirement are not apparent particularly for institutional investors."	"Private equity" can refer to a wide range of business models. The determination whether a participant in the private equity markets is engaged in the business of trading or advising is therefore very fact-specific. A general exemption would be inappropriate for that reason. We have included some guidance in the CP concerning venture capital investing, which shares some characteristics with some private equity funds. This may be helpful in determining whether a given private equity activity triggers the registration requirement. We may issue more specific guidance with respect to private equity in the future.
37.		A commenter observes that exemptions for limited and general partnerships are inequitable to other industry participants. The commenter suggests that if advising and dealing activity requires registration then it should apply across the board and if not, removed altogether. The commenter further suggests that the definition of "incidental" activity needs to be set out in more detail	There is no exemption for limited and general partnerships as such. The references to them in the CP discussion of venture capital make clear that, in fact, the structure under which an adviser or dealer operates is not relevant to the analysis whether its activities are registerable. We have expanded the discussion in the CP of incidental activity.

		and tightened to ensure these participants cannot effectively compete in activity that registered entities are undertaking, including the examples of private equity and real estate syndications.	
38.	**Registration of Financial Planners**	A few commenters proposed that fee based financial planners should be required to register. The commenters believe that the advice they give is in a practical sense investment advice. The commenters note that they may not recommend specific securities but they do recommend types of investment solutions encompassing asset allocation. Further, their recommendations may cause clients to make investment decisions and may result in clients purchasing securities from an on-line discount broker without seeking investment advice.	The proposed Rule does not deal with financial planners that do not carry out trading or advising activities with reference to specific securities. Various members of the CSA are considering the issues associated with financial planners but no proposals are being made at this time.
39.	**Principal Protected Notes**	A few commenters question why there was no discussion in the proposed Rule of PPNs. They suggested that standardized regulations on the sale of these products should be included in it.	PPNs are not within the mandate of this Project. However, please see CSA Notice 46-304 Updated on Principal Protected Notes, published July 27, 2007, and the other instruments referred to therein.
40.	**Insurance Products, including Segregated Funds**	A commenter recommends that the CSA should work with provincial insurance regulators to harmonize the regulatory treatment of insurance products, such as universal life policies and segregated funds that are attached to underlying securities.	These jurisdictional matters are outside the scope of the Project. The CSA are addressing the harmonization of securities and insurance regulation of these kinds of products through the joint forum of financial regulators.
41.	**Roles and Responsibilities of Registrants**	A commenter suggests that it would be helpful to make the roles, responsibilities capabilities and qualifications of registrants more clear to the public. In particular the distinction between advisers with a 'fiduciary' vs. 'commercial' responsibility to their clients.	The CSA and its member jurisdictions have a variety of initiatives designed to educate the public about securities regulation and what the public can expect from registrants and securities regulators.
42.	**Efficiency of Registration Process**	A commenter believes that the lengthiness of the registration process can be reduced significantly by introducing performance standards for the regulatory authorities and SROs (for example, provide a target timeframe to complete registration within six weeks).	Securities regulators operate under established timeframes for the processing of applications. Incomplete information or requests for exemptions from registration requirements are usually the reason when registrations are not completed within those timeframes.
43.	**Incorporated Representatives**	Several commenters advocate for provisions that would permit mutual fund and scholarship plan salespersons to establish a principal-agent relationship and have their commissions paid to their incorporated entity.	The SROs are working to address this issue separately from the proposed Rule.
44.	**Database of Broker Complaints**	One commenter suggests that SROs be required to publish complaints, regulator-imposed sanctions and other information about registrants on an internet database accessible to the public.	With the exception of complaints, some of this information is already available to the public on the websites of securities regulators. CSA jurisdictions are considering what additional information can be disclosed in light of locally applicable privacy legislation.

45.	**Ombudsman for Banking Services and Investments (OBSI)**	A commenter welcomes the CSA's initiative to broaden the access of investors with unresolved complaints to an impartial alternative to the legal system. This commenter looks forward to expanding their service beyond the present base of the member firms of the IDA, MFDA and the Investment Funds Institute of Canada (**IFIC**) to the broader group of firms that will be registered under the proposed Rule.	The CSA believes dispute resolution will be a helpful development, enhancing the overall investor protection regime.
46.		One commenter suggests that current restrictions on the OBSI (e.g. not mandated to handle issues with segregated funds) should be reviewed by the CSA.	Jurisdictional matters relating to insurance products such as segregated funds are outside the scope of the Project. CSA jurisdictions are addressing the harmonization of securities and insurance regulation on a local basis.
47.	**Principles-Based Regulatory Requirements**	A few commenters support the move to a more principles-based regime set out in the proposed Rule. One noted that it is particularly appropriate for compliance requirements. A few comments are of the view that that the proposed Rule is insufficiently principles-based. These commenters assert that prescriptive rules do not directly ensure enhanced consumer protection and impose additional regulatory burdens and costs. A few commenters are of the opposing view that there should be no use of principles-based regulatory requirements in the proposed Rule. These commenters argued that a principles-based approach places an inappropriate burden on registrants, as firms must create their own structures, and a lack of black-letter rules places internal compliance staff at risk.	A principles-based approach can offer advantages in view of the wide variety of business models and constantly-evolving products and services in the securities industry. On the other hand, the interests of the public, the industry and regulatory effectiveness all call for definite rules in many circumstances. We have endeavoured to strike an appropriate balance between a prescriptive and a principles-based approach, with the emphasis varying depending on each component of the proposed Rule. In areas where we have thought it best to rely more on a statement of principle, we have made an effort in the CP to provide guidance as to how registrants should apply the principle to their particular circumstances.
48.	**Access to U.S. Mutual Funds**	One commenter suggests that following the implementation of the proposed Rule, steps should be taken to allow retail access to low cost U.S. mutual funds in much the same way as U.S. equities are commonly available to Canadian residents.	We will take your comment into consideration.
49.	**SRO rules**	A commenter notes that a number of provisions of the proposed Rule allow for SROs to develop their own rules. The commenter does not believe that it is in the best interests of investors to have advisers or their firms subject to a different set of rules than those who are not members of an SRO.	We do not agree. The role of SROs is to develop and administer rules that are tailored to their specific membership.
50.	**Multiple Dealer Registrations**	A few commenters note that under the proposed Rule, they would still be required to register in more than one category or possibly, in the case of investment fund managers, register in multiple categories for the first time. They argue that this will increase costs	We do not think it is possible to entirely eliminate multiple registrations. However, we are conscious of these issues and have undertaken steps to create efficiencies with respect to multiple registrants. We have revised some of the provisions of the

		and the burdens of regulation without increasing investor protection.	proposed Rule that would apply to registrants in multiple categories. The National Registration System (**NRS**) will be amended to streamline the filing process for all types of registrants (except restricted dealers), and we will be co-ordinating our oversight activities among the CSA members and the SROs in order to minimize overlapping rules and administrative requirements. We believe that as a result, be there will in most cases be no significant burdens resulting from having multiple registrations under the proposed Rule.
51.		A few commenters suggest that mutual fund dealers (**MFDs**) should be permitted to sell exempt products without requiring an exempt market dealer (**EMD**) registration.	We do not agree. Registration categories and their terms and conditions of registration are tailored to specific purposes, and the sale of mutual funds is different in substance from the sale of exempt market products.
52.	**Transition Periods**	A commenter notes that while many of the registrants will be able to make some of the necessary changes shortly after the proposed Rule becomes effective (i.e., requirements that have not materially changed from the existing requirements), certain aspects of the proposed Rule will take much longer to fully implement. Some of the proposed requirements will require registrants to carry out a system by system analysis; obtain funding; and implement projects to update and reform processes and standards. According to the commenter, these tasks will take a considerable amount of time to achieve, some will take 18 to 24 months, and others like record-keeping may take at least 36 months.	We agree that new requirements such as proficiency, relationship disclosure, record-keeping, conflict management and referral arrangements should be subject to a gradual, incremental transition period. Specific transition periods are proposed for each of these requirements. The requirement to deliver relationship disclosure information to the client by way of a separate “relationship disclosure document” has been eliminated. The relationship disclosure information is not required to take the form of a separate document specially prepared for this purpose. The requirement may be met by providing a client with separate documents which, together, give them the prescribed information. A six month transition starting on the effective date of the Rule is proposed to be provided to all registrants for the delivery of relationship disclosure to clients. With respect to proficiency requirements, we propose a 12 month transition period for representatives of registered firms which are required to register in an additional category. A 12 month period is also proposed to meet the proficiency required of chief compliance officers.
53.		A few commenters propose that transition periods be two years for proficiency requirements, one year for capital and insurance requirements and one year for fit and proper requirements (other than proficiency).	The transition periods proposed by the CSA allow sufficient time for registrants to meet the new requirements. A two year transition period for the fit and proper requirements is too long in the opinion of the CSA. We have proposed a 12 month transition period for representatives

			of registered firms which are required to register in an additional category. A 12 month period is also proposed to meet the proficiency required of chief compliance officers. With respect to solvency requirements, we have proposed a 12 month transition to meet the new capital requirements, as well as a 6 month transition to amend existing insurance policies.
54.		A commenter is concerned that the proposed Rule does not set out any grandfathering or other transitional relief provisions which would provide dealers and advisers, and their Canadian customers with some certainty and the ability to continue existing business relationships.	Partial implementation of the proposed Rule does not seem feasible from a policy perspective. We propose specific transition periods which will allow registrants to comply on a phased-in basis.
55.		A commenter suggests implementing the changes in the proposed Rule in stages or as a gradual phase-in. For example, first implement changes where there is complete uniformity and general industry support and then implement other provisions later.	Partial implementation of the proposed Rule does not seem feasible from a policy perspective. We propose specific transition periods which will allow registrants to comply on a phased-in basis.
	General comments on exempt market and exempt market dealer category		
56.	**EMD Registration – General Support**	Several commenters expressed strong support for standardized requirements across all jurisdictions for individuals selling exempt products, possibly with variations in the requirements applicable to EMDs based on their different business models.	As noted below, we have modified some of the provisions applicable to EMDs in order to address various EMD business models.
57.	**EMD Registration – General Opposition**	A much larger number of commenters expressed opposition to the introduction of the EMD registration requirement. The overwhelming majority of these commenters were entirely or almost entirely concerned with this one issue (many submitted form letters). The commenters' opposition to the EMD registration requirement consists of variations on one or more of the arguments set out below, each of which speaks to an established theory of regulation: market failure, regulatory capture, and public good. 1. The commenters believe that there is no empirical or statistical evidence of market failure in the exempt capital market such as excessive market fraud or deception; in fact, they noted that the exempt market is functioning in accordance with expectations filling a niche ignored by registered dealers (*market failure*). 2. The commenters expressed the view that the proposed	We do not agree with the objections that have been raised to the introduction of the EMD registration requirement. We remain of the view that there will be important public benefits from extending the registration requirement to the exempt market. A significant proportion of CSA enforcement time and resources is spent dealing with exempt market violations. We believe that investors in the exempt market should be entitled to the protections of dealing with registrants who are subject to fitness reviews and regulatory oversight. We also believe that many accredited investors should have the benefits of a suitability determination before they invest (certain others may be exempted, based on their size and sophistication). In addition to these direct benefits to investors in the exempt markets, registering EMDs will also extend gatekeeper protections to a part of our capital markets that has not been covered to the same extent as the "retail" markets. This advances the public good of fostering confidence in our capital markets through a comprehensive regulatory regime.

		registration requirements would impose undue costs and restrict access to capital; moreover, they believe that it will not further investor protection either because investors are sophisticated enough to take care of their own interests, or because the benefits of regulation are inherently questionable (*public good*). 3. The commenters also believe that the proposal serves the interests of the IDA and MFDA by levelling the regulatory playing field as a step towards increasing their membership and influence in the capital market (*regulatory capture*). The commenters suggest that there would be negative consequences for capital markets, particularly the ability of smaller issuers to obtain funds, if exempt market dealers were required to become registered.	We recognize, however, that there are legitimate concerns about aspects of the implementation of an EMD registration requirement, and we address those in our further responses below.
58.	**Terms and Conditions of Registration Inappropriate for EMDs**	Many of the commenters opposed to the EMD registration requirement argued that the proposed Rule does not take into consideration the diversity of business models under which exempt market dealers operate or the diversity of products and services they provide. Aside from the suggestion that exempt market dealers should not be required to register, the further implication of this argument is that the terms and conditions of registration that would be imposed under the proposed Rule would be inappropriate for EMDs. One commenter expressed the concern in this way: "The exempt market is necessary to the Canadian capital markets and many small and medium-sized businesses have no alternative manner of accessing the capital markets. The commenter would appreciate that the CSA's continued efforts to streamline and adjust the proposed Rule or the exemptions to achieve its goals in the least invasive and least damaging way possible to an exempt market system that in our view currently works well."	We have been persuaded by the commenters that there should be some modification to the terms and conditions of registration applicable to EMDs. In our revisions to the proposed Rule, we have, among other things, revised the proficiency requirement, adjusted capital and insurance requirements to differentiate between EMDs that handle, hold or have access to any client assets (including cheques and other similar instruments) and those who do not and provided that certain ongoing requirements do not apply with respect to a subset of the accredited investor group referred to as "permitted clients". These amendments will, we believe, address many of the commenters' concerns.
59.		One commenter suggests that the very nature of the accredited investor exemption appropriately shifts the onus of suitability onto the investor who is judged to have the financial wherewithal to make independent investment decisions and absorb the risk of loss. Provided the issuer has complied with all exemption requirements the investor should not be placing unwarranted reliance upon intermediaries to advise them, and perhaps the addition of a tool accompanying the accredited investor form, a type of risk acknowledgement form, should be used to highlight	We believe that registrants' obligation to make trade suitability determinations for their clients is one of the principal investor protection benefits of our regulatory regime. We believe this benefit should be extended to most accredited investors. However, we have come to the view that certain accredited investors – institutions and individuals with personal wealth at a threshold well above the accredited investor baseline ("permitted clients") – may not necessarily need or wish for suitability determinations.

		that the investment decision and the responsibility for such a decision lies with the investor. According to the commenter, if the investor wants advice then they should be referred to another professional adviser. While unscrupulous intermediaries may not do this, neither will they perform a proper suitability assessment.	
60.		One commenter expressed the view that individuals that serve the investing public should either be fully qualified and able to offer advice or the full range of products or none at all.	We do not agree. In our view, some form of the present system of registration categories and proficiencies based on the general nature of an individual or firm's participation in the capital markets remains appropriate because it offers more flexibility than the alternative of uniform requirements for all.
61.		Two commenters suggest that the proposed proficiency requirements seem disproportionate as compared to the current situation, where no proficiency requirement applies to individuals dealing in the exempt market. The commenters further express that the requirements are also disproportionate to the actual activities of these individuals and that the Canadian Securities Course (**CSC**) has never been required for restricted dealers. The commenters suggested that a proficiency requirement should be adapted and tailored to the types of products sold.	We have removed the requirement that a dealing representative of an EMD pass one of the Conduct and Practices Handbook Examination or Partners, Directors and Senior Officers Examination. The Canadian Securities Examination (**CSE**) represents baseline knowledge of the securities industry and provides regulators with a measurable benchmark to evaluate prior industry experience. Individuals with extensive industry experience should not have undue difficulty in passing the CSE. The CSA will be setting up a subcommittee to look into alternative courses and course providers for proficiency requirements. This requirement is in accordance with the established approach to proficiency standards for registrants in prescribing minimum knowledge appropriate to the registration category. Ongoing or product-specific training is not typically prescribed. We would expect firms, as part of their obligations to clients and their supervisory obligations, to provide additional and ongoing training and development to ensure their registrants remain proficient.
62.	**Defining the 'Client'**	One commenter, in making a point raised by a few others as well said that "Approximately 60% of LMDs are a 'Sole LMD' as defined in OSC Staff Notice 11-758. As a Sole LMD raising capital for small issuers, the client relationship I have is really with the issuer whose product I am essentially marketing and not to the investor who purchases. Investors understand that they are not in a relationship with the LMD and that the LMD is generally being solely compensated by the issuer."	Many Sole LMDs who do not distribute products will no longer be required to register, as discussed in the CP guidance with respect to the application of the business trigger. Under the proposed Rule, others will be required to register as EMDs. For regulatory purposes, a registrant's client is the investor to whom securities are distributed or advice given. The CSA are firmly of the view that EMDs' clients include investors. It is not only in the exempt market that dealers may have an intermediary relationship with both issuers and investors with respect to the flow of securities and cash. We do not believe that all of an EMDs accredited investors will necessarily have the understanding or expectation that the commenter suggests.

			Key components of the registrant's duty towards its client, the investor, are to deal in good faith with the client and make a suitability determination. There can be no relief from the first of these. However, the permitted client suitability exemption discussed above will permit certain investors whose expectations are as described by the commenter to relieve their EMD of that obligation.
63.		One commenter proposes that there should be a harmonized definition of "exempt securities" to ensure that registration requirements for all individuals distributing the same product are triggered simultaneously in all jurisdictions.	We believe that section 2.1(d) of the proposed Rule clearly describes the activities that require registration as an exempt market dealer. The determination whether a security may be distributed in reliance on a prospectus exemption should not be made by reference to a registration rule. In any event, most prospectus exemptions are already harmonized in NI 45-106. Full national harmonization may be a desirable goal, but there may also be local considerations.
64.	**Real Estate Offering Memoranda (OM)**	Concern was expressed by two commenters that the private placement rules for real estate offerings using OMs established in NI 45-106 after extensive consultation would be replaced by the proposed Rule. The commenters stated there is no demonstrated need for further investor protection relating to these products and the proposed Rule simply creates barriers for legitimate business.	Real estate investment companies (REICs) and mortgage investment companies (MICs) have securitized their mortgage lending businesses in order to qualify for all Canadian Registered Savings and Registered Pension Plan investments. REICs and MICs are therefore trading in securities and therefore many of the investor protection issues addressed by the registration requirement arise. We have included specific guidance on MICs in the CP.
65.	**Mortgage Investment Corporations (MICs)**	Several MICs provided comments arguing that a clear exemption from the proposed Rule for MICs is warranted, arguing that they do not solicit funds from the public, do not provide investment advice to investors, and are regulated in their jurisdictions.	We do not agree with this analysis of MICs' activities, for the reasons discussed in the CP. Please also see the comments above and below with respect to the limits of their regulation by other agencies.
66.		The Real Estate Council of Alberta (**RECA**) commented that it is increasingly aware of the sale of syndicated mortgages through mortgage brokers regulated by RECA. RECA does not regulate the content, form or sale of syndicated mortgages and has discussed with the ASC the concern that investors are not therefore protected. RECA believes that syndicated mortgages are investments that should be regulated by securities commissions primarily in Alberta, British Columbia, Manitoba, Québec and Saskatchewan. RECA understands that mortgage brokers may be exempted from the requirements of the proposed Rule and are concerned that those who currently sell syndicated mortgages in reliance on the OM or accredited investor exemptions may become	We have taken the comment into consideration.

		authorized as a mortgage broker to avoid registration under securities laws. If this is allowed to occur, the current situation will worse and investors may be even more at risk.	
	Question #1: What issues or concerns, if any, would your firm have with the proposed fit and proper and conduct requirements for exempt market dealers? Please explain and provide examples where appropriate.		
67.		One commenter suggests that the requirements are very restrictive and the current provisions of NI 45-106 are more workable. The commenter is of the opinion that the proposed Rule would create a monopoly for IDA firms which would have no new regulations and that many exempt issuers find that IDA firms are not interested small sized offerings.	As indicated in our response above to similar comments in respect of the EMD registration requirement generally, we have amended parts of the proposed Rule as it relates to EMDs. We have, among other things, revised the proficiency requirement, adjusted capital and insurance requirements to differentiate between EMDs that handle, hold or have access to client assets (including cheques and other similar instruments) and those who do not, and provided that certain ongoing requirements do not apply to a subset of the accredited investor group referred to as "permitted clients". These amendments will, we believe, address many of the commenters' concerns.
68.		A commenter suggests that this will impact a significant number of exempt market dealers that have operated in the industry for several years. The Limited Market Dealers Association (**LMDA**) supports the CSA objective of harmonizing proficiency requirements across Canada but expresses the view that the proposed Rule does not take into consideration the diversity of LMD/EMD business models, the relevant experience of LMD/EMD participants or other proficiency requirements LMD/EMDs possess that are more applicable to the services LMD/EMDs provide to their clients than the proficiency requirements as proposed.	We believe the revised proficiency requirements for EMDs are not onerous and provide a necessary minimum standard.
69.		A commenter observes that the CSA has not identified any significant risks to issuers, investors or other market participants in capital markets serviced by the LMD/EMD industry, such as the CSA did with Investment Fund Managers. The capital requirement provisions, as drafted, over-regulate a non-existent situation for a significant number of LMD/EMDs.	Please see our responses above to similar comments in respect of the EMD registration requirement generally.
70.		A commenter points out that a large number of intermediaries in the exempt market act as finders or referral agents and do not maintain client accounts or take custody of client funds or securities, and trade confirmations, account statements and such are all handled by the issuer directly. In these circumstances, the commenter suggests, the proposed working capital, educational, audit and insurance requirements are inappropriate and will act as a barrier to small intermediaries. Furthermore, says the commenter, financial institution bonds are simply unattainable for	Insurance is meant to cover both client assets and firm assets. Minimum capital is a tool towards ensuring the ability of a registered firm to carry out its affairs on an ongoing basis and/or wind down its affairs in an orderly fashion. Minimum capital can also serve as a warning signal of other concerns if a firm has trouble maintaining it. We believe EMDs must be able to establish they are viable operations, and a minimum working capital requirement achieves this goal.

		sole proprietors. The commenter also expresses the view that although errors and omissions coverage has been suggested as an alternative, given the incidental nature of advice provided and limited involvement of the intermediary even this cost is burdensome and of questionable relevance. Registration without these requirements or using a principles based approach to the requirements is a viable compromise and would allow the issuer or intermediary to determine the education or experience required and that decision would form part of its defence in response to a claim much like a due diligence defence. The commenter suggests that as few intermediaries even have a contractual relationship with investors, conducting a suitability assessment should not be necessary.	However, we acknowledge concerns with respect to EMDs that do not take control of have access to, or hold client assets (including cheques and other similar instruments). As noted above, we have made several adjustments to address these concerns. For other registrants, the bonding and insurance requirements in Part 4 Division 2 remain in effect. However, the proposed Rule no longer requires that registrants maintain a financial institution bond (**FIB)** in order to satisfy those requirements. Exemptive relief from the insurance requirement may also be available where an EMD or other registrant can demonstrate that it is inappropriate in view of their particular business models. Our views on educational requirements are also discussed above.
71.		A commenter has no issue with the fit and proper requirements and agrees with the proposals but has some concern about the transition periods. The commenter suggests that perhaps during that period an EMD representative should be restricted to trading a given clients' existing investments with changes required to be approved by a qualified person until such time as the representative has also become fully qualified.	We propose a 12 month transition period for representatives of registered firms which are required to register in an additional category. As stated in the CP**,** the CSA expect that a registered firm's compliance system should ensure that everyone in the firm understands the standards of conduct for their designated roles. Representatives should not engage in activities on behalf of clients for which they are not fully qualified. We expect firms to have adequate compliance systems and policies to ensure that representatives are adequately supervised during the 12 month transition period.
72.		A commenter does not support the imposition of Canadian "fit and proper" requirements on non-resident dealers and advisers that are already subject to extensive regulation in their home jurisdictions. The commenter expressed a view that the "proficiency requirements, capital and insurance adequacy, compliance requirements, financial statement filing requirements, custody and other requirements are adequately addressed by US, UK or other regulatory regimes and that the imposition of these requirements on such entities is redundant and does not have any investor protection benefits."	The proposed Rule includes exemptions for international dealers and international advisers. If a non-resident dealer or adviser wishes to provide services beyond those contemplated by these exemptions, it should be required to register and operate on a level playing field with Canadian registrants. If, in the future, mutual recognition of registration requirements becomes a possibility among Canadian and foreign securities regulators, we will welcome that development.
73.		A commenter believes that the registration of limited market dealers has not provided any additional investor protections, and the costs may outweigh the benefits. The commenter believes that the CSA should reconsider the requirement to register in order to trade in the exempt market. Alternatively, the commenter expresses the view that there should be more definition to the types of activities that constitute acting as an "intermediary", or, if believed necessary for investor protection, that the scope of the	Please see our response to similar comments in respect of the EMD registration requirement generally.

		exempt market be reconsidered.	
74.		A commenter is concerned that some categories of registrants, including EMDs will be subject to less regulatory scrutiny than registered investment dealers. The commenter states that the proposed Rule must ensure that all categories of registrant are subject to similar regulatory obligations, including KYC.	EMDs will not be subject to less regulatory scrutiny than other registrants. However the regulatory obligations of registrants do vary by category, depending on the nature their registerable business. As noted above, we have modified the provisions applicable to EMDs to reflect their particular characteristics, and we have introduced a trade suitability exemption, which is not limited to EMDs.
	Question #2: The British Columbia Securities Commission (BCSC) seeks comments on the relative costs and benefits in British Columbia of harmonizing with the other CSA jurisdictions to create an exempt market dealer category and in doing so, eliminating the registration exemptions for capital-raising transactions and the sale of those securities, referred to in some jurisdictions as "safe securities" (i.e. government guaranteed debt).		
75.		A few commenters expressed strong support for standardized and harmonized rules across the country and desire to never again have a piecemeal system across the country. One commenter observed that it is often easier to do business in the U.S. than it is west to east in Canada.	**BCSC Response:** The BCSC now proposes to adopt the EMD category and make the registration exemptions unavailable to persons registered in another category or another jurisdiction. This will provide a harmonized system for those operating in multiple jurisdictions. However, the BCSC will maintain the registration exemptions for non-registrants operating locally. The consultation process during this project shows, as a whole, that the repeal of registration relief from the capital raising exemptions in British Columbia is likely to negatively impact small issuers that rely on the relief in that jurisdiction. The consultations have not demonstrated that there is a market problem caused by the registration relief in the capital raising exemptions in BC. While harmonization is important, it should not come at the expense of regulation that makes sense for BC industry and investors. The BCSC is committed to creating an effective passport regime. The approach now proposed by the BCSC will minimize the impact on harmonization and the passport system of its decision to maintain the existing registration exemptions.
76.		A commenter observes that if the three main objectives of the proposed Rule focus on harmonization, streamlining and modernization of the registration regime in Canada, the most cost-effective and least burdensome approach to achieve these objectives is for all securities regulators to be consistent in their approach and execution. The commenter believes that this would not be accomplished if British Columbia does not harmonize.	**BCSC Response:** See above.
77.		A commenter asserts that the BCSC is pointing out the substantial negative impact the proposed Rule will have on venture exchange	**BCSC Response:** The BCSC is concerned not just with the potential negative impact of the EMD registration requirement

		financing and the exempt market firms.	proposed rule, but with imposing regulatory burden that will not solve a demonstrated problem in BC.
78.		A few commenters support the position of the BCSC in asserting that access to capital will provide greater economic benefit than the benefit of harmonization to BC. They support the BCSC government in looking at opting out of the exempt market regulation and encourage the OSC and ASC to review and follow the BCSC example.	**BCSC Response:** Alberta, Ontario and most other CSA jurisdictions are adopting the EMD category as set out in the proposed Rule.
79.		A commenter believes that the cost of eliminating access to capital for many venture issuers is out of proportion to the benefits of the proposed Rule. The commenter suggests that a more simple 'fair and honest conduct' proposed Rule would be sufficient along with financial requirements for firms that place client funds at risk of their own creditors.	**BCSC Response:** The BCSC agrees that participants in the securities market, including the exempt market, should behave in a fair and honest manner. It thinks that existing requirements (e.g. disclosure in the offering memorandum) and prohibitions (e.g. provisions relating to fraud, misrepresentation, and unfair practices) address the risk that market participants will not act fairly or honestly.
80.		A commenter agrees with the BCSC that the CSA has not sufficiently described the market problem related to the use of these exemptions and, like the BCSC, they are concerned that the registration requirement that treats "exempt market dealers" the same as other registered dealers will have a detrimental effect on capital raising. The commenter suggests that the CSA provide a more rigorous analysis of the market problem and explain how it will be addressed by the proposed registration requirements for exempt market dealers before implementing these requirements.	**BCSC Response:** The BCSC agrees and is prepared to consider requirements that would address a demonstrated market problem.
81.		A commenter finds that cross-Canada registration of EMDs would be a step in the right direction if all provinces implement the change. However if the BCSC does not join the effort then the purpose will be defeated and British Columbia incorporated companies will have a distinct advantage. The commenter recommends that the application of the EMD category be nation-wide or it should not be implemented.	**BCSC Response:** The BCSC now proposes to adopt the EMD category and make the registration exemptions unavailable to persons registered in another category or another jurisdiction. This will provide a harmonized system for those operating in multiple jurisdictions. However, the BCSC will maintain the registration exemptions for non-registrants operating locally. For the reasons stated above, the BCSC considers that imposing requirements that restrict access to capital in British Columbia would result in economic costs that would outweigh any benefits from harmonization. The approach now proposed will minimize the impact on harmonization and the passport system of the BCSC's proposal to maintain the existing registration exemptions.
82.		A few commenters disagreed with any jurisdiction opting out of harmonizing. They suggest that there is no meaningful difference between British Columbia and the rest of the country to justify such	**BCSC Response:** See above.

		a scenario. British Columbia should implement the same categories. The commenters do not see how there would be any damage to the venture capital raising business where there is a strong and healthy economy.	
83.		A few commenters question why British Columbia is not going this way when Alberta is. British Columbia and Alberta have very similar cultures in regards to private equity so how is it that British Columbia does not perceive the need to implement these changes and Alberta does? A commenter expressed the view that the rules should apply consistently across all jurisdictions to avoid opportunities for regulatory arbitrage.	**BCSC Response:** The BCSC considers that the consultations have not demonstrated that there is a market problem caused by the registration relief in the capital raising exemptions in BC and that, while harmonization is important, it should not come at the expense of regulation that makes sense for BC industry and investors. The approach now proposed will minimize the impact on harmonization and the passport system of the BCSC's proposal to maintain the existing registration exemptions.
84.		A commenter pointed out that it is of particular importance that British Columbia ensures that the regulatory obligations imposed on marketplace participants do not provide a competitive advantage to one category of registrant over another.	**BCSC Response:** The BCSC is committed to designing regulatory interventions that are appropriate for each type of market participant. This does not mean that the requirements should necessarily be the same for everyone.
85.		A commenter is concerned that the BCSC is proposing not to adopt this important registration category. They suggest that before BCSC elects to opt out of the exempt market dealer registration category, it should undertake a comprehensive cost-benefit analysis that takes into account the benefits of improved scrutiny of exempt market activity, augmented investor protection and market confidence. In addition, the commenter proposes that the BCSC must consider the over-arching objective of regulatory uniformity in exempt markets and progress toward an effective passport system and more efficient markets in Canada.	**BCSC Response:** The BCSC now proposes to adopt the EMD category and make the registration exemptions unavailable to persons registered in another category or another jurisdiction. This will provide a harmonized system for those operating in multiple jurisdictions and a sound basis for the passport system. However, the BCSC will maintain the registration exemptions for non-registrants operating locally. The BCSC thinks that the cost of eliminating the registration exemptions for capital-raising and safe securities outweighs, in BC, the benefits of full uniformity and that the onus of doing a cost benefit analysis is on those proposing to impose new regulatory requirements.
86.		A commenter suggests that in order to ensure harmonization across Canada with respect to registration categories, the BCSC should be urged to consider adopting the EMD registration category. Doing so will allow registrants to have a uniform registration system across all provinces which will create operational efficiency. Moreover, the commenter further suggests that to opt out would be intellectually inconsistent with British Columbia's vocal support of the Passport System and the goal of regulatory harmonization.	**BCSC Response:** The BCSC now proposes to adopt the EMD category and make the registration exemptions unavailable to persons registered in another category or another jurisdiction. This will provide a harmonized system for those operating in multiple jurisdictions and a sound basis for the passport system. However, the BCSC will maintain the registration exemptions for non-registrants operating locally. The BCSC thinks that the cost of eliminating the registration exemptions for capital-raising and safe securities outweighs the benefits of full uniformity and that the onus of doing a cost benefit analysis is on those proposing to impose new regulatory requirements.
87.		A commenter believes the additional regulatory burden on exempt	**BCSC Response:** The BCSC is strongly committed to investor

		market dealers is justified as it leads to a general increase in investor protection and carries important and significant benefits of national harmonization.	protection. However, it is not convinced that the problems it currently sees in the exempt market (e.g. fraud, misuse of existing exemptions) would be solved in BC by registration. The BCSC is also concerned about the costs to industry of registration and the potential impact on capital-raising in the exempt market. It thinks that the potential benefits in BC outweigh the costs. However, in order to provide the benefits of harmonization, the BCSC now proposes to adopt the EMD category and make the registration exemptions unavailable to persons registered in another category or another jurisdiction.
88.		A commenter expressed a preference for a uniform set of rules across the Canadian provinces and territories. From a regulatory perspective it is preferable to focus on the type of investor rather than focusing on which securities are considered "safe securities". A commenter suggests that the CSA should provide dealer and adviser exemptions for a class of investors that do not need investor protection regardless of the type of product (i.e., "accredited investors"). The commenter believes that this approach also provides legal certainty with respect to the development of new products since the registration requirements would not be dependent on a product-by-product analysis.	**BCSC Response:** The BCSC strongly supports the philosophy underlying the current registration exemptions set out in NI 45-106.
89.		A commenter finds that it is essential for market efficiency that there is consistency of regulation across Canada, as encouraged by the passport initiative. The commenter recommends that all the provinces and territories enact all agreed upon sections of the Proposed Instrument without local exceptions, so that there is a level playing field and consistency of regulation across all Canadian jurisdictions.	**BCSC Response:** The BCSC now proposes to adopt the EMD category and make the registration exemptions unavailable to persons registered in another category or another jurisdiction. This will provide a harmonized system for those operating in multiple jurisdictions. For the reasons discussed above, the BCSC will maintain the registration exemptions for non-registrants operating locally.
	Question #3: Registration for managers of all types of investment funds (other than private investment clubs) is proposed. Are there managers of funds for which the risks identified are adequately addressed in some other way and therefore registration as a fund manager may not be necessary? If so, please describe the situation.		
90.		A commenter discussed the example where the GP of the partnership is not arms-length from the Portfolio Manager (**PM**) and exists only to assume the risk of the Limited Partnerships (**LPs**) and receives no remuneration and has no administrative duties.	The registration requirement applies to the "investment fund manager", as that term is defined term in securities legislation (i.e. the entity that has the power and responsibility to direct the affairs of the fund), of an "investment fund", as that term is also defined in securities legislation. The entity that fulfils the investment fund manager role for the fund will be the entity that is required to be registered regardless of the structure of the fund.

91.		A commenter believes that registration as a PM should be sufficient without an investment fund manager registration as identified risks are adequately handled by existing agreements between unit-holders and the fund management.	Private contract rights are not enforceable by anyone who is not a party to them. Statutory requirements are necessary in order for the securities regulatory authorities to take regulatory action.
92.		A few commenters commended the CSA for introducing the investment fund manager registration category which will create a more level playing field and bolster investor protection. One commenter went on to suggest that there should be consideration however, to exempting from the fund manager category firms that are SRO members where their minimum capital requirement as prescribed by the SRO would be no lower than $100,000.	The SROs currently do not have specific requirements for investment fund managers. If the SROs develop such requirements then the CSA can consider whether it is appropriate to exempt an SRO member from the investment fund manager requirement as has been done for portfolio managers.
93.		A commenter recommends that only managers that hold, handle or have access to client funds should require registration.	The risks of the investment fund manager role that have been identified in various studies over the past several years relate to a number of activities not just the handling of cash and securities. As well, we believe that most, if not, all managers have access to the assets of the fund by virtue of their ability to direct the custodian of the assets. Therefore we believe registration is appropriate in most cases.
94.		A few commenters suggest that Ontario should discontinue the use of the “flow through” analysis with respect to investment funds that have Ontario-resident investors. The commenters suggest that the CSA should clarify that non-Canadian advisers and investment fund managers of investment funds are not required to register in Canada merely because units of an investment fund are purchased by Canadian investors. To this end, the commenters believe that sections 9.2, 9.15 and 9.16 of the proposed Rule should be deleted and there should be no requirement for an investment fund to register as an adviser or a dealer to privately place securities with “accredited investors”.	We agree that the flow-through analysis should not be applied to investment fund managers and portfolio managers. The exemptions in section 9.15 and 9.16 of the proposed Rule that were based on the flow-through analysis have been deleted. The exemption in section 8.2 (formerly section 9.2) is not based on the flow-through analysis and has not been deleted.
95.		A commenter asks whether the CSA contemplated that registered advisers also register as investment fund managers of their own pooled funds.	We will initially consider this issue on a case-by-case basis and, depending on our experience, may subsequently adopt a uniform exemption.
96.		A commenter was concerned that the proposals have not dealt with private equity funds that may have similar investment activities of other funds that require registration.	The investment fund manager registration requirement applies to all investment funds, as defined in securities legislation, regardless of whether the fund refers to itself as a private equity fund. The term private equity fund is not a defined term and in practice, private equity funds may take many forms. We do not propose to try and define private equity fund in the proposed Rule.
97.		A few commenters ask that the CSA consider the following situation, which is not uncommon: A sophisticated, institutional	We acknowledge the comment and agree that in the situation described registration may not be necessary. However, we do not

		investor is seeking to obtain the portfolio expertise of a foreign adviser, which the investor has researched and sought out. After detailed due diligence, the investor agrees to enter into a relationship with the foreign adviser. For tax, regulatory, or other reasons the investor prefers that its investment be held through a special purpose Canadian vehicle. As a result, the foreign adviser, under the proposed Rule may arguably be required to register in Canada as an adviser, a dealer and an investment fund manager.	propose to include an exemption in the proposed Rule for the type of situation described at this time.
98.		A commenter questioned whether uncertainty surrounding the meaning of "investment fund" and "investment fund manager", both in the proposed Rule and under existing securities laws, could result in an uneven playing field amongst participants in the capital markets in Canada. The commenter believes that alternative investment managers whose portfolios consist of securities will be required to register as an "investment fund manager", but managers of collective investment vehicles which invest in particular asset classes, such as private equity or real estate, may not be subject to the same requirements as the vehicles they manage may not captured by the definition of "investment fund". The commenter believes that excluding from regulation such investment vehicles and other market participants that raise capital from investors or deal and advise in investments, which, based on a technical analysis of securities legislation, are securities, but which have not historically been regulated by securities regulators (regardless of the underlying asset class), places those market participants who are regulated and expend considerable energies in meeting the best practices standards required of them at a considerable disadvantage and does not promote the integrity of the Canadian capital markets. In the commenter's view, any market participant that is in the business of collecting and investing the money of investors and making investment decisions on behalf of its investors should be subjected to a no less onerous or rigorous standard of regulation than alternative investment market participants and other currently regulated market participants.	The fund manager registration requirement applies to the "investment fund manager", as that term is defined in securities legislation (i.e. the entity that has the power and responsibility to direct the affairs of the fund), of an "investment fund", as that term is also defined in securities legislation. The entity that fulfils the investment fund manager role for the fund will be the entity that is required to be registered regardless of the structure of the fund. In any situation it is necessary to examine the facts to determine what activity is actually being carried on – whether it is advice on securities or advice on an asset other than securities. The registration requirements are of course geared towards securities and may not be appropriate or indeed helpful where the actual activity or interest is based on something that is not a security (i.e. resources or real estate). We acknowledge that it is not uncommon for the trade of a security to be involved in those types of transactions but it is not the reason for the transaction.
99.		A commenter believes that the investment fund manager registration requirement should be drafted in such a way as to not require multiple investment fund manager registrations for fund managers with an affiliate that shares common officers and/or directors. Managers who are already subject to registration, in the commenter's view, should not be forced to register again creating a duplicative regulatory structure that would be unduly costly.	We acknowledge the comment and agree that in the situation described multiple registrations for managers that share common officers and directors may not be necessary. However, we do not propose to include an exemption in the proposed Rule for the type of situation described at this time. It is likely that each case would have similar but not identical facts and therefore we believe it is more appropriate to deal with these situations on a case-by-case

			basis.
100.		A commenter notes there are managers which are already subject to extensive regulation through the 81-series of rules and should not be subject to another layer of regulatory oversight. Registration as an investment fund manager will have significant initial and ongoing costs which will ultimately be born by investors. The commenter believes that to the extent that securities regulators feel the current rules do not adequately address a particular risk then the existing rules should be enhanced to deal with those risks. New overlapping rules are not needed.	The 81-series of rules are product-based rules which impose requirements on fund managers by imposing requirements on the fund. We believe that direct regulation of fund managers, through registration, is preferable and we will work to remove any overlapping requirements that exist amongst the rules.
101.		A commenter observes that registration for managers of closed-end funds that have completed their offerings in the exempt market and are not listed on an exchange does not seem necessary. The commenter notes that many of these fund managers are in the process of winding down operations and there doesn't seem to be an investor protection need in these cases.	We do not agree. The activities for which investment fund managers are responsible do not end when distribution ends.
102.		A commenter is of the opinion that unless the CSA's objective is to discourage the use of Canadian service providers, clarification is required that fund administration service providers performing such services are not to be considered Canadian agents of foreign investment managers since, if they were to be so considered, the effect would be that all foreign managers using Canadian service providers would themselves have to be registered as fund managers in Canada.	It is not the CSA's objective to discourage the use of Canadian service providers. We have discussed in the CP the issue of outsourcing activities. The entity that is the "investment fund manager", as defined in securities legislation, for a fund will be the entity that is required to be registered regardless of whether it has outsourced certain activities. If an investment fund manager is located outside Canada, there is no requirement for the investment fund manager it to be registered in Canada, unless it is directing a fund from inside Canada.
103.		Two commenters note that the CSA Notice states that a fund manager will register in the CSA jurisdiction in which the fund is located. This is not reproduced in the proposed Rule or the CP and no criteria are provided for the determination of the jurisdiction in which the fund is located. The commenters question whether the fund manager has to register in each jurisdiction in which the securities of the funds may be sold, or rather only in the jurisdiction in which the funds reside. Will this be the jurisdiction in which the fund has been constituted, or the jurisdiction of the head office of the fund? What about a federally constituted fund?	As indicated in section 2.8 of the CP, we do not expect investment fund managers to register in every jurisdiction where a fund is distributed. Investment fund managers are required to register only in the jurisdiction where the person or company that directs the fund is located, which in most cases will be where their head office is located. However, if an investment fund manager directs funds from locations in more than one jurisdiction, it must register in each of them. If the investment fund manager is located outside Canada, there is no requirement for the investment fund manager it to be registered in Canada, unless it is directing a fund from inside Canada.
	Question #4: Registration of the Ultimate Designated Person (UDP) and the Chief Compliance Officer (CCO) is proposed. As well, we propose that the UDP be the senior officer in charge of the activity carried on by the firm that requires the firm to register. What issues or concerns, if any, would your		

	firm have with these registration requirements? Do you think the registration of the UDP and CCO contributes to or detracts from a firm wide culture of compliance? Please explain.		
104.		A commenter is concerned that the new positions will add a layer of bureaucracy for EMDs that are small firms and will not help with compliance. The problems with LMDs in the past have been centred on unregistered firms and new compliance categories will not change this.	There is no requirement that new staff be hired to fill the UDP and CCO roles. There have been problems with registrants in all categories failing to comply with securities legislation. The UDP and CCO requirements are part of an emphasis on effective compliance in the proposed Rule.
105.		A commenter expressed support for the proposed UDP and CCO positions and believes they will benefit larger dealers. However making them both absolutely liable for compliance is a concern to them. The commenter is of the view that being either compliant or non-compliant is too black and white and the standard should recognize efforts to remain compliant and place responsibility on those individuals who fail to operate in a compliant manner.	We believe registrants large and small, as well as investors, will benefit. The comment suggesting that reasonable efforts to remain compliant should be acceptable is a fair one. We have endeavoured to clarify the responsibilities of the UDP and CCO with revisions to the CP discussion of these positions.
106.		A commenter strongly supports the new requirements. The UDP and CCO should be separate people and both should be registered.	We agree that the best practice is to separate the two positions, however in a smaller firm in particular, this may not always be practical or economically feasible.
107.		A few commenters are concerned that limiting the registered supervisory positions to the CCO and UDP somewhat detracts from the notion of firm-wide culture of compliance. The same good reasons for registering the UDP and CCO would also apply to other individuals carrying out or responsible for functions with an important compliance element. The commenters suggest that the culture of Compliance starts with the Board of Directors, Senior Officers and Management which then descend the ranks to all employees. The proposed Rule has narrowed the focus to only two individuals and limits the effectiveness and benefits of a registration process. Registration, in the commenter's view, provides an effective method of ensuring that registrants have the appropriate proficiency and reminds them of their obligations. The proposed Rule should, in the commenters' opinion, address the objectives of promoting a culture of compliance, and should ensure persons performing management functions have the requisite proficiencies and tools to deal with employees who do not carry out their business in accordance with regulatory requirements.	We believe that the burdens associated with registering all of the directing minds of a firm would outweigh the benefits. In the CP, we have stressed that compliance is a firm-wide responsibility and the UDP and CCO are *not* solely responsible for compliance. We have revised and expanded the discussion of the compliance system in the CP, partly to address the nature and allocation of supervisory responsibility. It is our expectation that by registering senior officers as UDP and CCO, sufficient corporate authority will be deployed to achieve the goal of a compliance culture driven from the top of the organization. The ability of the UDP and CCO to carry out this function has been bolstered with requirements giving them compulsory access to the board of directors or partnership, as the case may be. We also believe that this will avoid the possibility of the UDP or CCO being ignored or made into "scapegoats" in the small number of firms that lack the will to operate with a culture of compliance. Given the range of registered firms in terms of size, organizational structure, type and scale of business operations, we believe a more prescriptive approach to compliance systems would be inherently problematic.

108.		A commenter notes that dealers who are not members of an SRO require a branch manager or designated supervisory category of registration regardless of the UDP and CCO designations.	We believe it is unnecessarily prescriptive to require a branch manager or equivalent to be registered as such. Dealers that are not subject to SRO requirements for the designation of such individuals remain free to do so, or not, as such firms may deem appropriate for their business. Our further views on branch management are set out in the CP in section 5.9 Compliance system.
109.		A commenter believes it is unnecessary to impose a separate UDP and CCO requirement on non-Canadian dealers and advisers that are otherwise registered in their home jurisdictions.	Such firms have the option of proposing their existing UDPs and CCOs, or equivalents, for registration in those categories. We do not believe there is any less need for non-Canadian dealers and advisers to designate individuals to whom Canadian securities regulators can turn for answers if concerns about their firms' compliance with Canadian regulatory requirements should arise.
110.		A commenter is concerned that if the purpose of registering these two individuals is to allow for enforcement in the event of a failure to comply by the registered firm, then these positions will be very undesirable from a risk-reward standpoint.	As noted above, we have endeavoured to clarify the responsibilities of the UDP and CCO with revisions to the CP discussion of these positions. IDA member firms in all jurisdictions as well as investment counsels and portfolio managers in Ontario have operated successfully with similar requirements for some time now.
	Question #5: The Rule proposes an associate advising representative category for portfolio managers but not for restricted portfolio managers because the restricted portfolio manager category is intended for individuals who have expertise in a specific industry. Is the concept of an associate advising representative useful in the context of a restricted portfolio manager? If so, why?		
111.		A few commenters have found the concept useful and that the same argument for creating the category applies to both restricted and non-restricted portfolio managers. However, a commenter does not see why there should be a restriction on having an associate advising representative category for restricted portfolio managers. Given that this category of registration is largely discretionary, this commenter would prefer to see flexibility in the associate category. The commenter has also asked the CSA to consider implementing a practice that would indicate the required steps for upgrading the registration from "associate" to "full adviser" when an "associate" registration is granted.	We agree with the comments and the proposed Rule provides that an associate advising representative can be sponsored by either a portfolio manager or a restricted portfolio manager. An associate advising representative can apply to become an advising representative once he or she has obtained the full proficiency requirements for an advising representative as set out in section 4.11 of the proposed Rule.
	Question #6: We discussed but have not proposed registration of senior executives and directors (i.e. the mind and management) of a firm. Registration would assist the regulators in being able to deal directly with this group of people rather than indirectly through the firm. Please provide us with comments on what positions in a firm should be considered part of the mind and management and what issues or concerns you or your firm would have with registration of individuals in those positions.		

112.		A commenter is concerned that, if implemented, the proposed changes would increase liability insurance costs significantly.	We have taken this possibility into consideration.
113.		A commenter is of the opinion that given the potential inclusion within the “in the business” definition of issuers whose sole or primary business is not dealing with securities, the “registered persons” should be limited to those directly involved in the regulated activity and not involved those in the management of the primary business activity. These may be different persons and there is a cost with no corresponding value in registering people not involved in regulated activity. The registration of the UDP and CCO who are directly involved in the regulated business activity would be sufficient in most situations. A commenter notes that the current rules require registration of too many people and this significantly increases the regulatory burden. However, the proposed changes are appropriate.	We agree with this comment. The proposed Rule and related securities act amendments require registration only of those persons or companies who are carrying on the business of trading or advising or who are fund managers.
114.		A few commenters note that the ‘mind and management’ of a firm should be registered. This allows securities regulators to take action against a firm more easily and prevent unfit persons from serving in executive capacities. Individuals that comprise the mind and management of the firm and those with job functions that are connected to registerable activity, even if they do not undertake that role directly, should be registered.	We have considered these and related arguments at length. Although they have merit, we have concluded that the burdens associated with registering the directing minds of a firm – all of senior management, the directors etc. – and/or the other officers and/or personnel employed in the various operating units whose activities may be impacted by compliance requirements, would not be outweighed by the benefits. The range of registrants in terms of firm size and structure, as well as types and scale operations, would make a more prescriptive approach inherently problematic.
115.		A commenter is concerned whether there would be any use in registering other senior officers, in a large firm, where the CEO or other is registered as the UDP. If a firm is non-compliant then the securities regulator can suspend the firm. Having other officers registered does not make things easier or better.	In the CP, we have stressed that compliance is a firm-wide responsibility and the UDP and CCO are *not* solely responsible for compliance. With that clarification, we do agree that, on balance, too little is gained to make the registration of other officers, who do not undertake trading or advising activities, worthwhile.
116.		A commenter is of the view that executives and directors responsible for administrative functions that are not connected to the core firm activities should not require registration. The commenter believes that the requirement to complete registration forms for non-trading officers creates an unnecessary burden on the registrants and the firm. The benefits of registration and the value of such a broad based course can be addressed with a simpler and shorter registration form. The commenter suggests that the CSA consider a short form registration where an annual filing of the Partners, Directors and Officers be submitted via NRD with minimal information such as name, title, date of birth,	Only the individuals who form “the mind and management” of the firm will be required to file Form 33-109F4. These “mind and management” individuals are defined in NI 33-109 as “permitted individuals” and include “an individual who is not registered to trade or to advise on behalf of the firm and who (a) is a director, chief executive officer, chief financial officer, or chief operating officer of the firm, or performs the functional equivalent of any of those positions, or (b) beneficially owns, directly or indirectly, or exercises control or direction over, 10 percent or more of the voting securities of the firm.”

		current address, and date of exam completion be sufficient for registration of non-trading Partners, Directors and Officers. The long form registration would only apply to trading personnel, the UDP, CCO, and other senior officers as appropriate (CFO, COO, ADPs etc.).	This list is intended to achieve the same purpose as that proposed by the commenter, although we differ with respect to directors. In our view, directors are part of the mind and management of a firm. Since other non-trading, non-advising partners and officers will not be required to file F4s, there is no need for an abbreviated form. We disagree with the suggestion the entire schedule be broken down into distinct sections for SRO firms and non-SRO firms since much of the information required for SRO firms and non-SRO firms is identical and duplication would significantly lengthen the form. The IDA and MFDA have participated in the development of the requirements contained in this form as members of the project team.
	Question #7: The proposed exemption applies to advisers who are actively advising and managing their clients' fully-managed accounts. The exemption has not been extended to advisers trading in securities of their own pooled fund with third parties. If there are circumstances in which you think it would be appropriate to extend the exemption to third parties please describe.		
117.		A commenter believes that non-Canadian advisers, whether an adviser to an investment fund or fully-managing accounts, should not be required to register as dealers so long as the units of those funds are only distributed to "accredited investors".	We see no reason to treat non-Canadians differently than Canadians for these purposes.
118.		A commenter proposes that the CSA should provide guidelines as to what constitutes a *bona fide* fully-managed account.	We have expanded the discussion of this point in the CP (section 2.4).
119.		Two commenters suggested that portfolio managers should be exempt from the investment fund manager registration for funds that are only offered to "accredited investors". One of these commenters suggests that in such circumstances, the relationship between the adviser and the client is primarily an advisory one, and since the client retains the right to select the fund or investment strategy to be used, there does not seem to be an adequate justification to require that the manager have an additional registration.	We have amended the proposed Rule to include an exemption from the investment fund manager registration requirement for portfolio managers acting for their own fully managed accounts. We do not, however, agree with the suggested rationale for extending that exemption more generally. The reasons for registering fund managers, which were set out in the first publication Notice, apply regardless whether the investors are accredited or not.
120.		A commenter believes that the requirement for a fund adviser, that is principally responsible for distribution of the fund's securities to third parties, to also register as an exempt market dealer is duplicative and adds unnecessary regulatory cost to the registrant. The commenter recommends that as long as the registered adviser is prepared to discharge the know-your-client and suitability obligations to third party investors who do not otherwise purchase exempt securities through a registered dealer, the aims	We do not agree. Registration categories and their terms and conditions of registration are tailored to specific purposes, and the distribution of investment funds is different in substance from advisory activities.

		of the proposed Rule can be achieved without layering another, lesser, category of registration onto a registered portfolio manager.	
	Question #8: The Rule requires dealers, adviser and fund managers to have Financial Institution Bonds. In cases where the owners of the firm also carry out the operations and registerable activity of the firm, usually in small firms, are these bonds prohibitively costly to obtain and will the bonds provide coverage if they are obtained in these situations?		
121.		A commenter notes that given that the industry practice is for IC/PMs to largely be 'pure' advisers and not hold client securities, bonding and insurance do not seem necessary. It represents another financial and administrative burden for small firms.	The proposed Rule no longer requires that registrants maintain a FIB to satisfy the bonding and insurance requirements in Part 4 Division 2. Insurance protects both the firm's assets as well as its clients' assets. The proposed Rule does not require the same level of insurance for a 'pure' adviser. An adviser that does not handle, hold or have access to client assets (including cheques and other similar instruments) is only required to obtain coverage in the amount of $50,000. Bonding or insurance will provide protection in the event of a loss. For example, employee fraud may occur and this would be covered by clause A.
122.		A few commenters expressed the view that bonds are unnecessary for firms that deal exclusively with exempt institutions, have no funds under management, do not hold deposits or hold funds in trust, do not trade in securities and are only involved in private placements not requiring a prospectus. Given the $50,000 working capital requirement, also requiring insurance would be redundant and unnecessary.	We have reviewed the proposed solvency requirements and an EMD that does not handle, hold or have access to client assets (including cheques and other similar instruments) will not be required to maintain insurance (or minimum capital).
123.		A commenter notes that these are very costly for small firms and they are often subject to a minimum premium if the insurance company is willing to cover them at all. While a large dealer's premium may be less than 1% of its revenue, for a small dealer it may be 5 to 10% of that dealer's revenue. However the bonds are a necessary part of the business and are needed for the protection of clients.	We recognize the concern expressed by the commenter. For EMDs, see our response to the comment above. Exemptive relief from the insurance requirement may be available where a registrant can demonstrate that it is inappropriate in view of its particular business models.
124.		A commenter is concerned that exempting these firms does not make sense as often it is these smaller firms which present a greater financial risk.	We have taken the comment into consideration.
	Question #9: We propose that some existing requirements of Division 1 not apply to clients that are accredited investors as defined in NI 45-106 Prospectus and Registration Exemptions. Is it appropriate to exclude this group, or any group, of clients from the account opening requirements?		
125.		A commenter believes that some account opening requirements should not apply to accredited investor clients.	We have carefully considered this issue and concluded that in view of the relatively low thresholds for qualification as an accredited

		A few other commenters submitted that provided a registrant can rely on a representation from a client as to the client's status as an accredited investor, they support the CSA's approach to exclude accredited investors from the requirements of Division 1. Another commenter does not agree that accredited investors should be exempt and all clients should be subject to the same account opening requirements. All clients need to know about the relationship, responsibilities of the parties and services provided.	investor, many accredited investors should be treated much like non-accredited investors. On the other hand, we have concluded that at the upper end of the accredited investor spectrum, there are investors defined as "permitted clients") who are sufficiently sophisticated, or have sufficiently resources to obtain expert advice. These clients do not need or want the same protections. Among the measures we have adopted in this regard are limitations on the account opening requirements applicable where the client is a "permitted client".
126.		A few commenters suggest that pension funds, foreign financial institutions and other institutional investors should be included in the exemption from suitability obligations set out in section 5.5. Paragraphs 1.1(i) and (s) of NI 45-106 should be referenced in this regard.	As discussed, we have provided a suitability exemption in respect of "permitted clients".
127.		A few commenters note that all references to exemptions for accredited investors in the proposal should be replaced with a reference to any clients purchasing under the private placement exemptions of NI 45-106. This would ensure consistency of treatment for individuals who are deemed to be similar with respect to such investments.	We do not believe that the considerations that relate to relief from registration requirements are necessarily the same as those that relate to the prospectus requirement.
128.		A commenter recommends that only institutional investors should be exempt from the KYC requirement, not all accredited investors.	As noted above, we have provided an exemption from the suitability requirement for "permitted clients", which extends to KYC that relates to the suitability determination – but there can be no relief from gatekeeper KYC that relates to identifying the client.
	Question #10: What issues or concerns, if any, would your firm have with the proposed relationship disclosure requirements? Is this type of requirement appropriate for some or all types of accredited investors? If so, what information would be useful to have in the relationship disclosure document?		
129.		A commenter agrees with the concept of setting out particulars of the relationship and services in a relationship disclosure document but has concerns about the format and extent of it. A representative cannot make a client learn. As well, the commenter finds that the information cannot be provided to clients in single dose. Realistically, the account opening process is not a single event and is in fact a process often over several meetings. Accredited investors require the same process and should be subject to the same standards. If they are more knowledgeable and sophisticated (and some aren't) then the process will be shorter and take less detailed explanations. However it does not change their need to participate in the process, it simply makes it easier.	We have revised the requirement to refer to "Relationship disclosure *information*" (**RDI**) and indicated in the CP that registrants may provide the mandated disclosure to clients using separate documents. We have extended the RDI requirement to accredited investors but not to "permitted clients".

130.		A few commenters agree that the content of a relationship disclosure document (**RDD**) would be valuable for investors. But, they say, if it duplicates information in other sources like the simplified prospectus, and if the RDD is simply laid over the already cumbersome account opening process, the result will be excessive and will provide little added value to investors. Commenters also suggest the account opening process should be simplified and rationalized and the RDD should be considered together with the ongoing point of sale initiative by the Joint Forum and the broader objective of a principle based approach to the client relationship.	We have made revisions to the proposed Rule as noted above. Registrants will be free to provide the information to clients through a combination of existing or specially drafted documents. We will continue to work within the Joint Forum on the development of the point of sale initiative.
131.		A commenter notes that since the proposed Rule will be national, it makes sense that a standard disclosure document for retail investors should be developed by the industry and the CSA. Many of the current disclosure documents in the industry are standardized (e.g. the IDA "Strip Bonds and Strip Bond Packages Information Statement").	In view of the diversity of registrants and their operations, we believe it is more effective to set out the basic standard for information that must be provided to clients. Registrants are then free to decide how best to deliver that information in view of their particular circumstances.
132.		A commenter recommends that the required information should not include the information provided by the client in the KYC process as it would be unnecessarily repetitive and would not add to the client/adviser relationship.	We believe it is important that clients know what information their dealers or advisers are relying on to make suitability determinations on their behalf. Registrants will also benefit from heightened client awareness of this information and corrections or updates that they may provide from time to time.
133.		It is unclear to one commenter whether the required information is necessary or useful for clients. Several financial products do not require this level of information to clients. The commenter proposes that the relationship disclosure document should be considered together with all other rules relative to client documentation, and should favor electronic transmission of documents.	The CSA believes that the information is necessary for the client to fully understand the relationship with the registrant, its scope and limits, as well the costs the client will have to pay in making and holding investments in the account. We do not see any reason to favour electronic transmission of documents, but we have no objection to its use where clients are content to receive information in that manner.
134.		A commenter recommends that the CSA should provide examples of documents to be sent to clients.	This is not intended to be a prescriptive requirement. Registrants may determine what form the mandated disclosure will take.
	Question #11: Is the prescribed content for a confirmation the appropriate type of information?		
135.		A commenter suggests that while investors need to know what they invested in and when it was invested, most other information is unnecessary clutter that obscures the important information.	We acknowledge the comment, but have concluded that the information is necessary.
136.		A commenter feels that the prescribed information in the confirmation is adequate.	We acknowledge the comment.

137.		A commenter believes that it may be useful to have a prescriptive rule for retail clients however it does not believe that institutional accounts require the same detail. The commenter recommends that the CSA consider an exemption for institutional confirmations to be in any manner that agreed to with the institutional accounts, be it electronic confirmations, with individual or grouped executions for settlement purposes. As the confirmation and settlement process becomes more automated, current disclosures requirements that include average price, principal trade and related and connected issuer disclosures are no longer being reviewed by institutional clients. In addition, straight through processing decreases the utility of confirmation disclosures.	We acknowledge the comment, but the information required in the proposed Rule is not substantially different than what is required today. We do not agree that electronic processing and reporting, which is also not new, should change the content of the reporting.
138.		A commenter agrees with the proposed content but asks for guidance as to whether the confirmations must always utilize Canadian currency or whether it is satisfactory to provide the confirmation in the currency the trade was executed in?	We agree – a trade should be reported in the currency in which it was executed. Where foreign currency is executed through a Canadian account, the exchange rate should be reported to the client.
	Question #12: The proposed Rule requires a registered firm to identify and deal with all conflicts. Would a materiality concept be appropriate within the requirement or should that be dealt with at the firm level within the firm's policies?		
139.		A commenter believes that disclosure is not always enough and that firms may need to do more. The sale of in-house products is one area of conflict that is not being addressed by many firms.	The CP states that disclosure is not always enough to respond to a conflict of interest. Disclosure is only one of three methods discussed in the CP that registrants use to respond to conflicts of interest.
140.		A commenter suggests that it is not practical, reasonable or even prudent to attempt to identity every "potential" conflict of interest not to mention disclose them all to investors in a meaningful way.	The proposed Rule has been amended to address this comment.
141.		Several commenters recommend that a materiality concept be enshrined in the proposed Rule as without it, this over time, will simply come to mean all conflicts of interest (particularly between clients) which is simply not practical.	The proposed Rule has been amended to address this comment.
142.		A commenter supports this principles based approach to managing conflicts of interest. Conflicts of interest should be identified and addressed by the firm in its policies and procedures. The commenter notes that it is, however, very important for the CSA to clarify if there are some conflicts of interest that will be consistently reviewed by the securities regulators. For example if all firms are required to have a personal trading policy then it would	The reasonability test that has been added should already be familiar to registrants.

		be helpful to have further guidance and clarification on minimum standards and how the securities regulators will determine materiality.	
	Question #13: Is our description of the risks of referral arrangements complete and accurate? If not, what is missing?		
143.		A few commenters note that reference is made in section 6.14 of the proposed Rule to the registrant taking "reasonable steps" to confirm that a referral partner has the appropriate qualifications to provide their service and that they are appropriately registered (where required). Further guidance needs to be provided as to the definition of "reasonable steps". What kind of due diligence is required?	We feel that it is impossible to prescribe the specific steps that would be required to be taken by each registrant as the circumstances of each referral arrangement are different. The CP provides that it is the responsibility of the registrant to determine what reasonable steps are appropriate in particular circumstances. However, the CP provides an example of an assessment of the type of clients that the referred services would be appropriate for.
144.		A commenter suggests that the only element of disclosure to the client should be the method of the calculation of the remuneration, since the amount of the commission is rarely known at the time of the referral. Further, the amount of the commission must be seen in the context of the investment as a whole. Finally, once the information has been initially disclosed to the client, there should be no requirement to update the information since the relationship is established and subsequent changes are not susceptible of having an important impact.	We believe the details of compensation in a referral arrangement can be relevant and important.
145.		A commenter notes that the proposed Rule addresses the appropriate concerns and potential conflicts of interest. However, this commenter believes that for institutional accounts this topic should be coordinated and consistent, to the extent possible, with any rules and policies that come out of the redrafting of National Instrument 23-102 – *Use of Client Brokerage Commissions as Payment for Order Execution Services or Research* ("Soft Dollar" Arrangements).	We do not consider the provisions of Division 2 of Part 6 to be inconsistent with National Instrument 23-102 – *Use of Client Brokerage Commissions as Payment for Order Execution Services or Research*.
	Question #14: One objective of NI 45-106 was to have all exemptions in one instrument. As mentioned, we have included the registration exemptions in the proposed Rule for purposes of obtaining comments on the exemptions that are being proposed under a Business Trigger. Would you prefer the registration exemptions remain in NI 45-106 or be moved into the proposed Rule?		
146.		A few commenters hold the opinion that there should be no substantive change in exemptions as a result of the business trigger and that they should therefore remain in NI 45-106.	We acknowledge the comment.

147.		A few commenters believe that leaving the exemptions all in one place would have a positive effect on compliance and ensure consistency and ease of reference.	We acknowledge the comment.
148.		A commenter is of the opinion that it does not matter as it is just as difficult to navigate different national instruments as it is to follow amendments and changes to them. Having all exemptions in one place would be as good as having them with the actual rules.	We will provide guidance wherever possible to assist in the navigation of different national instruments.
149.		A commenter suggests that wherever the exemptions are located the other instrument should have a detailed cross-reference in its CP.	We acknowledge the comment.
150.		A commenter is very concerned about uncoupling the registration exemptions from NI 45-106. There is a general lack of awareness of the intention to eliminate the registration exemptions from NI 45-106 because of the decision not to publish a change to NI 45-106 along with the proposed Rule.	We are publishing consequential amendments along with the revised draft of the proposed Rule. These consequential amendments will include proposed amendments to NI 45-106.
151.		A commenter recommends that prospectus exemptions for securities offerings remain in NI 45-106. Any exemptions for the requirements and registration of advisors and dealers should be moved to the proposed Rule.	We acknowledge the comment.
152.		A commenter believes that it would be preferable to have all the registration exemptions within the proposed Rule. For purposes of harmonization we believe that requirements and exemptions should be contained in the proposed Rule and not local legislation.	We acknowledge the comment.
	Question #15: Is 120 days sufficient to allow registrants with existing referral arrangements to comply with the proposed Rule? If not, what length of time is sufficient? Please explain.		
153.		Several commenters suggest that 120 day period may be sufficient but for a firm whose issue deals with several other parties that may be a difficult target to meet. Suggestions for a longer period ranged from 180 days, to 120 days with an extra 60 day extension, subject to a fee (to discourage its use) if a firm has a case for requiring an extension, to one year. A few commenters do not agree with imposing the referral arrangement requirements on existing arrangements, and suggest that a transition period longer than the proposed 120 days be provided. Registrants will require sufficient time to canvass existing referral arrangements, amend existing referral arrangement agreements, prepare disclosures, update procedures, etc. and therefore 120 days will not suffice to accomplish all the necessary	The CSA has considered this issue and proposes a 6 month transition period to amend existing referral arrangements.

		steps. Accordingly, they suggest that, at a minimum, a 240 day or one year transition period should be provided.	
154.		A commenter requests clarification as to whether dealers are required to repaper exiting referral arrangements. If so then the necessary transition period will be affected.	The intent is not to be duplicative, however most of the CSA jurisdictions currently do not have provisions in place dealing with referral arrangements. If a registrant has a referral arrangement in place that does not comply with the requirements in Division 2 of Part 6, we have provided a 6 month transition period to allow registrants time to comply with the new requirements.
	Question #16: A matter not dealt with in the proposed Rule but one which relates to registrants and NRD is the annual fee payment date. Comments have been made by some industry participants that a December 31 fee payment date is problematic and that a May 31 fee date would be better. Please comment on whether a May 31 or December 31 annual fee payment date is better for your firm.		
155.	**Fee Pull**	Many commenters agree that the December 31 date is somewhat problematic and that May 31 would be a better date.	We propose to change the fee pull date to May 31. This change is done outside of the proposed Rule and will be implemented as soon as the applicable instruments can be amended and NRD changes made as necessary.
156.		A commenter prefers retaining the December 31 fee payment date or keeping it as an option.	We acknowledge the comment.
	COMMENTS ON SPECIFIC SECTIONS OF THE PROPOSED RULE		
	Part 1 – DEFINITIONS		
157.	**1.1 Definitions**	A commenter submits that with respect to the definition of "accredited investor" certain registrants may deal with institutional clients who do not fall squarely within the definition of accredited investors but who should nonetheless be included in that definition. The commenter is specifically referring to large foundations, endowments, aboriginal groups and not-for-profit organizations. The commenter urges the CSA to include such institutions in the definition of "accredited investor" and then prescribe that in order to qualify as an accredited investor those institutions would need to meet a minimum financial threshold that the CSA would set. In the alternative, the commenter suggests that the CSA should consider expanding the exemptions afforded to registrants with respect to accredited investors throughout the proposed Rule to institutional clients that do not meet the definition of accredited investor but that meet a minimum account balance threshold, which threshold would be set by the CSA. This alternative would remedy the odd and impractical result that arises in instances	We have amended the proposed Rule to include a class of "permitted clients". In general, these are individuals and specified institutions with means considerably above the "accredited investor" base-line. However, we do not assume that size alone is an indication of sophistication where charities and other non-commercial organizations are involved.

		where institutional money managers may have to provide different disclosures to a client that happens to be an endowment that is just as large, if not larger, than a pension fund client, and that has a larger account than the pension fund.	
158.		A commenter submits that section 1.1(1) - The definitions of “IDA” and “MFD SRO” should reference a “recognized SRO” as opposed to the “Investment Dealers Association of Canada” and the “Mutual Fund Dealers Association of Canada”, respectively, as the names of these organizations may change over time, or they may merge with other SROs, or be replaced.	We are of the view that referring to SROs by name provides a clarity that outweighs any inconvenience that might result from having to amend the Instrument in the event of a name change.
159.		A commenter suggests that section 1.1(1) - The definition of “marketplace” should be amended to remove subsection (d) (of the definition of “marketplace” under s.1.1 of National Instrument 21-101 *Marketplace Operation*). Technically, subsection (d) would include dealers carrying out initial public offerings, private placements and off-market trades (with RS consent), leading to marketplace requirements that were not intended and are inappropriate in the circumstances.	We have considered this comment, but find we cannot agree with the commenter.
160.		A few commenters submit that a definition for “investment fund” should be included as well as “adviser”.	The definition of “investment fund” and “adviser” is set out in securities legislation.
161.		s. 1.1 (3) – A commenter finds that the requirement that the UDP be “responsible for ensuring that a registered firm develops and implements policies and procedures” is too broad. The role of the UDP should be more clearly defined in the proposed Rule and, in particular, should be limited to obligations under securities legislation. The commenter also believes that the requirement that the CCO be “responsible for discharging a registered firm’s obligations” is too onerous a demand and creates excessive liability.	We have endeavoured to clarify the responsibilities of the UDP and CCO with revisions to the CP discussion of these positions.
	PART 2 – CATEGORIES OF REGISTRATION AND PERMITTED ACTIVITIES		
162.	**General Comments**	A commenter observes that the proposed Rule places significant emphasis on capital adequacy so it is unclear why the CFO role does not require registration at non-SRO firms. Recently the IDA imposed additional proficiency requirements for CFO’s to ensure that in addition to the general industry expectation for them to have professional designations such as a Chartered Accountant they are also required to complete an industry exam.	We acknowledge the comment. We will take this under consideration for the future. Additional research and consulting would need to be done before we could reach agreement on the imposition of a registration requirement for CFOs.
163.		A commenter commends the CSA for streamlining the number of registration categories.	We acknowledge the comment.

164.		A commenter asks why investment fund managers are referred to throughout the proposed Rule yet they do not appear in the registration categories in this section.	The requirement to be registered as an investment fund manager will be in the *Securities Act* or equivalent legislation in most jurisdictions rather than the proposed Rule. Some jurisdictions may implement the requirement to register as an investment fund manager through a local rule. We have included the investment fund manager category of registration in section 2.6 of the proposed Rule.
165.		A commenter suggests that subsections 2.1 (a) to (c) and (e) should have the wording "with any persons or companies" added to the end of each.	We are of the view that adding these words is unnecessary.
166.		A commenter observes that under the proposed Rule a start-up hedge fund would have to register as an investment fund manager, an EMD and a portfolio manager. Although the capital requirements may not be tripled, the effort and registration fees are.	Multiple registrations are required under the proposed Rule because the requirements for each category have been drafted to address the specific activities of the category. Where categories overlap the requirements will be the same and therefore not duplicative: by meeting the requirement in one category the registrant has met the requirement in the other category if that requirement is the same. We acknowledge the comments concerning duplicative costs associated with multiple registrations. However, costs are a local issue and each jurisdiction will be addressing this through local requirements.
167.	**2.1 Dealer Categories [now 2.1 Dealer and underwriter categories]**	A few commenters believe that a real estate investment firm should not be registered in a general dealer category when they are only capable of providing advice on one type of product.	Restricted dealer registration may be appropriate for some single-product dealers. Depending on its intended clients, a single-product dealer may also consider registration as an EMD as an alternative to the general investment dealer category.
168.		A commenter suggests a separate category should be added for those issuers only selling their own securities and not intermediaries or truly "in the business". The restricted dealer category which should presumably address this situation seems likely to produce uncertainty and unequal treatment from one jurisdiction to another. There should be a separate category with pre-set conditions to provide greater certainty fairness and harmonization among issuers and jurisdictions. This category should also contain an exemption from the fit and proper requirements in recognition of the recourse available to investors in their dual role as issuer and the lesser likelihood of unfair or fraudulent practices in these situations where an offering memorandum is utilized and prospectus exemptions are satisfied.	The business trigger is not intended to capture an issuer, such as an industrial manufacturer, whose business is not trading in securities. An industrial manufacturer that occasionally goes to market to raise funds for the manufacturing business is not, if we apply the guidance provided in the CP, in the business of trading or trading in securities. For issuers who are in the business of trading but who deal through registered dealers, we have added an express exemption from the dealer registration requirement (s. 8.3 of the proposed Rule).
169.		A commenter believes that the registration regime must avoid	As discussed in our answers to similar comments, we do not

		"layering", in that registrants registered in broader categories with more onerous requirements should not have to qualify, register and meet duplicative requirements in more narrowly-focused registration categories. The commenter recommends that the CSA clarify that the Proposal establishes the following as a logical hierarchy for registrants: • Firms that wish to deal in all types of securities and act as underwriters must be registered as investment dealers. Representatives must have full proficiency. • Firms that wish to deal in mutual fund securities (whether issued by a publicly offered mutual fund or a privately distributed mutual fund) must be registered as a mutual fund dealer. Proficiency for representatives should be consistent with this function and must be tailored to the particular product being distributed. Given the nature of a mutual fund and the proficiency required to distribute mutual funds, the ability to distribute exempt securities should be permitted as part of a mutual fund dealer registration, since it should be assumed that this proficiency is a sub-set of the ability to deal in mutual funds. • Firms that wish to deal in scholarship plans must be registered as scholarship plan dealers. Proficiency for individuals should be consistent with this function and must be tailored to the particular product being distributed. Given the nature of the product, we recommend no ability for scholarship plan dealer representatives to deal in any other type of security, unless additional proficiency is achieved. • Firms that wish to deal only in exempt securities must be registered as exempt market dealers. Proficiency for individuals should be consistent with this function and must be tailored to the exempt market. • Firms wishing to deal only in selected securities must be registered as restricted dealers. Proficiency for individuals should be consistent with this function and must be tailored to the selected securities being dealt in.	believe it is possible to eliminate all multiple registrations and we do not agree that exempt market dealing is a "sub-set" of mutual fund dealing. We believe the regulatory oversight that will be provided with the introduction of the EMD registration category will in fact enhance investor protection. The diversity of exempt market dealer activities is such that we do not believe a new SRO membership requirement would be appropriate. A review of current SRO requirements is not part of the mandate of this project.

		The commenter also recommends that NI 81-102 be reviewed for differences in treatment of MFDA and IDA members that serve no public policy purpose, such as the trust account requirements of Part 11 of NI 81-102. The commenter proposes that the CSA consider requiring all dealer registrants to become members of an SRO. This commenter is concerned that it will become increasingly common for mutual fund sales representatives who face enforcement proceedings through their SRO to simply discontinue their mutual fund license and choose to deal solely in exempt securities through an exempt market dealer. This behaviour may lead to product arbitrage and potential lessening of investor protection. For example, the exempt market dealer category of registration could benefit from the rigour that SRO oversight provides. The level of oversight necessary for exempt market dealers and restricted dealers should be commensurate with the inherent risk of the particular product distributed.	
170.	**2.1(b) Mutual Fund Dealers**	A few commenters find that section 2.1(b), which limits an MFD to dealing "solely in a security of a mutual fund", is too restrictive and would prevent them from distributing products like GICs. This is an important product for many clients of MFDs.	Mutual fund dealers are permitted to carry on non-securities business, subject to the rules of the MFDA, without additional securities-related registration. If mutual fund dealers deal in securities other than mutual funds then registration in another category may be required.
171.		A few commenters note that MFDs currently sell many other products including GICs, segmented funds and other life products – PPNs, hedge funds and alternative investments. The commenters recommend that the proposed category should not be more restrictive than the current reality. MFDs should be able to sell ETFs which will increase competition. MFDs should automatically be registered as scholarship plan dealers and EMDs without further and separate registration. The MFDA can ensure that only those advisers with appropriate proficiency sell exempt market products or ETFs.	We do not agree. Registration categories and their terms and conditions of registration are tailored to specific purposes, and the sale of mutual funds is different in substance from the sale of other products.
172.		Several commenters recommend that MFDs should be permitted to deal in exempt products without also having to register as an EMD in recognition of the higher level of oversight provided by SRO membership. This would give MFDA members the same status as IDA members in respect of exempt products. Since the MFDs are regulated by an SRO, the SRO should determine appropriate proficiency for engaging in this line of business.	Please see our response above.

173.		A commenter proposes that MFDs and their representatives should be permitted to also sell scholarship plans without necessarily being registered as a scholarship plan dealer, although the sales representatives doing so should be required to have the appropriate proficiency. Correspondingly, MFDs and scholarship plan representatives should be permitted to establish sales arrangements allowing them to in effect be dually licensed in much the same way as mutual fund salespersons can also be licensed to sell insurance products. To facilitate this cross-over between scholarship plan dealers and MFDs, the commenter suggests that the CSA consider removing the various terms and conditions that they have placed on the activities of scholarship plan dealers and permit them to distribute securities for which they are properly registered, without restrictions.	Registration categories and their terms and conditions of registration are tailored to specific purposes, and the distribution of scholarship plans is different in substance from mutual funds, notwithstanding that both are securities. “Dual licensing” refers to the situation that arises where for constitutional reasons different regulators have jurisdiction over different aspects of an individual or firm’s business operations.
174.		A commenter notes that many exempt products are inconsistent with what would be permitted to be sold under the business model used by most mutual fund dealers.	Mutual fund dealers that choose to deal in exempt market products will need to obtain registration as an exempt market dealer.
175.		A commenter points out that if one or more CSA jurisdictions choose not to adopt an exempt market category there would still be a benefit to having consistency with respect to what securities can be traded by a mutual fund dealer.	We acknowledge the comment.
176.		A commenter notes that MFDs in a number of provinces can sell exempt products to their clients. The proposed restriction from MFDs selling exempt products and requiring them to also obtain an EMD registration to do so raises a problem for clients of MFDs that elect not to also obtain an EMD registration. The commenter questions whether those investments will be grandfathered so as to not impair the client’s positions.	We do not believe that grandfathering provisions are appropriate though we have provided for transition periods. Mutual fund dealers who do not chose to obtain an exempt market dealer registration but may have clients who hold exempt market securities have options available to them such as transferring the non-mutual assets to another dealer.
177.		A few commenters support the concept of a registration hierarchy that would allow mutual fund dealers to sell exempt securities and scholarship plans without requiring additional categories of dealer registration.	Registration categories and their terms and conditions of registration are tailored to specific purposes, and the sale of mutual funds is different in substance from the sale of scholarship plans and exempt market products.
178.		A commenter urges the CSA to clarify that a mutual fund dealer, and its representatives, can also deal in securities of an issuer that falls within the definition of “mutual fund” in applicable securities legislation, whether or not that mutual fund is being distributed under a prospectus, as has been the case in many CSA jurisdictions in the past.	Under the proposed Rule mutual fund dealers can deal in both prospectus and non-prospectus qualified mutual funds.

179.	**2.1(d) Exempt Market Dealers**	A few commenters pointed out that in Québec and Manitoba, the term “securities” is defined to include deposit products (i.e. GICs, Index-Linked GICs and PPNs) but they have been considered to be exempt securities and may currently be sold by unregistered bank employees through the retail bank channel. However, pursuant to the proposed Rule, sale of such products may require an exempt market dealer registration. No other jurisdiction within Canada defines the term “securities” to include deposit products. The commenter’s note that the inconsistency in the definition of “securities” will lead to an uneven playing field for individuals and firms in Québec and Manitoba who will need to be registered in order to sell these products whereas they will not need to be so registered in other jurisdictions. The commenters note that the proposed Rule also proposes to eliminate most exemptions currently found in sections 34 and 35 of the Ontario *Securities Act*. These exemptions permit bank employees to sell government debt products such as Canada Savings Bonds without the need to be registered. The commenter’s query whether bank employees selling government savings bonds will need to be registered as a result of the changes arising from the proposed Rule.	The CSA jurisdictions will continue to deal with deposits and financial intermediaries in the materially the same way as they do today. The exemptions that currently exist for financial intermediaries and their representatives in Ontario under sec. 209(10) of Ontario Regulation 1015 and in Part 4 of OSC Rule 45-501 will continue.
180.		Several commenters pointed out that there is no definition of “exempt product”. They feel it is important to have a clear definition that is uniform across all jurisdictions.	We believe that the description for the exempt market dealer in sec. 2.1(d) of the proposed Rule clearly sets out the activities that the dealer can carry on. The proposed Rule does not use the term exempt product. It is a term that primarily relates to the prospectus requirement, which is not the subject of the Rule.
181.		A commenter points out that once an EMD has placed a security in its accredited investor account, it may need to be able to assist the client to resell that security, such as through the exchange. In order to assist the client in reselling, the EMD needs to be able to deal with registered dealers whether they are acting as agent or principal. This is not contemplated in the proposed Rule as EMDs are limited to dealing with accredited investors and the “acting solely through a registered dealer as agent” exemption has not been included. The commenter submits that this exemption should be included.	A registered dealer is an accredited investor and, as the revised proposed Rule now makes clear in s.2.1(d), an EMD can trade any security with an accredited investor or a registered dealer.
182.		A commenter finds that a dealer might avoid SRO regulation by making a submission for registration as a restricted dealer. The commenter suggests that it must be made clear that no dealer that would otherwise have to be a member of an SRO should be permitted to be a restricted dealer.	An application for registration in the restricted dealer category will be considered on a case-by-case basis and it will be in the discretion of the regulator to determine whether registration in that category is appropriate based on the activities the dealer proposes to carryon.

183.		A commenter proposes that the sale of prospectus-based mutual funds should be restricted to registered mutual fund dealers or investment dealers.	We do not agree. The proficiency requirements for a dealing representative of an exempt market dealer are essentially the same as those required of a dealing representative for an MFDA member.
184.		Commenters are concerned about the impact the new EMD registration category will have on individual CSA members. When universal registration was introduced in Ontario a huge registration backlog was created that took years to clear. A similar outcome may occur in other jurisdictions under the proposed new regime.	Transition provisions have been added to the proposed Rule which is intended to address this concern. The transition provisions require that an application for registration be made within a certain time and not that registration be obtained within a certain time. The CSA is committed to making the transition as smooth as possible. The NRS may also assist with the transition of those currently registered as a limited market dealer in Ontario who then become exempt market dealers and wish to register in other jurisdictions. We do not anticipate any significant backlog in the treatment of these applications.
185.	**2.1(e) Restricted Dealers**	A commenter recommends that the restricted dealer category should not be limited to activities that do not fall within other firm categories as the Notice and Request for Comment states. Rather, the restricted dealer category should be available to any entity whose activities are such that the more extensive registration requirements of another category (e.g. an EMD) are not appropriate.	We do not agree. As stated previously the restricted dealer category is intended for limited activities that do not fit within any other dealer category. As set out in the responses to the comments on the exempt market dealer category we have amended the requirements applicable to that category in response to the comments concerning the appropriateness of the requirements. We believe the amendments adequately address those concerns.
186.		A commenter is concerned that some CSA members may allow restricted dealers where it will provide a competitive advantage over fully registered dealers.	Restricted dealers, by definition, will only be permitted to operate within narrow boundaries. We therefore do not believe that they will have a competitive advantage over other dealers. In any event, CSA members are committed to working together to ensure that the terms and conditions under which restricted dealers will be granted registration are consistent among their jurisdictions.
187.		One commenter finds that the category and its lack of definition provide considerable uncertainty, which is inconsistent with the goals of the CSA for the Proposals and the Passport System. Another commenter states that the CSA should clarify which firms, and which securities would be registered and dealt in under the category of restricted dealers. The commenter would be disappointed if this category of registration were to permit creation of provincial differences in the categories of registration or enable the avoidance of registration in one of the categories of registration with more rigorous oversight. A commenter suggests that the use of the restricted dealer category should be rare to avoid proliferation of restricted product	The restricted dealer category is intended to provide for some flexibility in the registration regime as business structures emerge. If over time a new business structure becomes widely adopted we will consider amending securities legislation to provide a category for that business structure. The CSA is committed to a harmonized approach to the use of the restricted dealer category.

		solutions being offered to investors.	
188.		A commenter questions whether there are circumstances when an entity might seek registration as a restricted dealer or restricted portfolio manager for servicing a restricted class of clients (rather than a specified class of securities).	We do not intend the category to be used in that way at this time. The exempt market dealer category is the category which permits the dealer to deal with a certain class of clients.
189.	**2.2 Exemption from Dealer Registration for Advisers**	Several commenters are of the opinion that there should be exemptive relief for portfolio managers who only deal in their own securities and only in the exempt market. These commenters suggest that exemptive relief should not be restricted to fully-managed discretionary accounts as is currently the case under NI 45-106 in section 2.3(1).	The exemption is intended as an accommodation for advisers who pool client funds in their managed account for efficiency purposes. Portfolio managers that distribute units of in-house pooled funds to third parties are acting in the capacity of a dealer and require the corresponding registration.
190.		A few commenters suggest that an adviser should not be required to register as an EMD regardless of whether the adviser carries out the client mandate through proprietary or non-proprietary pooled funds, and the criteria for the exemption should be that where there is an agreement that imposes obligations typical of an adviser then the dealer exemption should apply.	As discussed in our responses to similar comments, although we have provided a dealer exemption for advisers in certain circumstances, advising and trading are in substance different activities and we do not believe it is possible to eliminate all multiple registrations.
191.		A commenter commends the CSA for introducing this exemption which will be valuable to many advisers. However, the commenter finds that the exemption should not be limited solely to an adviser's own pooled funds within the context of fully managed accounts. There is no reason to draw a distinction between an institutional client buying a pooled fund in a fully managed account or in a non-discretionary account. If the intent is to protect clients and prospective clients, the commenter believes that this intent is already satisfied by the adviser's registration as a portfolio manager and the prospectus exemptions set out in NI 45-106. Pooled funds are sold under prospectus exemptions and eligible investors in pooled funds do not need the additional layer of protection provided by a prospectus and dealer registration when the manager of the pooled fund or an affiliate is selling the pooled fund units. The commenter submits that the prospectus exemption regime is adequate and that limiting this dealer exemption to advisers dealing with their own pooled funds for their own managed accounts is inconsistent with the principles of NI 45-106. The commenter recommends that the CSA expand the application of this exemption to capture scenarios where an adviser is dealing (a) in securities of an affiliate's pooled fund; (b) in securities of the adviser's or affiliate's public mutual fund; (c) with non-managed accounts; (d) with fully managed accounts where the adviser retains a sub-adviser to provide advice in order to manage the account; and (e) with third parties who are acquiring securities	We have amended the proposed Rule to include an exemption from the investment fund manager registration requirement for portfolio managers acting for their own fully managed accounts. We acknowledge the comments. However, we do not agree that there is no distinction in the situations described. We believe there is a material difference between a portfolio manager deciding in its discretion to set up its own pooled funds as an efficient way to invest client funds under its management, as compared with a registrant – be it a portfolio manager or not – offering units in investment funds for sale to third parties. The second activity constitutes trading and it is, we have concluded, appropriate that dealer registration be required for that activity. The prospectus regime is not an alternative to the registration regime. They are complementary and serve different regulatory purposes.

		under prospectus exemptions (especially accredited investors).	
192.		A few commenters suggest that the term “pooled fund” should be defined for purposes of the application of this section.	The term “pooled fund” refers to a redeemable non-prospectus qualified fund.
193.	**2.3 Adviser Categories**	A commenter suggests that unregistered niche advisers have been competing unfairly for years and have avoided the cost of registration and the scrutiny of securities regulators. The commenter notes that to continue the exemption for unregistered niche portfolio managers perpetuates an unfair situation to the continued detriment of registrants.	The exemptions from the adviser registration requirement which are available are limited in scope and do not include any exemption for “niche” portfolio managers. Specialist advisers will still be required to register, as they are today, but with the introduction of the restricted portfolio manager category under the proposed Rule, will find it easier to do so. We believe that if the proposed Rule comes into force, the regulation of advisers will be enhanced.
194.		A commenter proposes that the term “investment counsel” should be substituted for the term “adviser” in the Act. The commenter suggests that this would create a different regulatory regime of that category. The term “adviser”, the commenter suggests, is too confusing.	“Investment counsel” is at present a category of adviser in several CSA jurisdictions that refers to an adviser who may recommend investment in specific securities but may not exercise discretion on behalf of clients. As discussed in the first publication Notice, we have eliminated that category in the proposed Rule because it was very seldom used. We feel that this will reduce confusion in that all advisers will have the ability (but will not be required) to undertake full discretionary portfolio management. “Adviser” remains the term to describe the overall type of registration – as opposed to dealer or investment fund manager – as we believe it continues to imply an accurate description of the activity, and is well-understood within the industry and among many investors.
195.	**2.3(b)**	A commenter suggests that the wording “specified securities or classes of securities” is narrower than the related commentary in the Notice, which uses the wording “specified securities, types or classes of securities or specified industries”.	We agree. The proposed Rule has been amended to reflect the comment.
196.		A commenter encourages the CSA to add “or to advising specified clients, or a combination of such restrictions” to the end of clause (b). This commenter is of the view that this would add some flexibility to grant the restricted registration in circumstances where they are warranted by specific facts.	We do not agree. The category is intended to accommodate advisers who have developed an expertise through working in a particular industry not through dealing with a particular type of client.
197.	**2.4 Exemption from Adviser Registration for Dealers without Discretionary Authority**	A commenter has expressed that this exemption states that the adviser exemption for registered dealers only applies “in connection with a security in which *it deals* [emphasis added]”. It is not clear if it is a condition of this exemption that the registered dealer actually deals in the security for which advice is provided for the client. The commenter also notes that the wording of this section (“in connection with a securities in which it deals”) is	We agree. The proposed Rule has been amended to reflect the comment.

		narrower than the related commentary in the Notice ("which is necessary to support its dealing activities"). In order to remove any ambiguity, the commenter suggests that this provision be changed to: "in connection with a security in which it may deal…"	
198.		A commenter questions whether exemptions available to a registered dealer also apply to market participants who have received a registration exemption. The commenter suggests that the term "registered dealer", as used in this section, is unclear and that further clarification is required. The commenter suggests that if the exemption does apply to a market participant then the word "registered" should be removed from provision.	The use of the term registered dealer was intended in this section. Exemptive relief is based on the facts in each case. Market participants should review the relief being relied upon and ensure that it addresses all the activities being conducted.
199.	**2.6 Individual Categories [now 2.7]**	A commenter suggests the addition of a "trader" category for those individuals whose functional role is trading and the proficiency of increasingly technical trading mechanisms with a focus on technical regulatory compliance proficiency.	We do not believe it is necessary to provide for this category in the proposed Rule. This is a matter more appropriate for the dealer SROs.
200.		The commenter applauds the CSA's efforts to harmonize the firm and individual categories across all of the CSA jurisdictions and urges the IDA to simplify and rationalize its individual registration categories accordingly. The commenter also supports the proposed registration requirement applicable to fund managers and the individual registrations required for those in supervisory roles.	We acknowledge the comment. The IDA is streamlining its individual categories.
201.		A commenter notes that while the CSA has chosen not to continue with a "branch manager" category of registration in favour of requiring registrants to establish "systems of controls and supervision", scholarship plan dealers request that they be permitted to maintain their current systems of dealer-designated branches and supervision of sales representatives.	The proposed Rule allows each registrant to tailor its compliance structure in a way that is appropriate for the registrants business. Scholarship plan dealers are able to maintain their current system of dealer-designated branches and supervision of sales representatives if it is appropriate for their business.
202.		A commenter suggests that there should also be a category for fee-for-service financial planners. It would be appropriate to bring these people into the jurisdiction of the CSA.	The proposed Rule does not deal with financial planners that do not carry out trading or advising activities. Various members of the CSA are considering the issues associated with financial planners but no proposals are being made at this time.
203.		A commenter recommends only individuals dealing with Canadian customers in a securities sales or trading capacity should be required to register.	We do not agree. The CSA believes it has an obligation on an international level, as a member of IOSCO, to ensure that the activities that are carried out in its jurisdiction are properly regulated.
204.		A commenter proposes that the role(s) of these individual registrants should be clarified so as to ensure proper registration.	We have amended the proposed Rule where appropriate in response to the comment.
205.		A commenter notes that it is unclear how these categories relate to	We have revised Schedule C as suggested.

		Schedule C of the draft Form 33-109F4. The commenter would appreciate clarification or a revision to Schedule C.	
206.	**2.7 Associate Advising Representative – Approved Advising Only [now 2.8]**	A commenter suggests that this does not distinguish between discretionary advice and non-discretionary advice - when an associate advising representative is providing non-discretionary advice it should not require the approval of the supervising adviser.	We do not agree. An individual registered in the associate adviser representative category has not obtained the proficiency of a full portfolio manager and supervision is therefore appropriate regardless of whether it is discretionary or not.
207.		A few commenters expressed the view that the category is designed to accommodate individuals employed by a portfolio manager who are responsible for, or in charge of, client relationships but who do not perform portfolio management for clients. The commenters question the rationale behind expanding this registration category beyond the existing apprentice category and the harm that the CSA is attempting to remedy by requiring registration of individuals in charge of client relationships if no specific portfolio advice is associated with such relationships. A commenter proposes that this registration category be limited to the existing apprentice scope. Requiring persons not actually providing portfolio management or investment advice to be registered as representatives of a Portfolio Manager seems inconsistent with the idea of the business trigger.	The associate advising representative category is not an existing category in several jurisdictions. The rationale for not limiting it to apprentice portfolio managers is discussed in the CP. We do not assert that "individuals in charge of client relationships" must necessarily be registered. The range of activities that may be encompassed by a client relationship function will vary greatly from firm to firm and even between individuals within a firm. However, to the extent that such individuals may be providing specific advice, they are already required to register. The proposed associate advising representative category will make it easier for many such individuals to obtain registration.
208.		A commenter recommends providing explicitly for graduated supervision of associate advising representatives. In keeping with the concept of an apprentice category there should be a gradual minimizing of supervision not a simple graduation to non-supervised full adviser.	We have expanded the CP discussion of supervision and approval processes for associate advising representatives to indicate that what is appropriate for a given associate advising representative will depend on the particular case, including the individual's current level of experience.
209.		A commenter supports the apprenticeship category as it may assist market entrants and firms. However, if the activities undertaken by the individual are purely administrative the commenter does not believe registration is necessary.	We believe that the associate advising representative category will be useful to adviser firms' ability to advance their business. We also agree that purely administrative activities should not trigger the registration requirement and have provided expanded guidance to that effect in the CP.
210.	**2.8 Ultimate Designated Person [now 2.9]; and** **2.9 Chief Compliance Officer [now 2.10]**	A few commenters are of the opinion that in a small firm the UDP will likely also be the CCO and the investment manager. The designation is, therefore, unnecessary in these circumstances. The UDP should be eliminated for firms under a certain size and with only one office location, and/or the securities regulators should have regular contact with the CCO throughout the year to identify problems.	The proposed Rule provides that in such circumstances the UDP and CCO can be the same person.
211.		A commenter notes that the choice of individuals permitted to act	We continue to believe the appropriate person to be registered as

		as the UDP is too restrictive and should be replaced with a broader selection as is currently provided for in OSC Rule 31-505 in section 1.3(2) and IDA By-law 39. Failing to do so will create an inconsistency and confusion for IDA members as to which requirement to comply with and it will lead to different requirements for IDA and non-IDA firms. Since IDA members are not exempt from this requirement, the commenter recommends that the CSA work closely with the IDA to align the UDP requirements for IDA and non-IDA firms. A few commenters note that the CFO and COO positions at a firm have not been specifically included as individuals eligible to assume the UDP which is not consistent with IDA By-law No. 38.	UDP is the most senior directing mind of registered firm or the operating division carrying out its registerable activity.
212.		A commenter suggests that a provision similar to section 2.9(2)(b) allowing a sole proprietor to be designated as CCO should also be added to this section.	That was the effect of section 2.8(2)(c) of the proposed Rule as it was first published for comment. However we have amended the UDP provision (now section 2.10) to explicitly allow for the designation of a sole proprietor.
213.		A commenter urges the CSA to consider the addition of other registration categories such as Alternate Designated Persons (**ADP**). In the absence of the UDP, there should be an alternate that can represent the firm and officially cover his or her responsibilities.	We believe setting out provisions in the proposed Rule concerning ADPs would be unnecessarily prescriptive. However, in the revised CP we note that a good compliance system will include provisions for alternates designated to act in the absence of the UDP or CCO.
214.		A few commenters suggest that some large investment dealers or advisors may have distinct divisions that may be served better with their own CCO. The ability to mirror the regulatory structure to the actual hierarchy of large Firms will provide stronger controls and accountability. The commenters recommend that upon application, a Firm should be permitted to split the UDP and/or CCO roles as appropriate. It should be noted that this approach would not be a unique concept to Canada: the NYSE recently confirmed the practice of co-CCOs and co-COOs with NYSE Information Memo Number 07-51.	We agree with this comment and have made a corresponding addition to the commentary in the CP.
215.		A commenter believes that IDA By-law No. 38 properly assigns the responsibilities of the UDP and CCO and that sections 2.8 and 2.9 of the proposed Rule should be redrafted to reflect this division of responsibilities.	We have clarified the responsibilities of the UDP and CCO, with revisions to the related sections of the Rule and of the CP. We have enhanced our discussion of the supervisory vs. monitoring roles for these positions.
216.		A commenter questions whether there will be a requirement for Canadian residency in order to hold a position as a CCO or UDP.	There will be no such requirement.
217.		A commenter proposes that there should also be guidance from the CSA on what happens in the event that a CCO resigns or is	In the revised CP we note that a good compliance system will include provisions for alternates designated to act in the absence

		dismissed from a registered firm and there are no other individuals employed with the registered firm that are qualified to immediately replace the CCO. The commenter questions whether the CSA will provide such registered firms with a grace period within which it can arrange for a specific individual to meet the proficiency requirements. If a firm loses its UDP or CCO there should be provision for a new person to assume the role even if they have not yet completed the required proficiency but are undertaking it.	of the UDP or CCO. Proficiency is one of the key components of an individual's fitness for registration. However, in the circumstances described by the commenter, we would be prepared to make reasonable accommodations on a case-by-case basis.
218.		A commenter recommends that there should be clarification on whether a firm registered in multiple categories, i.e., portfolio manager, EMD and investment fund manager, can have the same individual registered as the CCO of each, as opposed to having a separate CCO for each category of registration. The commenter submits that allowing such a firm to have the same CCO should be permitted and there should be clarification as to whether the CCO would have to meet the highest proficiency requirements or the proficiency requirements of all categories.	We have added guidance in the CP indicating that this is also our expectation: in most cases, one individual with the higher qualifications would act as CCO in respect of all registerable activities.
219.		A commenter urges the CSA to clearly indicate that a CCO of one registered firm can act as the CCO of another registered firm, particularly if those firms are affiliated with each other. The commenter suggests that there should be clarification on whether a CCO can hold a CCO role for two or more affiliated registrants. The ability to act as a CCO for two or more affiliated registrants should be permitted to allow for continuity of compliance supervision over similar activities.	We will consider registration applications in such circumstances on a case-by-case basis.
	PART 3 – SRO MEMBERSHIP		
220.	**3.1 IDA Membership for Investment Dealers**	A commenter expresses a general concern that a registered introducing broker would be required to join the IDA and this dual registration would be onerous and unnecessary.	We are not aware of any "registered introducing broker(s)" that are not IDA Members. Any dealer that introduces to an IDA Member is itself required to be an IDA Member.
221.		One commentator expressed the opinion that membership in a national SRO would be onerous for a small business operating only in British Columbia and exclusively in exchange contracts, i.e. a niche market, and further that existing regulation by the BCSC is sufficient. One commentator also proposed that existing exchange contract dealers operating in British Columbia be permitted to opt-out of the IDA membership requirement.	The BCSC has reviewed its exchange contracts dealers and has determined that requiring IDA membership is not the best way to regulate an introducing broker who deals in exchange contracts in B.C. For that reason the BCSC will continue to directly regulate exchange contracts dealers as restricted dealers.

<table>
<tr>
<td>222.</td>
<td>3.1 and 3.2</td>
<td>A commenter recommends that all dealers in the retail market should be under SRO supervision. This includes advisers, scholarship plan dealers, and exempt market dealers.</td>
<td>SROs may have rules related to the types of dealers they regulate which are inappropriate for other types of dealers and advisors, particularly where securities regulation already allows that trading in certain types of instruments or transactions or with certain types of clients require less stringent regulation than others.</td>
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<tr>
<td>223.</td>
<td>3.2 MFD SRO Membership for Mutual Fund Dealers [now MFDA membership for mutual fund dealers]</td>
<td>A few commenters suggest that there should be confirmation that the CSA will grandfather exemptive relief orders obtained by mutual fund managers from the requirement that they be members of the MFDA. The commenters assume that this is the intent of the CSA which is evident in provisions such as the proficiency requirements in the proposed Rule which provide for “mutual fund dealer-dealing representative-non MFD SRO”. The commenters therefore suggest that existing and future exemptive relief orders be reflected in this provision as follows: “No person or company may be registered as a mutual fund dealer unless the person or company is a member of an MFD SRO or has received an exemption from the MFD SRO membership.”</td>
<td>This is our intention.</td>
</tr>
<tr>
<td>224.</td>
<td>3.3 Exceptions for SRO Members</td>
<td>A commenter commends the CSA for recognizing various SRO rules including capital, insurance, suitability, margin and confirmation requirements. However, the commenter believes that SRO members should also be exempt from the following sections because such rules are already addressed by the SROs:
<table>
<tr><th>Rule</th><th>NI 31-103</th><th>MFDA</th><th>IDA</th></tr>
<tr><td>Know your client</td><td>5.3</td><td>Rule 2</td><td>Policy 2</td></tr>
<tr><td>Record-keeping</td><td>5.19-5.20</td><td>Rule 5</td><td>Regulation 200</td></tr>
<tr><td>Complaints</td><td>5.29, 5.31-5.32</td><td>Policy 3</td><td>Policy 8</td></tr>
<tr><td>Referral arrangements</td><td>6.11-6.15</td><td>Rule 2</td><td>By-law 29.1, 29.6</td></tr>
</table>
The commenter’s concern with not expressly exempting SRO members from rules that are already addressed by the SROs stems from the fact that the SRO rules might differ from those set out in the proposed Rule. This could lead to confusion amongst SRO members with respect to compliance. Should the CSA decide not to exempt SRO members from the above rules then the commenter strongly urges the CSA to work closely with the SROs in an effort to introduce rules that complement the SRO rules to avoid an unlevel playing field between SRO and non-SRO members.</td>
<td>Section 5.3 (the KYC requirement) other than the requirement to ascertain whether the client is an insider of a reporting issuer, which is a useful addition, is general enough not to conflict with any of the specific SRO requirements. The more detailed SRO requirements would be looked at in terms of fleshing out the meaning of compliance with section 5.3.

Section 5.19-20 (Recordkeeping) – same principle as above.

Section 5.29, 5.32-32 (Complaints) – same principles as above. The CSA has its own interest in obtaining complaint information and will work with the SROs to minimize or eliminate duplicate filings.

Section 6.11-15 (Referral arrangements) – The SROs worked with the CSA on the development of these provisions. The IDA By-laws cited are very general. The IDA previously proposed a similar by-law dealing specifically with referral arrangements.</td>
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225.		Several commenters generally agree with the approach of allowing SROs to establish different requirements for their members than those in the proposed Rule but believe that the CSA must take a hard-line position on suitability which should be the subject of a consistent standard for clients of all dealers.	The IDA has a more detailed suitability regime that recognizes different standards for advisory clients, clients wanting only order execution and institutional clients. Having the same standard for all clients of all dealers does not recognize the reality that IDA Members have different kinds of clients seeking different kinds of services. The suggestion could in fact eliminate the ability of some clients to get the limited services they desire, such as order execution, with a concomitant increase in their costs.
226.		A commenter suggests that the exemptions for SRO members should be amended so that they only apply where the SRO has rules "dealing with the same subject matter which are substantively similar".	The SRO rules may not in fact be "substantially similar." For example, in the case of suitability as noted above, the rules are different for good reasons. In many cases SRO rules are more elaborate to reflect the realities of the marketplace. A term such as "substantially similar" could restrict the flexibility of the SROs in crafting rules appropriate for different markets, instruments and clients. As the SRO rules remain subject to CSA approval, there are controls to ensure that they are not contrary to the public interest.
227.		A commenter finds that although the proposed Rule lists sections that are limited in their application to non-SRO members, it is unclear as to whether these sections will apply to SRO members whose activities go beyond their SROs scope of jurisdiction.	The IDA and MFDA considers all activities undertaken by its Members to be within their jurisdiction.
228.		A commenter is of the opinion that SRO members should also be exempt from other prescriptive sections of the proposed Rule, specifically: • Part 5, Division 7, Complaint Handling • Part 6, Division 1, Conflicts of Interest • Part 6, Division 2, Referral Arrangements Another commenter believes that SRO members should be exempt from all of Part 5.	The conflicts of interest section is largely principles-based. Those principles should apply to all dealers, including SRO Members. We do not believe it is necessary to include exemptions from the complaint handling sections because they do not conflict with SRO requirements.
229.		A commenter suggests that MFDs should also be exempt from the following sections: 6.12, 5.3, 5.25 and 5.20 which are all addressed in MFDA Rules and are substantially the same, or could be easily conformed. Another commenter proposes that section 4.2 and 5.27 should also be listed as exemptions for SRO members.	As discussed in the Notice, we have expanded the exemptions (in s.3.3 of the proposed Rule) from certain rule requirements for SRO members. These are generally requirements that apply to matters also covered in the proposed Rule, but differ in their particulars in order to accommodate specific aspects of the SROs members' operations that are not necessarily shared by other types of registrants. However, we do not believe it is necessary to include exemptions where SRO requirements are essentially the same as those in the proposed Rule.

230.		A commenter expresses the view that CSA jurisdictions should amend their SRO rule approval process to permit other industry groups to comment or proposed rules are equivalent to the provisions which they are required to operate under.	All substantive SRO rule proposals are published for comment as part of the proposed Rule review process.
	PART 4 – FIT AND PROPER REQUIREMENTS		
	Division 1: Proficiency Requirements		
231.	**General Comments**	A commenter recommends that the proficiency requirements for SRO and non-SRO registrants should be similar. Failure to have consistent proficiency requirements between two types of registrants may lead to a false public perception that some registrants are more qualified than others. To that end, the commenter assumes that the CSA has and will continue to engage in discussions with SROs to ensure consistency with respect to proficiency requirements. A few commenters would like to seek confirmation from the CSA that individuals who are currently registered will be grandfathered under the proficiency requirements of the proposed Rule (including for current CCOs). The commenter's strongly recommend that the proficiency requirements apply only on a going-forward basis once the proposed Rule comes into force.	The proficiency requirements are based on the regulated activity being conducted by the registrant. Where SRO and non-SRO registrants are conducting the same regulated activity, e.g. portfolio management, we have attempted to harmonize the requirements. Individuals currently registered in a category where the proficiency requirements for registration have not materially changed will remain registered in the same category following the implementation of the proposed Rule. This is the case with portfolio managers and chief compliance officers. This does not, however, apply to new categories of registration, such as, the exempt market dealer. Registered individuals sponsored by limited market dealers in Ontario and Newfoundland and Labrador will have to obtain the proficiencies set out in the proposed Rule.
232.		A commenter suggests that there should be flexibility in determining what experience will be acceptable in order to become registered as a CCO in any of the categories. Industry experience should be given greater weight as candidates with degrees may still not have the required skills.	The prescribed proficiencies do include specific industry experience among the alternative proficiencies for CCOs. However, it is not possible to contemplate all possible permutations of industry experience nor is it possible to make an individual assessment of every applicant. There is always room for flexibility in the discretionary relief process.
233.		A commenter questions whether the CSA has taken into consideration the numerous exemptive relief orders that have been granted with respect to the existing proficiency requirements, and incorporated the results of such exemptive relief orders into the proficiency requirements set out in the proposed Rule. If not, the commenter urges the CSA to undertake this task in an effort to pre-empt the necessity of seeking similar exemptive relief after the proposed Rule comes into force. If the proficiency requirements under the proposed Rule are not significantly different from the existing proficiency requirements, exemptive relief orders ought to be carried forward once the proposed Rule comes into force rather then requiring the submission for new but almost identical exemptive relief.	Yes. Several jurisdictions receive large numbers of exemption requests for time limits on courses and for proficiency requirements of portfolio managers. We have drafted these sections to allow for situations where we would routinely grant an exemption. For example, the proposed Rule incorporates relevant experience and not just registered experience when considering time limits on courses. Individuals who have received exemptive relief from proficiency requirements for a category of registration will continue to be registered following the implementation of the proposed Rule (i.e. they will be grandfathered).

234.		A commenter is of the opinion that it would appear that the CSA is moving away from allowing jurisdictions such as British Columbia to recognize categories such as “financial planning”. The commenter supports the retention of such a category and designation as a benefit to the public.	We did not consider the registration of financial planners in the Project. We note that financial planning is not a category of registration in British Columbia.
235.		A commenter suggests that the CSA should recognize the course offerings by IFIC as suitable for proficiency qualifications. For purposes of the proficiency requirements for investment fund managers, the Partners, Directors and Senior Officers Exam (**PDSOC**) offered by the CSI Global Education Inc. (**CSI**) should be treated equally with the Officers, Partners and Directors Exam (**OPD**) offered by IFIC. The commenter recommends that there should be a modular product specific approach to proficiency that does not assume that the CSE is the only proficiency assessment tool.	The CSA will set up a subcommittee to explore alternative courses and course providers for proficiency requirements. The revised proposed Rule treats the PDSOC and the OPD as equivalent. The Canadian Securities Examination represents baseline knowledge of the securities industry and provides regulators with a measurable benchmark to evaluate prior industry experience. Individuals with extensive industry experience should not have undue difficulty in passing the CSE.
236.		A commenter notes that part 4 of National Instrument 81-104 – *Commodity Pools* (**NI 81-104**) addresses proficiency and supervisory requirements for the sale of such products. The commenter questions why those requirements are not incorporated into the proposed Rule.	Those requirements are part of an existing national rule and are therefore harmonized. That national rule deals with a discrete issue and includes prospectus as well as registration requirements. We do not think it is useful to move the requirements for this discrete issue from the existing rule to the registration rule.
237.		A commenter supports the CSA decision not to retain an explicit full-time employment requirement for certain registered individuals and encourages the confirmation that such a requirement will not be reinstated administratively if not in the proposed Rule itself.	The CSA recognize the need to maintain consistency in the application of the requirements in the proposed Rule. The CSA will be implementing training and other initiatives to ensure consistent application and interpretation of the proposed Rule.
238.		A few commenters propose that there should be specific courses developed to provide training for carrying out the compliance function. Perhaps a “CCO Certification Program” would be useful to institute within the industry and help ensure consistent standards of compliance.	The CSA do not develop courses for proficiency. As noted above, the CSA will be setting up a subcommittee to look into alternative courses and course providers for proficiency requirements.
239.		A commenter finds that the current proficiency requirements no longer meet the needs of today’s representatives. Several educational and professional institutions are developing courses to better address industry needs. The commenter recommends that proficiency requirements should be more flexible to be able to incorporate newer and potentially more relevant courses.	We do not agree with the assertion that current proficiency requirements are not appropriate. However, as noted the CSA will be setting up a subcommittee to look into alternative courses and course providers for proficiency requirements. Exemptions from proficiency requirements will be considered when the individual has equivalent or more appropriate education and experience.
240.		A commenter suggests that, based on the positive experience in Québec, compulsory professional development should be added to	The IDA already has professional development requirements for its members. The MFDA is considering adopting professional

		the proficiency requirements and be included in the rules of the relevant SROs.	development requirements for its members.
241.		A commenter is of the opinion that recognition should be given by the CSA to the home country regulation of US and other non-resident advisers. For example, the proficiency requirements of the U.S. and the U.K. and other EU member states should satisfy the Canadian requirements. The commenter states that in its experience, the current process of obtaining "proficiency equivalency waivers" is very slow and unnecessarily bureaucratic.	We have included in the CP a definition of relevant experience which includes experience in foreign jurisdictions. This means that we will recognize foreign experience in granting exemptions.
242.		A commenter proposes that the CFA designation should be a sufficient proficiency for any category of registration.	The CFA is recognized for non-SRO categories of registration.
243.	**4.1 Definitions**	A commenter recommends that all references to organizations should include their respective successors, replacements and assigns. This commenter would also suggest that the CSA consider building in the flexibility to designate equivalent courses.	There are legislative drafting protocols that require that we name only the current organizations. As noted, the CSA will be setting up a subcommittee to look into alternative courses and course providers for proficiency requirements. Exemptions from proficiency requirements will be considered when the individual has equivalent or more appropriate education and experience.
244.	**4.2 Time Limits on Examination Proficiency [now 4.4]**	A few commenters propose that there should be an exemption from proficiency requirements that recognizes industry experience.	Exemptions from proficiency may be considered when the individual has equivalent or more appropriate education and experience.
245.		Several commenters propose that there should also be an exemption from the proficiency requirements that recognizes qualifications completed prior to the 36 month time limit. They also recommend that there should be no sunset on qualifications provided the individual has remained engaged in the business for which the qualifications are applicable, or the registrant assumes responsibility to ensure the individual displays sufficient proficiency to carry out their role.	The time limits on examination and course completion have been amended to include relevant experience. The CP provides guidance on what is considered relevant experience. Courses will remain current as long as the individual is in a role where relevant experience can be gained.
246.		A commenter notes that this provision is a change from the current time limits set out in OSC Rule 31-502 – *Proficiency Requirements for Registrants*. A few commenters recommend that the CSA revert to the existing threshold of requiring that the individual have had the relevant registration or the relevant experience *at any time* (rather than for any 12 months) during the 36 months before the date the individual applied for registration. The emphasis should be on the type of experience obtained as opposed to the amount of time in which the experience was obtained. While the commenter	The time limits on exam and course completion have been amended to include relevant experience. The CP provides guidance on what is considered relevant experience. We believe that both the amount of time and the type of experience are important. The proposed Rule sets the minimum standard which is 12 months. The CFA is recognized for the combination of education and experience. In the case of a portfolio manager that leaves the

		believes that there are certain instances where the length of time will dictate competency, there are other instances where an individual may have spent a shorter amount of time gaining relevant experience and obtained a higher level of experience than another individual who may have spent the full 12 months undertaking less relevant experience. A commenter also notes that the CFA designation expires whereas the CA designation does not. It is not realistic or practical to expect an individual who currently holds a CFA to go back and complete the 3-year program again. The commenter suggests that the proposed Rule contemplate an active CFA designation that is in good standing (i.e., the individual has maintained their CFA by paying their dues and meeting any requirements of the CFA Institute).	industry for more than 3 years, the individual could reapply as an associate portfolio manager and then after 12 months could apply as a full portfolio manager. We have added the CFA to the list of options in 4.13(b). However, we anticipate that it would be unusual for a CFA Charter holder, with the prescribed experience, not to qualify as a portfolio manager and as such be eligible to register as CCO under 4.13(a).
247.		Further to Part 3 of the CP which states that the proficiency requirements will not apply to SRO members and their registered individuals, a commenter questions whether it is correct to assume that the time limits set out in this section are also included in that exemption.	There are no proficiency requirements for investment dealer representatives in the proposed Rule. This is because subsection 3.1(2) provides that they must be approved persons of the IDA and the IDA sets proficiency requirements for them (subject to the process for CSA approval of IDA rules). Consequently, the time limits in Part 4 of the proposed Rule do not apply to investment dealer representatives. On the other hand, the revised proposed Rule does include proficiency requirements for mutual fund dealer dealing representatives, regardless whether they are sponsored by MFDA member firms. The time limits therefore do apply to mutual fund dealer dealing representatives.
248.		A few commenters suggests that securities regulators need to show flexibility in reviewing applications for registration and interpreting what will qualify as 12 months experience for purposes of this section. It should be cumulative and not necessarily continuous	We have amended the CP to state that the 12 months experience maybe cumulative.
249.		A commenter is of the view that a principles-based approach may be better in that it not only permits firms to make their own assessments and tailor their own training programs for those who have completed the basic requirements, but adds a broader principle that firms have a responsibility to ensure that all their representatives are and remain competent on a continuing basis, whether or not they have taken time out of the industry.	We disagree. The prescribed proficiencies are meant to establish a minimum competency standard for the protection of investors. We expect firms to provide additional and ongoing training and development to ensure their registrants remain proficient. We have added in section 4.3 of the proposed Rule a statement of principle to that effect.
250.	**4.3 Mutual Fund Dealer – Dealing Representative [now 4.5]**	A commenter states that the CSA has missed an opportunity as part of the modernization process to use the registration tool to protect investors. Smaller and less sophisticated investors in Canada are served by the least proficient financial advisers –	The prescribed proficiencies are meant to establish a minimum competency standard for the protection of investors. We expect firms to provide additional and ongoing training and development to ensure their registrants remain proficient.

		mutual fund salespersons. While mutual fund salesperson should not be referring to themselves as 'financial advisers', most usually do and the public does not know or understand the differences between registration categories. The commenter finds that the proficiency requirements across all categories are too low.	The use of the term financial advisor is ubiquitous in the securities industry but does not describe a category of registration. Individuals can only hold themselves out as for the activities for which they are registered.
251.		A commenter suggests that there should be a registration category for mutual fund sales assistants similar to the associate advising representative category. The commenter recommends that these individuals should be permitted to take and submit client orders for execution but not provide investment advice. The proficiency could be Canadian Investment Funds Course and a 30-day training period.	We do not believe that this category is necessary at this time.
252.		A commenter is unclear as to how sections 4.3 and 4.4 apply in light of section 3.2. The commenter questions whether all mutual fund dealers have to be SRO members.	The proposed Rule has been amended to include proficiency requirements for all mutual fund dealing representatives regardless of whether they are with an SRO-member firm or not. There are mutual fund dealers that have been granted an exemption from the requirement to be an SRO member.
253.	**4.5 Scholarship Plan Dealer – Dealing Representative [now 4.7]**	A commenter fully supports the mandatory proficiency requirement for sales representatives of scholarship plan dealers.	We acknowledge the comment.
254.		A commenter notes that registered salespersons of scholarship plan dealers wish to continue to hold themselves out as "sales representatives" rather than the term "dealer representatives as the category of registration is named. The perception of "dealing representative" is somewhat negative and will confuse the public.	Dealing representative is a category of registration, and not necessarily a position title. Representatives can use other titles as long as they do not misrepresent their category of registration or their position.
255.	**4.7 Exempt Marker Dealer – Dealing Representative [now 4.9]**	A few commenters suggest that the demonstration of product knowledge and expertise to run the business would be better than educational requirements or at least an adequate substitute to allow currently registered individuals to continue in their role. Grandfathering should also be considered. Another commenter operating a mortgage investment company disagreed with the requirement for the CSE and 5 years experience and fails to see how the public is protected by a license which does not relate to the mortgage industry. The commenter does note see why extreme changes are necessary. A few commenters suggests that other designations are more relevant for EMDs than the CPH, PDO and the General Securities Representative Exam offered through the Financial Industry	We have removed the requirement that a dealing representative of an EMD pass one of the Conduct and Practices Handbook Examination or Partners, Directors and Senior Officers Examination. The Canadian Securities Examination represents baseline knowledge of the securities industry and provides regulators with a measurable benchmark to evaluate prior industry experience. Individuals with extensive industry experience should not have undue difficulty in passing the CSE. The CSA will be setting up a subcommittee to look into alternative courses and course providers for proficiency requirements. This requirement is in accordance with the established approach to proficiency standards for registrants in prescribing minimum

		Regulatory Authority (**Series 7 Exam**) and should therefore be added to the list of acceptable proficiencies. These include: the Chartered Business Valuator (CBV) designation, the CFA designation, and the Corporate Finance (CF) designation. Several commenters suggest that 'product specific' courses would be better for individuals selling exempt products than the requirement for the general CSE and CPHE or PDSOE. The content of these courses does not properly address exempt products, including real estate and mortgage securities. There are many other common industry courses which would be more appropriate for persons working with exempt products.	knowledge appropriate to the registration category. Ongoing or product-specific training is not typically prescribed. We take a less prescriptive approach and expect firms, as part of their obligations to clients and their supervisory obligations, to provide additional and ongoing training and development to ensure their registrants remain proficient.
256.		A commenter recommends that for non-resident exempt market dealers, section 4.7 should be amended to address equivalent non-North American standards.	It is not possible to catalogue all equivalent non-North American proficiency standards. Applicants for registration without prescribed proficiency will have the opportunity to present information as to their foreign credentials.
257.		A commenter questions whether the existing limited market dealers will be "grandfathered" with respect to proficiency requirements.	No. EMD is a new registration category and part of its purpose is to ensure common proficiency standards.
258.		Based on the OSC LMD review, a commenter believes that the CSC and CPH courses will be a sufficient foundation for exempt dealers. The PDO should no longer be considered an alternative to the CPHE which was revised several years ago and no longer includes the CPHE content. The commenter recommends that an individual that has met the "requirements of section 4.9" (section 4.7(c)) also be required to complete the CPHE as the CFA program focus is on the non-retail U.S. environment and does not adequately address suitability for an individual providing advice to a Canadian retail client.	We have removed the requirement that a dealing representative of an EMD pass one of the Conduct and Practices Handbook Examination or Partners, Directors and Senior Officers Examination.
259.		A commenter notes that the "relevant experience" guidance contained in section 4.4 of the CP states that the securities regulator may grant an exemption based on qualifications or relevant experience equivalent to, or more appropriate in the circumstances than, the prescribed proficiency requirements. The commenter suggests that this guidance should be codified in the proposed Rule to ensure that current LMDs and current exempt market participants that will be registered as EMDs are granted an exemption ("grandfathered") based on their experience in the LMD/EMD industry.	The CP provides guidance as to how regulators will interpret and apply the proposed Rule. Current salespersons of LMDs will be required to meet the proficiency of a dealing representative for an EMD. We do not intend to provide a blanket exemption. However we propose a 12 month transition period to gain the proficiencies.
260.		A commenter proposes that the exemptions should include an exemption for professionals and other LMD/EMD industry participants (i.e. lawyers, accountants, real estate brokers)	Exemptions will be granted when alternative qualifications or experience are equivalent to, or more appropriate than, the proficiency requirements prescribed in the proposed Rule.

		possessing qualifications and/or experience relevant to the LMD/EMD industry.	
261.	**4.8 Exempt Market Dealer – Chief Compliance Officer [now 4.10]**	A commenter indicates that this seems to set out a higher standard for a CCO of an EMD than for any other such category. The commenter states it is not sure if this is intentional but it does not seem to make sense.	This is not the case. The proficiency requirements for the CCO of an EMD are among the least onerous.
262.		A commenter suggests that in order to maintain consistency the PDO should be required for those completing the Series 7 Exam and New Entrants Course.	We agree and have revised the proposed Rule accordingly.
263.	**4.9 Portfolio Manager – Advising Representative [now 4.11]**	A few commenters note that the "relevant experience" guidance contained in section 4.4 of the CP states that the securities regulator may grant an exemption based on qualifications or relevant experience equivalent to, or more appropriate in the circumstances than, the prescribed proficiency requirements. The commenters suggest that this guidance should be codified to ensure that experienced portfolio manager advising representatives are not prevented from continuing in their current capacity. They should be explicitly grandfathered.	The CP provides guidance as to how securities regulators will interpret and apply the proficiency requirements in the proposed Rule. Portfolio Managers who are registered when the proposed Rule comes into effect, will not be required to gain the new proficiency prescribed in the proposed Rule. Similarly, Portfolio Managers that were granted an exemption from proficiency will continue to be able to rely on that exemption.
264.		A commenter finds that it is imperative that those who were previously registered only in the investment counsel category requalify as Portfolio Managers and not be grandfathered. The investing public has the right to know that all those who hold themselves out as Portfolio Managers are fully qualified. The commenter notes that it is unclear how the requirements will affect the renewal of existing individuals who may not meet the educational requirements. The CP indicates some flexibility and discretion based upon experience but individuals would have no certainty that their registration will be renewed.	Portfolio Managers who are registered when the proposed Rule comes into effect, will not be required to gain the new proficiency prescribed in the proposed Rule. Similarly, Portfolio Managers that were granted an exemption from proficiency will continue to be able to rely on that exemption.
265.	**4.10 Portfolio Manager – Associate Advising Representative [now 4.12]**	A commenter suggests that the term "or any part of a requirement, set out in section 4.9" in section 4.10 needs to be more fully discussed in the CP in order to clarify its meaning.	This section has been redrafted to clarify the requirements.
266.		A commenter notes that the requirements for associate advising representatives are more onerous than for a salesperson of an IDA member firm which is doing the same discretionary management business – therefore placing the ICPM at a disadvantage compared to an IDA firm.	The new requirements are the same as the IDA.

267.		A commenter supports the creation of the associate advising representative. The commenter finds, however, that there is some ambiguity as to the intended audience for this category. The commenter understands it is intended to capture 3 distinct roles. A few commenters suggest the proficiency requirements differ for each role: 1. Administrative employees of a portfolio manager who have client contact but provide no advice. The commenters do not believe these people need to be registered. 2. Client relationship managers involved in asset allocation, suitability and providing portfolio management results to retail clients. Accordingly, the commenters are of the opinion that these people should be required at a minimum to complete the CSC and the CPHE similar to the IDA introductory investment adviser requirement. 3. Apprentice portfolio managers that work directly with portfolio managers and have limited contact with retail clients. The comments notes that prior to registration these people should have completed the course requirements for a portfolio manager – advising representative in section 4.9 and during the period of their employment they will acquire the experience component required for the full advising representative registration. Another commenter suggests that the category seems to cover both apprentice portfolio managers and client relationship managers under the same proficiency when a more formal distinction might be useful with descriptive terms added to the category titles. The model of the AMF which requires that client relationship managers restrict their activity to client services and have no portfolio management role might be a useful addition. Another commenter recommends that the proficiency requirements for associate advising representatives of advisers and registered representatives of full-service firms should be aligned in relation to non-discretionary advisory services.	We have revised the proposed Rule and CP to clarify the purposes of the associate advising representative category and its proficiency requirements.
268.	**4.11 Portfolio Manager – Chief Compliance Officer [now 4.13]**	A commenter suggests that given that the role of the CCO is to identify, assess, monitor and generally advise on a firm's compliance with regulatory requirements as opposed to actually discharging the firm's obligations, the CSA ought to consider	The CCO of a portfolio manager is not required to have the same qualifications as a portfolio manager. Section 4.13 of the proposed Rule offers three alternative routes to portfolio manager CCO proficiency: (a) portfolio manager proficiency; (b) specified

		relaxing the proficiency requirements for a CCO of a Portfolio Manager. It is not apparent that to monitor the activities of a Portfolio Manager one need have the same qualifications of an actual Portfolio Manager or meet the proposed proficiency requirements. Industry experience is often an adequate substitute for industry or professional credentials.	professional qualifications plus exams and practical experience; or (c) exams alone plus longer period of practical experience. This approach was worked out in Ontario in consultation with the portfolio management industry a few years ago and successfully implemented.
269.		A commenter proposes that the options set out for meeting the proficiency requirements of this category should be expanded to include employment with an affiliate of a registered dealer or a registered adviser if such affiliate is a bank. Frequently, large banks employ individuals such as in-house lawyers who are employees of the bank as opposed to the affiliated registered firm.	To the extent that 4.13(c)(ii) does not already address this concern, exemptive relief is available for applicants with alternative qualifications. We would expect that if an in-house bank lawyer could demonstrate experience related to portfolio manager compliance, that individual would be a good candidate for an exemption.
270.		A commenter suggests that the CCO of an EMD can satisfy the proficiency requirements by passing the Series 7 Exam and the New Entrants Exam. The commenter also recommends that a CCO of a portfolio manager should be allowed to satisfy the proficiency requirements by passing the Series 7 Exam and the New Entrants Exam. These options should be added to the proficiency requirements of a CCO of a portfolio manager.	We agree. This was an oversight in the proposed Rule as first published. It has been corrected in the revised proposed Rule.
271.		A commenter notes that the CFA is missing from the list of options. The commenter states that the CFA charter is highly relevant to the investment management business and should be added as one of the acceptable qualifications.	We have added the CFA to the list of options in 4.11(b). We anticipate that it would be unusual for a CFA charter holder, with the prescribed experience, not to qualify as a portfolio manager and as such be eligible to register as CCO under 4.11(a).
272.		A commenter recommends that the proposed requirement of having completed a specific portion of experience or employment in a set amount of “consecutive” years should be reconsidered. The commenter submits that as long as the time frame has been met it should not matter whether the time of employment or experience was consecutive. The word “consecutive” should be deleted from this section.	We agree and have redrafted the section.
273.		A commenter is of the opinion that the new requirements should be administered in such as way as to not disentitle current CCOs from performing the role under the new requirements should they fall short of the new standards.	We agree. Current CCOs will be grandfathered.
274.	**4.11(b)(i) [now 4.13(b)(i)]**	Several commenters suggest that the Certified Management Accountants (**CMA**) designation should be added to the Chartered Accountants (**CA**) designation as a qualification for a CCO. There is no difference in the relevant competencies of the designations.	We agree concerning CMAs and CGAs and have added them to the available qualifications. Concerning Accredited Public Accountant, a Public Accountant and a Registered Public Accountant, we are not familiar with these

		A commenter recommends that the Certified General Accountants (**CGA**) designation should be added to the CA designation as a qualification for a CCO. There is no difference in the relevant competencies of the designations. The commenter also proposes that the following designations should also be added to the list of acceptable qualifications: Accredited Public Accountant, a Public Accountant and a Registered Public Accountant.	designations and have not included them at this time. We will consider additional qualifications in the future.
275.	**4.11(c) [now 4.13(c)]**	A commenter suggests that for purposes of the proficiency requirements for investment fund managers, the PDO exam offered by the CSI should be treated equally with the "Officers, partners and Directors Exam" offered by IFIC.	We agree and have redrafted the section.
276.	**4.13 Investment Fund Manager – Chief Compliance Officer [now 4.15]**	A commenter requests clarification on whether a firm registered in multiple categories, i.e., portfolio manager, EMD and investment fund manager, can have the same individual registered as the CCO of each, as opposed to having a separate CCO for each category of registration. The commenter submits that allowing such a firm to have the same CCO should be permitted and there should be clarification as to whether the CCO would have to meet the highest proficiency requirements or the proficiency requirements of all categories.	This issue has been addressed in the CP.
277.		A few commenters suggest it is not necessary to have the same stringent requirements for a CCO of an investment fund manager as a CCO of a portfolio manager because the types of activities performed are quite different (i.e. administrative in nature and do not involve the management of assets). In addition, investment fund managers usually outsource certain functions to qualified third parties or affiliates. Therefore, the commenters recommend that consideration should be given to having less stringent proficiency requirements for the CCO of an investment fund manager and adopt proficiency requirements similar to those of a CCO of a dealer. These commenters are concerned that the requirements of this section (referencing section 4.11) are too stringent and may not enable currently employed CCOs to meet the requirements to continue as CCOs under the new rules. The CSA should consider grandfathering provisions to enable these individuals to continue in their present capacities.	We have reconsidered the requirements for CCOs of investment fund managers in the proposed Rule. The new requirements more closely mirror that for the CCO of a mutual fund dealer, rather than a portfolio manager. As indicated above, current CCOs will be grandfathered.
278.		One commenter suggests there be no mandated/required professional (lawyer or CA) designation and, as an alternative to	There is no mandated/required lawyer or CA designation. These are options which were selected based on extensive industry input

		the CSC and PDO courses, suggest a "fit for purpose" proficiency certification for CCOs. More specifically, the commenter proposes to offer courses specifically designed for individuals seeking the position of Chief Compliance Officer for a mutual fund company.	as to the kind of qualifications that working CCOs actually have. The CSA will be setting up a subcommittee to look into alternative courses and course providers for proficiency requirements.
279.	**4.4, 4.6, 4.8, 4.11, 4.12, 4.13 [now 4.6, 4.8, 4.10, 4.13, 4.14, 4.15 respectively]**	A commenter supports the proposed PDO course requirement for all CCOs as a good general qualification but the commenter suggests that the CSA consider the Chief Compliance Officers Qualifying Examination course recently revised by the CSI as a more suitable requirement. This course was specifically designed for IDA CCOs the CSI would be open to adapting it to non-IDA CCOs if it would be beneficial.	As noted, the CSA will be setting up a subcommittee to look into alternative courses and course providers for proficiency requirements.
	Division 2: Solvency Requirements		
280.	**General Comments**	A commenter urges the CSA to provide guidance as to whether registrants are permitted to use capital to offset the proposed insurance requirements.	Registrants must comply with both capital and insurance requirements. Capital cannot be used to offset insurance requirements.
281.		One commenter recommends that the CSA provide guidance permitting affiliated registrants owned by one parent to be covered under one insurance policy.	We agree with the comments and have made the appropriate revision to the proposed Rule.
282.		A commenter asks whether the current requirement in certain provinces to have surety bonds cease as of the effective date of the proposed Rule.	Yes, the requirement for surety bonds will cease as of the effective date of the proposed Rule.
283.		A commenter questions whether the current Québec requirement, to have individual professional liability insurance, ceases as of the effective date of the proposed Rule.	The professional liability insurance requirement will remained unchanged for mutual fund dealers and their representatives in Québec. It will also continue to apply to scholarship plan dealers and their representatives. The bonding and insurance requirement will however not apply to these registrants in Québec.
284.		A commenter says that insurance requirements are expensive and unnecessary and working capital is the best way to ensure solvency. The commenter also suggests the CCO should be required to certify compliance with capital requirements on a periodic basis. Another commenter suggests that the insurance costs associated with the new rules are not clear. It was also suggested that the insurance requirements are excessive and may be a barrier to entry for small and new businesses, or that insurance companies may not provide coverage for the risks identified	Working capital is a liquidity measure and demonstrates that a firm is able to meet its financial obligations in the short term. Insurance is seen as a necessary requirement of all registrants. It is not the role of the CCO to monitor the financial health of the registrant. That responsibility must lie with an individual with appropriate financial expertise. The CCO must monitor compliance with the requirement to have adequate capital and insurance in place and file financial statements. But, it is not the CCO's responsibility to certify the calculation of these amounts or other content of financial filings.

			Insurance serves a different purpose than capital. The different clauses prescribed in Appendix A to the proposed Rule cover losses, should they occur. However, exemptive relief may be available to a firm that can demonstrate that one or more of those clauses are not appropriate for its business. We have also revised the solvency requirements as they apply to some EMDs – please see the discussion below.
285.		A commenter finds that there is insufficient discussion of capital requirements for the clearing and custodian entities that handle client funds on behalf of most advisers and investment fund managers. The commenter believes these entities should have substantial capital requirements mandated as they are ultimately responsible for the safekeeping of investor assets.	Clearing entities and custodians are not required to register (except to the extent they might also engage in trading, advising or investment management activities). They are therefore not subject to the proposed Rule.
286.	**4.14(2) Capital Requirement [now 4.18(2)]**	As noted above, several commenters are of the opinion that the $50,000 minimum capital requirement for a dealer would be a barrier to entry for small firms. “It is too onerous for most companies in the exempt market, many of whom are important to financing small business in other industries.” Several commenters propose that EMDs that do not hold client funds and do not operate under a business model that has an obligation to counterparties should either be exempt from the capital requirement, only be required to maintain a capital level that is linked to its operating expenses, or have a capital requirement calculated on a case-by-case basis. Some expressed the view that specialty dealers should not be holding client cash, at all. Another commenter noted that pursuant to s. 4.17 of the proposed Rule, advisers who do “not hold, handle or have access to client’s cash or assets” are not required to comply with the higher FIB requirements of section 4.16 of the proposed Rule. Since a significant number of EMDs also do not hold or have access to client assets, the commenter proposes that if a solvency requirement is imposed on EMDs, it should be the same level as for advisers (i.e. $25,000). Making a related argument, one commenter recommends that, for sole LMDs whose compensation is comprised either of an agency fee for placing securities or an advisory fee from a company, no capital is required to complete a transaction and therefore there should be no need for a capital requirement at all.	We have reviewed the proposed capital calculation and an exempt market dealer that does not handle, hold or have access to client assets (including cheques and other similar instruments) will not be required to maintain minimum capital (or insurance). For other EMDs, we believe the $50,000 capital requirement is appropriate.

287.		Several commenters believe that working capital should not be needed at all. Others objected to increased capital requirements, variously arguing that changing the amount of working capital will not guarantee that client assets are better protected, that smaller managers will have to pass on the cost to investors, there will be higher barriers to entry to new managers, there will be no guarantee that creditors debts will be satisfied in the event of insolvency, and there is no apparent correlation between the capital requirement and the costs of winding up a firm. Commenters suggested that if the amount is going to be increased, consideration should be given to: allowing the capital formula to include invested capital and/or segregated capital, grandfathering existing managers, allowing managers to determine their own capital to prudently manage their own business, having the securities regulator consult with investment managers as to what is prudent, determining a formula based on assets under management, allowing a manager to designate personal assets as back-up, and allowing a phase-in over several years. One commenter proposed an alternative system of graduated capital requirements based on dealer assets or assets under management, similar to the graduated insurance requirements in the proposed Rule. The commenter believes this would address the stated goals of the proposed Rule and promote innovation and competition through new entrants to the industry. This system could start with a minimum of $25,000 of excess working capital for dealers and investment fund managers.	It is a basic requirement in Canada and in similar jurisdictions abroad that all registrants should be able to demonstrate that they are adequately capitalized and financially solvent. We carefully considered the various options for capital and insurance requirements and reviewed the requirements of other jurisdictions before settling on those in the proposed Rule. As noted above, we have revised the requirements for EMDs in response to comments received. We do not believe the increase in minimum capital for advisers from $5,000 to $25,000 is too high in view of the activities undertaken by advisers. The proposed Rule will require fund managers to be registered for the first time. We believe the minimum capital for fund managers is also appropriate in view of the activities that they undertake. The prescribed amounts in the proposed Rule are minimums and registrants may determine that they in fact require a greater amount of capital to prudently manage their business.
288.		A few commenters do not consider this requirement appropriate for MICs. They suggest that some real estate and mortgage investment firms may not be able to meet this requirement or should they be able to, it will be a poor use of resources.	We believe if a MIC is engaging in registerable activities and not exempted from registration, then they should be subject to capital requirements for the same reasons as are other registrants.
289.		A few commenters urge the CSA to consider setting portfolio manager capital and insurance requirements on a two-tier system graduated by the number of clients or by assets under management. This will effectively allow new portfolio managers to achieve minimum critical mass before being subjected to the proposed higher regulatory burdens.	As indicated above, various approaches were considered by the CSA when determining the minimum requirements. A minimum level of capital in the amount of $25,000 was determined to be appropriate regardless of size for portfolio managers. Registrants may determine that higher levels of capital, for example are necessary for them to operate their businesses effectively. The required insurance amount is calculated based on a formula. The amount is determined based on a number of variables and is more directly linked to the access the adviser has to client assets.
290.		A commenter suggests that a better ‘capital reserve requirement’	Working capital is a liquidity measure that demonstrates that a firm

		would be three months of operating expenses plus audit fees. Higher reserves only benefit the banks that hold the deposits.	is able to meet its liabilities in the short term. We considered using other methods, including the use of operating expenses as the basis for the capital calculation. One of the disadvantages of this method is that operating expenses could fluctuate on monthly basis.
291.		A commenter recommends that unsubordinated debt and investment risk on securities held should be treated as per GAAP and not as the subject of specific inclusions/deductions. Although the commenter understands the minimum capital calculations are the same as those applied to other registrants, the commenter believes the business operations of a fund manager suggest that the treatment of theses things in accordance with GAAP would be more appropriate.	The basis for the capital formula is a registrant's financial statements which are prepared in accordance with GAAP. However, certain conservative adjustments should be made for purposes of the capital calculation to reflect operational risk, market risk and liquidity risk. These are present in varying degrees in all businesses. Unsubordinated debt is treated conservatively in the capital formula. However, a registrant may determine whether the execution of a subordination agreement is necessary for the purposes of capital calculation.
292.		A commenter recommends that portfolio managers and investment fund managers be permitted to include the seed capital that they have in their proprietary investment funds for the purposes of computing capital adequacy.	Seed capital can be used in the calculation of minimum capital. Any investments in their funds would be included as a current asset on their balance sheet. However, a market risk deduction would have to be taken as a deduction as part of the capital calculation.
293.		A commenter suggests that it is not clear why the capital requirements are significantly higher for a fund manager than for a portfolio manager. It would make more sense if they were at the same level. Several commenters are of the opinion that the $100,000 minimum capital requirement for an investment fund manager may drive small entrepreneurial firms out of business and limit investor choices to large firm products. This may consequently limit employment opportunities for aspiring portfolio managers and be a deterrent for new advisers.	The operations of a fund manager and an adviser are different. The CSA determined that the appropriate minimum level of capital should be $100,000 based on an assessment of the business model and on all the functions that a fund manager is responsible for (fund accounting, transfer agency, trust accounting).
294.		A few commenters propose that there should be an exemption from the capital requirement for fund managers that utilize a third party custodian or that outsource key functions of the investment manager role (e.g. NAV calculation, etc).	The CSA discussed the issue of whether there should be different capital level for those fund managers that outsource, but decided against it for several reasons: 1. Even when a fund manager outsources some or all of their key functions, the ultimate responsibility for those functions still remains with the fund manager. 2. As a trustee, fund managers have the ability to access the assets even when the assets are with a third party

			custodian. 3. The use of a third party custodian does not alleviate the in-transit risk when clients are making purchases or redeeming their investments.
295.	**4.14(3) [now 4.18(3)]**	A few commenters note that the requirement that excess working capital be calculated within 20 [non business] days of month end is not in line with the IDA requirement that it be calculated within 20 business days of month end.	We agree with the comment. The proposed Rule has been revised to 20 business days.
296.	**4.16 Insurance – Dealer [now 4.21]**	A few commenters, while they agree that insurance bonding is appropriate for firms that handle client cash and securities, however suggest that EMDs that do not handle client cash, cheques, funds or investments for other parties should be exempt from the insurance bonding requirement as the requirement is unnecessary and onerous.	As discussed above with reference to capital requirements, we have amended the proposed Rule to exempt EMDs that do not handle, hold or have access to client assets (including cheques and other similar instruments) from both capital and insurance requirements.
297.		A commenter questions whether the requirement in 4.16(1)(b) is for 1% of the total client assets or 1% of $25,000,000.	The requirement is 1% of total client assets to a maximum amount of $25,000,000. In other words, no firm will be required to obtain insurance coverage exceeding $25,000,000.
298.		A commenter notes that insurers of large Canadian banks and perhaps other large companies consider losses within the first $25 million to be within a bank's bearable risk, and as such insurers do not offer traditional full risk transfer insurance policies in this range. To meet existing insurance requirements, insurance companies have been offering "fronting policies". In essence, the insurer issues the policy and the bank agrees to reimburse the insurance company for any losses they pay out under the policy on the bank's behalf. The proposed insurance requirements should consider the commercial realities of materially different sizes of registrants. Another commenter finds that the impact of the proposed insurance requirements under the proposed Rule will be that insurance companies will likely require higher premiums from registrants to increase the limits on the fronting policies. The registrants, in turn, will pay additional interest cost to support their indemnity to the insurance companies. This increased financial burden resulting from the proposed provisions without any obvious benefit is clearly unnecessary in the context of large banks and other large companies which are in most instances more financially viable than the insurance companies that are issuing fronting policies. Furthermore, the commenter questions the need for the increases in insurance thresholds without evidentiary support as to	We understand that certain companies may have fronting policies in place. As discussed above with reference to capital requirements, we carefully considered the various options for capital and insurance requirements and reviewed the requirements of other jurisdictions before settling on those in the proposed Rule, which mandate minimum insurance coverage for registrants based on a number of variables.

		the effectiveness of such insurance policies and the frequency with which claims are made on such insurance policies. A commenter recommends that a lower insurance threshold be applied for registrants that are affiliated with large banks financially capable of satisfying any claim on their own, rather than requiring them to obtain a "fronting policy", to meet their regulatory obligations	
299.	**4.17 Insurance – Adviser [now 4.22]**	Several commenters recommend that the requirement to obtain insurance for advisers should apply only to advisers who "handle, hold or have access to client cash or assets". In addition to the fact that the concept of handling and having access to client cash or assets is unclear and which we suggest be clarified, registrants who do not actually hold cash clearly do not present the same level of risk as those who actually do hold cash. A few commenters suggest that the phrase "handle, hold, or have access to client cash or assets" needs some definition or guidance as it has significant impact on the insurance requirements and premiums that will be incurred. These commenters recommend that consideration be given to the term "custody" as used by the SEC and defined in Rule 206(4)-2 of the Investment Advisers Act of 1940. Or, as a preferred alternative, they propose that the CSA adopt a rule similar to the SEC on registered investment advisers that client assets be held by an institutional custodian or a registered broker-dealer which removes the risk of fraud and ensures a third party reporting to the client of their account. This is similar to the requirement on a non-resident registrant in section 5.35 of the proposed Rule.	Insurance requirements are meant to protect both client as well as firm assets. Those who do not have access to client assets will be able to maintain lower levels of insurance. Guidance on how to determine the concept of handling and having access to client cash or securities can be found on the OSC website at www.osc.gov.on.ca under registration requirements for investment counsel and portfolio managers.
300.		A few commenters suggest that part 5 Division 3 of the proposed Rule should be modified to use the same terminology as section 4.17. Currently section 5.13(1) and (2) refer to a firm that "holds" securities or cash which suggests that the phrase "handle, hold, or have access to" as used in section 4.17 has a more expansive meaning.	Part 5, now Division 2, concerns custodial arrangements and the segregation of clients' assets. This different context is the reason why "hold" forms part of a different formula of words as compared to its usage in the provisions of Part 4 that relate to solvency requirements.
301.		A few commenters assert that the new requirements greatly increase the insurance coverage required for advisers and say they seem arbitrary and without any supporting empirical evidence. Some also say these costs will be passed on to investors and "make it tougher for small managers to survive while doing little to improve the integrity of portfolio managers." A commenter is of the opinion that the proposed requirements are	As noted above, it is a basic requirement in Canada and in similar jurisdictions abroad that all registrants should be able to demonstrate that they are adequately capitalized and financially solvent. And, as also noted above, we carefully considered the various options for capital and insurance requirements and reviewed the requirements of other jurisdictions before settling on those in the proposed Rule.

		an unnecessary level of insurance coverage that will simply add cost without any meaningful benefit to clients. The levels for adviser seem based on the dealer requirements yet the two businesses have very different risk levels with regard to investors. Another commenter suggests that the section should be amended to read "1% of investment fund assets under management… plus $50,000, or $25,000,000…" or in the alternative, the "1%" of assets under management should be dropped to "0.25%".	Minimum insurance requirements for advisers are not new. The existing insurance requirements for advisers across the CSA jurisdictions are a fixed amount. The insurance coverages required for both dealers and advisers are now calculated based on a formula which is more directly linked to the access the adviser has to client assets. For an adviser that does not handle, hold or have access to clients' assets, the insurance coverage required is $50,000 – which is not an increase in some jurisdictions. For an adviser that handles, holds or has access to clients' assets (including cheques and other similar instruments), the insurance coverage increases with the level of assets under management.
302.		A commenter suggests that this section should be clarified regarding how it applies to SRO members who also have reporting obligations to their SRO in addition to the CSA securities regulators.	We will work with the SROs to coordinate reporting obligations for registrants who are also their members.
303.		A commenter proposes that the FIB should only apply to assets where the adviser/manager handles the assets and not to a firm's total "assets under management".	We agree with the comment. The proposed Rule has been amended to that effect in respect of the insurance requirements for advisers. We have not, however, changed the requirement in the investment fund managers' insurance provision since they have access to "assets under management".
304.	**4.18 Insurance – Investment Fund Manager [now 4.23]**	Several commenters assert that requiring an investment fund manager to have insurance when a third party custodian maintains the client assets will mean an additional cost to an investor with no real benefit to the investor and may increase already high fees. Another commenter suggests that there should be an exemption from the insurance requirement for fund managers that utilize a third party custodian.	The use of third party custodian will not necessarily eliminate the potential for loss. Even when client assets are held at a third party custodian, the fund manager, as trustee, has access to the assets and there is a potential for a loss to occur. Furthermore, client funds are continually "in transit" to and from the custodian as new investments are made or existing investments are redeemed.
305.		A few commenters proposed alternative approaches to setting the insurance requirements for investment fund managers. Some assert that FIBs are a frictional cost of doing business which will be an added expense to managers and a barrier to entry to new managers. Commenters variously recommend that consideration should be given to: grandfathering current investment fund managers, eliminating the need for FIBs altogether, maintaining current standards, disclosing how many managers have ever made claims against their FIB to provide evidence of its necessity, eliminating the FIB if the owners are involved in the day-to-day business,	Insurance requirements are meant to protect both client as well as firm assets. As with dealers and advisers, the CSA considered different models and approaches in arriving at the determination of insurance requirements for investment fund managers. The amount of insurance required is formula-based and is linked to assets under management. We believe these requirements are appropriate in view of the activities undertaken by investment fund managers. Investment fund managers may choose to maintain higher levels of insurance (as well as capital) as a prudent business practice.

		allowing investment managers to determine their own insurance needs. One commenter proposes that investment fund managers that maintain high levels of capital should be permitted to maintain lower levels of insurance than those stipulated in section 4.18(1). For example a firm that has $100 million under management would be required to maintain a minimum capital of $100,000 and a FIB of $1,000,000. Should that firm maintain $1,000,000 in capital it should be permitted to reduce its FIB by 50%. This would encourage firms to retain higher levels of capital which reduces risk to investors and reduce insurance premiums for firms that do so.	
306.		A commenter is unclear as to why the insurance requirements for an investment fund manager in section 4.17(1) are significantly less than the insurance requirements for an adviser. The risks are likely greater at the adviser level yet the mandatory coverage is less.	The operation of an investment fund manager is different than that of an adviser. An investment fund manager has the responsibilities associated with fund accounting, transfer agency and trust accounting. The requirements for the two are therefore different because of their different business models. The proposed insurance requirements for fund managers and advisers are both calculated based on a formula. The formula is directly linked to the access the registrant has to client assets. The insurance coverage requirement will increase with an increase in the level of assets under management.
307.		A commenter suggests that there should be a principle-based requirement for investment fund manager insurance requirements. A basic requirement of $50,000 could be complimented by a requirement for an annual requirement to consider whether the prescribed minimum is adequate in light of the firm's activity and secure an additional amount if it is deemed not to be.	We do not believe this is an instance where a principles-based approach would be appropriate because the inherent difficulty of determining appropriate coverage would result in different standards from registrant to registrant.
308.	**4.19 Notice of Change, Claim or Cancellation [now 4.25]**	A few commenters suggest that the requirement to notify the securities regulator in writing of any change in, claim made under, or cancellation of any insurance policy, is too broad and should incorporate a materiality threshold that is based on the registrant's reasonable analysis.	We believe the element of subjectivity in the approach suggested by the commenter could be problematic. Also, information of regulatory significance it is not necessarily restricted to events that are material in themselves. For example, a high volume of small claims may be an indicator of underlying problems at a registrant.
	Division 3: Financial Records		
309.	**General Comments**	A commenter requests clarification as to which financial reporting requirements would apply where a firm is registered as both a mutual fund dealer and an investment fund manager. Would the firm have to meet reporting obligations to the MFDA as well as submit prepared financial statements and a calculation of excess	The firm would be required to meet the MFDA's filing requirements and those applicable to investment fund managers under the proposed Rule. As noted above, we will work with the SROs to coordinate

		working capital to the CSA securities regulators(s) as an investment fund manager?	reporting obligations for registrants who are also their members.
310.		A commenter proposes that financial reporting requirements should be harmonized with those of the IDA and take into consideration significant differences in foreign jurisdictions.	The current filing requirements of the IDA are more stringent that the proposed filing requirements in the proposed Rule. However, the requirements that are appropriate for IDA members are not necessarily appropriate for registrants in other categories. Foreign financial reporting may be determined to be acceptable on a case-by-case basis, where the registration exemptions for foreign dealers and foreign advisers are not available.
311.		A commenter notes that for a firm that is registered as a dealer, adviser and investment fund manager, there seems to be little to be gained by filing the same financial statements three times. The commenter urges that CSA to consider allowing a company that has three or more registration categories to file audited financial statements once on behalf of all registrations.	We would expect to receive only one set of financial statements using the most stringent of the capital requirements applicable to a firm's categories of registration.
312.		A commenter suggests that submitting unconsolidated financial statements for advisers and dealers (non-SRO) may prove difficult for many offshore registrants. The commenter recommends that the proposed Rule allow consolidated statements to be provided, together with the unaudited financial statements of the relevant operating registrant that have been reviewed by auditors.	The proposed instrument continues to require unconsolidated financial statements because we believe it is important to be able to review registrants on a stand-alone basis.
313.	**4.20 Appointment of Auditor [now 4.26]**	A commenter recommends amending the wording from "of that jurisdiction" to read "of the competent regulatory authority within that jurisdiction".	We believe the current requirement is adequate.
314.	**4.22 Delivering Financial Information – dealer [now 4.28]**	Several commenters are of the view that the requirement to deliver quarterly financial statements to the securities regulator is excessive for an EMD that does not hold client funds or trade securities (and therefore poses no financial risk other than to its owners).	In the revised proposed Rule, we have added a partial exemption from the financial records requirements of Division 3, for EMDs who do not handle, hold or have access to client assets (including cheques and other similar instruments). However, they will be required to file unaudited quarterly financial statements. All businesses should maintain proper books and records to record their financial affairs. The filing of unaudited quarterly financial statements should not pose an excessive burden if the firm is maintaining adequate books and records. Experience has shown that problems revealed in quarterly filings are often early warnings of larger regulatory concerns.
315.		A commenter notes that because of greater demand for audit services in recent years, the cost of audit services has become significantly higher. The commenter suggests that given the simple business models of most EMDs, their low capital requirements and	The partial exemption from financial records requirements that we have added for EMDs who do not handle, hold or have access to client assets (including cheques and other similar instruments) extends to audited annual financial statements. However, for other

		the fact that that a significant number do not hold client assets or property in trust (which EMDs will therefore not have ongoing capital requirements to meet demands of counterparties or to any need to hold additional capital to protect their clients against loss should they wind down their business), imposing an audit requirement for all EMDs, will provide little or no additional regulatory protection for the investing public while placing a significant capital burden on EMDs. Another commenter draws the CSA's attention to the relevant provisions of the *Income Tax Act* (Canada) pursuant to which a declaration that the financial information contained in the filer's return is true and accurate provides adequate comfort for Canada Revenue. If the Government of Canada, which derives income from these filings, finds sufficient comfort in such a declaration, the commenter submits that such a declaration should provide sufficient comfort to the securities regulator, pending a legitimate reason to request an audit of an EMD's financial statements. This commenter also notes that pursuant to s. 4.21 each EMD grants the securities regulator the right to request the EMD's appointed auditor to provide the securities regulator with an audit or review should one be required. A commenter notes that section 3.1 of the OSC Rule 31-503 Limited Market Dealers provides an exemption for LMDs with respect to providing audited financial statements to the securities regulator with the filing of an application or renewal of application to register as a LMD. The commenter recommends that a similar exemption from the requirement to supply audited financial statements to the securities regulator should be included. A commenter notes that pursuant to s. 4.23 of the proposed Rule, an adviser only has to file financial statements and Form 31-103 F1 *Calculation of Excess Working Capital* at the end of the year. Since a significant number of EMDs also do not hold client cash or assets, these EMDs should be provided with an exemption to the statement filings requirement such that these statements are unaudited and that they are only required to be filed on a yearly basis, rather than quarterly.	EMDs, they will be required and the regulator retains the authority to direct an audit of any EMD. We considered the various different registrant business models and determined that a quarterly filing requirement was appropriate for dealers. An audit provides the securities regulator with a higher level of assurance than other types of engagements, which we believe is necessary for the proper discharge of our mandate to protect investors and capital markets in Canada.
316.		A commenter suggests that the fact that the quarterly financial statements required by subsection (2)(a) are not audited should be made more clear.	Unless so specified, financial statements are not required to be audited. Quarterly statements required under subsection 4.30(2)(a) therefore are not required to be audited.
317.		A commenter suggests that the filing of financial statements should not be required for firms that do not hold client assets. If it is	The purpose of financial statement filings is to monitor the ongoing ability of a registered firm to meet its financial obligations. If a firm

		required however, internally prepared statements should be adequate in respect of a corporate finance intermediary. Alternatively with the designation of the CCO it would seem more efficient to have that individual certify, perhaps quarterly, that the firm remains solvent and that minimal working capital is being maintained.	is unable to do so, there may be harm to other registrants, as well as to clients. It is therefore necessary that all registered firms provide financial statements. The CCO must monitor compliance with the requirement to have adequate capital and insurance in place and file financial statements. But, it is not the CCO's responsibility to certify the calculation of these amounts or other content of financial filings.
318.		A commenter finds that the requirement for delivery of annual audited financial statements within 90 days of year end is too aggressive, particularly for small firms and the time period should be extended.	We do not agree that the 90-day period is inappropriate. In some jurisdictions, registrants in certain categories already have this requirement and, based on our experience this has not been a problem.
319.	**4.22(2)(a) [now 4.28(2)(a)] & 4.24(2)(a) [now 4.30(2)(a)]**	A commenter recommends that the quarterly financial statement reporting requirements for a dealer and investment fund manager should be limited to a balance sheet and an income statement. These reports are commonly produced for management purposes and should provide sufficient information to give a securities regulator whatever disclosure they might require.	The quarterly financial filings are to include a balance sheet and an income statement as well as a capital calculation. The capital calculation is based on the financial statements. Firms should be able to prepare this calculation if their financial statements are prepared. Furthermore, firms should have this information prepared so that they can monitor their capital position on an ongoing basis.
320.	**4.23 Delivering Financial Information – Adviser [now 4.29]**	A few commenters question whether the requirement to deliver quarterly financial statements should be retained. Some also question whether the time frame provided for delivery should be extended. A few commenters recommend that registrants be provided with at least a 60-day (or 45-day) window after the end of a quarter to deliver the quarterly financial statements. One suggests that quarterly results are not usually released until after the board meetings and these do not usually take place within 30 days after the end of the quarter.	We considered the various different registrant business models and determined that a more frequent filing requirement was appropriate for dealers. The 30-day filing deadline was decided upon given that the quarterly financial statements are not required to be audited. All businesses should maintain proper books and records to record their financial affairs. The filing of unaudited quarterly financial statements should not pose an excessive burden if the firm is maintaining adequate books and records. Experience has shown that problems revealed in quarterly filings are often early warnings of larger regulatory concerns.
321.	**4.24 Delivering Financial Information – Investment Fund Manager [now 4.30]**	Two commenters question the objective behind requiring the investment fund manager to disclose NAV adjustments since NAV adjustments occur at the actual fund level. Therefore, the commenter's propose that the more relevant place to disclose NAV adjustments is in the fund's Management Report of Fund Performance or the fund's financial statements.	The fund manager has the responsibility to calculate NAV for its investment funds. Where there are a significant number of NAV adjustments, this may be indicative of an operational problem which we would want to know about. The impact of a NAV adjustment is not only at the fund level. Depending on the circumstances relating to the NAV adjustment, a NAV error may have a financial impact on a fund manager's operations.
322.		A commenter recommends that there should be a description of what is considered to be a NAV adjustment and incorporation of a concept of materiality to the requirement to disclose NAV	Fund managers should ensure that NAV errors are treated in a consistent manner.

		adjustments. Furthermore, the commenter asks what will be done with such information once it is disclosed.	Information filed with the securities regulator will be used internally and will be kept confidential to the extent permitted by law.
323.		A few commenters suggest that this requirement is particularly onerous for small managers and will have little benefit to their clients. The commenters recommend that consideration should be given to: a short form reporting financial statement that does not require full note disclosure unless there is a change from the most recent audited statements, allow manager to maintain quarterly statement in-house, allow managers to file 45 or 60 days after quarter-end, have securities regulator engage in more frequent contact with managers uncover problems, have securities regulator make random working capital calculation visits.	We considered the various different registrant business models and determined that a more frequent filing requirement was appropriate for dealers. The 30-day filing deadline was decided upon given that the quarterly financial statements are not required to be audited. All businesses should maintain proper books and records to record their financial affairs. The filing of unaudited quarterly financial statements should not pose an excessive burden if the firm is maintaining adequate books and records. Experience has shown that problems revealed in quarterly filings are often early warnings of larger regulatory concerns. We do not expect the registrant to include full note disclosure on a quarterly basis unless there is a significant change and note disclosure will be necessary for the securities regulator to understand and properly review the financial statements.
324.		A commenter notes that since the assets under administration of our fund would be included in our financial statements for the corporation it questions what benefit there would be to having to file these statements on behalf of the fund. A few commenters note that Part 14 of NI 81-106 has specific rules on calculation and reporting of net asset value. To the extent that the incorrect or untimely calculation is material it must be disclosed in an investment fund's management report. The commenters find that this seems to make section 4.24 redundant.	The requirements in the proposed Rule relate to the operations of the fund manager not the investment funds. NI 81-106 – *Continuous Disclosure* deals with the reporting of the investment funds themselves.
325.	**4.24(1)(c) [now 4.30(1)(c)]**	A commenter recommends that this section should be amended to insert the word "*material* net asset value adjustment…". Without it the requirement is too onerous. As the term "net asset value adjustment" has not been defined by the CSA, a few commenters' strongly encourage the addition of a materiality or *de minimis* concept to avoid filings for routine adjustments.	Fund managers should have internal policies and procedures relating to the treatment of NAV errors including setting internal materiality threshold. This should include setting an internal materiality threshold to determine when an adjustment will be required. The Investment Funds Institute of Canada's guidelines for correction of NAV errors may be helpful in this regard.
326.	**4.24(2) [now 4.30(2)]**	A commenter says they were told by a third party (i.e., not a CSA representative) that this section is an error and that there was no intention of a requirement for quarterly financial statements. The commenter supports the elimination of this section.	The commenter was misinformed. The requirement remains in the proposed Rule requiring quarterly filings for investment fund managers.
327.	**4.26 Audit of Financial**	A commenter notes that this section proposes to require that	The filing of unconsolidated financial statements will provide the

	Statements and Auditor's Report [now 4.32 Preparation of financial statements]	annual audited financial statements be prepared on an unconsolidated basis. This is a change from the existing regime which permits annual financial statements to be delivered to the securities regulator on a consolidated basis. The commenter submits that the existing regime complies with GAAP and should be sufficient for the securities regulator's purposes. Changing the requirement from consolidated to unconsolidated reporting will require a change in the procedures of registrants with respect to how they prepare their financial statements which will be time and resource intensive and, more importantly, will increase costs as a result of additional required audits. Without a strong reason for requiring such a change we recommend that the current requirement to deliver consolidated financial statements be upheld.	securities regulator with a clearer picture of the financial operations of the registrant.
328.		A commenter suggests that EMDs that do not handle client cash, cheques, funds or investments for other parties should be exempt from the appointment of an auditor and the requirement for financial statements that are accompanied by an auditor's letter. The balance sheets of most current LMDs, particularly small 2-3 person firms, are simple as they do not carry any inventory or client balances and therefore have a low risk of compilation errors and these requirements would impose significant costs with no material consumer of regulatory benefit. In the alternative prepared or reviewed financial statements should be permitted for these EMDs. A few commenters recommend that the financial statements of an EMD should not be required to be audited but should only need to be signed by a chartered accounting firm as "reviewed". For small firms audited statements are burden and costly however having reviewed statements still provides some assurance and is cost effective and simple. Furthermore, a review is all that is required by Canada Revenue Agency therefore the commenters question why do the securities regulators require an audited statement?	The partial exemption from financial records requirements that we have added for EMDs who do not handle, hold or have access to client assets (including cheques and other similar instruments) extends to audited annual financial statements. However, for other EMDs, they will be required and the regulator retains the authority to direct an audit of any EMD. We considered the various different registrant business models and determined that a quarterly filing requirement was appropriate for dealers. An audit provides the securities regulator with a higher level of assurance than other types of engagements, which we believe is necessary for the proper discharge of our mandate to protect investors and capital markets in Canada.
329.		A commenter asks that the CSA confirm that Part 8 of NI 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* will apply to this subsection and that there will be no amendments to Part 8 in connection with the implementation of the proposed Rule.	We confirm that Part 8 of NI 52-107 still applies to foreign registrants.
330.	**4.27 Content of Financial Statements [now 4.31 Content of annual financial statements]**	A commenter notes that this section only provides guidance on the content of annual financial statements. The proposed Rule has introduced a new requirement for certain registrants to also deliver quarterly financial statements and Form 31-103F1 to the securities regulator which do not appear to be driven by any demonstrated	There is no requirement that quarterly financial statements be audited. They are to be prepared on an unconsolidated basis and should include both an income statement and a balance sheet.

		need. The commenter further notes that there is no guidance with respect to what the expected content of the quarterly financial statements will be (i.e., consolidated or unconsolidated, audited or unaudited, etc.).	
331.		A commenter suggests that the requirement to have the balance sheet signed by at least one director should be removed. Firstly, in the United States, directors are not required to sign financial statements (certifications are done by the chief financial officer). Secondly, Canadian corporate statutes already require that a director sign the balance sheet; there is no need to repeat this requirement in a securities rule.	A foreign-based firm registered to conduct business in Canadian markets is subject to Canadian requirements. To the extent a Canadian firm is subject to another requirement to have a director sign the balance sheet, this requirement represents no change. Other Canadian registrants that may not be subject to those corporate requirements now or in the future will nonetheless be required to have a director sign the balance sheet.
	PART 5 – CONDUCT RULES		
	Division 1: Account Opening and Know-Your-Client [now Division 1: Relationship With Clients]		
332.	**General Comments**	A commenter asserts that the prescriptive rules in this section of the proposed Rule are a concern and will not prevent misconduct in the financial marketplace. The commenter finds that prescribing rules to govern the relationship between advisers and clients is inappropriate and will have a profound impact on the regulatory obligations of financial advisers. A principles based regime would give advisers the flexibility they need to better meet the financial needs of their clients. In addition there should be a focus on cross-pillar regulatory harmonization in recognition of the convergence of, in particular, the insurance and securities industries. The commenter asserts that the principle based conduct rules are the best means of achieving this.	For our views on principles-based regulation, see our response to comment #46. Concerning the regulation of insurance, see our response to comment #39.
333.		A commenter suggests that carrying dealers who act on behalf of introducing dealers should be exempted from the application of Division 1 and 2 and section 5.21(1)(h) of Part 5 in recognition of their lack of direct contact with clients.	This is addressed through the combination of the instructed trade exemption from KYC and suitability and SRO rules.
334.		A commenter notes that the proposed Rule places emphasis on KYC obligations without setting any standards requiring a registrant to know the product they are selling or recommending.	The CP addresses the need to know their product as a pre-condition to making a suitability determination.
335.		A commenter recommends that non-Canadian dealers should be exempt from both KYC and suitability.	There is no justification for exempting dealers from KYC and suitability obligations simply because they are non-Canadian. To the extent that the commenter assumes that non-Canadian dealers will have business in Canada restricted to sophisticated clients who may not wish to have a suitability determination made for them, our addition of a suitability exemption for permitted clients

			should be helpful. KYC however, is required in all cases, as it forms part of the registrant's duty as a gatekeeper.
336.		A commenter suggests that the regulations should better delineate between firms that conduct retail business with the public and those that conduct business with sophisticated institutional clients. Many of the conduct and reporting requirements do not fit well with a non-retail business.	As noted above, we have recognized these considerations with the introduction of a suitability exemption in respect of permitted clients and certain exemptions from account opening and other registrant conduct requirements.
337.		A commenter expresses the view that the KYC requirements should be extended to any product that is attached to underlying securities including segregated funds and universal life policies. This commenter does realize this would require the CSA to work with insurance regulators in order to implement.	This comment has merit, but the suggestion is not something that can be achieved in the context of this project.
338.		A commenter suggests that both the KYC and suitability review requirements would benefit from much more detailed guidance as to expectations of registrants.	We have added some additional guidance to the CP. However we do not believe it is the purpose of a CP to provide detailed prescriptions. Registrants should be aware of SRO requirements in respect of these matters, which may be more prescriptive, and the separate guidance that is issued from time to time by the CSA and SROs.
339.		A commenter recommends that conduct rules should apply equally to all categories of registrants so as to not give a competitive advantage to one category over another.	We disagree. Different clients are served by registrants in different categories and it is appropriate that these differences be acknowledged with requirements tailored to the needs and reasonable expectations of the clients.
340.	**5.3 Know-Your-Client**	A commenter notes that SRO registrants are not exempt from this requirement even though SRO registrants are subject to KYC rules set out by the SROs. The commenter suggests that SRO registrants should be exempt from this section. It is crucial to have consistent KYC rules for SRO and non-SRO registrants as inconsistency will lead to confusion for clients and to an unlevel playing field.	SRO registrants are not exempt from the KYC requirement because it is a fundamental gatekeeper obligation and it is therefore essential that all registrants be subject to the same KYC provision.
341.		Several commenters believe that KYC is not relevant when a firm only has *one* type of product to recommend (e.g. MICs and real estate investment firms).	We do not believe that having only one type of product to recommend should in any way obviate a registrant's obligations as a gatekeeper of the integrity of our capital markets or to make suitability determinations for its clients which are informed by an adequate understanding of the clients.
342.		Several commenters suggest that prospective clients of an EMD would be unwilling to share their financial details for purposes of KYC, which will likely drive business away from the company. In one commenter's experience, investors will be reluctant to disclose their personal financial information to the intermediary just	As noted above, KYC is a fundamental obligation of a registrant. We also note that KYC and suitability do not necessarily go together. Suitability depends on KYC, but KYC is also required for systemic protection – to keep unsuitable persons from manipulating or discrediting our capital markets, to detect insider trading, to protect dealers from insolvent clients – whose failure to

		for the purpose of completing the transaction. Further, the investor will also be reluctant to continue updating the intermediary about the investor's personal financial circumstances and, even if the investor's circumstances were to change, it may largely be irrelevant because investor may still have to hold the exempt market security due to the resale restrictions. One commenter noted that the KYC requirements appear to be drafted only in contemplation of retail clients. For EMDs that deal almost exclusively with other companies the KYC obligation should be satisfied by way of satisfactory engagement letters which outline the transaction, the services provided and the compensation arrangements.	pay could have knock-on effects for other clients. To the extent that a prospective client of an EMD would fall into the suitability exemption for "permitted clients", the information required to discharge the registrant's gatekeeper KYC obligation would be less than in the normal case, where further KYC information will form the foundation for suitability determinations.
343.		A commenter is of the opinion that clients are in the best position to asses their own risk tolerance pursuant to a 'risk acknowledgement form' disclosure which highlights potential risks of the investment. A commenter suggests that Form 45-106F4 (the Risk Acknowledgment Form) is clear and sufficient as its very plain and blunt warning states that the person selling the security has no duty to tell the investor whether the investment is suitable and it states what the issuer is paying the seller. This disclosure, combined with the requirements prescribed by NI 45-106 as to who is eligible to invest in such securities based on the investor's income or relationship with the issuer, in our view, ought to be sufficient.	These comments are reflective of the present regime that does not include the EMD registration category. One of the reasons for the introduction of this category is that we believe registrants' obligation to make trade suitability determinations for their clients is one of the principal investor protection benefits of our regulatory regime. We believe this benefit should be extended to most accredited investors. However, as indicated above, we have come to the view that certain accredited investors – "permitted clients" – should be permitted to waive suitability determinations.
344.	**5.3(1)(a)**	A commenter questions what "reasonable steps" are satisfactory to ascertain a client's identity? Guidance should be provided as to what reasonable steps a firm should take to determine if an individual is an insider.	By definition "reasonable" is a subjective test that will vary with the circumstances. We do not believe it is possible to anticipate all circumstances with a prescriptive requirement.
345.		A few commenters question whether the requirement to establish the reputation of a client is a useful concept to have in the proposed Rule. Without guidance and a clear understanding of what is meant by "reputation" it is difficult to support the inclusion of this requirement. Furthermore, what steps should a registrant take to establish the "reputation" of a client? A few commenters submit that the current requirements to scrub clients against the Office of the Superintendent of Financial Institutions (**OSFI**) list as part of the AML/ATF regulations as well as the new OSFI Rules pertaining to Politically Exposed Persons should be adopted and accepted as sufficient safeguards.	"Reputation" is a concept used in many jurisdictions outside Canada and a long-standing concept in the securities legislation of many Canadian jurisdictions. Reputation should be interpreted according to the normal sense of the word. It is useful because an individual may well be known to be unsuitable without necessarily having been convicted of a crime or otherwise placed on a list that could be incorporated into a prescriptive requirement.

346.	**5.3(1)(b)**	A commenter suggests that it should be clarified whether this provision should apply to all reporting issuers in any jurisdiction, including foreign jurisdictions. Given that MFDs are only authorized under the proposed Rule to deal in mutual fund securities and an insider of a reporting issuer could not, in ordinary circumstances cause a mutual fund to trade in securities of the reporting issuer, a commenter questions whether MFDs should be required to identify insiders of reporting issuers.	The provision applies to issuers (not only reporting issuers) without limitation. We do not think it is unreasonable for MFDs to identify insiders. Although we recognize that this information might often not be relevant, circumstances may arise in which it would be desirable to have this information.
347.	**5.3(1)(c)(iii)**	A commenter notes that this seems to only be applicable to IDA level dealers yet is a shared criterion for MFD dealers.	We note there is an "or" separating (i) (recommended trades), (ii) (instructed trade) and (iii) (discretionary trades). So regardless which of these types of trade a registrant in any category makes, the registrant is subject to the obligation in paragraph (c) (sufficient information about the client), including an MFD salesperson when recommending a trade in units of a fund.
348.	**5.3(2) [now 5.3(4)]**	A commenter suggests that there should be guidance on what "reasonable efforts" are required to keep the information under this section current, and what is considered "current". For instance, does a registrant satisfy its reasonable efforts standard by contractually requiring clients to notify the registrant of changes to their KYC information? Furthermore, in order to avoid confusion and contention between SRO and non-SRO registrants, the commenter suggests that it would be useful to ensure that the timing for updating KYC information imposed on non-SRO and SRO registrants is the same.	Please see our comments above as to the meaning of "reasonable" and the CP for additional guidance. Given that the updating of KYC information relates primarily to the registrant's ability to make adequately-informed suitability determinations, rather than its gatekeeper obligation, we are not concerned that SROs might prescribe detailed requirements in this regard, where the proposed Rule and CP do not.
349.		A commenter finds that keeping KYC information current is redundant if the investor has been placed in a long term non-redeemable investment common in the real estate securities industry. A commenter also finds that the requirement to keep KYC information current is a particular challenge for a scholarship plan dealer given the nature of its clients and products, and seems unnecessary. Clarification on how this requirement should apply (or not apply) to their circumstance would be helpful.	We have added guidance on this point to the CP.
350.	**5.4(1) Suitability [now 5.5(1)]**	A commenter suggests that the requirement to determine suitability at a client level as opposed to at the account level can prove problematic for registrants dealing with clients who have multiple accounts and have different investment objectives for each account. If registrants had to comply with the proposed requirement for determining suitability on a client level, the	If a client wishes to divide his or her portfolio into multiple accounts and assign different investment objectives to each of them, the registrant must still ensure that the *overall* effect will be a portfolio that is suitable for the client. If a specific trade instructed by a client appears to be unsuitable, the registrant is obligated to inform the client of that fact.

		registrant would have to explain to the client that they are legally bound to determine suitability on a client level and as such cannot accept the client's instructions to treat the various accounts differently from a suitability perspective. Since this result may not always be well-received by a client, the commenter assumes that this was not the intent of the section. Accordingly, the commenter is of the view that registrants should be provided with the discretion to determine with each client whether suitability should be determined on a client or an account level.	
351.		A commenter recommends that the list of items considered in evaluating suitability should also include the investor's current investment holdings.	We agree and have included this in the additions to the CP.
352.		A commenter notes that exemptions from the suitability requirement for dealers that administer capital accumulation plans have been enacted by way of blanket order in many jurisdictions and are by exemption relief order in Ontario. While the original intention was to incorporate this exemption in amendments to NI 45-106, this has not happened. Given that all jurisdictions appear to be in agreement on this relief the commenter asks whether the proposed Rule be amended to include an exemption from the suitability requirement for capital accumulation plans.	The prospectus and registration exemptions for capital accumulation plans are addressed in the proposed amendments to NI 45-106 which are being published for comment concurrently with the revised proposed Rule.
353.		A commenter suggests that suitability should not be prescribed by the CSA but should be defined by the business relationship between buyers and sellers of the financial services. A suitable alternative to KYC checklists would be an "investment policy statement" recognized by the CSA.	As noted above, we regard the suitability determination to be of the utmost importance for most investors, and have included an exemption for sophisticated "permitted clients". Also as noted above, it is necessary to distinguish between KYC and suitability.
354.		A commenter notes that the suggested level of detail may be appropriate for a client who seeks to establish a full service or managed account, but may be excessive for a client who engages in occasional or infrequent transactions, for example a one time mutual fund purchase as part of a contribution to an RRSP. A simple solution, in the commenter's view, would be to permit an "opt-out" provision which clearly acknowledges that more detailed information is not being collected at the client's direction.	We do not see why an investor of modest means who makes an occasional mutual fund purchase for his or her RRSP should be afforded an inferior level of protection.
355.		A commenter suggests that there should be a requirement that no SRO impose suitability requirements that are inconsistent with the proposed Rule. It is important that all investors and industry participants are subject to the same rules and have a right to consistent treatment across the country. The commenter, as a result of the exemption from this section for SROs (found in section 3.3) suggests that this contemplates that	It is in the discretion of SROs, which are established in part because of the specialized expertise they have, to decide that their members should be subject to different or additional regulatory requirements. However, SRO requirements are subject to approval by CSA members.

		the SROs may establish different rules for their members from what is contained in the proposed Rule in several areas. Generally, the commenter would not disagree with approach but believe that the CSA must take a hard-line position on suitability, which is fundamental for clients of all dealers - therefore all dealers must be subject to the same rules and requirements to ensure appropriate and consistent investor protection. Unless the CSA take this position, the SROs may adopt different suitability rules which will result in investors receiving different treatment for no adequate reason. Investors have a right to expect consistent treatment and experience when working with anyone "in the business of dealing" in securities.	
356.	**5.4(2) [now 5.5(2)]**	A commenter suggests that if a registrant receives an instruction from a client that in the registrant's opinion would not be suitable for the client, the registrant must not act on the instruction without first informing the client that in the registrant's opinion the transaction is not suitable for the client. The commenter would like clarification on what "without first informing the client" means and, in particular, if the CSA believes that the registrant must not act execute any transactions until the client has acknowledged the client notification.	We have added language to the effect that a registrant may not execute any such trade unless, having been informed that it would be unsuitable, the client has confirmed that he or she nonetheless wishes to proceed.
357.		A few commenters note that this appears to be in conflict with IDA rules where firms granted order-only execution do not screen for suitability and institutional clients are deemed to be sufficiently informed to determine suitability.	Section 3.3(i) exempts IDA members and their representatives from section 5.5 of the proposed Rule provided they comply with the corresponding SRO rules.
358.		A commenter asks what evidence does securities regulators expect a registrant to maintain with respect to satisfying this requirement?	That will depend on the circumstances – such as the manner in which the client was informed. However, we do not think it would be very different from the procedures used to evidence other trading instructions.
359.	**5.5 [now 5.5(4)]**	A commenter suggests it is not clear whether section 5.5 is broad enough to exclude the relationship with a mutual fund (the client) from the requirements in part 5 where sub-advisory agreements exist between an adviser and the investment fund manger.	The section referred to is the instructed trade exemption from KYC and suitability. An investment fund manager does not undertake KYC or suitability, except possibly as a dual registrant. In the case of a sub-adviser to a portfolio manager, it is the portfolio manager that is responsible for KYC. While the sub-adviser has to make suitability determinations in order to advise, the portfolio manager remains ultimately responsible for suitability.
360.	**5.6 Leverage Disclosure [now 5.8 Disclosure when recommending use of borrowed money]**	A commenter believes that the proposed requirement to deliver leverage disclosure will arise if the registrant believes, after having "exercised reasonable diligence" that the client will use borrowed money to invest. However, the commenter points out, in section 5.4 of the CP [now 5.3] the standard which triggers the registrant's requirement to deliver leverage disclosure is if the registrant	We acknowledge these concerns and have narrowed the scope of this requirement (which had been imported to the proposed Rule from NI 33-102 *Regulation of Certain Registrant Activities*). The leverage disclosure statement is now only required where the registrant *recommends* the use of borrowed money for the purchase of securities (SRO members and permitted clients are

		"becomes aware" that the client will use borrowed money to invest. The commenter expresses concern about the onus that the proposed Rule places on registrants to exercise reasonable diligence to determine if a client will use borrowed money to invest. In the commenter's view, absent express guidance as to what meets the reasonable diligence standard, this requirement will lead to regulatory uncertainty. The commenter feels that the existing standard of the registrant "becoming aware" is a more reasonable standard to impose on registrants and is more realistic from a compliance perspective. Another commenter asks what is the standard to which dealers will be held, and what is "reasonable diligence"?	carved-out of the requirement).
361.		A commenter suggests that the written statement on leverage provided to the client should contain a comment that leverage should only be considered as part of a long term strategy.	We believe there may be circumstances in which leverage can be appropriate for purposes other than long term strategy.
362.		A commenter recommends that portfolio managers should only be required to document that they have provided the leverage disclosure statement to the client. Requiring the client to confirm in writing that they have read the statement is too unwieldy. The commenter further recommends that once the leverage disclosure statement has been provided to the client there should be no further need to provide ongoing renewals of the statement.	We agree and have removed the requirement.
363.	**5.6(2)(c) [now 5.8(2)(c)]**	A commenter suggests that this section indicates that the leverage disclosure is not required if the client is an accredited investor. NI 45-106 allows sales under the private placement exemptions to both accredited investors and to individuals who invest in excess of $150,000. The commenter recommends that section 5.6(2) be amended to exempt from this requirement any client who has purchased under the private placement exemptions of NI 45-106.	The carve-out for accredited investors has been removed and replaced with one for permitted clients. Please see our comments above for a discussion of our reasons for distinguishing among non-retail investors on this basis.
364.	**5.7 Disclosure for Activities in a Financial Institution [now 5.9 Disclosure when opening an account in a financial institution]**	A commenter supports the idea of highlighting to clients instances where the registrant is sharing space with a Canadian bank. However, rather than require clients to provide a written acknowledgement to such disclosure, the commenter believes it would be sufficient to simply provide clients with written notice.	We have considered this comment, but have concluded that this is not an overly burdensome requirement, since it applies only at the time when an account is opened.
365.		A commenter suggests that it is unclear as to how the requirements for registrants conducting securities-related activities will apply, if at all, to the call center operations of a registered firm.	Exemptive relief orders have been granted to call centres in order to reconcile their particular circumstances to the requirements of securities legislation.

	Division 2: Relationship Disclosure [now Division 1: Relationship with clients]		
366.	**General Comments**	A commenter expresses the view that it is not aware of the concerns or failures of the existing regulatory regime that the RDD is meant to address and whether the introduction of the RDD will in fact remedy such concerns and failures, if any. The commenter believes that the existing regulatory regime sufficiently protects investors and we are not aware of any material gaps in the current legislation that should be a cause for concern.	We disagree. The relationship disclosure requirement was developed in response to needs identified in the OSC's Fair Dealing Model. It parallels requirements that the SROs are developing. We believe that clients of non-SRO members should also be entitled to the benefit of key information relating to what they may expect of their dealer or adviser.
367.		A few commenters note that the new RDD is being introduced at the same time the point of sale disclosure project is going on at the Joint Forum. The commenters strongly encourage the CSA to integrate the two documents and develop a common content so as to avoid needless duplication and confusion.	We will continue to work within the Joint Forum on the development of the point of sale initiative.
368.		A commenter suggests that Division 2 does not apply to SRO registrants and understand that the SROs expect to introduce a Client Relationship Model (CRM) that is meant to mirror the requirements of Division 2. However, it is apparent that the RDD is not consistent with the CRM or existing SRO requirements (i.e., requirement for signature, non-application to accredited investors, performance reporting etc.). The commenter strongly urges the CSA to work closely with the SROs in an effort to introduce consistency between the CRM and the RDD to ensure that clients of SRO and non-SRO members are treated in a similar manner.	Clients of SRO members and non-SRO members will be treated in a similar but not necessarily identical manner. The purpose of exempting SRO members is to recognize that SROs have a mandate to develop requirements that are tailored to their members' operations. That said, we do not anticipate material differences between the SRO requirements that we will approve and those set out in the proposed Rule.
369.		A few commenters suggest that the result of the RDD together with the existing regulatory requirements will likely lead to an even larger volume of documentation that a client will receive at account opening and on an ongoing basis. One of the main purposes of disclosure is said to be investor protection. The commenters state that it is unclear how providing clients with an increased volume of documentation will serve to achieve this goal since an abundance of documentation will likely confuse and annoy rather than educate clients. The commenters note that their registrants have repeatedly advised us that clients complain about the volume of disclosures they receive. A few commenters anticipate that increasing the volume of regulatory disclosures, by having to also provide clients with the RDD, will prove to be a client dissatisfaction issue.	Investor groups have strongly supported regulatory initiatives to improve disclosure by expanding and the information that clients receive from registrants. We have made revisions to the proposed Rule and the CP to indicate that the mandated disclosure need not take the form of a special new document. Indeed, registrants that are already providing the information will not need to create any new documentation. Others may make additions to existing documents if they prefer not to create additional documents. In any event, we do not believe that the RDI requirement will create significant new burdens for registrants. There is no reason why the information cannot be presented to investors in a user-friendly format.
370.		A commenter suggests that a standard New Account Application Form and terminology should be prescribed in the proposed Rule (and not just in SRO rules) and adopted across the industry to reduce misunderstandings and minimize clients being placed in	We have revised the proposed Rule and the CP to indicate that there is no requirement for a specific relationship disclosure document. We do not intend to prescribe any specific account opening document, only the basic information that all clients of

		unsuitable investments. This should be an enhancement of the proposed relationship disclosure document.	non-SRO firms must receive. The SROs will have similar (but not necessarily identical) requirements for their members.
371.		A commenter is of the view that any requirements that lead to even more boilerplate language in disclosure documents are unhelpful to clients and must be avoided. New technology should be allowed as a means of electronically posting detailed information for clients to access.	We do not believe that "boilerplate language" will satisfy the relationship disclosure information requirements. Electronic access can be offered to clients as a means of delivering information.
372.		A commenter expresses that it is a small firm with only five people in the office. This commenter has in excess of 250 clients. The commenter notes that if it were able to prepare one client relationship disclosure document per business day (which would be a challenge on some days) it would take them approximately one year to prepare the forms. There needs to be a lengthy phase in period to accommodate the administrative work that will be necessary.	Relationship disclosure information need not be prepared for existing clients. It will be required only for new clients, which should not require an excessive amount of time. As noted above, it is not necessary to prepare a special document for this purpose.
373.		A commenter recommends that this section be amended to state that the section does not apply to any client who has purchased under the private placement exemptions of NI 45-106.	We do not agree that *all* such purchasers should be carved-out of the relationship disclosure information requirement. However, we would agree that some investors will not need all of the mandated information and will be in a position to negotiate the disclosures they do wish to receive. We have identified these investors as "permitted clients", the same group of investors who may also waive suitability determinations, as discussed above.
374.		A commenter acknowledges that there may be differences in the extent of disclosure provided to accredited investors, however the commenter does not believe it is appropriate from a policy perspective to eliminate the requirement to provide some form of disclosure as seems to be the case in sections 5.6(2)(c), 5.7(4) and 5.8(2).	We agree and have revised the requirement to exempt only "permitted clients" – who form a sub-group of accredited investors who we deem to be more financially sophisticated or better equipped to retain additional expertise to assist them in connection with their investments.
375.	**5.10 Providing Relationship Disclosure Document [now 5.4 Providing relationship disclosure information]**	A commenter notes that the proposed Rule proposes to require registrants to provide clients with a revised Relationship Disclosure Document in the event that there is a material change to the information in the RDD before the registrant next purchases or advises on a security. The commenter questioned whether this means that registrants cannot execute any transactions on a client's account until the revised RDD is delivered to the client. If that is the intent, the commenter believes that this requirement is problematic since prohibiting a registrant from executing any transactions on a client's account might inevitably lead to some investment losses for the client. Since the commenter does not think that this is the intended effect of this provision, the commenter urges the CSA to reconsider the timing of the delivery of a revised RDD. An alternative might be to require registrants to	We have made revisions to make it clear that there is no mandated relationship disclosure document, only a set of information that must be provided to the client. The notification that a client must be given after a material change can therefore be a document addressing that development alone, rather than a revised version of an all-encompassing RDD. We do not consider this to be unduly burdensome in the context of a material change.

		provide the revised RDD to clients within a reasonable time frame after a material change.	
376.		A commenter notes that this section requires that a client be supplied the RDD before they even receive advice. Since such disclosure generally occurs at account opening, 5.10(1) appears to establish new expectations regarding the timing of disclosure. The use of the term “advises” seems to be the key trigger for determining when the relationship between a registrant and client begins. The commenter recommends that clearer language be used to define the trigger since there is a varying range of activity that may be interpreted as “advising”. Clients expect to be given guidance, which we would consider advice, before purchasing, holding or selling a security. However, the term “advise” could also be construed to include informal discussions that are not intended to be investment recommendations, for example. The commenter suggests that it is crucial for clients to receive adequate information regarding the nature of their relations with registrants, but it is also important to adequately define the moment that such a relationship becomes a formal engagement.	We believe the requirement is clear: it applies before a registrant advises a client *to purchase, sell or hold a security*. It is not a pre-condition to discussions that involve more general advice.
377.		A commenter suggests that in requiring the RDD, this section does not adequately address the differences between existing clients (such as those opening an additional account) and new clients. Since existing clients would already have been informed of the nature of their relationships with registrants, providing them with another RDD would be repetitive and unnecessary.	The relationship document need not be prepared for existing clients. It will be required only for new clients, which should not require an excessive amount of time.

378.	**5.12 Content of Relationship Disclosure Document [now 5.4(3)]**	A commenter notes that the concept of providing this disclosure is a positive move and will make things better, but the content is far too dense and simply will not be absorbed by clients.	We believe that registrants will be able to provide the mandated information in forms that clients can absorb, particularly as we have now indicated that it need not be presented in one (potentially lengthy) document.
379.		Several commenters are concerned that the content of the RDD is a duplication of information currently provided to clients by registrants through other documents such as account agreements, disclosures booklets, investment policy statements and KYC forms. Requiring registrants to amalgamate all of this information to create the RDD when clients are sufficiently protected under the existing disclosures provided to them does not appear warranted, given the substantial resources that will be required to achieve this result. The commenters question whether the CSA has determined through focus groups or surveys whether clients will truly benefit from additional disclosure and whether clients will understand the information contained in the RDD in light of the existing disclosure they also receive.	Investors have expressed frustration with the information that they receive from some registrants. As indicated above, the relationship disclosure information is not required to be delivered in the form of an amalgamated document. Registrants may continue to use exiting documents so long as clients receive all of the information. Consequently, registrants that have endeavoured to ensure that their clients are well-informed are unlikely to find this requirement will cause them to make burdensome changes to their existing practices.
380.		A commenter notes that the proposed Rule provides that the RDD must be customized for each client and account. The commenter suggests that it is impractical from an operational, efficiency and cost perspective to expect a unique RDD for each client and account. Quite apart from this concern, however, is the fact that customized disclosure might serve both to confuse clients and create inconsistency in the industry. For example, clients who retain a portfolio manager do not necessarily want to be provided with the detail around how each investment product meets their investment objective. By way of another example, the requirement to disclose risk factors associated with investing with an adviser is fraught with problems ranging from advisers using this as an opportunity to market their firm (i.e. some advisers might fail to highlight all the risks while other advisers will provide a more thorough analysis of the risks) to advisers being negatively impacted by clients misconstruing the risks as incompetency on the part of the adviser. The commenter recommends that the objective of investor protection is better achieved through the introduction of standardized industry disclosure.	We do not agree for the reasons set out in the responses above. We are in agreement with investors (and the SROs), in believing that the information mandated in this Division of the proposed Rule should be the foundation of the relationship between investors and the dealers and advisers that they employ. We do not think that a one-size-fits-all approach is appropriate in view of the diversity of registrants and clients. This information is not related to marketing and a registrant who seeks to turn it to that purpose may have difficulty complying with it.
381.		A commenter expressed that they fail to understand why clients need to receive a customized RDD that includes items such as a client's KYC and investment policy statement when that information is already available to the clients, albeit in a separate document. The commenter suggests that combining standard disclosure with customized disclosure presents practical issues in	We agree and, as discussed in the responses above, registrants will not be required to create a special document. As suggested, registrants will only need to address any gaps between what they currently provide to clients and what is mandated in the proposed Rule.

		instances where only one part of the RDD needs to be updated. This would then beg the question of whether the other part of the RDD would also need to be updated. The commenter recommends that the RDD should not need to be customized because clients already receive the relevant information through existing. Furthermore, the commenter strongly recommend that the proposed Rule not impose a requirement to create a separate RDD document but rather, specifically highlight to registrants gaps in existing client disclosure and allow registrants to address those gaps by updating their existing client disclosure.	
382.		A commenter is of the view that requiring registrants to include the KYC information in the RDD would result in clients repeatedly and unnecessarily receiving general information regarding their relationship with the registrant. Providing KYC documentation and the RDD separately would benefit both the client and registrant in terms of cost, time and efficiency.	We agree – please see the response immediately above.
383.		A commenter asks the CSA to consider whether certain of the disclosure (i.e. section 5.12(1)(a) and (b)) could be included in account opening documentation, and whether other disclosure (i.e. s. 5.12(1)(c) and (d)) could be available upon request. The commenter questions whether item 5.12(1)(g) addresses requirements with respect to related and connected issuers and related registrants. If so, section 6.4 should be modified accordingly.	Registrants may provide the listed information in whatever documentation they deem appropriate (as always, subject to a common sense standard of reasonable behaviour). So, it may indeed work for a given registrant to address these particular items of information in its account opening documentation. However, registrants must provide *all* of the listed information – it is not sufficient that it simply be made available on request. Amendments to the conflicts of interest provisions of the proposed Rule are addressed below.
384.	**5.12(1)(g) [now 5.4(3)(d)]**	A commenter supports the consolidation and modernization of the conflict of interest disclosure requirements but is concerned that the requirement to disclosure a description of conflicts of interest does not mitigate the obligation to act in the best interests of the client.	Disclosing conflict of interests in no way alters other obligations related to how they must be addressed or the nature of a registrant's duty to its clients.
385.	**5.12(1)(h) and (i) [now 5.4(e) and (f)]**	A commenter does not see the need for disclosure of services fees and charges as they are already disclosed in the prospectus given to the investor and information on exact fees to be paid by specific investor are difficult to calculate.	There is no requirement for repetition of disclosure. As long as mandated information is provided to clients, a registrant may use or reference existing documents.
	Division 3: Client Assets [now Division 2 : Client Assets]		
386.	**General Comment**	A commenter would like confirmation that EMDs will not be subject to the requirements relating to custody of clients assets as they are incompatible with requirements placed on U.S. broker-dealers by	We have amended to the proposed Rule to address any conflict.

		the SEC and FINRA.	
387.	**5.13 Securities, Cash and Other Property [now 5.10 Holding client assets in trust]**	A commenter proposes that non-SRO registrants should be permitted to use clients' encumbered securities (i.e. margined securities), cash and other property in the ordinary course of their business (i.e. lending) so long as they can ensure the safe return of similar securities and property to the client upon the client's instructions, and that only fully-paid or excess margin securities must be segregated and held in trust for clients (similar to IDA By-Law 17.3). Failure to allow for this concept may bring the practice of margining or lending against a client's securities to a halt and we do not think that the proposed Rule intended for this result.	We recognize that there are business models for non-SRO registrants that involve margin lending. Exemptive relief under section 9.1 of the Rule will be available on a case-by-case basis to non-SRO registrants or applicants for registration who have adequate measures in place to address the risks involved and other related regulatory concerns.
388.		A commenter suggests that it should be clarified that only one separate securities trust account is required, not one separate securities trust account for each client.	We confirm that this is the correct interpretation.
389.	**5.13(2) [now 5.10(2)]**	A commenter finds that the requirement to hold cash with a Canadian financial institution does not reflect the realities of prime brokerage arrangements engaged in by our members. If an investment fund manager utilizes an offshore prime broker, which is often the case when the investments involved are not Canadian, then the offshore prime broker will hold the cash, as well as the securities, particularly the cash arising from short sales. The commenter suggests that this arrangement provides the fund with security and margin for positions. As a result, in many cases it will not be possible or reasonable to segregate a fund's cash at a Canadian institution separate from the custodian of its securities.	We understand that prime brokerage operations can raise unique regulatory issues. We will initially consider this issue on a case-by-case basis and, depending on our experience, may subsequently adopt a uniform exemption.
390.	**5.14 Securities Subject to Safekeeping Agreement [now 5.11] and** **5.15 Securities not Subject to Safekeeping Agreement [now 5.12]**	A commenter notes that registrants who are members of SROs are not exempt from sections 5.14 and 5.15. SROs have existing rules with respect to client assets and we recommend that SRO registrants be exempt from these requirements. In addition, we recommend that the non-SRO rules be harmonized to the SRO rules to ensure consistency.	We have added these provisions to section 3.3 exempting SRO members. We do not agree that requirements for non-SRO members should be harmonized, because the role of SROs is to develop and administer rules that are tailored to their specific membership.
391.	**5.17 [now 5.7]**	A commenter believes the prohibition on non-SRO registered firms providing margin to clients is appropriate due to the recognition that the capital and insurance requirements do not take into account the risks of providing margin.	As noted above, we recognize that there are business models for non-SRO registrants that involve margin lending. Exemptive relief under section 9.1 of the Rule will be available on a case-by-case basis to non-SRO registrants or applicants for registration who have adequate measures in place to address the risks involved

		A commenter finds this restriction will seriously impact foreign exchange trading and other businesses. EMDs and other registrants subject to regulatory requirements in other jurisdictions should be exempted from this restriction. Further, non-SRO registrants should be permitted to provide margin to accredited investors and to non-Canadian clients where permitted under applicable local legislation as it may be necessary for them to do so (for example, in the context of a sale to certain accredited investors and offshore investors who will only pay against delivery of the security certificates, they may need to advance funds). Another commenter suggests that the prohibition on margin for non-SRO members should be made for flexible to allow for the use of margin by registrants who are members of international SROs like FINRA, or are regulated by the FSA. In both circumstances the firms are subject to margin regimes very similar to that imposed by the IDA.	and other related regulatory concerns.
392.		A commenter suggests that the prohibition on lending or extending credit in section 5.17 appears to be inconsistent with the obligation in paragraph 5.3(1)(d) to establish the creditworthiness of a client.	Section 3.3 of the Rule exempts SRO members from section 5.17 to the extent that their SRO permits lending to clients (the IDA does, the MFDA does not) and, as noted above, se.9.1 of the Rule contemplates exemptions.
	Division 4: Record-Keeping [now Division 3: Record-keeping]		
393.	**General Comments**	A commenter notes that most firms already have in place sophisticated record-keeping systems that are based on existing record-keeping requirements. Setting up and maintaining such record-keeping systems were and continue to be enormous projects that involved and continue to involve the use of substantial financial, technological and personnel resources. The commenter finds that to expect firms to revamp those existing record-keeping systems without identifying an obvious risk with existing record-keeping requirement is not realistic. The existing record-keeping systems are not systems that can be easily, readily or economically changed or implemented. Therefore, the commenter suggests that if the CSA wishes to impose new record-keeping requirements that will be extremely costly and burdensome to implement, the industry should be provided with a cost-benefit analysis to support such a drastic change failing which the CSA should not change the existing record-keeping requirements.	The proposed requirements are intended to reflect current business practices. Although we recognize that the commenter may have some of these requirements already in place, the requirements are meant to standardize all books and records requirements for all registrants.
394.		A commenter questions whether the CSA has conducted reviews of all existing legislative and statutory requirements with respect to record-keeping and retention requirements (i.e. Anti-Money	We understand that the retention requirements would be consistent with other forms of legislation. However, the CSA has not conducted a review of other statutory requirements that may or

		Laundering, Statutes of Limitations, Criminal Code, etc.) in order to ensure that the proposed rules do not contravene existing requirements. It is crucial that registrants be able to comply with the proposed rules without contravening other existing rules.	may not apply to registrants.
395.		A commenter notes that registrants who are SRO members are not exempt from Division 4 and questions the decision behind sweeping SRO members under the CSA regime when SRO members are subject to record-keeping requirements pursuant to SRO rules and regulations. The commenter finds that the proposed record-keeping requirement is not consistent with existing SRO record-keeping rules. This inconsistency will prove to be a source of confusion in terms of compliance for SRO members since they will become subject to two different and contradictory sets of record-keeping requirements. To avoid confusion and to ensure that the harmonization goal of the proposed Rule is met, the commenter urges the CSA to work closely with the SROs in order to introduce a record-keeping regime that is consistent for both SRO and non-SRO registrants.	SRO registrants are subject to record keeping requirements subject to SRO rules and regulations. The CSA worked closely with the SROs and we do not believe that the proposed record keeping requirements are inconsistent with SRO rules and regulations.
396.		A commenter is concerned about the categorization of communications on an 'activity' and 'relationship' basis. There is room for significant overlap between the two categories, for instance where emails and verbal communication deal solely with a specific transaction.	The categorization of the records as "activity" or "relationship" dictates the starting date from which the retention period is calculated.
397.		A commenter suggests that there should be guidance provided on whether registrants are expected to comply with the proposed record-keeping requirements on a going forward basis for new clients only, or retroactively. The commenter assumes that the CSA will only expect registrants to comply with these proposed rules on a going forward basis. The commenter suggests that if it is wrong in its assumption, they submit that most firms would not be able to comply with these proposed rules without a significant transition period of at least 3 years.	The proposed requirements will take effect on the implementation date.
398.	**5.19 Records – General Requirements [now 5.15]**	A commenter suggests that the proposed Rule proposes to replace the existing prescriptive lists of documents that firms must retain with a general obligation for registrants to maintain an effective record-keeping system. This commenter does not believe that this is an appropriate application of the principles-based approach. A general obligation to maintain an effective record-keeping system places the onus on registrants to determine what an effective record-keeping system would be. Registrants should not be left to guess which documents need to be retained but should be provided with specific guidance on what exactly is expected of	There is considerable variation of business models and structures among registrants. The proposed requirements will allow registrants to better determine what books and records they must maintain to adequately record their business transactions and financial affairs, and the transactions that are executed on behalf of others in accordance with statutory requirements.

		them in order to comply with the proposed Rule.	
399.	**5.19(l)**	A commenter notes that the proposed Rule proposes a new requirement for registrants to retain client correspondence including emails. The commenter would like confirmation that the CSA does not contemplate that a registrant should keep evidence of all email client correspondence. This commenter assumes that the intention of the CSA is to mandate that registrants retain a record of material email client correspondence that evidences the business relationship and activities between the registrant and the client. This commenter does not see the merit in requiring registrants to retain client email correspondence that would not have any bearing on the registrant's relationship with the client.	The intention is not that a registrant will keep evidence of all email client correspondence, however they must maintain client correspondence that relates to the obligations set out in section 5.19(1) of the Rule.
400.	**5.20(1) Records – Form, Accessibility and Retention [now 5.16(1)]**	A commenter suggests that it would be helpful to explain what reasonable steps should be taken by a firm to ensure that its records remain 'durable'.	Depending on the form of communication this may require that different measures be taken. For example, electronic data should be properly backed up and a copy stored offsite.
401.	**5.20(1) and (2) [now 5.16 (1) and (2)]**	A few commenters suggest that there should be clarification with respect to the method of retaining client email correspondence. It is the view of the commenters that registrants should be able to determine the method of retention of emails within the general principle of ensuring the safety and retrieval of such emails. The issue of the adequacy of electronic records needs to be clarified in general.	The CSA agrees that registrants should determine appropriate method of retention within the general principle of ensuring the safety and retrieval of emails within a reasonable timeframe.
402.	**5.20(2) [now 5.16(2)]**	A few commenters suggest the requirement that for a period of two years after the creation of a record, a registered firm must keep the record in a manner that permits it to be provided *promptly* to the securities regulator requires clarification. Depending on how the CSA interprets "promptly", the retrieval of records from a central storage facility may not necessarily be achievable promptly. The proposed time frame should take into consideration the business reality of storage and retrieval for large firms who employ complicated record-keeping systems that might involve off-site storage. Therefore, the commenters suggest that the requirement set a "within a reasonable timeframe" standard for all record retrieval.	The CSA would interpret "promptly" taking into consideration the business reality of registrants.
403.	**5.20(4) [now 5.16(4)]**	Two commenters express a concern about the distinction between "activity records" and "relationship records". Firms will face difficulty in determining whether a specific record should be categorized as an activity or a relationship record. This is exacerbated by the fact that there is overlap in the description of the types of records in the CP (i.e., communication between	The categorization of the records as "activity" or "relationship" dictates the starting date from which the retention period is calculated. We have revised the discussion in the CP.

		registrants and clients). Although activity records deal with specific transactions, a relationship record includes disclosure provided to clients which can potentially include activity records. These two commenters recommend that the overlap between these two categories (i.e., communications between registrant and client should be a relationship record as opposed to an activity record) be eliminated. As well, we submit that the requirement to retain client communications should be limited to material client communications only.	
404.		A few commenters suggest that a retention period of between 2 and 5 years is more appropriate for relationship records. This also corresponds to the recent reduction in limitation periods in several provinces to 2 years.	Although the limitation period has been reduced, we do not agree that the retention period for firms' books and records should necessarily mirror the limitation periods.
405.		Another commenter notes that most mutual fund dealers have email system storage that is organized by username and not by client. The commenter is of the view that to comply with this requirement to preserve all email communications with clients for 7 years mutual fund dealers will have to build new email systems at exorbitant expense or store all of their email communication almost in perpetuity, also at exorbitant cost. These costs will ultimately be passed on to clients. The commenters ask the CSA to reconsider the requirement to treat email as 'relationship records' that must be preserved for such a lengthy period of time.	Depending on the form of communication this may require that different measures be taken. Considering the varying business models and structures of registrants, the proposed requirements will allow registrants to better determine what books and records they must maintain to adequately record their business transactions and financial affairs and the transactions that are executed on behalf of others in accordance with statutory requirements. A registrant can determine how to best satisfy these requirements in a cost effective manner.
406.		A commenter suggests, with respect to relationship records, that the proposed Rule states that such records should be retained for at least seven years from the end of the relationship. The commenter assumes that the "relationship" with the client does not end until all of the accounts the client holds with the registered firm are closed. The commenter notes that it would be helpful for the CSA to clarify whether the end of the relationship extends to the end of the relationship with the registered firm only or whether it extends to the registered firm's affiliates as well.	This requirement applies to registered firm only and not to affiliates.
407.		A commenter suggests that a seven year retention period may work for dealers which retain 'ownership' of clients after a representative leaves the firm, but questions how this should apply when a representative leaves a firm and they retain 'ownership' of the client and therefore retain possession of the client files.	The proposed requirements apply to a registered firm, therefore, when a representative leaves the firm they will presumably join another firm who must also comply with these requirements.
	Division 5: Account Activity Reporting [now Division 4: Account activity reporting]		

408.	**5.21 Confirmation of Trade – General [now 5.18]**	A commenter suggests that section 5.21, 5.22 and 5.23 do not seem particularly applicable to scholarship plan dealers given the nature of their product. Trades only occur at subscription time despite periodic deposits of money to enhance the level of the investment.	Section 5.23 as drafted expressly addresses this issue.
409.		A commenter finds that section 5.21, 5.22 and 5.23 do not appear to be relevant to the business model of many EMDs.	The information required is, we believe, basic to most securities transactions. However, we acknowledge the comment and the revised proposed Rule exempts EMDs that do not handle, hold or have access to client assets from the account activity reporting requirements set out in Part 5, Division 4 of the Rule. We will also be open to considering case-by-case relief in appropriate circumstances.
410.		A commenter suggests that electronic delivery should be specifically permitted under this section as well as section 5.25.	Neither of these sections prescribes a method of delivery. It is therefore open to the registrant to deliver the required information electronically. See also the discussion of electronic delivery in the CP.
411.		A commenter notes that it would be appropriate to include "withholding taxes" as a transaction disclosure category as opposed to bundling it with "other charges" as this is not a "charge" but a tax. Subsection (c) would also be more appropriately worded as "any other amount *deducted*" as opposed to the current "any other amount charged".	The required information is a minimum. A registered firm is free to provide additional information to its clients. Therefore, a firm that wishes to disclose withholding taxes separately from the overall "other charges" item is free to do so.
412.		A commenter urges the CSA to codify the exemptions granted in recent years to dealers, who act as portfolio managers and hence manage managed accounts, from having to give confirmations of trades to clients who hold those managed accounts.	Section 5.21 of the Rule provides part of the relief in the exemptions referred to by the commenter (where the investor agrees, a dealer executing a trade may send the confirmation to an adviser that acts for the investor, not the investor, etc.). The further relief in the exemptions referred to by the commenter (the portfolio manager that issues units in its pooled funds to a fully-managed client account does not have to provide a trade confirmation to the client) is no longer needed in view of the dealer exemption under the proposed Rule.
413.	**5.21(4) [now 5.18(4)]**	A commenter notes that this section provides that paragraph 1(h) does not apply if the security is a security of a mutual fund that is an affiliate of the registered dealer and the names of the dealer and the fund are sufficiently similar to disclose that they are affiliated. The commenter suggests that rather than require that the name of the registered firm and the mutual fund be "sufficiently similar to disclose that they are affiliated", it would be more appropriate to require that actual disclosure of the affiliation is disclosed. In addition, the commenter does not believe that the	A mutual fund is a trust and as such it is an affiliate in this situation. We do not agree with the comment. The conflict of interest where names are dissimilar would likely not be obvious to an investor.

		statement “mutual fund that is an affiliate of the registered dealer” is appropriate or clear in this context because it is the mutual fund manager and the registered dealer that are affiliated as opposed to the mutual fund and the registered dealer. Accordingly, the commenter suggests that the provision be rephrased to read as follows “paragraph 1(h) does not apply if the security is a security of a mutual fund manager that is an affiliate of the registered dealer and the affiliation between the mutual fund manager and the registered dealer is disclosed.”	
414.	**5.22 Reporting Trades Otherwise [now 5.19]**	A commenter recommends that this section should be amended to allow for the reporting of trade confirmations on a quarterly basis along with the quarterly reports required by section 5.25(1).	Trade confirmations should be sent promptly, their purpose being different than quarterly reports.
415.	**5.23 Semi-Annual Confirmations for Certain Automatic Plans [now 5.20]**	A commenter notes that when read in conjunction with the statement of account and portfolio requirement in section 5.25 which requires that statements of account be delivered quarterly unless the client requests statements on a more frequent basis, this section seems redundant, as transactions would appear on the quarterly statement of account in any event. Given that most of the trade confirmation disclosure is either in the statement of account or not applicable in the case of a mutual fund (principal or agent for example, the marketplace on which the transaction took place), the commenter questions the benefit to the client to also deliver a semi-annual confirmation for automatic plans regardless of the frequency of the investment.	We have revised this provision in the proposed Rule.
416.		A commenter requests that the CSA consider broadening the applicability of this provision to all systemic purchases or redemptions in a mutual fund account as long as such transactions have been pre-authorized by the client.	This section does extend to pre-authorized purchases of mutual funds and we believe the circumstances contemplated are appropriate.
417.	**5.25 Statements of Account and Portfolio [now 5.22]**	A commenter suggests that there should only be a requirement for an account statement when there is activity in an account. The requirements need to reflect the size and type of account.	We believe clients should be regularly updated as to what activity there may *or may not be* in their accounts. The size and type of the account is not relevant.
418.		A commenter asks whether there will be the ability to send client statements electronically. Can this be by email if the dealer has evidence of the client opening the email statement once a quarter, or can having ongoing electronic access to their account portfolio online be satisfactory? In either situation do they really need to have quarterly statement s mailed to them?	As indicated above and in the CP, where there is no prescribed method of delivery (there is none in this section), the registrant may deliver the required information electronically. Ongoing access is not an acceptable alternative, however. The information must be actively delivered to the client’s attention.
419.		Several commenters note that there is concern about the requirement for quarterly account statements and the failure to distinguish between nominee accounts and “client name	We believe the requirement in the proposed Rule is appropriate. Please note the exemption from this Division for investment fund managers and certain exempt market dealers.

		accounts". MFDA Rule 5.3.1(a)(1) only requires delivery of account statements to "client name accounts" once every 12 months and the proposed Rule's requirement for quarterly statements will be a significant cost for a small dealer to absorb. Standards should be aligned with current SRO requirements.	
420.		A commenter proposes that SRO members be exempt from the requirement for quarterly account statements as the particular SRO rules address this issue adequately.	The exemptions for SRO members generally concern requirements that apply to matters that are covered in both SRO rules and the proposed Rule, but differ in their particulars in order to accommodate specific aspects of the SROs members' operations that are not necessarily shared by other types of registrant. However, we do not believe it is necessary to include exemptions where SRO requirements are essentially the same as those in the proposed Rule.
421.		A few commenters suggests that because a significant number of LMD/EMDs do not hold client assets and because many transactions are one-off exempt market financings it serves no useful purpose to require them to provide investor clients with account balance statements of $0.00 on a regular basis as contemplated. Therefore, the commenters recommend that the CSA should provide an exemption to this provision of the proposed Rule for those LMD/EMDs that do not hold client assets. To do otherwise is to regulate a situation that does not exist.	EMDs that do not hold, handle or have access to client assets (including cheques and other similar instruments) and investment fund managers are now exempted from the account activity reporting requirements in Part 5, Division 4 of the proposed Rule.
422.		A commenter suggests that there should be some flexibility built in that would permit a client to opt out of at least some of the account reporting requirements.	We believe that investors should receive the prescribed minimum information.
423.		A commenter urges the CSA to revise this provision to require registered firms to deliver account statements quarterly but allow them to satisfy clients who wish to be able to monitor account activity more frequently through electronic internet account access.	The requirements in the proposed Rule are minimums. Nothing prevents a registered firm from providing additional information. However, as noted above, providing access is not an acceptable alternative to actively delivering information. Increasing frequency to one month would be too burdensome. As noted above and in the CP, where there is no prescribed method of delivery (there is none in this section), the registrant may deliver the required information electronically. Ongoing access is not an acceptable alternative, however. The information must be actively delivered to the client's attention.
424.		A commenter suggests that this section be reworded to either mandate quarterly statements but permit clients to request monthly statements, or mandate monthly statements but permit the client the option of requesting quarterly statements.	The proposed Rule includes provision for monthly statements when requested and has been revised to include reference to a summary of client transactions.

		Section 5.25 requires that the statements contain only details of the debit or credit balance and the securities held in the account. There is no requirement that the statements include details of transactions that have taken place during the period. The commenter suggests that transaction reporting, currently a basic reporting requirement, should be retained.	
425.	**5.25 (1) [now 5.22(1)]**	A few commenters note that section 5.25(1) provides that "a registered dealer must send a statement of account to each client not less than once every three months… unless the client has requested statements on a more frequent basis…". The commenters recommend that this provision include an exemption similar to that set out in section 5.24 which would exempt the registered dealer from the need to send a statement of account to each client if the investment fund manager of the mutual fund sends the client a statement of account. The commenters believe that most investment fund managers currently perform this service in any event for clients who hold mutual funds in client name. Duplication of statement of accounts (i.e., one from the registered dealer and one from the investment fund manager) will result in confusion.	We have exempted investment fund managers from Division 5, Account Reporting. We feel it is important that dealers should provide consolidated information to their clients.
426.		A commenter finds that quarterly statements of accounts are unnecessary for scholarship plan dealers given the nature of their product and therefore should not apply to these dealers notwithstanding the reference to scholarship plan dealers in section 5.23(a). Subscribers receive an annual statement which is seen by most clients as entirely sufficient.	We have considered the comment but disagree. We believe quarterly reporting is a reasonable standard.
427.		A commenter supports issuing client account statements on a quarterly basis but strongly oppose the blanket requirement to provide statements on a more frequent basis if a client so requests. A few commenters suggests that the provision that a client may request statements with a frequency of their choosing could be an administrative nightmare to comply with should they request a weekly or bi-weekly cycle for example. The commenter's suggest that this section make it clear that the ability of the client to request more frequent statements is limited to moving from quarterly to monthly statements, or that this section be deleted entirely.	We acknowledge the comment and have revised the provision to say that the client may request monthly statements, as opposed to an open-ended "more frequent" basis.
428.	**5.25(3) [now 5.22(3)]**	In instances where investment fund managers deliver client account statements on behalf of dealers and a client requests account statements to be delivered more frequently then on a quarterly basis, a commenter suggests that the dealer bear the	It appears the commenter may have confused additional reporting that some fund companies provide to investors on their own initiative with the regulatory requirement for an investor's dealer to provide the investor, its client, with statements. In any event, it

		onus of having to satisfy the more frequent delivery obligations as opposed to the investment fund manager. Failing that, the commenter suggests that dealers compensate investment fund managers for the system changes that will need to take place in order for the investment fund managers to meet clients' frequency requests.	would not be appropriate for the CSA to prescribe compensation arrangements between dealers and fund managers in regard to matters such as these.
429.	**5.25(4) [now 5.22(4)]**	A commenter notes that this section appears to be imposing an obligation on a registered adviser acting as a sub-adviser in a wrap program offered by a registered dealer to deliver a monthly statement to the client, to the extent the client has consented as per section 5.21(1) to the delivery of trade confirmations to the registered adviser. The commenter's concern is that, depending on the legal structure of the wrap program involved, the client in question is the client of the registered dealer and not the registered adviser. The registered adviser typically does not even know who the client is. Imposing a statement delivery requirement on a registered adviser in such circumstances would be inappropriate.	We have revised the proposed Rule to address this concern.
430.		A commenter notes that the requirement that the registered adviser must send the client a monthly statement when the client elects to have the confirmations sent to the adviser is duplicative if there is a custodian arrangement where the custodian is already sending the client a monthly statement. Most clients want less, not more paper and any needless redundancy should be eliminated. Hence, the adviser should not have a requirement to send a monthly statement if the custodian is already sending a monthly statement.	We have revised the proposed Rule to address this concern.
	Division 6: Compliance [now Division 5: Compliance]		
431.	**5.26 Compliance System [now 5.23]**	A few commenters find that this section provides that a registered firm must establish, maintain and enforce a system of controls and supervision designed to "manage the risks associated with the business". The commenters submit that the CSA has no jurisdiction to mandate compliance with the registrant's business generally and the CSA's mandate should be restricted to ensuring that registrants manage the risks associated with securities issues only.	If a registrant has business other than its registerable business, failure to operate that other business prudently, including managing its risks, could have negative consequences for its registerable business and consequently its investor clients. There is also the potential in such circumstances for the harm to extend further into the capital markets resulting in more remote harm to investors. For these reasons, securities regulators would be remiss if they did not include this requirement. The alternative would be to prohibit registrants from conducting non-registerable business.
432.		A commenter recommends that the word "reasonably" should be inserted between "…supervision designed…" The commenter urges the CSA to revise the requirements so as to be more consistent with the SEC's Compliance Plan Rule (the	We have added reasonability as a qualifier in respect of both compliance systems and the efforts expected of CCOs. We have also endeavoured to clarify the responsibilities of the UDP and CCO with revisions to the related sections of the

		SEC Rule) adopted for U.S. investment advisers and investment companies several years ago. In the commenter's view, the SEC's Rule is a clearer, more practical and effective rule since it (among other things) requires: • compliance policies and procedures that are "reasonably" designed to prevent violations of securities laws and rules; • the designation of a CCO who is responsible for administering the same and recognizes that the CCO is a risk manager and strategist; and • an annual review and testing of policies and procedures and improvements of any weaknesses discovered through the annual review and testing.	proposed Rule and the CP discussion of the supervisory vs. monitoring roles for these positions. We do not however agree that the prescriptive approach favoured by US securities regulators is generally preferable.
	Division 7: Complaint Handling [now Division 6: Complaint handling]		
433.	**General Comments – 5.29 Complaints [now 5.28]**	A few commenters note that throughout Division 7, there are references to registrants having to deal with complaints that relate to one of the products or services provided by the registrant. The commenters suggest that the CSA should clarify that Division 7 applies only to complaints that relate to the registerable activities of the registrant. For example, if a registrant were also a public issuer, complaints about the registrant's public disclosure documents would not be subject to Division 7, whereas a complaint about the reporting in a client's account with the registrant would. A few commenters also recommend that SRO members should be exempted from these requirements. Beginning July 2007, MFDA members will be required to report the complaints that it has received to the MFDA using the METS system. Securities dealers are already required to report complaints to the IDA using the IDA's Comset system. Therefore, to avoid registered firms having duplicated reporting obligations and having to build separate policies, systems and procedures to report the same complaint to different securities regulators, the commenter's suggest the CSA exempt SRO members firms from these requirements. A few commenters note that the proposed complaint handling regime under the proposed Rule differs from the complaint handling regime adopted by SROs. It is crucial that all SRO and	We have amended the Rule to provide that Division 6 (formerly Division 7) applies only to trading and advising activities of the registrant. The complaint handling regime applies to products or services offered by the registered firm or its representatives. The CSA believe that a complaint about a registrant's public disclosure documents would not constitute a complaint within the meaning of the Rule since these documents are neither products nor services offered by a registered firm or a representative. The requirement to document and respond to complaints applies to all registered firms (subject to the exception mentioned below), is a principle based requirement and applies all registrants, whether or not they are SRO members. The requirement does not apply to investment fund managers, nor does it apply to EMDs when dealing with permitted clients. All firms registered in Québec must comply with the provisions of the *Securities Act* (Québec) relating to complaint handling. These firms can therefore not be exempt from complying with those legislative provisions, and section 3.3 of the Rule has been revised accordingly. The CSA intend to ensure harmonization between the Rule and the SRO requirements on an on-going basis through the existing

		non-SRO registrants be subject to similar complaint handling regimes. Therefore, the commenter's recommend that SRO members be exempt from Division 7 as they are currently subject to SRO rules with respect to complaint handling (e.g. IDA Policy 8 and MFDA Policy 3). In addition, the commenter's recommend that the CSA work closely with the SROs in an effort to formulate complaint handling rules for non-SRO registrants that are sufficiently similar to or the same as the SRO rules. Is it necessary for complaints that are filed with the SRO to also be filed with the securities regulators? A few commenters support an exemption for SRO members with respect to matters reported to the CSA by the SROs on behalf of SRO members.	SRO rule approval process.
434.		A commenter finds that there does not appear to be a demonstrated need for a mandated complaint processes which makes for an inadequate basis for introducing this regulatory regime of internal complaint processes which does not serve investors well.	Complaint handling processes are essential for the protection of investors. The CSA note that the process works quite well in Québec and for SRO members. The CSA therefore believe that all registrants should have a complaint handling process, as proposed in Division 6 (formerly Division7) of the proposed Rule.
435.		A commenter suggests that the requirement for a complaint resolution services will require additional resources to address complaints that have no merit.	The CSA believe that all registrants should have a complaint handling process, as proposed in Division 6 (formerly Division 7) of the proposed Rule. The CSA do not believe that significant resources will be required to ensure compliance with the new regime.
436.		A commenter is of the view that complaint handling is not something that fits well with the business of an adviser, particularly one that primarily or exclusively advises institutional clients.	There is no distinction between an adviser and a dealer with respect to complaint handling.
437.		A commenter suggests that this section should be expanded to include more substance than merely the obligation to "deal fairly" with complaints. Disclosure of conflict of interests and lack of transparency in the complaint process should be addressed and that the process be swift and undertaken without undue delay, perhaps modelled on the ISO 10002 standards. The commenter is concerned about shortened limitation periods in many provinces and that clients should be able to bring their case to the OBSI if the matter is not resolved within 90 days lest the slow internal resolution process threaten the client's right to seek legal recourse.	We do not agree. This a principle based provision, and we see no need to define the concept of fairness
438.		The commenter recommends that this section should make a clear obligation of restitution and stipulate that it rests with the firm and not the individual. SROs limit their sanctions to non-compliance with rules and do not address investor restitution. Sanctions levied	The obligation of restitution is beyond the scope of this project.

		in one jurisdiction should also be applied to individuals in all jurisdictions to avoid the current problem of individuals simply relocating to avoid sanction.	
439.		A commenter notes that what constitutes a “complaint” is not clear. In the example of scholarship plan dealers, subscribers are all entitled to a 60 day cancellation period at the option of the subscriber. Should a cancellation by a subscriber constitute a “complaint” and be reported?	A cancellation is not a complaint We have clarified that the regime applies to complaints made to the registered firm about any product or service offered by the firm or a representative of the firm.
440.	**5.30 Dispute Resolution Service [now 5.29]**	A commenter suggests that it is unclear what is meant by “dispute resolution service” and questions whether that extends beyond the OBSI and if so which dispute resolution services would fall within the meaning of this term. If entities beyond OBSI are meant to be captured, the commenter suggests clarification on whether the CSA will provide registrants with an approved list of dispute resolution services from which to choose from or whether registrants and clients will be able to mutually select a dispute resolution service. If it is the latter, the commenter questions what happens if the registrant and the client cannot agree on a dispute resolution service? Also, if a fee is involved for using a dispute resolution service, who will be responsible for paying such a fee in the event that the client’s complaint was without merit?	We have revised and clarified the requirement to participate in a dispute resolution service, as follows: a registered firm must participate in an independent dispute resolution service unless required by securities legislation to use the dispute resolution service provided by the securities regulatory authority. We do not propose to prescribe an approved list. In Québec, the AMF provides a dispute resolution service. The, concept of a dispute resolution service therefore goes beyond OSBI.
441.		A commenter is of the view that the OBSI should be specifically included in the proposed Rule as part of the complaint process.	We do not agree.
442.		A few commenter questions what constitutes an acceptable dispute resolution service for non-SRO registrants should be clarified. The CP implies an internal process may be acceptable but this is not clear to the commenter.	We do not believe that internal processes may be acceptable on their own to meet the requirement.
443.		A commenter suggests that the best dispute resolution service is the judicial system. It is a system that has been developed over centuries, in which the parties have faith in the system, under which each party has rights and protections, and which is funded by the taxpayer. It would also be extremely difficult and, in the opinion of the commenter, wasteful to have registrants research dispute resolution services when a world class and respected judicial system already exists in Canada.	We do not intend to abolish the judicial system. We simply intend to implement another level of investor protection.
444.		A few commenters note that while EMDs should be required to document and effectively deal with complaints as per section 5.29, the requirement that they also participate in a dispute resolution service is onerous and has no identifiable benefit.	The proposed Rule does not require EMDs to comply with the requirement when dealing with permitted clients.
445.		A commenter recommends that consideration should be given to	We do not agree.

		making dispute resolution services mandatory and binding for claims under $100,000.	
446.		A commenter suggests that the term “person or company” should be replaced with the “client” as presumably this section is only intended to address client complaints.	We think that the wording is correct with respect to our intent to include every person or company that has an interest in the financial products or services furnished by a firm.
447.	**5.30(1) [now 5.29(1)] [Deleted]**	A commenter proposes that this section should be amended to read “A registered firm must participate in an *independent third-party* dispute resolution service”.	We agree and have made the requested change.
448.		Given that non-SRO firms do not have an SRO that provides them dispute resolution services, a commenter questions whether the securities regulators (other than in Québec) be willing to act in this capacity similar to the AMF in Québec and if not what organizations are being contemplated for this requirement and have costs to smaller firms been explored.	The securities regulators (other than the AMF) are not considering offering a dispute resolution service at this time nor have we prescribed which service must be used.
449.		A commenter expresses the view that this represents an unnecessary expense and is likely to be duplicitous since standard engagement letters of corporate finance intermediaries (EMDs) already contain a dispute resolution clause. As this clause is often negotiated between the parties, the commenter finds that this requirement may actually interfere with the contracting parties preferred choice. In such cases there should be a requirement that all engagement letters contain a dispute resolution clause.	We do not agree. The engagement letters of corporate finance intermediaries typically only cover the relationship of the issuer and the distributor (the EMD) and do not protect the investors who deal with an EMD. The proposed Rule does not require EMDs to comply with the requirement when dealing with permitted clients.
450.	**5.30(2) [now 5.29(2)]**	A commenter finds that this section should be amended to better reflect current practice by replacing the word “mediate” so the section would read: “notify the person or company of the dispute resolution service that is available *should the firm’s attempt to resolve the complaint be unsuccessful*, and”. The commenter is of the view that these changes (including the comment directly above) would align the wording of the proposed Rule with a memorandum being prepared by the Joint Forum of Financial regulators, Finance Canada and the Financial Services OmbudsNetwork on the dispute resolution mechanisms available to consumers through OBSI and the ombudservices for insurance.	We have clarified the Rule.
451.		A commenter suggests that a dispute resolution service should not be required for LMD/EMDs as their investor clients are by definition sophisticated individuals or institutions (i.e. accredited investors) that have the financial means to litigate where no reasonable resolution to a dispute appears possible. The commenter finds that many smaller LMD/EMDs will have fewer resources for dispute resolution services than the investors they serve. Moreover,	The proposed Rule does not require EMDs to comply with the requirement when dealing with permitted clients.

		LMD/EMDs do not have a financial advantage over their investor clients possessed by SROs; therefore a dispute resolution service requirement is not only an inequitable requirement for LMD/EMDs, it is prohibitively expensive and unnecessary.	
452.		A commenter expresses the view that when a complaint involves litigation, dealers should be able to respond through the litigation process and not be bound to resolve complaints involving litigation or anticipated litigation within a 3 month period.	This section is not meant to set aside the litigation process. It is the client who will decide the procedures that he or she wants to pursue (ombudsman, judiciary process, or both).
453.	**5.31 Policies and Procedures on Complaint Handling [now 5.30]**	A commenter notes that a registered firm must have policies and procedures on recording and examining a complaint made by a person or company having an interest in a product or service it has provided. The commenters further notes that it is not sure of what "having an interest in a product or service" means. Registered firms should have to respond to complaints from clients only and not third parties. Therefore, this concept should be clarified.	We think that the wording is correct with respect to our intent to include every person or company that has an interest in the financial products or services furnished by a firm.
454.	**5.32 Reporting to the Regulator or Securities Regulatory Authority [now 5.31 Reporting to the securities regulatory authority]**	A commenter notes that there is a requirement for registered firms to submit a report to the securities regulator that includes the number and nature of complaints as at the end of the registered firm's fiscal year. Since the proposed Rule does not distinguish between regulatory and non-regulatory complaints, the commenter is of the view that the scope of complaints that may be captured under this section potentially extends to all complaints whether they are of a regulatory nature or not. The commenter does not support this position because it is not necessary for securities regulators to be notified of all complaints since only regulatory complaints should be relevant for their purposes. Therefore, the commenter suggests that reporting of complaints to securities regulators be handled the same way as IDA Policy 8 and MFDA Policy 3 so that only regulatory complaints, and not service issues, are reported to the securities regulator.	We believe that the reporting requirement is very important in order to allow the regulator to ensure continued suitability for registration. A significant of number of unresolved complaints can be an indicator of serious problems within the firm. We have harmonized the reporting requirement and all firms will have common reporting requirements. The CSA intend to ensure harmonization between the Rule and the SRO requirements on an on-going basis through the existing SRO rule approval process.
455.		Two commenters suggest that only 'material' complaints should need to be reported and guidance should be provided as to what should be considered material (i.e. based on dollar value and/or the nature of the complaint). Theses commenters also suggest that further clarification should be provided regarding what the CSA intends "nature of complaint" to include, i.e. how general or specific of a description of the complaint must be provided?	We do not agree.
456.		A commenter looks forward to the opportunity to comment on implementation mechanisms. This commenter also suggests that	The CSA is working on the implementation process and will advise registrants of the process prior to implementation of the proposed

		registered advisers be permitted to make the complaint report only to their principal securities regulator rather than to all jurisdictions where it is registered. The commenter also notes that it is not clear whether the jurisdictions of a client making a complaint effects which CSA member the complaint should be reported to.	Rule.
457.		A commenter suggests that the reference to section 5.29 in this section should be changed to section 5.31 by way of a drafting comment.	We agree.
458.		A commenter notes that the IDA has entered into an agreement with the AMF under which the IDA provides the AMF with an annual report on the number and nature of certain client complaints reported to the IDA. This way IDA member firms only have to file client complaints with the IDA and not the AMF. The commenter suggests that a similar procedure be established with the other securities regulatory authorities, so that appropriate SROs would transmit a report on the number and nature of complaints filed to the securities regulatory authorities. This, in the commenter's view, would avoid the potentially cumbersome requirement for member firms to file, with all 13 commissions, reports that have already been filed with the SROs. However, such a procedure would be most efficient using a common reporting date for all firms rather than one based on fiscal year-end.	The agreement between the IDA and the AMF allows AMF staff to obtain the relevant information through the Comset system. However, there is no agreement as to the use by the AMF (or any other securities regulatory authorities) of the MFDA's METS system, which became operational in July, 2007.
	Division 8: Non-Resident Registrants [now Division 7 : Non-resident registrants]		
459.		A commenter suggests that there is a need to define "non-resident" for purposes of this section. The commenter also questions whether this applies to outside of the country or merely outside of the province. The commenter further questions whether non-resident refer to a non-resident of Canada, i.e. an employee of a Canadian registrant who lives in New York, but is a registrant with the OSC.	We have revised the description to make it clearer that a non-resident is an individual or firm located outside of the jurisdiction, whether in another Canadian jurisdiction or a foreign jurisdiction.
	PART 6 – CONFLICTS [NOW PART 6 – CONFLICTS OF INTEREST]		
	Division 1: General		

460.	**General Comments**	A commenter suggests that investment fund managers should be exempt from the requirements of this Division 1 because they are subject to very strict conflicts of interest rules pursuant to NI 81-107. In any event, the commenter suggests that the CSA coordinate the rules in Division 1 with the rules set out in NI 81-107. A commenter recommends that investment fund managers should be excluded from Part 6 entirely as long as those conflicts of interest are covered by the rules already in force under NI 81-107. A commenter proposes that much of Part 6 should be deleted as it overlaps with the requirements of 81-107 as would create confusion and ultimately be unnecessary. A commenter is of the view that if the conflict provisions in the proposed Rule are introduced there should be clarification on how they will interact with the conflict of interest provisions of NI 81-107 and NI 81-102 as they apply to fund managers. The commenter notes that perhaps fund managers already subject to the conflicts rules in NI 81-107 and NI 81-102 should be carved out from the conflict provision in the proposed Rule.	Except as indicated otherwise the conflicts provisions in Part 6 of the proposed Rule, these provisions will apply to fund managers. Appropriate consequential amendments to NI 81-107 will be implemented at the same time that the proposed Rule comes into force.
461.		A commenter suggests that while the proposed Rule is comprehensive it is also complex and onerous, whereas a principles-based system would be far simpler and more effective.	The first section is principle-based and the remainder of the sections are for transparency and clarity purposes.
462.		A commenter recommends that there needs to be clearer guidance to confirm that the conflict requirements imposed to not require an adviser to understand the inner workings and corporate structures of its clients, when in many cases, they have merely be retained to provide limited advice.	That requirement has been deleted.
463.		A commenter suggests that dealers are in the best position to identify and resolve conflicts of interest and potential conflicts of interest. A general requirement to identify and respond to conflicts of interest is sufficient for the proposed Rule.	We do not agree.
464.	**6.1 Conflicts Management Obligations [now 6.1 Identifying and responding to conflicts of interest]**	A commenter notes that this section generally overlooks fundamental contractual and statutory obligations of advisers to act honestly, in good faith and in the best interest of their clients, which stands at the core of the investment manager-client relationship. These principles are sufficient to ensure the objectives of the proposed requirements without having to impose such prescriptive rules.	We believe the section strikes an appropriate balance.

465.		A few commenters note that this section requires a registrant to identify each *potential and actual* conflict of interest within the registrant, with other entities, with a client, between clients, and the registrant's agents. This is a concern for two primary reasons: 1. It would be nearly impossible for registrants to confirm with certainty that they have identified every potential and actual conflict of interest. Regardless of this unattainable standard, registrants would be in breach of this proposed requirement if they fail to identify all potential and actual conflicts of interest. 2. It is impractical to extend the scope of this requirement beyond conflicts of interest within the registrant. Registrants cannot be expected to identify a potential conflict of interest with another entity if the registrant has no way of knowing of the actual existence of a conflict. As well, the concept of requiring firms to identify potential and actual conflicts of interest with agents is too broad (e.g. who is an agent of the registrant?). How can a registrant be expected to possibly identify all potential and actual conflicts of interest with an agent when the registrant is not privy to policies and procedures of those agents? In addition, it is unrealistic to expect registrants to identify all potential and actual conflicts of interest between clients since they are not privy to certain facts that may lead to the existence of a conflict of interest. Unless the CSA is able to identify specific concerns and existing failures underlying this proposed requirement, the commenters suggest that consideration be given to changing the proposed requirement to a requirement that registrants have effective policies and procedures to identify and appropriately deal with actual and *material* conflicts of interest.	That requirement has been deleted and a reasonability test has been added.
466.	**6.1(2) [now 6.1(2)]**	A few commenter note that this requires registrants to deal with a conflict of interest in a fair, equitable and transparent manner, and by exercising responsible business judgment influenced *only* by the best interest of the client or clients. The commenters are of the view that this is too broadly worded. Two commenters do not believe that every conflict should be subject to a "best interest of the client" test. This is recognized in NI 81-107 where the Independent Review Committee (the IRC) does not have to come to that conclusion for every conflict it considers, but only for	That requirement has been deleted.

		matters that are otherwise prohibited under securities laws. For other conflicts of interest, the IRC has to determine that the proposed action "achieves a fair and reasonable result for the investment fund". Furthermore, the requirement would be unworkable when dealing with two clients that may have conflicting interests. These are not sure how we would comply with the proposed Rule in such instances i.e., which client's interest would take precedence? For these reasons, we suggest that the best interest of the client be only one of the factors that registrants should take into consideration when dealing with conflicts of interest.	
467.		Several commenters suggest that a materiality test should be incorporated into the provisions to ensure that conflicts of interest disclosure does not become so voluminous as to be meaningless. While materiality is mentioned in the CP it should be expressly stated in the proposed Rule.	A reasonability test has been added.
468.	**6.1(3)**	A few commenters are of the view that the requirement that registrants provide written disclosure of conflicts of interest to clients "when there is a reasonable likelihood that the clients would consider the conflict important when entering into a proposed transaction" is a very subjective standard. This standard is impossible to monitor or supervise from a compliance point of view. Furthermore, the commenters believe that it may amount to an invitation to litigate, since clients can claim with hindsight that an undisclosed conflict would have deterred them from a transaction if it had been disclosed. The risk of litigation will force registrants to err on the side of caution and disclose all potential and actual conflicts of interest to every client. The effect will be excessive and meaningless disclosure to clients. The suggest that the only viable solution for these problems would be to have the CSA specifically highlight in the proposed Rule the conflicts of interest which would require client disclosure as they did with related and connected issuers.	A reasonability test has been added.
469.		A commenter suggests that the application of the section appears to violate privacy laws and the CFA Institute Code of Ethics which requires that a client's identity be kept confidential. When the conflict is between clients the firm should have internal procedures to identify these conflicts of interest but not be required to disclose them to the particular clients. In theory every client is in conflict with every other client when it comes to buying and selling securities. Specific disclosure is both unnecessary and improper in these circumstances.	That requirement has been deleted.

470.	**6.2 Prohibition on Certain Managed Account Transactions**	A few commenters have a number of concerns with the proposed definition of "responsible persons": The concerns are as follows: 1. Not every partner, director or officer of an adviser should necessarily be considered a "responsible person". If partners, directors or officers do not have access to information about investment decisions or advice, the commenter's strongly urge the CSA to exclude such persons from the definition of "responsible person". 2. The definition seeks to capture all affiliates of the adviser. This is a key change from the existing requirement found in section 118 of the *Securities Act* (Ontario) which restricts the concept of affiliates in the definition of "responsible person" to those affiliates who participate in the formulation of, or have access prior to implementation, to investment decisions made on behalf of or the advice given to the client of the adviser. The commenter submits that the existing formulation of affiliate is the more reasonable and practical approach. Most organizations have put in place ethical walls and related policies and procedures to prevent certain affiliates of the adviser from having prior access to investment decisions. Casting such a wide net will have a negative impact on the practices of larger organizations that have many affiliates and advisers. The commenter therefore recommends that the definition of "responsible person" be revised to capture only those affiliates who have access to or can influence investment decisions. 3. The commenter noted that the definition of "responsible person" has been expanded to include agents of the adviser which is a divergence from the existing definition in the *Securities Act* (Ontario). The commenter is not sure who would qualify as an agent and seek clarification from the CSA on the meaning of this term. A commenter does not understand the rationale behind including section 6.2 in the proposed Rule. A commenter says there are several flaws with section 6.2: 1. Paragraph 6.2(1)(d) is substantially different from section 118 as in section 118, affiliates and associates of the	This provision has been re-drafted, and combines the elements that originated in the existing section 227 and subsection 115(6) of the Ontario Regulation, and corresponding provisions in other jurisdictions.

		adviser are only considered to be responsible persons if they fall within the criteria set out in (e) (i) and (ii) 2. The overall section is unclear as to its scope. A commenter urges the CSA to reconsider the comments of OSC staff made in a 1995 paper outlining technical issues with Part XXI of the OSA that deal with section 118, particularly as it relates to mutual funds. 3. Subsection 6.2(2)(b) is substantially different from subsection 118(2)(b). Is this intended? 4. Investment fund managers and mutual funds are not exempted from its scope as applicable, in ways dealt with in National Instrument 81-107. Does this mean that if an investment fund manager and/or a fund have an exemption under NI 81-107 from securities regulation that it must again apply for an exemption under section 6.2 of the proposed Rule? Similarly, if a registrant has already been exempted from section 118 (or equivalent section in other applicable legislation) in respect of a continuing activity, will it have to re-apply for an exemption from section 6.2? If this section is retained, the commenter urges the CSA to provide blanket relief from this section to any registrant who has relief from the equivalent provisions of securities legislation.	
471.		A commenter questions whether it is intended that section 6.2 cover inter-fund trading. What about cross-trades? If so, why? And if so, how? The inter-relationship of section 6.2 with NI 81-107 is of critical importance here. The commenter strongly recommends that the CSA conduct additional consultation with the investment management industry on inter-fund trading and cross-trading before formulating a final provision of the proposed Rule in this area.	Fund managers will be exempt from all of Part 6 except for 6.1, which will apply only to fund managers in connection with funds that are not subject to NI 81-107. Appropriate consequential amendments to NI 81-107 will be implemented at the same time that the proposed Rule comes into force.
472.	**6.2(2)**	A few commenters are concerned about the restrictions on investments by a registered adviser in the context of a fully-managed account or an investment portfolio unless a client has provided their prior written consent: 1. The existing corresponding requirement found in section 118(2) of the *Securities Act* (Ontario) includes a knowledge qualifier such that the adviser is prohibited from “knowingly” making one of the prohibited	This provision has been re-drafted, and combines the elements that originated in the existing section 227 and subsection 115(6) of the Ontario Regulation, and corresponding provisions in other jurisdictions.

		investments without the client's prior written consent. The commenter notes that this knowledge qualifier has been removed from section 6.2(2). The commenter submits that the knowledge qualifier should be included in section 6.2(2) as, without such a qualifier, inadvertent errors may result in a breach of this requirement, which is surely not the CSA's intent. 2. the commenters suggest that an adviser would be required to obtain a client's written consent prior to each purchase transaction: In practice, this requirement may not always be in the best interests of clients. Clients who do not submit their written consents in a timely manner will not have access to the widest array of investments because their adviser would be prohibited from executing a specific trade unless they have the client's specific written consent on file prior to execution. As a result, these clients may suffer some investment losses. The commenters fail to see how this can serve the best interests of the client. Therefore, the commenters believe that the underlying purpose to protect investors is severely undermined by the specific consent requirement. In any event, most clients do not place much emphasis, if any, on these types of consent forms. On the contrary, clients have voiced complaints and confusion about the need to sign such consent forms. Accordingly, the commenters submit that the appropriate requirement is to mandate general client disclosure at account opening relating to the responsible persons, related issuers and connected issuers conflicts of interest. This is a very onerous requirement for registrants affiliated with large banks to comply with and it unfairly restricts their business activities. If the intent behind the consent requirement is to ensure that the adviser is not prioritizing the interests of responsible persons, related issuers and connected issuers over the best interests of the client, then the commenters note that advisers are already subject to a high standard with respect to managing a client's account. For example, advisers have a statutory and frequently contractual fiduciary duty to act in the best interests of their clients and an obligation to ensure that transactions are suitable to the client's investment objectives. The commenters suggest that this framework already serves to prohibit advisers from "dumping" securities of responsible persons, related issuers and connected issuers in a client's account. Accordingly, the commenters submit that the existing securities law regime is	

		sufficiently robust to protect the interests of investors in this regard without the need to obtain prior written consent. A commenter notes that that this section could also apply to purchases of mutual funds. The commenter recommends that section 6.2(2) include an exemption for transactions made in accordance with subsection 4.1(4) of NI 81-102 *Mutual Funds*.	
473.	**6.2(2)(b) [now 6.2(2)(c)]**	A commenter is of the view that this restriction will have the perhaps unintended consequence which is detrimental to investors as a result of a lack of a 'client consent' exception to the restriction. There is some ambiguity as to the definition of a responsible person and we encourage a clarification that it will not include an investment fund of which the investment adviser or its affiliate is trustee.	This provision has been re-drafted, and combines the elements that originated in the existing section 227 and subsection 115(6) of the Ontario Regulation, and corresponding provisions in other jurisdictions.
474.		A commenter is of the view that section 6.2(2)(b) prohibits an adviser from purchasing or selling a security from or to the account of a responsible person of the adviser whether the client has provided their consent or not. This is problematic because it means that we cannot put principal transactions through a related dealer which is inconsistent with IDA rules and therefore creates an uneven playing field. The commenter submits that this provision should allow for an exemption in the event that the client provides consent to such transactions.	The proposed Rule has been revised to address this issue.
475.	**6.3(1) Registrant Relationships [now 6.3]**	A few commenters note that this appears, on its face, to permit individuals registered as dealing or advising representatives to be registered in the same capacity with an affiliated firm. The commenters commend the CSA in taking this approach and would also encourage the CSA to work with the SROs to permit, subject to the applicable proficiency requirements being met, a dealing representative of a mutual fund dealer to also be registered as a dealing representative of an investment dealer when the dealers are affiliates. It is the view of the commenters that there are significant benefits to both clients and registrants of such an approach and that adequate control to address any regulatory concerns can be established to allow for this development.	We acknowledge the comments.
476.	**6.3(2) [now 6.3]**	A commenter notes that this section is a stark change from current OSC Rule 31-501 which requires in the situation that the fact be: a) disclosed to the OSC including the business reasons for it, b) the registered firm must adopt policies or procedures to minimize potential conflicts of interest, and c) the details must be disclosed to clients. The commenter believes that the current regime under 31-501 works well and the prohibition proposed under section	This section carries forward the concept currently in subsection 1.1(2) of OSC Rule 31-501, and also applies it to advising representatives and associate advising representatives. Part 2 of OSC Rule 31-501, which the comment addresses, has not been carried forward as it is covered, subject to a reasonability threshold, in section 6.1.

		6.3(2) of the proposed Rule will have adverse impact on firms and the fact that it exempts related registrants will only penalize smaller firms. The prohibition on firms within the same registration category is justifiable but the blanket prohibition is not advisable.	
477.	**6.4 Issuer Disclosure Statement**	A commenter suggests that this is an improvement over the current rules but does not adequately address the practical needs of a portfolio manager with multiple managed accounts that may still require a notice every time a trade is made if a portfolio manager passes a certain threshold of collective ownership by their client accounts and accounts of employees resulting in becoming "related" to that issuer. The commenter finds that the cost of creating a system to properly monitor this is exorbitant.	This provision has been re-drafted to address the concern.
478.		A few commenters suggest as an alternative that firms should be able to deliver a conflicts of interest list at account opening which will contain a website address where current issuer disclosure statements are posted, and that posting shall be considered delivery.	We do not agree because it will make information inaccessible to those without computer skills or access to a computer.
479.		A commenter strongly recommends that section 6.4 be redrafted to provide the following: 1. Account opening documents must clearly disclose the possibility of a portfolio manager causing a client to invest in a "related issuer" and outlining the general reasons why an issuer may become a related issuer to the portfolio manager. 2. Clients will consent to the portfolio manager causing them to invest in related issuers as part of their general discretion given to portfolio managers at account opening. 3. Clients will receive a list of related issuers when they enter into an account, and a revised, updated list of related issuers on an annual basis. It is simply impractical and costly to require portfolio managers to send a notice describing a new related issuer every time this relationship threshold is tripped or materially changed, before being able to invest client's assets in that related issuer. In any event, the commenter expects that clients will not appreciate, or know what to do with, the regular paper flow of information proposed to be mandated in section 6.4.	This provision has been re-drafted to address the concern.
480.	**6.4 (1)**	A few commenters note that this section proposes to require that	This provision has been re-drafted to address the concern.

		the issuer disclosure statement contain a list of connected issuers of the registrant. The commenters find that the determination of whether an issuer is "connected" to a registrant is only relevant during the course of distribution by the issuer. This determination is fact specific and usually made by counsel for the issuer and underwriter for that issuer's prospectus and inevitably results in a generic statement in the prospectus that the issuer "may be a connected issuer". Given the fact-specific nature of the determination and the continuous changes that occur on a daily, if not hourly, basis of who would be a connected issuer, it is difficult and impractical to require registrants to maintain a list of connected issuers. Two commenters urge the securities regulators to allow registrants to deal with this requirement by (i) describing the concept of a connected issuer in the issuer disclosure statement; and (ii) providing specific examples of connected issuers in the issuer disclosure statement.	
481.		A commenter suggests, with respect to section 6.4 issuer disclosure statement, OSC staff has required disclosure of related issuers even if a registrant does not intend to deal or advise in respect of securities of a related issuer. The commenter questions whether this provision will be interpreted by the CSA to be limited to only those related issuers whose securities might be the subject of a trade or advice.	The preamble of the provision precludes the commenter's interpretation.
482.	**6.4(2) [now 6.4(3)]**	A few commenters note that the requirement for delivery of an issuer disclosure statement before each and every purchase and sale or recommendation of a related or connected issuer is a concern. Two commenters do not believe that clients would react positively to receiving issuer disclosure statements on such a regular basis. In addition to the practical concerns noted above, the commenter's submit that clients already complain about the volume of material sent to them and are less likely to read the issuer disclosure statement if it is delivered to them on such a regular basis. As well, it is operationally difficult to keep track of ensuring that the issuer disclosure statement is delivered for each client at the right time. The commenters urge the CSA to reconsider this position and instead allow for the delivery to take place upon account opening and then annually. The commenters also suggest that the CSA provide advisers with the option of satisfying this delivery requirement by posting the updated issuer disclosure statement on their website i.e., access equals delivery. This suggested approach would eliminate client inconvenience and would be more practical from an operational perspective.	This provision has been re-drafted to address the concern.

483.	**6.4(5) [now 6.4(6), 6.4(7) and 6.4(8)]**	A commenter requests that the requirement that the name of the registered firm and the mutual fund be sufficiently similar to disclose that they are affiliated, is not realistic since there are many funds that are affiliated with a registered firm but do not have a name similar to the firm's. The commenter believes that it would be unfair to exclude such mutual funds from the exemption. Accordingly, we suggest that the requirement should provide an alternative in such situations, namely to disclose the affiliation.	We do not agree. The conflict of interest where names are dissimilar would likely not be obvious to an investor.
484.	**6.5(c)**	A commenter recommends that scholarship plan dealers should also be referenced in this section for much the same reason that mutual fund dealers are included.	This change has been made.
485.		A commenter suggests that this proposed requirement can be detrimental to clients who might suffer some investment losses as a result of advisers being prohibited from trading on a client's account unless the revised trade allocation policy has been delivered to the client (which can take hours or days, depending on the delivery method). Based on this fact alone, the commenter urges the CSA to move towards a delivery of the updated policy promptly without restricting the adviser's ability to trade on the client's account in the meantime. The commenter also suggests that the CSA provide advisers with the option of satisfying this delivery requirement by posting the updated trade allocation policy on their website i.e., access equals delivery.	This provision has been re-drafted to address the concern about restricting the adviser's ability to continue trading.
486.		A commenter finds that additional guidance is needed on this section. For example, the commenter questions whether the CSA expects registrants to allocate securities on a pro-rata basis or can they be allocated based on a business model. The imposition of a fair allocation requirement amongst all clients will be a substantial departure from current standard practice.	This section is similar to subsection 115(1) of the Ontario Regulation and equivalent provisions, so standard practice should not have to change. Guidance is provided in the proposed CP.
487.	**6.7(1)(b) Acquisition of Securities or Assets of a Registrant [now 6.8(1)(b) Acquiring a registered firm's securities or assets]**	A commenter suggests that guidance is needed on what will be considered "substantial".	That guidance is located in the proposed CP.
488.	**6.7(3) [now 6.8(3)]**	A commenter finds that the timeline as proposed is too long and will create uncertainty in transaction. The timeline for response by the securities regulator should be shortened to 10 days.	We disagree. We accommodate shorter timelines on an emergency basis.
	Division 2: Referral Arrangements		

489.	**General comments**	A commenter generally supports the introduction of guidance surrounding referral arrangements and specifically commends the CSA for eliminating the requirement, currently in place in Québec, to file the agreement of referral with the AMF. However, the commenter is concerned that Division 2 is worded quite broadly and in such a way that we believe it casts a very wide net. In particular, the commenter has the following concerns: 1. The requirements with respect to referral arrangements might capture referrals between affiliates. The commenter submits that referrals between affiliates should be specifically excluded from the proposed Rule. The commenter's registrants already provide clients with referral disclosure at account opening with respect to a referral fee that is received or paid between affiliates for the referral (or possible referral) of a client. The commenter has reproduced the disclosure they currently make in this regard below, which the commenter believes sufficiently informs the client of the arrangements and highlights the important issues (i.e. amount of the fee, permitted activities, etc.): *"We and certain of the CIBC group* (each a "CIBC Member"), have entered into a referral arrangement to refer qualified clients to each other. You are under no obligation to purchase any product or service from a CIBC Member. However, if you do so, you acknowledge that a CIBC Member may pay another CIBC Member an annual referral fee of up to *% of the fees that you will pay each year for the products and services purchased from that CIBC Member. You do not have to pay any fee for the referral. It is illegal for the CIBC Member receiving the referral fee to trade or advise in respect of securities unless it is duly licensed or registered under applicable securities legislation to do so.* **The CIBC group includes Canadian Imperial Bank of Commerce and its subsidiaries that offer deposits, loans, mortgages, mutual funds, portfolio management, investment counselling, securities trading, trust and insurance services."* The commenter is also concerned that the combination of the	The requirements with respect to referral arrangements will capture referrals between affiliates. Although we recognize that the commenter may already provide clients with a form of referral disclosure, the requirements in Division 2 of Part 6 are meant to standardize the requirements relating to referral arrangements for all registrants. As set out in the CP, whether a party needs to be registered depends on the activities carried out by the parties to the referral arrangement. There are a number of factors to consider in determining whether an arrangement is a referral that requires registration. If the activity does not fall into one of the categories of regulated activities, there is no need to assess whether the activity is conducted as a business, as the activity does not require registration. If the activity in question did not require registration prior to the implementation of the business trigger, the referring party would not be required to be registered simply by virtue of the implementation of the business trigger. However, it is up to each registrant to review the activities carried out by the parties to the referral to determine whether the referrer needs to be registered.

		business trigger and the referral arrangements requirements might mean that referrers that are not currently registered will need to be registered in order to carry out referral activities, regardless of the fact that those individuals are not conducting registerable activities. For example, bank employees who might regularly refer clients to affiliated registrants and receive a referral fee for doing so might be said to trigger the factors set out in the business trigger. While the commenter understands that whether a party needs to be registered depends on the activities carried out, the commenter does not believe that the business trigger was meant to capture referrals by bank employees to their affiliated registrants. As a result, the commenter recommends that such activities should be specifically exempt from the registration requirement.	
490.		A commenter questions whether it is correct to conclude that the referral arrangement requirements in Division 2 of Part 6 will override any SRO policies concerning referral arrangements since that referral arrangement requirements is not included in section 3.3.	The IDA and the MFDA were involved with the development of the provisions relating to referral arrangements. Similar provisions, consistent with the provisions of Division 2 of Part 6 of this proposed Rule, will be implemented or adopted by the MFDA and IDA.
491.		A commenter finds that while the intent of the proposed Rule is proper, it is very prescriptive and puts the onus solely on registrants to ensure that clients are protected.	The CSA has regulatory authority over registrants, and as such, the requirements in Division 2 of Part 6 are intended to ensure that registrants have appropriate controls in place to minimize conflicts of interest that may arise from referral arrangements. In light of the continuing problems we have seen in the industry relating to referral arrangements, we agree that the level of quality of information disclosed to investors should be improved. This was the reason for including the specific requirements with respect to client disclosure in section 6.13 of Division 2 of Part 6.
492.		A commenter believes that the proposed Rule should also outline how the CSA will take steps to ensure that investment products are appropriately vetted to prevent unsuitable and fraudulent products from entering the market, before they are inadvertently sold or referred by financial advisors.	It is not possible to ensure that fraudulent products cannot enter the market but the risks of that happening can be mitigated. Securities legislation consists of requirements that are in large part directed at doing so. However, securities regulators do not pass judgement on the merits of any offering and determining the suitability of an investment is the responsibility of the registrant who recommends it to a client or makes a discretionary trade in it on behalf of a client. As discussed in the CP, we do not believe it is possible for a registrant to discharge this responsibility if the registrant does not understand what he or she is trading or recommending.
493.		A commenter suggests that the CSA should clarify whether the proposed requirements applicable to referral arrangements also apply to commission and/or fee splitting arrangements.	As set out under “Application” in section of 6.11 of the CP, a referral fee means any compensation paid for the referral of a client, including sharing or splitting any commission resulting from

			the purchase or sale of a security.
494.		A commenter questions whether this is intended to cover payments made within a registered firm.	The intent of the proposed Rule is to cover referrals from a registered firm to another party, related or arms-length, and is not intended to cover payments of referral fees made within the registered firm.
495.		A commenter notes that, with respect to referral arrangements, neither the proposed Rule nor the CP discusses who may be an acceptable entity for referrals, which was discussed in previous CSA publications on referral arrangements. The commenter wonders if this was intentionally dropped as a regulatory concern of the CSA, and feels that without additional commentary and some specific proposals concerning referral arrangements, securities market participants are left in the dark with regard to the intentions of the CSA.	It was the intention of the CSA to capture any referral to or from a registrant. Therefore, the proposed Rule was intentionally not limited to "acceptable entities". The definitions in Division 2 of Part 6 make it clear that it is intended to capture all referrals to or from a registrant. As such, we do not feel that any further clarification is necessary. We note that the provisions in Division 2 of Part 6 are broader in scope than what was proposed in the CSA Distribution Structures Committee Position Paper published in August 1999, which was limited to referrals between dealers and "acceptable entities".
496.	**6.11 Definitions – Referral Arrangements**	A commenter notes that "client" is defined to include prospective clients. The commenter does not think it is necessary for a registrant to comply with Division 2 if the prospective client does not become a client. The commenter believes that the onus should be on the entity that makes the referral to provide any necessary disclosures particularly if no services are ultimately rendered by the registrant to whom the prospective client was referred.	This issue was considered by the CSA project committee. The concern with putting the onus on the referrer to give disclosure to clients is that the referrer may not be a registrant. Although the registrant must ensure that the disclosure is provided to the client in accordance with subsection 6.12(c), the disclosure may be provided by either party, in accordance with the terms of their written agreement.
497.		The commenter notes drafting inconsistencies between Division 2 of Part 6 the proposed Rule and the related discussion in the CP.	We have substantially re-drafted the discussion of referral arrangements in the CP.
498.		A few commenters suggest that the definition of referral fee should not include the situation where a fee is paid to a third party that is not involved in the transaction (e.g. a law firm that refers a client for advice on a transaction but does not represent any parties to the transaction and where post-closing the dealer wishes to recognize the contribution of the law firm by sharing in the fees generated) as this has no impact on the client-broker relationship, causes no conflicts of interest and no client confusion.	The definition of "referral arrangement" does not depend on whether the referring party is involved in the transaction; it is dependant on whether a registrant pays or receives a referral fee (for the referral of a client). In the situation described, there may be conflicts of interest as the law firm may be referring to the particular registrant that pays the highest referral fee.
499.		A commenter is of the view that, under the proposed Rule, a referral fee can not be paid to people that introduce a registrant to clients. This should be changed to allow an individual to source new clients.	Payment of referral fees is not prohibited by the proposed Rule. It is permitted provided that certain requirements are met (e.g. disclosure is provided to clients).
500.	**6.13 Disclosing Referral**	A commenter suggests that provisions that expressly deal with referral arrangements are a much needed and productive step.	As set out under "Application" in section 6.11 of the CP, whether a party needs to be registered depends on the activities carried out

	Arrangements to Clients	The section would be more helpful if it or the CP confirmed that the referrer can participate in data gathering and assembly if the referee is properly conducting know-your-client and suitability reviews and the referrer does not provide any advice in respect of specific securities.	by the parties to the referral arrangement. There are a number of factors to consider in determining whether an arrangement is a referral that requires registration. The gathering of general client information (e.g. name, address, etc…) is not considered registerable activity, but it is expected that the registrant will verify any information provided with the client and satisfy its KYC and suitability obligations.
501.	**6.13(1)(c)**	A commenter recommends that paragraph 6.13(1)(c) should refer to "any known material conflicts…"	The proposed Rule requires registrants to identify, manage and disclose conflicts of interest that may arise in referral arrangements. To introduce the concept of "materiality" would lead to a differing standard between registrants. We think that registrants have an obligation to identify all conflicts of interest that may impact client relationships and have internal processes in place to identify conflicts of interest.
502.		A commenter suggests that this requires disclosure of any conflicts of interest resulting from the referral arrangement relationship. The commenter notes that conflicts of interest are thoroughly covered in section 6.1. A commenter believes that it is duplicative and unnecessary to have conflicts of interest requirements covered under two different sections. This duplication will lead to inconsistency and confusion for registrants. Accordingly, the commenter suggests that the CSA select either section 6.1 or section 6.13 to cover conflicts of interest. In any event, there needs to be guidance as to the meaning and the scope of conflicts of interest as such term pertains to referral arrangements. The commenter urges the CSA to incorporate a materiality threshold and limit the potentially far reaching scope of the concept of conflicts of interest in the context of referral arrangements.	Although section 6.1 relates to conflicts management generally, Division 2 of Part 6 deals specifically with referral arrangements. It is not intended to be duplicative, but is intended to include the specific requirements relating to referral arrangements in Division 2 of Part 6.
503.	**6.13(1)(d)**	A commenter supports the requirement for disclosure of referral arrangements in detail and in writing, but the disclosure of the total amount of the referral fee should be mandated and not be qualified with the words "to the extent possible…".	Disclosure of the amount of the referral fee is mandated. However, we recognized that in some instances, the amount of the referral fee may not be possible to calculate in advance as it may be dependant on another variable (e.g. assets under management). For this reason we ask that the method of calculating the referral fee be disclosed.
504.		A commenter is of the view that the requirement in paragraph 6.13(1)(d) to disclose the amount of the fee is not appropriate. This is confidential information between the referring parties. The commenter believes that the fact that a fee may be payable should be sufficient information to alert an investor that a possible conflict exists, the importance of which the investor can assess, either directly or by asking for additional information.	This issue was considered by the CSA project committee and we think that this is important information that a client needs in order to assess the extent of the potential conflict of interest resulting from the referral arrangement.

505.	**6.13(1)(c) & (g)**	A commenter submits that the disclosures outlined in paragraphs 6.13(1)(c) and (g) are too open ended and subject to interpretation after the fact and should be removed. Another commenter notes that the requirement to disclose any other information that a reasonable client would consider important in evaluating the referral arrangement is very broad. The commenter does not agree with including such a "catch-all provision" and suggests that the CSA specifically include any other disclosure requirements that they wish to have registrants make to their clients with respect to referral arrangements.	The proposed Rule requires registrants to identify, manage and disclose conflicts of interest that may arise in the circumstances of their particular referral arrangements. As the number of referral arrangements and the various types of arrangements has increased in recent years, it is difficult to enumerate all of the types of conflicts of interest that may arise. Therefore, these provisions are necessary to ensure that registrants disclose information about referral arrangements that a reasonable investor would consider important in order to evaluate the referral arrangement.
506.	**6.13(1)(e) & (f)**	A commenter believes that the disclosure required in paragraphs 6.13(1)(e) and (f) are not meaningful to an investor and should not be required. A commenter finds that in light of paragraph 6.13(1)(f), paragraph 6.13(1)(e) is unnecessary and overly prescriptive.	The intention of these provisions is to clarify the roles and responsibilities of each of the parties to the referral arrangement. Without adequate disclosure clients may be confused about who they are dealing with and who to approach for advice. Specifically, 6.13(1)(f) makes it clear that the client should be dealing with the registrant receiving the referral.
507.	**6.13(2)**	A commenter does not think it is necessary for clients to be apprised of all changes regardless of whether or not those changes are material to the referral arrangement. The commenter suggests that the requirement should be to mandate registrants to provide revised written disclosure only if there is a material change to the referral arrangement information that will have an impact on the client. The commenter also finds that the proposed time frame is too prescriptive. The commenter recommends that the timing be changed to provide for the notice to be delivered to clients within a reasonable time frame after the material change.	The project committee considered this issue. However, "material change" is a defined term in the securities legislation of some of the CSA jurisdictions. In addition, we think that all of the items enumerated in subsection 6.13(1) are sufficiently important that any change in this information warrants disclosure to clients. The project committee considered this option, however, we feel that it was important that clients receive the disclosure and be able to assess the impact of the change prior to the next payment or receipt of a referral fee.
508.	**6.15 Application and Transition to Prior Referral Arrangements**	Two commenters do not believe that it is appropriate for the proposed Rule to capture existing referral arrangements. The commenters are concerned that repapering existing referral arrangements might serve to unnecessarily confuse clients. Referral arrangement requirements should be restricted to referral arrangements that arise as of the date the referral arrangement requirements under the proposed Rule take effect.	The intent is not to be duplicative, however, most of the CSA jurisdictions currently do not have provisions in place dealing with referral arrangements. As such, if a registrant has a referral arrangement in place that does not comply with the requirements in Division 2 of Part 6, we have provided a transition period in section 6.15 to allow registrants time to comply with the new requirements.
	PART 7 – SUSPENSION AND REVOCATION OF REGISTRATION		
509.	**General Comments**	A commenter notes that the CSA is proposing that the securities regulator have discretionary power to revoke or suspend a registration or impose terms and conditions on registration at any time when the securities regulator makes a determination that a	We do not agree. "Objectionable" is a term that is used in the existing legislation of several jurisdictions to provide the decision maker under the

		registrant no longer meets the fit and proper requirements or that their continued registration is objectionable. The commenter understands that the CSA introduced this provision by way of balancing out the change of no longer requiring registrants to annually renew their registration. However, the commenter is concerned that the discretionary power is too broad and we recommend that the CSA provide registrants with guidelines as to what it will consider to be objectionable. At the very least, the commenter believes that the objectionable standard should be restricted to a registrant's activities as they relate to securities laws. In addition, the commenter believes that registrants should be provided with reasonable notice to remedy the objectionable behaviour before securities regulators revoke or suspend their registration.	legislation with a flexible test to address circumstances as they arise in order that the public interest may be protected. The accumulated decisions of CSA securities commissions, executive directors and directors are the best guide to the meaning of "objectionable" for these purposes. In fact, the grounds for revoking or restricting registration in those decisions are more often related to the fit and proper criteria discussed in section 4.1 of the CP: integrity, competence and solvency. Conduct related to registrants' activities in matters not related to securities laws is relevant because it may indicate compromised integrity. It is in the discretion of the decision maker to decide whether to revoke or suspend registration or to first impose terms and conditions which, if complied with, will remove the threat of revocation or suspension. This is necessary because the mandate of securities regulators is first and foremost to protect investors, and discharging that mandate will sometimes mean that immediate action is required to remove a threat.
510.	**7.3(1) Suspension of SRO Approval [now 7.3(1) Suspension of IDA approval and 7.4(1) Suspension of MFDA approval]**	A commenter suggests that the proposed Rule allows and may require a single firm to have multiple registrations. Due to the wording of this section, it is not clear as to whether the suspension of a firm's SRO membership would result in the suspension of any, or all, of the firm's other registrations.	We have expanded the discussion of Part 7 in the CP to address this concern, among others.
511.	**7.4 Failure to Pay Fees [now 7.5]**	A commenter suggests that the suspension for failure to pay annual fees should only take effect 30 days after the securities regulator has notified the firm of its failure to pay. It should not be 30 days from the due date. The commenter believes that the suspension for failure to pay annual fees should not take effect until 5 days after the securities regulator has notified the firm of its failure to pay.	It is the responsibility of the registrant to comply with the terms and conditions of registration, including the payment of applicable fees.
512.	**7.6 Reinstatement [moved to NI 33-109]**	A commenter would appreciate guidance on how the National Registration Database will accommodate the concept of automatic reinstatement of a registrant.	We have included discussion of the reinstatement process in both the CP and the revised companion policy to NI 33-109. If any more specific NRD guidance is required, it will be provided closer in time to the implementation of the proposed Rule.
513.		A commenter recommends that there should be tightly prescribed timelines for a firm to process a transfer (i.e. a termination) and penalties for unnecessary delays in order to avoid the past problems where significant delays were common.	We agree that there were problems in the past and believe that the system that we have proposed for transfers will produce a significant improvement.

514.		A commenter suggests that the 90 day timeline is too short and should be 180 days.	Only one commenter having expressed this view, the proposed Rule will continue retain the 90 day period.
	PART 8 – INFORMATION SHARING		
515.	**8.1 Firms' Obligation to Share Information**	Several comments were received concerning this Part.	As discussed in the Notice, we have deleted the Information Sharing Part from the proposed Rule. We have proposed an amendment to NI 33-109 which requires a perspective employer to obtain from a perspective employee his or her notice of termination.
	PART 9 – EXEMPTIONS FROM REGISTRATION [now Part 8]		
	Division 1: General		
516.	**General Comments**	A commenter notes that the CSA states that "As a result of adopting the business trigger the number of registration exemptions needed will be significantly reduced. As a result, proposed amendments may include changes to the exemptions set out in section 34 [Exemptions of advisers] and section 35 [Exemptions of trades] of the Act." The commenter submits that if such an effort is to be undertaken, the CSA should provide the industry with an opportunity to comment on the impact of reducing the number of available exemptions. Allowing the industry to comment is crucial since many market participants rely on certain exemptions set out in sections 34 and 35 of the Ontario Securities Act. A few commenters assume that the CSA's intent is not to require firm and individual registration for the sale of safe securities such as Canada Savings Bonds. A commenter finds that requiring registration for the sale of such products is counterproductive considering the low risks associated with investing in Canada Savings Bonds.	The CSA Notice dated February 23, 2007, that accompanied the first publication of the proposed Rule, indicated that the registration exemptions set out in Part 9 [now Part 8] of the proposed Rule are the only registration exemptions that we propose if the business trigger is adopted and the proposed Rule is implemented. As we indicated in that Notice there will not be exemptions for capital raising or the sale of safe securities to the same extent as the current exemptions. The exempt market dealer category is the registration category for those entities that choose to carry on that type of activity. We have included the exemption from government guaranteed debt. The adoption of the business trigger for registration is based on the policy decision that those who carry on business in our capital markets should be subject to dealer registration requirements. The exemptions that are proposed under Part 8 are appropriate under a business trigger environment either because there is an alternative regulatory regime in place or the transaction is related (i.e. dividend reinvestment) to an initial transaction that was subject to the registration requirement.
517.		A commenter is of the view that although the remaining exemptions from registration are appropriate, the commenter believes that existing exemptions for dealing with "exempt purchasers" should be maintained. The commenter does not propose a continuation of exemptions for individual "sophisticated or accredited investors" but only to institutions with the resources and expertise to protect themselves in the market. Registration	We received many comments which the appropriateness of the exempt market dealer category in respect of a certain segment of the accredited investor definition. Throughout the comments this segment has been referred to as many things – exempt purchasers, institutional investors, sophisticated investors – but generally the context of each of the comments was referring to the non-individual segment of the accredited investor definition.

		requirements should continue to apply where retail investors are involved.	We believe these comments have merit and have amended the proposed Rule in several areas in response to them. Amendments were made to the requirements applicable to exempt market dealers when trading with a prescribed client list (permitted clients) and amendments were made to the permitted clients that international dealers and advisers can deal with.
518.		There has been much confusion as to whether financial institutions such as banks who sell bonds, principal protected Notes (**PPNs**), treasury bills, commercial paper, money market and other instruments will become subject to registration under the proposed Instrument. A commenter does not support the imposition of registration requirements on Canadian banks regulated by OSFI. The commenter recommends that more information and detail is needed on this important point and any such changes will be published for comment.	Concerning the sale of securities by federally regulated financial intermediaries, the exemptions that exist in Ontario under sec. 209(10) of the Ontario Regulation 1015 and in Part 4 of OSC Rule 45-501 will continue. All other jurisdictions will continue to deal with financial institutions as they currently do.
519.	**9.2 Investment Fund Distributing Through Dealer [now 8.2]**	A commenter believes that the requirement for U.S./international funds to use a registered dealer or to become a registered dealer to sell funds to accredited investors in Canada should be removed as it raises costs for sophisticated investors without additional benefit. The commenter recognizes the concern about the "retailization" of fund investments intended for sophisticated investors, however, the commenter believes that the solution is not to require a dealer to intermediate trades to accredited investors but instead to change the accredited investor definition so that only truly sophisticated investors qualify. Highly sophisticated investors, such as pension funds, funds-of-funds and financial institutions resident in Ontario, generally, seek out non-Canadian hedge funds on their own or through the assistance of a hedge fund consultant, and not on the recommendation of a registered dealer. Once the sophisticated investor in Ontario decides to invest in a non-Canadian hedge fund, the non-resident fund must involve an Ontario registered dealer to intermediate the private placement. The commenter notes that the registered dealer must then, among other things, satisfy know-your-client and suitability requirements with the investor, perform diligence on the fund (which from a practical perspective may be quite difficult for a dealer not otherwise involved in the investment) and negotiate a dealer agreement including fees and appropriate indemnities. For these sophisticated investors, the commenter suggests that the requirement for a dealer to intermediate the trade creates additional costs and complications without adding any value to the investment decision-	We have sought to balance the desirability of allowing Canadian investors access to foreign securities offerings and foreign expertise against the need to retain an appropriate level of regulatory oversight over foreign participants in Canadian capital markets and maintain a level playing field for Canadian registrants. We anticipate that under the revised proposals, international dealers and advisers will be able to operate with an adequate level of access to Canadian investors with less regulatory burden than under the alternative of becoming registrants. Additionally, for those international dealers and advisers who have a full service oriented business model, we have made non-resident registration more accessible. We have addressed the concern about suitability determinations with the introduction of the permitted client exemption.

		making process.	
520.	**9.3(1)(a) Investment Fund Reinvestment [now 8.4(1)(a)]**	A commenter finds that section 9.3(1)(a) restricts the exemption to reinvestment in the same class or series. A commenter suggests that a reinvestment in a fund in the same fund family should also be permitted.	This exemption follows the same exemption currently in NI 45-106. The comment concerning reinvestment in the same class or series was considered when NI 45-106 was out for public comment and the CSA did not agree with the comment at that time and the CSA's position on this issue has not changed.
521.		A commenter questions whether this should be extended to non-investment fund distribution reinvestment programs.	An exemption from a non-investment fund reinvestment plan has been added to the Rule.
522.	**9.3(1)(b) [now 8.4(1)(b)]**	A commenter does not understand the reference to "trade on a marketplace" if the exemption is meant to deal with pre-authorized purchase plans. The commenter would the like clarification from the CSA on this point.	Section. 8.3(1)(b) of the proposed Rule refers to the "cash option" portion of plans which are allowed in addition to the reinvestment of dividends or distributions to unit-holders.
523.	**9.4(b) Additional Investment in Investment Funds [now 8.5(b)]**	A commenter queries whether this exemption should be limited to additional purchases of the same class or series as the security initially acquired. This limitation seems quite restrictive.	This exemption follows the same exemption currently in NI 45-106. The comment concerning additional investments in investment funds was considered when NI 45-106 was out for public comment and the CSA did not agree with the comment at that time and the CSA's position on this issue has not changed.
524.	**9.11 Adviser [deleted]**	A commenter notes that the entities listed in section 9.11 can only rely on the adviser registration exemption if the advisory services they perform are "incidental to their principal business". This is a divergence from the existing adviser exemptions provided in Ontario and Newfoundland & Labrador for the entities listed in section 9.11. Currently, those provinces provide certain entities with an exemption from the adviser registration requirement independent of whether the advisory services they perform are "incidental to the principal business" (see section 209(10) of the Ontario Securities Regulations and section 173(10) of the Newfoundland & Labrador Securities Regulations). The commenter questions and objects to the rationale behind the restriction of the adviser registration exemption to entities that are only providing advisory services in a manner that is incidental to their principal business. The entities listed in section 9.11 are already heavily regulated and requiring them to register as advisers would be tantamount to over-regulation. The commenter urged the CSA to delete the reference to "incidental to their principal business" from section 9.11 and revert back to the current language used in Ontario and Newfoundland & Labrador.	The exemptions for federally regulated financial institutions that exist in Ontario under sec. 209(10)(b) of the Ontario Regulation 1015 and in Part 4 of OSC Rule 45-501 will continue in those forms upon implementation of the proposed Rule. All other jurisdictions will continue to deal with financial intermediaries as they currently do.
525.	**9.12 Advising Generally [now 8.14]**	One commenter felt that explicitly excluding this case of person from registration will further open the door for the promotion of ill-advised and improper investment schemes. There should be more scrutiny in this area not less.	We have revised the provision in the proposed Rule by including conditions to the exemption and have expanded the discussion of it in the CP.

		Another commenter felt that the existing registration exemption permitting publications of general circulation provides a realistic balance and should be retained.	
526.		A commenter views the exemption from registration for entities providing generic advice as not being a positive step, since it will exempt from registration entities such as fee-based financial planners. The commenter believes that these entities should be required to be registered. The commenter asserts that the relationship between fee-for-service financial planners (not affiliated with a mutual fund dealer) and their clients is similar to that of the relationship between a dealer registrant and its clients, in that both offer advice for compensation. The commenter believes that this type of business relationship should continue to be caught by the Business Trigger for advisors, which would require fee-for-service financial planners to be registered, in turn providing additional investor protection that regulatory oversight affords.	The proposed Rule does not deal with financial planners that do not carry out trading or advising activities with reference to specific securities. Various members of the CSA are considering the issues associated with financial planners but no proposals are being made at this time.
527.	**9.13 International Dealer [now 8.15]**	Several commenters object to the CSA's proposed implementation of clause (a) in the definition of "international dealer" which states that an international dealer means a dealer that has no establishment in Canada or officers, employees or agents resident in Canada. While in most cases U.S. broker dealers, that are affiliated with Canadian bank-owned dealers, do not have any Canadian branches or offices, many employees of the affiliated Canadian bank-owed dealer that are based in Canada will have supervisory responsibility for, or business functions on behalf of, the U.S. broker dealer affiliate. Indeed, many Canadian bank-owed dealer employees are registered with U.S. securities regulators as associated persons and/or principals of the U.S. broker dealer affiliate. Clause (a) of the proposed definition of "international dealer" would make it virtually impossible for Canadian bank-owned dealers to have U.S. broker dealer affiliates as Canadian dealers would be required to completely separate their U.S. broker dealer affiliates from Canadian supervision and support, which we believe would impose undue financial and operational costs on Canadian bank-owned dealers and potentially reduce the ability of "permitted international dealer clients" to gain access to foreign capital.	We agree and have removed the prohibition on an international dealer or international adviser having any establishment in Canada or officers, employees or agents resident in Canada.
528.		A few commenters object to the CSA's proposed implementation of	Several commenters suggested that, for a variety of reasons, the

		the definition of “permitted international dealer client”. While the proposed definition incorporates many of the “accredited investor” categories from NI 45-106, it excludes the categories of sophisticated investors under clauses 1.1(m), (n), (o) and (r) of NI 45-106. The commenters believe that there is no policy reason for the CSA to prohibit Canadian bank-owned U.S. broker dealer affiliates from dealing with these investors. These investors would constitute corporate clients, hedge funds and registered charities that would be considered sophisticated investors and/or would otherwise be advised by a registered adviser under securities legislation. Many of these types of institutional investors seek access to foreign capital markets, especially in the United States, and as a result, have direct relationships with foreign dealers. This is particularly true of Canadian corporate clients who offer securities, on a public or private basis, to raise capital in the United States. Accordingly, the commenters request the CSA to include the categories of investors that fall under clauses 1.1(m), (n), (o) and (r) of NI 45-106 in the proposed definition of “permitted international dealer client” under section 9.13.	proposed exemptions for international dealers and international advisers were too restrictive to serve their intended purpose. We find these arguments persuasive and have amended the exemption by expanding the permitted client list for both international dealers and advisers.
529.	**9.13(1)(c) [now 8.15(1)]**	A commenter states that the definition of “foreign security” should delete (c) due to inter-listed securities or ATS-traded foreign company securities. The commenter asserts there is almost no scope provided under this exemption for dealing in securities of Canadian issuers including those that are cross-listed on U.S. or international exchanges or even Canadian issuers listed exclusively on exchanges or marketplaces outside of Canada. The commenter finds that if the limitation on dealing with Canadian securities is necessary, the limitation should be based on the jurisdiction of the securities marketplace as opposed to the jurisdiction of the issuer’s incorporation. This would assist affiliates outside Canada to better manage a prohibition on dealing in securities of Canadian issuers if there was an exception made for issuers with securities traded on major U.S. or international marketplaces.	We have revised the list of securities in which an international dealer may trade. However, it remains restrictive. The purpose of the international dealer exemption is to facilitate access to foreign issues for Canadian investors whose economic and advisory resources are sufficient that the protections of dealing with a registrant may not always be necessary. It is appropriate that a foreign dealer that wishes to become more active in the Canadian market should register in the appropriate categories and jurisdictions.
530.	**9.13(2) [now 8.15(2)]**	A commenter expresses the view that the elimination of the accredited investor dealer registration exemption in most jurisdictions and the elimination of the “international dealer”	Several commenters suggested that, for a variety of reasons, the proposed exemptions for international dealers and international advisers were too restrictive to serve their intended purpose. We

		registration in Ontario is not warranted in the context of U.S. and international firms that are regulated or exempt in their home jurisdictions. As only one example, the commenter submits that the elimination of the longstanding ability of U.S. and international firms to deal with corporations that meet a net assets test is not a necessary reform. In this respect, the proposed Rule is seen as a major step backwards in the regulation of non-resident firms by the CSA. Furthermore, the registration requirements for an exempt market dealer are significantly more onerous than the international dealer or non-resident limited market dealer registration requirements.	find these arguments persuasive and have amended the exemption by expanding the permitted client list for both international dealers and advisers.
531.		A commenter states that the proposals are a welcome establishment of a national system regarding non-resident intermediaries. The commenter agrees with the CSA approach to exempt them from registration rather than create special registration categories imposing limited obligations (as is currently the case in Ontario). The commenter does not believe, however, that the current Ontario registration of intermediaries provides any significant protection beyond that which would be provided by requiring compliance with prescribed conditions in an exemption category.	We acknowledge the comment. The CSA is committed to harmonizing requirements across all jurisdictions. The exempt market dealer category which will replace the limited market dealer category has more robust requirements than Ontario's limited market dealer category and therefore we believe will be more meaningful than an exemption.
532.		A commenter recommends that 9.13(2)(e) should not require principal status, as a Canadian client may want to buy a foreign security.	We have changed the provision to accommodate this possibility.
533.		A few commenters are of the view that if a dealer is subject to primary regulation by FINRA, FSA or similar body that imposes capital, insurance, CCO, UDP and other similar requirements, additional Canadian regulation is redundant.	We have endeavoured to ensure that the proposed Rule reflects international norms to the extent that they exist. Through the participation of some of its members in IOSCO, COSRA and NASAA, the CSA supports international efforts to coordinate securities regulatory matters worldwide. One example of coordination with international initiatives is Part 6 of the proposed Rule relating to conflicts of interest. When drafting that part of the proposed Rule, staff considered and incorporated recent IOSCO. The CSA is supportive of recently announced SEC interest in mutual recognition.
534.	**9.13(3) [now 8.15(3) and 8.15(4)]**	A commenter suggests that the requirement to appoint agents for service of process in each of the Canadian provinces and provide specific notifications to each client are not necessary for SEC, FSA and other firms because of existing Memoranda of Understanding	The requirements in the proposed Rule as to appointment of agents for service are not related to the Memorandum of Understanding of 1988, which is a cooperation agreement between securities regulators.

		with the CSA. (for example, the original Memorandum of Understanding, dated January 7, 1988, between the SEC and the securities commissions in Ontario, Québec and British Columbia).	
535.		A commenter believes that this exemption is impractical for dealer to dealer relationships (i.e. to buy a share on behalf of a Canadian client in Germany).	We have modified the exemption in an attempt to make it more useful.
536.	**9.13 [now 8.15] & 9.14 [now 8.16]**	A commenter notes that with the elimination of the registration categories for international dealers and advisors, the restrictions in the proposed exemption may cause a number of unintended negative consequences. Specifically, the requirement that the dealer have no establishment, officers, employees or agents in Canada will significantly alter the way in which US and other foreign firms operate in Canada. The proposed Rule would prevent foreign firms from having registrants in Canada which has been common practice for US/Canada cross border trading and research. The commenter points out that in order for them to take advantage of this exemption from full registration, they would have to de-register these dual registered employees. The unintended consequence would be to limit these Canadian affiliates from effectively servicing US Institutional accounts investing in Canadian listed securities. The current practice of dual registration also facilitates sharing of information, research and expertise.	We have removed the prohibition on an international dealer or international adviser having any establishment in Canada or officers, employees or agents resident in Canada.
537.		A commenter supports the introduction of an “international portfolio manager” exemption in all Canadian provinces and territories, however the exemptions for international dealers and advisers should be harmonized as many products and services are, in effect, hybrid services and the exemptions are based on the sophistication and/or net worth of the clients and not the services being provided.	Several commenters suggested that, for a variety of reasons, the proposed exemptions for international dealers and international advisers were too restrictive to serve their intended purpose. We find these arguments persuasive and have amended the exemption by expanding the permitted client list for both international dealers and advisers.
538.		A commenter is of the view that given the fact that capital markets are moving toward a global model of business operations it is important for the CSA to create a framework which would allow Canadian participants to operate competitively in the global context. It is important for the CSA to be mindful of the movement to more free trade in securities, particularly in the institutional market. The commenter finds the exemptions provided in the proposed Rule are too narrow to serve any practical function. In crafting an exemption, the CSA must balance the movement to free trade with the concept of reciprocity, so that international dealers and advisors are subject to similar restrictions as Canadians seeking to do business abroad.	Several commenters suggested that, for a variety of reasons, the proposed exemptions for international dealers and international advisers were too restrictive to serve their intended purpose. We find these arguments persuasive and have amended the exemption by expanding the permitted client list for both international dealers and advisers.
539.		A commenter notes that the international dealer/adviser	We believe there is a well-understood distinction between (a) an

		exemptions do not permit having a Canadian agent, but 9.13(3) and 9.14(2) require a Canadian agent. A few commenters suggest that the term "agent" is very broad and could capture a myriad of service providers, which we would assume is not the intention.	"agent" in the usual legal sense of a party through which another acts – in this instance, the acts are in furtherance of its business of trading in or advising in respect of securities – and (b) an agent for service.
540.		A commenter is of the view that the exemption from registration for international dealers and international portfolio managers is contingent, in part, on the dealer or portfolio manager being registered in the jurisdiction where its head office is located. A number of non-Canadian jurisdictions do not require registration for dealers and/or portfolio managers including the U.S. As a result, a number of international dealers and international portfolio managers may not be able to provide services to Canadian investors without becoming registered in Canada.	It is not accurate to say that the US does not require registration. The SEC and other US securities or commodities regulators may exempt certain dealers or advisers so long as they conduct their registerable business in accordance with certain requirements. This is particularly true for advisers of US hedge funds – although the exemption that most use at present may be changed. We recognize this and have modified the provision to contemplate exemptions in the home jurisdiction. Note that this is not the same as dropping the home jurisdiction registration requirement, since an exempted dealer or adviser is by definition carrying on its business in its home jurisdiction subject to the authority of a securities regulator and in accordance with home jurisdiction regulations.
541.	**9.14 International Portfolio Manager [now 8.16 International adviser]**	A few commenters note that the definition of "permitted international portfolio manager client" set out in section 9.14(1) is substantially more limited than the current "permitted client" definition found in section 1.1 of OSC Rule 35-502 – *Non Resident Adviser*s (**OSC Rule 35-502**). Specifically, the commenters note that the following categories of clients currently found in Rule 35-502 are excluded from the definition of "permitted international portfolio manager client": (a) charities and endowments that meet a certain monetary threshold; (b) accredited investors; and (c) portfolio managers for fully managed accounts. These commenters do not understand the rationale behind excluding these clients. For example, charities and endowments can be just as large and financially viable as pension funds. In addition, accredited investors are sophisticated and financially viable. Furthermore, the exclusion of portfolio managers for fully managed accounts is troubling particularly since section 9.14 requires that the international portfolio manager be directly engaged by permitted clients and the commenters do not think it is reasonable to prohibit such portfolio managers from engaging international portfolio managers directly. The commenters submit that these excluded clients should properly be included in the list of clients in section 9.14(1).	Several commenters suggested that, for a variety of reasons, the proposed exemptions for international dealers and international advisers were too restrictive to serve their intended purpose. We find these arguments persuasive and have amended the exemption by expanding the permitted client list for both international dealers and advisers.
542.		A commenter recommends that the CSA establish a clear threshold below which foreign advisers with a certain number of	We do not propose a *de minimus* exemption in the proposed Rule.

		Canadian clients would not need to register in Canada.	
543.		A few commenters are of the view that the rules surrounding an international advisor and the ability of a fund manager to retain international advisors are inadequate. The Proposal contemplates the elimination of the International Advisor category currently in place in a few provinces. As a result of the proposed changes to such regime, Canadian investment funds that have retained international advisors as their portfolio managers will either need to persuade their existing advisors to become sub-advisors, if that is even feasible, or become fully registered, thus assuming all the responsibilities and obligations of a registrant in the jurisdiction. The commenters believe that if those efforts fail, such funds will be faced with the result of having to select new advisers. The commenters also believe that the suggestion that an international manager must in all cases be registered in order to act as an investment manager of a fund, is a significant commitment to any organization and one that would likely be rejected by many. This is even more likely given the obligations of a registrant as currently set out in the proposed Rule. The alternative, which is to move any international portfolio manager function to that of a "sub-adviser" under section 9.17 of the Proposal, will impact on the business of running a fund and of optimizing the talents of an international manager to the benefit of the unit-holders. In the commenters' view, this requirement interferes with the business relationship between a fund manager and a portfolio manager to the detriment of the unit-holders of a fund. This cannot be a desirable outcome.	We believe that investment funds managed in Canada should have a registrant as their principal adviser. Foreign advisers with sufficient business of this kind in Canada to warrant the costs associated with registration will make the decision to register. Others will be able to utilize the exemption for sub-advisers in section 8.17 of the proposed Rule, which imposes few costs if any on the sub-adviser. Under the proposed Rule, an adviser to an investment fund will be required to register in the Canadian jurisdiction(s) where the fund is directed, but not necessarily in other jurisdictions where it is distributed. If the investment fund manager does not direct a fund from within a Canadian jurisdiction, neither the investment fund manager nor a foreign adviser the fund would be required to register (although the dealers distributing units of the fund in Canada would be required to register in the appropriate category).
544.		A commenter submits that if the CSA has concerns that the existing rules are likely to lead to the proliferation of investments in funds located outside of Canada, by Canadian investors who, in the opinion of the CSA, do not have the necessary sophistication to make such investments, a more effective risk management device may be to raise the wealth standard built into the definition of 'accredited investor'.	Several commenters suggested that, for a variety of reasons, the proposed exemptions for international dealers and international advisers were too restrictive to serve their intended purpose. We find these arguments persuasive and have amended the exemption by expanding the permitted client list for both international dealers and advisers.
545.		A commenter believes that this regulatory change will affect Canadians' access to such global investment management expertise by making the registration process a barrier to entry for these international participants. The commenter notes that the international portfolio manager	Several commenters suggested that, for a variety of reasons, the proposed exemptions for international dealers and international advisers were too restrictive to serve their intended purpose. We find these arguments persuasive and have amended the exemption by expanding the permitted client list for both international dealers and advisers.

		registration exemption (section 9.14) will not permit many international participants to take advantage of it. The proposed conditions attached to such exemption, including the prohibition on solicitation and the very narrow list of permitted clients, which does not include an investment fund or individuals and is much more restricted that the OSC's current list of international adviser permitted clients, render the exemption of little use to most international advisers. The commenter strongly encourages the CSA to establish a nationally harmonized category of registration for international advisers which would mirror the current Ontario international adviser registration category contained in OSC Rule 35-502. Without this accommodation, previously-negotiated and long-standing relationships and Canadians access to international investment expertise will be put into jeopardy. The commenter also notes that many Canadian institutional investors prefer, or are required only to engage, entities that are registered in Canada. The commenter admits that many international advisers became registered in this category in order to meet the preferences and/or requirements of Canadian institutional investors.	
546.	**9.14(1) [now 8.16(1)]**	A commenter suggests that the list of "permitted international portfolio manager clients" should be expanded to match those currently recognized in OSC Rule 35-502. There is no justifiable reason why the rules must change in this regard.	Several commenters suggested that, for a variety of reasons, the proposed exemptions for international dealers and international advisers were too restrictive to serve their intended purpose. We find these arguments persuasive and have amended the exemption by expanding the permitted client list for both international dealers and advisers.
547.	**9.14(2)(b)**	A commenter adds that the CSA should consider adopting the same *de minimis* rights that the SEC grants to foreign advisers who have fewer than 15 clients in the U.S. The provision that international advisers not be able to "solicit new clients" in Canada should be removed. According to this commenter, should the SEC move forward with further liberalization efforts, the CSA should respond in kind and grant more flexible access to U.S. based advisers.	The CSA is not proposing a *de minimus* exemption. We agree with the comment concerning "no solicitation" and have removed that condition from the exemption. The CSA are supportive of recently announced SEC interest in mutual recognition.
548.		A commenter suggests that the regulation would also benefit from a clarification that non-compensated referrals or responses to RFP's do not constitute solicitations. Another commenter is of the view that the prohibition on soliciting	We have removed the "no solicitation" condition from the exemption.

		clients would prevent international fund managers from making use of the exemption if they for example, operate a marketing program which targets pension funds and financial institutions. A commenter notes that it makes extensive use of foreign advisers with its pension plan investments. It is helpful to this commenter that information on advisers is provided to from many sources, including direct solicitations from advisers or others on their behalf. The commenter does not agree that the registration exemption for international portfolio managers should only be available to those who do not engage in any solicitation. The commenter finds it an unnecessary and unwelcome restriction. The commenter expresses the view that it appears anomalous that it need the protection of Canadian registration of the adviser where it is solicited, but does not if no solicitation has occurred. The commenter further suggests that a permitted international portfolio manager client is recognized as having sufficient sophistication to retain non-resident advisers and should therefore also be able to entertain solicitations from such advisers.	
549.	**9.14(2)(e) [now 8.16(2)(d)]**	A commenter suggests that this section provides that the registration requirement does not apply to an international portfolio manager provided that it derives not more than 10% of the aggregate consolidated gross revenue of the international portfolio manager and its affiliates for any fiscal year from portfolio management activities of the international portfolio manager and its affiliates in Canada. The commenter noted that the 10% threshold is lower than the current 25% threshold set out in OSC Rule 35-502. The 10% threshold is too restrictive for large banks that have many affiliates and particularly too restrictive since this requirement attempts to capture Canadian affiliates as well. The commenter suggests that the current 25% threshold be maintained and that the concept of affiliates be restricted to non-Canadian affiliates.	We have considered the comment but remain of the opinion that 10% is the appropriate limit.
550.	**9.15 Privately Placed Funds Offered Primarily Abroad** **9.16 International Investment Fund Manager** **[Deleted]**	A commenter strongly supports the elimination of the current flow-through analysis as it believes that it will benefit Canadian investors by eliminating the cost of an unnecessary intermediary. The commenter believes the investor protection rationale for the client flow-through approach would be better served by raising the “accredited investor” standard, so that only sophisticated investors are able to subscribe for hedge fund securities on a prospectus and dealer registration exempt basis. According to the commenter, a truly sophisticated investor does not need the protection of a	We will not continue with the flow-through analysis and have amended the proposed Rule to remove the exemptions that were based on that analysis (sections 9.15 and 9.16 of the proposed Rule as first published).

		registered broker-dealer or of the state when negotiating contracts or evaluating investment opportunities. The commenter also believes that NI31-103 as drafted will over-regulate international participants in the Canadian capital markets and negatively impact Canadian investors by significantly limiting access to non-Canadian investment opportunities.	
551.		A commenter suggests that it would be useful if the CSA explained the intended scope of section 9.15. What is meant by the phrase "the securities of the fund are primarily offered outside of Canada"? The commenter is of the view that based on the fact that the Canadian market is only about 2% of global markets, almost any foreign fund would satisfy the test. Prior versions of this exemption in Ontario suggest that it had a much narrower intent i.e. to not require the portfolio manager of an offshore fund to register merely because a registered dealer in Ontario had acquired securities for one of its clients.	We have concluded that sections 9.15 and 9.16 are no longer needed now that the flow-through analysis is no longer employed.
552.		With regard to Ontario's existing look-through analysis - it is the contention of one commenter that when a non-resident adviser advises a fund located outside of Ontario the adviser's client should be thought to be only the fund that the adviser advises, manages or sponsors (even if the funds investors include Ontario individuals). The adviser is concerned with the funds performance not with each investor's investment objectives. According to the commenter, if this 'indirect advising' analysis were not accepted it does not believe there would be any need, for example, for the exemption in section 9.15 in the proposed Rule for non-resident portfolio managers advising funds offered primarily outside of Canada and distributed in Canada exclusively on a private placement basis. The commenter submits that the look-through approach should be abandoned on a going forward basis.	The OSC agrees and has harmonized with the other CSA jurisdictions. The exemptions that were based on the flow-through analysis are not needed and have been deleted from the proposed Rule.
553.		A commenter expressed the view that it assumes that the registrants required by this section (i.e. must be distributed by) would not be considered the resident Canadian agents (referenced in section 9.15(2)(d)(iii) and required by section 5.34(c)) of the portfolio manager but would like to see some clarification on this point.	We will not continue with the flow-through analysis and have amended the proposed Rule to remove the exemptions that were based on that analysis (sections 8.15 and 8.16 of the proposed Rule).
554.	**9.15(2)(b) [Deleted]**	A commenter suggests that the requirement that a registered dealer be involved in any trade involving privately placed funds	We will not continue with the flow-through analysis and have amended the proposed Rule to remove the exemptions that were

		offered primarily abroad should be removed. This restriction is frustrating for large pension funds that are trying to reduce costs for their members.	based on that analysis (sections 8.15 and 8.16 of the proposed Rule).
555.		The commenter suggests that it would be helpful for the CSA to suggest a policy rationale and a cost benefit analysis to justify the (presumably) one-time intervention of a registrant in an otherwise ongoing advisory relationship between the foreign adviser and the foreign fund it advises, an intervention precipitated by an otherwise exempt distribution. It would be helpful for the CSA to clarify the role it expects registrants to play in connection with the distribution of the foreign funds to Canadian investment sophisticates. A commenter also note that the proposed Rule is silent on how foreign advisers of foreign funds with Canadian private placement investors are to comply with the exemption in section 9.15 in respect of such Canadian investors to whom the distribution took place before the proposed Rule will have come into force.	We will not continue with the flow-through analysis and have amended the proposed Rule to remove the exemptions that were based on that analysis (sections 8.15 and 8.16 of the proposed Rule i.e. sec. 9.15 and 9.16).
556.		A commenter suggests that when it invests its pension funds it gathers all relevant information and perform due diligence on the adviser and other key aspects of the fund. The commenter does not seek, or desire to have, a dealer involved in the trade. The commenter is of the view that the current rules require a dealer to be interposed in the transaction in part because of the Ontario “flow through” approach in OSC Rule 35-502 and which seems to be replicated in the proposed Rule but compounded further by extending it to the international investment fund manager of the fund. The exemption from registration if the manager qualifies as an international investment fund manager is also premised on the interposition of a dealer as one of the conditions of the exemption. As a result the proposed Instrument does not really change much with respect to international portfolio managers and foreign funds, other than compounding the problem with the addition of the investment fund manager category. The commenter believes the regulatory regime should distinguish the need for a dealer on a trade in the private placement market according to the nature of the investor. In essence, institutional investors, such as the CPP Board, function like portfolio managers. In the public markets a dealer is necessary for purposes of execution of trades, however in private placement	We will not continue with the flow-through analysis and have amended the proposed Rule to remove the exemptions that were based on that analysis (i.e. section 9.15 and 9.16).

		markets institutional investors have no role or need for a dealer.	
557.	**9.17(e) Sub-Advisers [now 8.17(e)]**	A commenter recommends that there should be some clarification about whether sub-advisers would be violating the subsection (e) by making routine client service contacts.	We believe the prohibition on sub-advisers having direct contact with clients in the absence of the registered adviser is quite clear as drafted.
558.	**9.17(f) [now 8.17(f)]**	A commenter suggests that there should be uniformity across Canada and there does not appear to be any compelling policy justification for this not to apply in Manitoba. The commenter objects to this 'opt-out' provision.	Manitoba remains of the view that advisers who are registered in another Canadian jurisdiction require registration in Manitoba when in a sub-adviser relationship with a Manitoba-registered adviser.
	Division 2: Mobility Exemptions		
559.	**9.22 [now 8.23] and 9.23 [now 8.24]**	A few commenters note that if the principle of serving clients across borders is acceptable then it shouldn't matter how many clients are involved. There should be no limit on dealers (to less than 10 clients) and individuals (to less than 5 clients) as the registrant's home jurisdiction will provide adequate oversight.	The intent of the exemption is to accommodate, on a *di minimus* basis, a registrant who has clients that move to another jurisdiction. If the number of clients exceeds the stated number the registrant is, in our opinion carrying on a sufficient level of activity in the jurisdiction that registration is appropriate.
560.		A commenter finds that the decision to retain the limits on the mobility exemption which is currently contained in the passport system (subsequently to be moved to the proposed Rule) is problematic and inconsistent with the purpose of a national registration system.	We do not believe the mobility exemption is inconsistent with the national registration system. The NRS is in fact intended to make registration in more than one jurisdiction simpler.
561.		A commenter is of the view that there is support for the changes to the mobility exemption however some dealers report they do not use the current exemptions because it can be difficult to track how it is being used.	We acknowledge the comment.
562.		A commenter suggests that the exemption only applies in very limited circumstances, is restricted to a maximum of five individuals and will not apply in Ontario as they have not accepted the passport system.	Section 8.22 would apply in Ontario and represents an acceptance of a limited mobility exemption in Ontario regardless of Ontario not currently being a party to the broader passport system.
563.		A commenter believes that the proposed exemptions can be made more useful and effective by eliminating some of the limitations required to qualify for the exemption such as number of eligible clients and account size. While the commenter supports the need for limits where registrant intend to solicit new clients in other jurisdictions, the requirement to track the passive movement of existing clients is burdensome and impractical to monitor and enforce and provides little added investor protection.	The intent of the exemption is to accommodate, on a *di minimus* basis, a registrant who has clients that move to another jurisdiction. If the number of clients exceeds the stated number the registrant is, in our opinion carrying on a sufficient level of activity in the jurisdiction that registration is appropriate.
	COMPANION POLICY TO THE PROPOSED RULE – NI 31-103		

564.	**1.3 Business Trigger [now 1.3 Business trigger for registration]**	A commenter finds that there is a lack of clarity over the term "dealing in securities" and when combined with the business trigger there is a concern that a number of service providers (data providers, transfer agents, dealer system providers, and other intermediaries) may be caught by the registration trigger. The commenter suggests that a clearer definition of dealing would be very useful.	The proposed wording for the business trigger has been changed to "in the business of trading in securities". The change we believe will address many of the commenter's concerns.
565.	**1.4 Applying the "in the Business" Factors [now 1.4 Applying the business trigger factors]**	A commenter assumes that investment fund managers who engage in "fund of fund" trading would not be required to be registered as dealers given that these firms are not generally in the business of trading in securities. Applying the "in the business" factors, such firms would not be (i) receiving remuneration for undertaking the activity; (ii) soliciting, directly or indirectly, others in connection with the activity; (iii) acting as an intermediary; or (iv) holding themselves out as being in the business of the activity. This should be made clear in the CP.	We have revised the CP to deal with a number of comments concerning the application of the business trigger. The analysis set out by the commenter appears to be reasonable based on the facts as stated. However, each case must be considered on its facts when determining whether a person or company is in the business of trading in securities.
566.		A commenter notes that alternative investment managers often structure their investment funds as limited partnerships with a separate GP that is an affiliate of the investment adviser for each investment fund. The proposed Rule, as currently drafted, could be interpreted to require each GP to obtain registration as an investment fund manager. This obligation could result in multiple registrations of the same people and place a heavy ongoing cost and compliance burden on alternative investment fund managers who operate their business through a multiple fund structure due to the multiple registrations, insurance requirements, capital requirements and compliance regimes. The commenter suggests that the proposed Rule be amended to clarify that GPs of investment funds under common management may delegate their management duties to a common manager affiliated or related to the GP that is registered as an investment fund manager. In such a scenario each GP would remain ultimately responsible for the manager's activities but would not be registered.	We are sympathetic to the comments. Each case is fact specific however and for that reason we have not proposed a statutory exemption in the proposed Rule. We will consider each situation on a case-by-case basis to determine if an exemption is appropriate.
567.	**Registration of Principal Traders**	A commenter does not agree with treating principal traders differently whether they are inside or outside of a registered firm. New registration requirements for principal traders at dealers that provide clients direct market access will add unnecessary costs and fees, increase barriers to new traders, decrease	We believe that the discussion of these issues set out in the CP is appropriate.

		competitiveness of smaller specialized dealers, reduce market liquidity and provide few incremental benefits to the public. In this business model the dealer does not possess undisclosed material information and nevertheless clients trade directly and independently. The dealer can still perform a gatekeeper function and monitor capital levels without the trader being registered. The commenter disagrees that principal traders are unique from other principal traders such as day traders or pension funds. The CP cites the fact that such entities routinely possess undisclosed information about issuers and client trading, and the fact that such traders can have an impact on a firm's financial viability, as support for treating such traders as being unique. These factors are already addressed by existing rules (the Universal Market Integrity Rules in the case of information and the gatekeeper function, and the regulatory capital rules of the IDA in the case of a firm's financial viability) and are not appropriate considerations for the registration regime. The commenter fails to see how requiring principal traders to be registered will have any incremental impact on a firm's existing obligations in respect of financial viability or the use of undisclosed information.	
568.		A commenter queries whether investment funds or their managers are "in the business" of dealing in securities when the securities are offered on a continuous basis. The commenter submits that they are not, and ask that you confirm this issue in section 1.4 of the Policy.	We believe that an investment fund is in the business of trading in securities. However we do not intend to change the way in which investment funds are currently distributed and have provided an exemption in section 8.2 of the proposed Rule an investment fund and its manager if the securities of the fund are distributed through a registered dealer.
569.		A commenter finds that, in the case of a limited partnership operating a venture capital fund, the CP does not address the following: 1. What "active management and the development of investees" means (including whether syndicate participation is "active"); 2. Whether the involvement of the Manager in the investment decision of the fund would require registration as an adviser; 3. Whether the involvement of the Manager in raising capital for the fund or investees would require registration as a dealer;	We believe these questions can for the most part be answered by the application of the guidance in the CP. The CP cannot be much more specific than it is in respect of these matters because the forms that "venture capital" can take vary greatly today and no doubt will be different again in the future. The guidance in the CP makes it clear that (i) there is nothing in a limited partnership that alters the application of registration requirements as compared to other business structures and (ii) the application of registration requirements to "venture capital" is very fact specific.

		4. Whether a fund of funds is subject to the registration requirements; 5. Whether or not the security utilized by the fund to make investments has any bearing on the requirement for registration; and 6. Whether changes in role over time (from an active investment to a passive investment) are relevant for classification purposes. The commenter suggests that there should be clarifying language in the proposed Rule to indicate that a Manager raising capital for a fund to be actively managed by it does not need to be registered as a dealer provided the Manager is not paid a separate fee for raising money for the fund. Likewise there should be clarifying language to note that registration is not required for assisting investees in raising financing. Perhaps the language should be broadened to include investment funds and not just partnerships.	
570.		A commenter strongly recommends that the CSA clarify what kind of marketing and dealing activities that investment fund managers can carry out without triggering a dealer registration requirement (whether mutual fund dealer or exempt market dealer). The commenter is of the view that the CSA should acknowledge the description of the activities that could be carried out without dealer registration, or with an exemption from registration, by investment fund managers (and the attendant necessity of becoming a member of the MFDA) that was set out in the letter from staff of the OSC in their letter to The Investment Funds Institute of Canada and the Investment Counsel Association of Canada dated December 6, 2000. The commenter recommends that the CSA definitively state that these activities do not mean that the investment fund manager is "in the business of dealing in securities". The commenter also adds to the description of activities in that letter the following activity: causing top funds to invest in underlying mutual funds (whether managed by the same manager or not). This latter point is an integral part of many fund managers' activities as registered portfolio managers for their funds and should not mean that the fund managers are "in the business of dealing in securities" and hence required to register as a dealer.	We have added a discussion of marketing and wholesaling matters to the CP.

571.	**2.3 Dealing in Securities – Exemption for Advisers [now 2.4 Trading in securities – exemptions for advisers]**	This section states that "This exemption is not intended to apply to an adviser that…dedicates more time to managing the fund as compared to managing the fully-managed accounts." A commenter recommends that this sentence be deleted as it suggests that an adviser may choose how much time to spend on managing the fund. Both an adviser and a manager have a fiduciary duty to act honestly, in good faith and in the best interest of the client/fund. To suggest otherwise is not appropriate.	We believe section 2.4 of the CP is quite clear as to the purpose of the provision. It does not suggest anything that would derogate from a registrant's duty to its clients.
572.	**2.4 Advising in Securities [now 2.5]**	A commenter recommends that the CP be expanded to more fully address the reality that, in investment organizations today, the roles of sales, relationship management, client service and financial planning are frequently provided by non-registrants. These non-registrants often are responsible for soliciting information from prospective and actual clients that serves as input in the investment decision-making process; providing economic and other general information to clients as well as historic performance information; undertaking client-related administrative tasks; and meeting clients' general service needs. The commenter believes that elaborating the CP to clearly set out that the gathering and updating of client demographic, financial and other data; the provision of generic asset allocation and other financial planning advice; and the provision of historic performance information by non-registered employees of an investment firm does not constitute "advising in securities" as long as it does not stray into "advice on specific securities" would be extremely helpful for firms in the development of compliant organizational structures and processes.	We agree that the delivery of adviser and dealer services is often quite complex in the industry of today. We have expanded the discussion in the CP to provide some guidance in respect of these matters. However, whether sales, relationship management, client service and financial planning functions trigger the dealer or adviser registration requirement is fact-specific, so it is not possible to provide definitive answers in the CP.
573.	**2.5 Associate Advising Representative [now 2.7]**	A commenter suggests that there should be specific guidance as to who would fall under this category of registration by clarifying what "in charge of/responsible for" means. The commenter assumes that this registration category is not intended to capture individuals who are solely performing administrative, public relations or marketing services. It would also be helpful to distinguish between soliciting clients and maintaining a client public relations role (which ought not to require registration), and soliciting trades or advising in securities, which would require registration.	We have expanded the guidance in the CP with respect to associate advising representatives.
574.	**2.6 Managing Investment Funds [now 2.8 Investment fund managers]**	A commenter finds that the registration category of Investment Fund Manager should not apply to a bank listed in Schedule I or II to the *Bank Act* (Canada) or a trust corporation registered under the *Loan and Trust Corporations Act* that acts or may act as a manager of investment funds. Such entities are regulated by OSFI and are subject to OSFI's rules which the commenter believes,	The CSA jurisdictions will make local determinations concerning the registration of federally regulated financial institutions in the investment fund manager category. Ontario does not intend to require federally regulated financial institutions to register as investment fund managers.

		sufficiently address the risks associated with not having investment fund managers register identified by the CSA. The CSA is proposing to require an Investment Fund Manager to register in the CSA jurisdiction in which the fund is located. A commenter assumes that where the fund is located means the jurisdiction of the fund or the fund manager's head office. However, the commenter requests clarification from the CSA on the meaning of "located". Another commenter requests clarification to ensure that investment fund managers would only need to be registered in the jurisdiction in which they administer the fund.	We do not expect an investment fund managers to register in every jurisdiction where a fund is distributed. Investment fund managers are required to register only in the jurisdiction where the person or company that directs the fund is located, which in most cases will be where their head office is located. However, if an investment fund manager directs funds from locations in more than one jurisdiction, it must register in each of them. If an investment fund manager is located outside Canada, there is no requirement for the investment fund manager it to be registered in Canada, unless it is directing a fund from inside Canada.
575.		A commenter is of the view that the business trigger may catch the foundations that administer scholarship plans and require investment fund manager registration although most fund management responsibilities in a scholarship plan are delegated to registered portfolio managers, therefore, fund manager registration should be unnecessary. As the administrators of the scholarship plans are generally the same entity that is the registered scholarship plan dealer, a substantial transition period will be needed if investment fund manager registration is deemed to be necessary.	If the foundation administers a scholarship plan, it will require registration as an investment fund manager. An investment fund manager remains accountable for all functions that are outsourced. Registration is therefore appropriate.
576.		A commenter mentioned that in the past it has noted some potential gaps with respect to other aspects of fund manager regulation and is of the view that additional guidance should be included in the CP with respect to internal control and compliance requirements for fund managers. The commenter proposes that a close examination of the risks associated with fund management should be conducted and that consideration should be given to alternatives for prudential regulation of the funds, including the creation of an investor protection fund for assets managed by the fund companies.	We have endeavoured to strike an appropriate balance between a prescriptive and a principles-based approach, with the emphasis varying depending on each component of the proposed Rule. We do not believe it is the purpose of a CP to provide detailed prescriptions or that this is an instance where a prescriptive approach would be appropriate due to the variety of activities undertaken by investment fund managers. We may however provide guidance from time to time in the future. Concerning alternatives to the prudential regulation of funds, we are satisfied that registration of investment fund managers is the appropriate solution. The creation of an investor protection fund for investment funds is outside the scope of this project. We may consider it in the future.
577.		A commenter requests clarification about the jurisdiction of registration for foreign fund managers that have no funds located in CSA jurisdictions.	We do not expect an investment fund managers to register in every jurisdiction where a fund is distributed. Investment fund managers are required to register only in the jurisdiction where the person or company that directs the fund is located, which in most cases will be where their head office is located. However, if an

			investment fund manager directs funds from locations in more than one jurisdiction, it must register in each of them. If an investment fund manager is located outside Canada, there is no requirement for the investment fund manager it to be registered in Canada, unless it is directing a fund from inside Canada.
578.		A commenter suggests that the definition of investment fund manager should be clarified to make clear that mutual fund trustees are not required to register as fund managers. Likewise GPs of LPs where management has been delegated to a separate management company should be expressly excluded from the definition of fund managers.	We expect that in many cases the activities undertaken by a trustee for an investment fund would not be equivalent to those of a fund manager. In such cases, the trustee would not be required to register as an investment fund manager. However, there may also be cases where a trustee does undertake activities where fund manager registration would be required. Our response to the second comment is similar: in many cases the registerable activities undertaken in the circumstances described will occur at the level of the management company and not at the level of the GP. However, these determinations must be made on a case-by-case basis.
579.	**4.4 Relevant Experience**	A commenter recommends that this should be amended to ensure that the actual work experience in the company is relevant to the specific area of work for which the individual is registered (i.e. time spent in the accounting department of a dealer should not be counted).	We believe the use of the modifier "relevant" before "experience" along with the guidance provided in the CP addresses this concern.
580.	**5.3 Suitability of Investment [now 5.4]**	A commenter supports the know-your-product requirement, however submits that the knowledge requirement should be restricted to information that is publicly available and registrants should not be required to confirm the accuracy of such information.	We disagree. This suggestion would have registrants abrogate their responsibility as gatekeepers.
581.	**5.4 Leverage Disclosure**	One commenter points out an inconsistency between the proposed Rule, where the requirement to deliver leverage disclosure will arise "if a registrant believes, after having exercised reasonable diligence" that the client will use borrowed money to invest, and the CP which has the registrant's requirement to deliver leverage disclosure triggered if the registrant "becomes aware" that the client will use borrowed money to invest. The commenter is concerned about the onus that the proposed Rule places on registrants to exercise reasonable diligence to determine if a client will use borrowed money to invest. Absent express guidance as to what meets the reasonable diligence standard this requirement will lead to regulatory uncertainty. Another commenter interprets this to mean that a registrant is obligated to deliver leverage disclosure to a client when an account for a client is opened regardless of whether the registrant is aware that the client will be using borrowed money to invest. The	As noted above in the discussion of section 5.6 of the proposed Rule as first published (now revised as s. 5.8), we acknowledge these concerns and have narrowed the scope of this requirement. The leverage disclosure statement is now only required where the registrant *recommends* the use of borrowed money for the purchase of securities (SRO members and permitted clients are carved-out of the requirement).

		commenter does not think this is the intent of the section and for purposes of avoiding confusion, and recommends that the guidance be amended to provide that leverage disclosure is only required to be provided at account opening if the registrant is aware that the client will be using borrowed money to invest. In any event, the commenter suggests, there should be guidance as to whether registrants who adopt the practice of providing all of their clients with leverage disclosure at account opening only (whether or not the client will be using borrowed money to invest at account opening or at a later date) will satisfy the requirement to deliver leverage disclosure.	
582.		A commenter finds that the statement that "the requirement [to deliver leverage disclosure] applies whether or not the borrowed money was specifically borrowed for the purpose of purchasing the securities" could conceivably capture any loans that a client may have, i.e., a mortgage, which is not used to invest in securities. The requirement should be restricted to circumstances where money is borrowed to purchase securities only. The commenter finds that the statement is contrary to the provision in the proposed Rule which restricts the requirement to provide leverage disclosure to instances where borrowed money will be used to purchase securities only and not for borrowed money generally.	We believe we have addressed this concern with revisions to section 5.8 of the proposed Rule, which now refers specifically to "borrowed money to finance any part of a purchase of a security".
583.	**5.7 Retention of Records [now 5.6 Activity and relationship records]**	A commenter notes that the definition of 'relationship records' is too broad and recommends that it be narrowed to only include certain key documents such as account opening forms.	We disagree. The information discussed in the CP guidance regarding relationship record retention is important not only for purposes of regulators' ability to discharge their oversight obligations, but also may prove to be valuable evidence from registered firms' perspective.
584.		A commenter suggests that it may be useful to include as relevant communication to and from a client, and not just those sent to the client.	This was our intention and we have re-drafted the guidance in the CP accordingly.
585.	**5.12 Client Complaints**	A commenter expresses that view that the provision that complaints must be acknowledged in writing within 5 business days does not accommodate the business realities of large registrants that have to follow specific internal procedures with respect to acknowledging complaints. The commenter believes that this time frame is too short and should be extended to at least 10 business days.	The CP has been amended to address the comment.
586.		Two commenters find that the scope of the definition of a complaint in this section is overly broad and vague. The commenter's suggest that the definition of a complaint be harmonized with that used by SROs to ensure consistency and avoid confusion. At the very least, there should be clarification from the CSA on what is	The proposed definition of complaint is stated in broad, principle based terms: a reproach is a blame in the common sense of the term. Harm is an equally understandable, clear term. We do not therefore propose to change that definition. Further, service complaints and not merely complaints of a

		meant by “reproach” and “harm”. The commenters also find that it is problematic to use such broad terms because they may lead to frivolous complaints that are wholly unrelated to the registered firm’s business activities. As well, complaints should be restricted to complaints that relate to a breach of a regulatory requirement or duty as opposed to complaints of a service nature that should be handled in the ordinary course of business.	regulatory nature are included. The CSA believe that limiting complaints to those of a regulatory nature is too restrictive an approach from the perspective of investor protection.
587.		A commenter suggests that the differentiation between an “expression of dissatisfaction” and a “complaint” should be moved into the proposed Rule as many “expressions of dissatisfaction” can, we submit, be resolved before they become “complaints”.	We do not think it is necessary to make such a distinction in the proposed Rule, rather than the guidance in the CP.
588.		A commenter suggests that the definition of a complaint should exclude a reproach that is solely of a general nature where there is no identification of real or potential harm or an alleged violation of a securities law or regulation so that dissatisfaction with service levels or a firm’s operational policies and procedures are not included with issues of compliance.	The component of harm, real or potential, forms part of the definition of a complaint.
589.		A complaint is defined as “an unresolved expression of dissatisfaction” that has been referred to compliance staff. In a small EMD, this could mean that all “expressions of dissatisfaction” are “complaints” because the person fulfilling the role of CCO may also be the UDP, the dealing representative and the person ultimately responsible for resolving the “expression of dissatisfaction” at the outset.	Part 5, Division 6 of the proposed Rule and the discussion in the CP have been revised. It is now clearer that the complaint resolution requirements apply equally to all complaints and to all registrants (except investment fund managers and EMDs who do not handle, hold or have access to client assets).
590.		A commenter notes that it is not clear what is meant by ‘resolution’ in this case or what is meant by ‘most’ cases. In the view of this commenter, it is perhaps unrealistic to expect that a very large percentage of complaints be resolved within three months.	These terms are used in their usual meaning: a majority of complaints should be brought to a close – which might happen because a fair process has determined that they are without merit or, if they have merit, a settlement satisfactory to both client and registrant has been agreed. In any event, the revised language of the CP is less prescriptive. We have attempted to balance investors’ reasonable expectations that complaints will be resolved quickly against registrants’ reasonable concerns about realistic timing by replacing “resolved” with “provided a substantive response”. This is intentionally imprecise. We believe it will be apparent as a matter of fact in any given instance whether a registrant has been sufficiently diligent to bring a complaint to that point within three months.
591.		A commenter expresses the view that the obligation of the CCO to know “all” complaints is overreaching and unrealistic.	The obligation lies with the registrant which should have effective controls in place in order to ensure that it can “ensure that the CCO and appropriate supervisors are aware of all complaints.”

592.	**6.1 Definition of Conflict of Interest**	A commenter notes that the term "conflict of interest" is broadly defined in section 6.1 of the CP to include "circumstances in which the interests of different parties … are inconsistent or divergent". This vague definition, in the commenter's view, casts a very wide net and, fails to distinguish between material and immaterial conflicts of interest. Read literally, the proposed definition would capture all competing interests that have long been accepted by investors and businesses alike as part of doing business (i.e. the inherent conflict between institutional clients who aim for the highest prices versus retail clients who aim for the lowest prices). The commenter suggests that consideration be given to the definition of a conflict of interest contained in NI 81-107 which is a "situation where a reasonable person would consider [a manager]…to have an interest that may conflict with [the manager's] ability to act in good faith and in the best interests of [the investment fund]". The commenter urges a reconsideration of the definition and the inclusion of a materiality threshold and provision to allow registrants to develop procedures to permit them to comply.	The proposed Rule and CP have been amended to address this comment.
593.	**6.10 Referral Arrangements [now 6.11]**	A commenter notes that the CSA has discussed situations where "non-registrants are actively promoting and marketing specific securities through third party registrants who then merely execute the trade." The commenter expresses the belief that while the discussion in this section demonstrates the failure of some registrants to uphold the registrant's duties in dealing with the client, it is confusing with respect to the referrer. The referrer, who is a non-registrant, is considered to be breaching securities laws if in making their referral they advise their client regarding the security because then they are considered to be advising on and/or trading in a specific security. The commenter finds this type of discussion confusing because it focuses on a breach occurring, which breach is based on a "trade trigger," even though the intent of the proposed Rule is to require registration based on a business trigger.	The example in the CP was intended to clarify our concerns regarding a number of problematic referral arrangements that we have seen. In any event the CP has been revised to make it clearer.
	FORM 31-103F1 – Calculation of Excess Working Capital		
594.		A commenter notes that the various categories of registration have very different characteristics to their businesses. It follows that "financial viability" is different for each category of registrant. The commenter finds that the 'one size fits all' formula on the proposed	The capital formula is based on the financial statements which are to be prepared in accordance with GAAP. The formula is based on a working capital methodology with certain adjustments. Working capital is a liquidity measure that demonstrates that a firm can

		new form does not reflect this reality and prescribes the same calculation methods for all registrants including those who have liabilities to clients and those who by nature of their business model do not. This in principle is a deviation from GAAP and if the CSA wishes to do so it should justify its rationale for doing so. For example in the case of a portfolio manager that does not handle client funds, what justification is there for a requirement to exclude prepaid expenses from current assets? The commenter asks whether the CSA thinks that if the firm pays next months rent before the end of the month that it is less financially viable than if it had waited until after month end. Clearly when designing the form only registrants with amounts owing to clients payable on demand was considered by the drafters. The commenter suggests that the CSA explain why GAAP doesn't do the job here.	meet its obligations at least in the short term. The formula incorporates operational risk, market risk and liquidity risk. These are present in varying amounts in all businesses. A firm can manage these risks to minimize the amount of capital required. For example, if all accounts are properly reconciled then there will be a 0 amount required on line 12 of form 31-103F1.
595.		A commenter expresses the view that in the context of affiliated registrants a calculation of working capital which excludes such related party balances has the potential to be problematic given that on a conservative calculation related party balances are excluded where there is a question as to whether it is in the "normal course". The commenter asks for confirmation that the calculation of Current Assets in this Form does not contain this exclusion and that investment fund managers can include all related party balances in its calculation. If they are not permitted to do so then the de facto minimum working capital requirement will be much higher than intended in an affiliated group.	Related party receivables can be included. Long term related party debt is treated conservatively in the capital formula. However, a registrant may determine whether the execution of a subordination agreement is necessary for the purposes of capital calculation.
596.		A commenter notes that many companies provide seed capital to pooled funds that allow the fund to establish a track record for performance and attract investors. Applying margin calculations to seed capital in the capital calculation will create a barrier to an adviser's ability to launch new products. The commenter finds that the recent adoption of 3855 accounting standard requires all securities held to trade to be fair valued (market to market) and therefore the market impact is immediately reflected in the capital requirement and margin requirements should not be necessary. IDA margin rules do not address private placements such as pooled funds. A commenter asks that if margin rules continue to apply to the capital calculation, the proposed Rules should permit margin of pooled fund units to be calculated in the same manner as comparable units of a similar fund issued under a prospectus.	The margin rules were designed to deal with market risk associated with adverse market movements on securities. The calculation of margin is based on the market value of a security. Section 3855 deals with the valuation of financial instruments. Margin attempts to deal with and quantify market risk. The current margin rules do not permit the margining of pooled funds. The commenter states that the IDA margin rules do not address private placements such as pooled funds because they do not allow them to be margined. The IDA margin rules do in fact address these types of securities. Margin is not allowed on these types of securities because they are not subject to a disclosure regime. They are offered by way of offering memorandum as opposed to a prospectus. Liquidity may also be an issue with these types of investments.

597.	**Line 2**	A commenter has asked for clarification on the meaning of "Current assets not readily convertible into cash".	Examples of current assets that are not readily converted into cash have been provided in the form. For example, a prepaid asset is a current asset but it is not readily convertible into cash.
598.	**Line 9**	A commenter states that the deduction of pre-paid expenses has a negative effect on the calculation of ones capital position and essentially penalizes firms that save money by entering long term sales periods with suppliers to reduce costs. The current formula is superior. A commenter suggests that the deduction required by line 9 for market risk should be reduced to 0% where an adviser invests in its proprietary funds over which it manages and can control liquidity. Alternatively, the deduction should be based on the underlying instruments in which the fund invests (e.g. if the advisers funds are managed in a money market fund it should not be required to exclude these assets). A commenter is of the view that this calculation requires a deduction for the market risk of securities owned by the firm, in accordance with IDA margin rules. As the proposed Rule is currently drafted, an investment fund manager that invests in funds not offered under a prospectus (e.g. hedge funds) would face a 100% deduction in respect of such securities. The commenter believes that this is unfairly punitive and runs counter to industry and competitive pressures that exist today.	The formula is based on a working capital methodology which is a liquidity measure. The deduction of prepaid expenses is meant to provide a better picture of a firm's liquidity. Please see also our response above to the comment concerning seed capital and margin rules.
599.	**Line 12 [now Line 12 "Less unresolved differences"]**	"Less unreconciled differences" (line 12): A commenter noted that some reconciliations are not completed 30 days after month-end which would be problematic given the requirement to submit this form no later than the 30th day after the end of each quarter.	The CSA is of the view that 30 days is sufficient time to reconcile all accounts.
	FORM 33-109F1 – Notice of Termination		
600.	**General Comments**	Section D asks whether the employee resigned or was dismissed "for cause". A commenter notes that this terminology requires further clarification as it is not a recognized concept in employment law and may not be an appropriate question to ask in any event.	The meaning of "for cause" is well understood. However, we do agree concerning its use in connection with resignation and have re-worded the question, as discussed below. The reasons for an individual's departure from his or her former sponsoring firm are of obvious importance for the responsible securities regulator's determination whether the individual is fit and proper for continued registration with a new sponsoring firm.
601.		A commenter questions whether there will be late filing fees?	Fees, including fines, are administered locally by each CSA jurisdiction. It is therefore not possible to be more specific

		A commenter also asks that clarification be provided regarding the administration of fines for late filings. It appears that there will be a two stage Notice of Termination filing and we question whether registered firms will need to pay fees twice if the Notice of Termination is not initially filed within 5 business days and then exceeds the 30 day balance to file the rest of the information required on Part D of the Notice of Termination.	concerning fees in a national instrument such as the proposed Rule.
602.		In an effort to streamline the reporting of Notice of Terminations, a commenter suggests that the Notice of Termination Form 1 be revised so that a two stage reporting process would not be required. The firms should be given 30 days to produce a complete filing. According to the commenter, registrants can rely on the automatic transfer process in the interim to ensure the transfer of registrations is not delayed as a result of the 30 day filings. A commenter recommends that the form be revised so as to avoid a two-stage process. The commenter also suggests that firms be given 30 days to file a complete Form 33-109F1, similar to the approach in the US. Registrants could rely on the automatic transfer process via the shorter version of NRD Form 33-109F4 and on the securities regulators to notify firms accordingly; this is where a transfer form would be very useful for firms and securities regulators alike.	We do not agree. The two-stage process will bring potential problems to the attention of the securities regulator within a reasonable five day period. 30 days is too long to wait for that information, although it represents a reasonable accommodation of the time it may take for a former sponsoring firm to prepare the information that will expand on the potential problem.
603.		A commenter suggests that the disclosure relating to the collection and use of personal information currently used in Form 4 be incorporated into the Notice of Termination.	We have added disclosure relating to the collection and use of personal information into the Notice of Termination.
604.		A commenter supports requiring the additional information.	We acknowledge the comment.
605.		A comment recommends that the CSA clearly indicate on Form 33-109F1 that the registered individual is providing continued ongoing consent to both the securities regulator and the registered firm that clearly outlines the express consent to mutual collection and disclosure of personal information about the registered individual and outlines the purposes for which the information may be used without further requirement for additional consent. The commenter is also concerned that by complying with the request for information on Form 33-109F1, registered firms are exposing themselves to potential legal action brought about by the registered individual.	The individual is not a signatory to this form. We have added relevant consent to the Form 33-109F4 signed by the individual. Securities regulators have a mandate to protect investors from registrants who lack competence or integrity. The information required on this form is necessary so that they can discharge that responsibility.
606.	**Section D- Information About the Termination**	A commenter finds the phrase "Resigned… for cause" confusing and subject to differing interpretations. The commenter suggests that it be changed to read "Resigned…. was this solicited by the	We agree and have revised the questions accordingly.

		firm?" Accordingly, the commenter notes that this would effectively eliminate the need to repeat this question with different wording under section E – Question 1.	
607.		A commenter asks what termination date should be specified in the circumstances when the registered firm requests a notice period and it is declined by the individual registrant? In this regard, there may be discrepancies between the date that the individual actually physically leaves the firm and when the employment relationship is actually terminated factoring in an appropriate notice period. The differences in date may have implications in terms of facilitating the transfer of the individual's registration, pay, etc. The commenter finds that further guidance would be beneficial.	We agree and have re-drafted to indicate that it is the first day on which, so far as the terminating firm is concerned, the individual no longer has authority to act on its behalf.
608.		A commenter recommend the removal of "… for cause". According to the commenter, the facts and circumstances surrounding the dismissal or resignation should be of key consideration in terms of classifying an individual as being terminated for cause or in good standing.	We disagree. If an individual was terminated for cause, the firm should be prepared to say so. This information will be useful in promptly flagging an individual who was dismissed for cause as potentially having problems with his/her fitness for continued registration – the details of which will follow when Part E is filed.
609.	**Section E- Further Details**	A commenter suggests that filing deadlines should be clearly defined as business or calendar days.	We agree and have re-drafted to indicate that it is calendar days.
610.		A commenter is of the view that firms should not be required to provide information regarding events which have already been reported/disclosed through either the NRD and/or ComSet. A commenter suggests that the sentence "Answers should be with reference to events in the past twelve months" should have the following added at the end "…*which have not previously been reported or disclosed".*	We do not agree. The Form 33-109F1 Notice of Termination is intended to be a complete statement indicating any concerns that might reasonably be expected to enter into the securities regulators' assessment of an individual's suitability for registration.
611.		**Question 1 [now deleted]** A commenter notes that this is redundant as the information has been supplied in section D.2.	We agree and have deleted the question.
612.		**Question 3 [now 2]** The question reads as follows: "Was the individual subject to any <u>significant</u> internal disciplinary measures at the firm or any affiliate of the firm?" A commenter suggests that the term "significant" may be interpreted in various ways and each registered firm may have	We used the modifier "significant" because not all discipline matters will be relevant for these purposes: lateness or inappropriate attire for example. We have modified the question to refer to "disciplinary measures … related to the individual's integrity or competence as a registrant", these being the issues that concern us. We do not agree concerning affiliates. We have seen issues of personal integrity arise in connection with individuals' activities at unregulated affiliates.

		their own measures of internal disciplinary actions and standards of significance. Accordingly, the commenter would like guidance from the CSA on the meaning of the term “significant” since it is very broad and vague. The commenter would also suggest that the information collected for “affiliates” be replaced with information collected for regulated affiliates to ensure the information reported is material and can be collected and reported in a timely manner.	
613.		**Question 4 [now 3]** A commenter recommends that this section either be removed entirely or the reference to written complaints be clarified, since not all written complaints can be substantiated and would merit a positive response to this question.	We disagree. We are aware that not all complaints, written or otherwise, have real substance. Nonetheless, a history of disproportionate numbers of complaints is often an indicator of problems with an individual’s fitness for continued registration.
614.		A commenter asks for clarification as to why it is important to disclose on the Form 33-09F1 whether or not the clients lost money. The individual’s conduct and the circumstances surrounding the termination should be the key consideration when assessing an individual’s suitability for future registration. The commenter also is of the view that providing a response to this question may be problematic for representatives that do not manage a book of clients (e.g. call centre environment). In such an environment, representatives could be handling hundreds of clients daily and examining each interaction could be difficult due to the excessive volumes. In order to capture any information with respect to civil claims (which would also reflect monetary losses or potential monetary losses by investors), the commenter suggests that the CSA ask whether there are any securities-related civil claims and/or arbitration notices filed against the individual (and/or the firm) by a client. The commenter would also limit the question to include civil claims and/or arbitration notices that were filed while the individual was in the employ of the firm or concerning matters that occurred while the individual was in the employ of the firm.	We agree and have revised the question to incorporate the suggestion.
615.		**Question 5 [now 4]** A commenter recommends that the CSA consider a change to the wording on this question. The fact that a client account is not fully secured, margined or paid does not mean that the registrant has an "undischarged financial obligation to clients."	We agree and have revised the question accordingly.
616.		**Questions 5 and 9 [now 4 and 8]**	As indicated in the introduction to the questions in Part E of the

		A commenter finds that both require a Yes or No answer as currently drafted. A registrant may have trouble responding to these questions without a proviso “to the best of our knowledge” since these activities may occur outside the scope of a persons employment or without the employers knowledge.	form, all answers are to the best of the firm’s knowledge and belief.
617.		**Question 6 [now 5]** A commenter suggests that more specific guidelines should be provided here. For example, minor trade corrections may result in a "monetary loss" to the firm, but their significance and impact may be minor. It would be impractical to review all and report on all trade corrections which had resulted in a loss to the firm.	We agree and have revised the question accordingly.
618.		A commenter asks for clarification as to why this information is required on the Form 33-109F1 as it addresses the impact to the firm. The commenter feels that the Form 33-101F1 should be limited to the requirement to disclose details regarding an individual’s actions and behaviour. The commenter is of the view that it is difficult for a firm to definitively determine whether the firm or an affiliate of the firm has suffered, or is likely to suffer, loss or harm to its reputation as a result of the individual’s actions unless a client has complained, the firm has become aware of certain activities of the individual and is conducting an internal investigation, or if a client has filed a lawsuit against the individual and/or firm. According to the commenter, the question is very broad and how, from a practical perspective, can harm to the firm’s reputation be identified and quantified?	If the firm suffers monetary loss or harm to its reputation, that may be an indicator that the individual has been incompetent or acted without integrity. We recognize that definitive answers will not always be possible. However, it is with good reason that firms place great emphasis on protecting their reputations.
619.		**Question 7 [now 6]** The question reads as follows: “Did the firm or any affiliate investigate the individual in connection with possible material violations of fiduciary duties, regulatory requirements or the compliance policies and procedures of the firm or any affiliate?” A commenter finds the term “affiliate” very broad in this context. The commenter would like clarification from the CSA on which entities would be considered affiliates and would suggest that only regulated entities be included in the scope of this context.	“Affiliate” is a defined term. It is not intended to be limited to regulated affiliates for the reasons noted above.
620.		A commenter notes that it would be difficult for firms to comply with	We would expect a registered firm that permits one of its registered

		this request for information about investigations undertaken by affiliates. The commenter suggests that "engaging in undisclosed outside business activities" be deleted. Most instances of undisclosed outside business activity arise due to a lack of understanding on the registrant's part of what constitutes an "outside business activity", and these are usually addressed when they come to light. Most are not material. Previously undisclosed outside business activities that are serious and that actually lead to termination would, in our minds, almost inevitably be disclosed on the Notice of Termination.	individuals to devote part of his/her time to working for an affiliate to ensure that it was aware of investigations by the affiliate into possible material violations of fiduciaries duties, regulatory requirements or compliance policies/procedures. We agree that most outside business activity is not material and, for that reason, included a materiality threshold in the question.
621.		**Question 9 [now 8]** A commenter recommends that perhaps this should be included under question 7 rather than as a separate question.	We feel this is a sufficiently distinct and important question in itself.
622.		**Question 10 [now 9]** The question reads as follows: "Is there any other matter relating to the individual's termination or conduct leading up to it that the firm is aware of and believes is relevant to his or her suitability for registration?" A commenter is of the view that this question is too broad and suggests that the CSA provide guidance around the meaning of the term "suitability" as opposed to placing the onus on registered firms to make a subjective determination of suitability, which may consequently expose them to legal action. In the alternative, the commenter suggests that the question be removed as the information disclosed in questions 1-9 provides sufficient information to the securities regulator to assess the individual's suitability for registration.	We have replaced "suitability for registration" with "competence or integrity as a registrant". See discussion of similar point above.
623.		A commenter asks for clarification by providing examples of what would be considered "relevant". The commenter believes that firms should not be making any judgments as to what would be relevant to an individual's suitability of registration. This type of questioning could be subjective and vary by firm as to the types of matters that would be relevant to suitability of registration. The commenter asks what criteria would be used by a Branch Manager or Branch Compliance Officer to be able to make a	Suitability criteria are discussed section 4.1 of the CP. For greater clarity, we have replaced "suitability for registration" with "integrity or competence as a registrant". See discussion of similar points above. This question is the firm's opportunity to address any reasons for termination that the securities regulators should know about that have not been elicited by the other questions in the form. We agree there is an element of subjectivity. Nonetheless, a registered firm has a fundamental duty to satisfy itself that

		determination on suitability.	individuals it puts forward for registration, and maintains in registered roles, are suitable for registration. It should therefore be within the firm's ability to determine whether the circumstances of a registered individual's termination involved conduct or other matters relevant to that individual's suitability for registration.
624.	**Certification**	A commenter notes that the certificate requires the individual who signs the form to certify that the statements in the form were provided by a duly authorized representative. In most cases, the firm's Registration Officer completes the information on the Notice of Termination by inputting information received from an authorized individual such as the Branch Manager. The Registration Officer that completes the filing does not necessarily speak to the authorized firm representative that signs the Notice of Termination. The commenter suggests that the certification be revised to state that the authorized firm representative is making the certification that the information contained in the Form is accurate, "to the best of their knowledge". The commenter believes that this section needs to be reworded as it states that an authorized firm representative (**AFR**) has confirmed that the "… information contained in the form is accurate and complete to the best of his or her knowledge and belief". An AFR is defined in National Instrument 31-102 – *National Registration Database* as an individual who submits information in NRD format on behalf of firm filers and individual filers. An AFR is often not directly involved in the supervision of an individual registrant and cannot attest to the accuracy of the information disclosed on Form 33-109F1.	The certification already is limited to the best of knowledge and belief of the individual concerned. We have revised the text of the certification to clarify who is required to make the certification.
625.	**Signature**	A few commenters request clarification on which individuals will be permitted to sign the form. If it is intended that the form be signed by individuals who are not registered as officers, this should be clarified. Another commenter suggests that the signature section of Form 33-109F1 be amended in order to remove the reference to an "authorized signing officer" as the Proposed Instrument intends to only require the registration of "mind and management". As a result, for larger firms, the "mind and management" would not likely be the appropriate individuals to sign a Notice of Termination. The commenter recommends that the CSA consider an "authorized signatory of the firm" in place of 'authorized signing officer'. They are of the view that CSA should consider adding an amendment to the CP by clarifying that an authorized signatory of the firm may be anyone that the firm has determined is authorized to sign firm	This part of the form has been revised to be consistent with the related Forms 33-109F4 and 33-109F6.

		documents. In the case of Notice of Termination, a branch manager commonly would be authorized to sign-off.	
	FORM 33-109F4 – Application for registration of individuals and permitted individuals		
626.	**General Comments**	A commenter recommends that the CSA include the name and NRD number on every page of the NRD report that we generate for the individual. Another commenter would like clarification on how the new questions asked on this form will affect existing registrants. The commenter asks what will be the expectation of registered firms to input this new information. The commenter questions whether this will result in another Data Transfer Submission process. If so, will registered firms be provided with a three-year transition period to input this information on to NRD? The commenter inquires as to what assurances will be provided by the securities regulators that the errors experienced during the initial NRD conversion are not repeated.	An NRD change request has been created that will be contemplated after the implementation of the proposed Rule. From an NRD perspective, all new questions will show up as unanswered. Any question that has changed will show up in a 'view history' page. There have been no discussions of Data Transfer Submissions and transition periods. It will be difficult to provide assurances that there will be no errors as the system is being updated to accommodate changes to our registration rules.
627.		A commenter recommends that: 1. the entire Schedule be broken into three distinct sections – one for non-SRO firms, one for IDA firms with the additional IDA information; and one for MFDA firms and any categories unique to that registration; 2. categories and checkboxes under the "Supervisory Roles" heading be moved to that new IDA section referenced above; and 3. the categories and checkboxes under the "Traders" heading be similarly moved to the new IDA section referenced above. The commenter further questions whether, under the "Registration by Jurisdiction" heading, the individual is supposed to check off each box next to a particular province that applies to the category for which they applying. That is, if one were applying as a Trading Representative in Alberta, would they check off the first box next to Alberta? The commenter recommends that these boxes be made larger, or preferably separated into three distinct columns and	This schedule has been substantially revised since the proposed changes were published for comment. There is now a section in the schedule that requests IDA information including check boxes for "Supervisor" and "Trader". The registration categories have also been updated.

		order alphabetically–labelled “Advising Representative”, “Associate Advising Representative” and “Trading Representative”. Under the heading of “Relationship with Sponsoring Firm, a commenter recommends clarification on what a “Representative – Non Employee” is. This does not appear to be a category of registration under the Proposals.	
628.	**Registrant Relationships**	The Form 33-109F4 does not ask for spousal information. Currently the information is reported outside of the NRD system, via an email. A commenter asks whether the proposed Form 33-109F4 will be amended to include this question or will we continue to record the information outside of NRD?	The amended Form 33-109F4 will not be amended. Since only two CSA regulators require spousal information to be disclosed it will continue to be requested outside of NRD by those two securities regulators.
629.	**Notice of Collection and Use of Personal Information**	Currently the NRD screens that the AFR sees prior to submitting the Form 33-109F4 are submission to jurisdiction, notice of collection and use of personal information and information contained under the heading, SRO. The AFR signs off on the NRD filing. A commenter recommends that the form be amended to allow the applicant the ability to attest to the information prior to submission.	The requested change has been made.
630.	**Item 1 – Other Personal Names**	A commenter seeks clarification to the meaning of “style name”. The commenter suggests that this section provide specific instructions concerning the disclosure of team and marketing names, since the securities regulators have indicated they want this information on record.	We disagree. We have deleted the words “or style name” from this question. The remaining question is clear that we want “any name” used disclosed.
631.		A commenter recommends the addition of “team name” as this is a more familiar term to IDA member firms.	We disagree. The question is clear that we want “any name” used disclosed.
632.	**Item 4 – Citizenship**	A commenter finds the wording on this question seems to indicate that Canadian citizens who hold dual citizenship are required to disclose information relating to the "other" citizenship. Is this the intent? If not, the commenter suggests that the wording be changed to be more specific: i.e., “If you are **not** a Canadian citizen complete the following information:” If an applicant is not a Canadian citizen and does not hold a valid passport – the commenter asks what other information is acceptable? (e.g., Landed immigrant document and/or expired passport).	Yes this is the intent of the question. This NRD field is mandatory. The current workaround for an individual who is not a Canadian citizen and does not have a valid passport is a response of “N/A”. Instead of the workaround, an option may be to include a button to indicate not having a valid passport. Although this change will not be made immediately, the NRD Working Group will look into making this field optional.
633.	**Item 6 – Individual**	A commenter notes that it is not clear whether the reference to	This section has been substantially revised since the proposed

	Categories	securities in the checklist of types of products the applicant may deal in includes options and futures and presumes that these are not included. The commenter suggests that options and futures be added as separate approval categories. The commenter is also of the view that it could be onerous on firms and their registrations departments to be obliged to track changes in the types of products that individuals are authorized to deal in, outside of the NRD. The NRD should capture this information, and firms should not be required to upgrade their systems and procedures to meet audit trail requirements because NRD does not capture the information. It would be helpful, the commenter notes, for the securities regulators to make it clear in the forms what products registrants are and are not permitted to deal in, and which categories will require regulatory approval and which ones will simply be acknowledged. The individual categories are limited and confusing in the following ways: • There is no option for APM or options. • The "Relationship with Sponsoring Firm" includes "Officer" but the "Investment Dealers Association of Canada- Additional Information" does not. • A commenter requests clarification on what the term "Representative-Non-Employee" refers to? • Futures and derivatives are not an option under "Products". • Under "Traders", what is the difference between "Floor Trader" and "Floor Broker"? A commenter requests clarification on the term "Local"? • Under the "Registration by Jurisdiction", what is the meaning of "Trading Advising Associate"? If an individual has ceased to be registered in a province, the permanent record will continue to show the surrendered province. The commenter further notes that, if you investigate further, the permanent record will show no registration	changes were issued for comment. Most of these questions are no longer applicable. This form now includes the categories for commodities and futures.

		information for that province. However, if you are viewing on-line, when you get to the registration category it indicates “suspended (employment termination)”. The commenter suggests that the “suspended (employment termination)” be removed from the list or indicate “not active” beside the province so we can view this information in one glance and have a clearer understanding of the registration history of the individual.	
634.		A commenter finds that it is not clear whether the reference to securities in the checklist of types of products the applicant may deal in includes options and futures; the commenter presumes that these are not included. A commenter suggests that options and futures be added as separate approval categories.	The form has been revised to include categories for commodities and futures.
635.	**Item 7 – Address for Service**	A commenter questions the appropriateness of permitting residential addresses to be used in this context.	We believe a residential address is an appropriate address for service.
636.	**Item 8 – Proficiency**	**Section 8.1** – **Course or examination information** A commenter suggests that the wording "<u>any</u> post-secondary education and <u>all</u> degrees and diplomas that are relevant to the registration that you are applying for" indicates that any post-secondary education must be disclosed regardless of relevancy to registration. The commenter recommends the wording be changed to "any post-secondary education, degrees and diplomas that are relevant to…”	The intent of this question is for the disclosure of any post-secondary education.
637.		**Section 8.2** - **Student numbers** Form requests information on course completed through the Canadian Association of Insurance and Financial Advisors (**CAIFA**). A commenter suggests that this should be updated to “Advocis” which was formed on January 1, 2003, as a result of a merger between CAIFA and the Canadian Association of Financial Planners.	This change has been made.
638.	**Item 9 – Location of Employment**	A commenter requests that a “multiple locations” option be added to this section. This will cover circumstances where individuals may be located in a different branch on a part-time basis.	This change will not be made at this time, however, an NRD change request has been created that will be contemplated after the implementation of the proposed Rule.
639.		A commenter is very pleased to see that the firms will have the ability to enter a cost center, branch transit number or firm specific	This change has been made.

		identification number to assist with reconciliation/accounting efforts. A commenter requests that this field be set up to accommodate a combination of alpha/numeric entries and have a minimum 18 character capacity.	
640.	**Item 10 – Current Employment and Other Business Activities**	A commenter questions whether one needs to include trade names here if it is already disclosed under Other Names? If so, what is the expectation of firms to move the existing Team Names to Item 1 of the proposed form? A few commenters suggest that information pertaining to outside business activities be asked separately from current employment information. The applicant is more likely to understand the different information being sought and is more likely to provide detailed information. A few commenters would like some flexibility to indicate the time spent with respect to outside business activity in the form of days/months/quarterly/yearly instead of a fixed number of hours. A few commenters also recommend a section under Item 10 that deals specifically with leaves of absence (personal, parental, disability etc). The commenters recommend adding the following checkboxes: Maternity/Parental Leave (from-to); Long-Term Leave (from–to).	Yes, the trade names are required to be disclosed here. Item 10 does not require the disclosure of "Team Names". This information should be disclosed under Item 1 (since Item 1 requires the disclosure of "any names" used). This question is clear that outside business activities are required to be disclosed under current employment. We considered these suggestions but concluded the requirement as proposed will provide sufficient information.
641.		A commenter recommends that an additional question be added to request disclosure regarding Outside Business Activities (OBA). This will provide greater clarity to registrants in understanding their obligations in reporting this information. Further, the commenter suggests that the manner in which the question is drafted in Schedule G is unclear. The disclosure of the employment activities with the sponsoring firm should be separate from the disclosure of the other business activities.	This change will not be made the question is clear that outside business activities are required to be disclosed under current employment.
642.	**Item 12 – Resignations and Terminations**	A few commenters recommend that this question be limited to employers in the securities industry, as opposed to employers generally which we submit casts too wide of a net and is not relevant. In addition, the commenters suggest the term "for cause" requires further clarification as it is not a recognized concept in employment law.	The intent of this question is to cover both industry and non-industry employers. We have revised the wording "for cause" to read "for just cause for dismissal".
643.	**Item 13 – Regulatory**	A commenter suggests that this question should be a pre-	This field will not be pre-populated by the securities regulators. The

	Disclosure	populated field by the securities regulators. This information can be provided by the securities regulators with the correct dates. A commenter also wonder whether the two sections regarding securities regulatory authorities (SRAs) and SROs can be combined into one section as the questions are similar in nature and the registrants are repeating the same information in both sections.	applicant or firm is expected to enter the appropriate response to this item. We do not agree with the comment as not all individuals will have the same response under the SRA and SRO questions.
644.	**Item 14 – Criminal Disclosure**	A commenter suggest that this section indicates that it is not required to disclose speeding offences etc. for which a pardon has been granted, and such pardon has not been revoked. The commenter questions whether this means it is to disclose this information if a pardon was not granted and the pardon was not revoked? With respect to the questions in section (c) and (d), the commenter suggests that a knowledge qualifier be added i.e., "To the best of your knowledge, are you aware of…".	We have re-phrased the question in the form. We have added the 'qualifier' in the form.
645.		A commenter noted that question (c) and (d) should be removed as this information should be captured on the Form 33-109F6. If it cannot be removed, we recommend the following amendments: Question (c): **"**To the best of your knowledge are there any outstanding charges against any firm of which you were at the time of the offence was alleged to have taken place in any province, territory state or country, a partner, director, officer or major shareholder?" Question (d): "To the best of your knowledge has any firm, when you were a partner, officer, director or major shareholder, even been convicted of or pleaded guilty o no contest to, or was granted an absolute or conditional discharge from , an offence that was committed in any province , territory, state or country?"	We have revised the wording to add the qualifier "To the best of your knowledge…" in the appropriate places.
646.	**Item 15 – Civil Disclosure**	A few commenters would like clarification on the meaning of "similar conduct" in the context of (a) and (b).	We have revised the wording to read 'similar misconduct' instead of 'similar conduct', as the list of particular forms of conduct referred to in (a) and (b) are each 'misconduct' actions.
647.	**Item 16 – Financial Disclosure**	A commenter questioned the appropriateness of asking whether an applicant has "ever failed to meet a financial obligation of $5,000 or more." Even if such a question is justified, we suggest that specific timeframes be established rather than having an	We agree with the suggestion. We have revised the wording to add a time frame of ten years for item16(2) – Debt Obligations

		open-ended timeframe. The commenter also questions the appropriateness of asking whether “any firm, while you were a partner, director, officer or major shareholder of, failed to meet a financial obligation as it came due”? Even if such a question were justified, the questions should specify thresholds for personal reporting obligations and specific timeframes should be established. In Item 16(4), the applicant is required to disclose the “percentage” of earnings to be garnished. A commenter suggests that if the applicant does not have the percentage it should be acceptable to provide the exact amount that is being paid.	We have revised the question. We have revised the question.
648.		A commenter recommend that: • the CSA remove “...or has any firm while you were a PDO…” since the registrant would not necessarily be aware whether the firm failed to pay a bill, etc.; and Financial suitability should be in relation to the individual. The CSA could include reference to Item 1(3). The question could then read: “Have you or has any business named in Item 1(3) ever failed to meet ….”.	We have revised the section to include the qualifier “To the best of your knowledge…” We do not agree. The intent of this question is to specifically include information regarding where the individual was a partner, director, officer or major shareholder of a firm.
649.		**Section 16.2 – Debt obligations** A commenter is of the view that raising the amount from $500 to $5000 does not establish a measure of solvency, financial stability or integrity and determine suitability for registration. The applicant could have 10 outstanding financial obligations of $499.00 each and these would not be reportable – however, one financial obligation of $5000.00 which occurred 12 years ago and which has been paid in full would be reportable. This does not make sense. The commenter urges the securities regulators to be clear on what the intent of this question is. If the rationale for this question is that the securities regulators must have full disclosure of an individual's financial history in order to determine suitability, then raising the amount does not accomplish this. However, if the intent of this question is to capture any information not covered in Item 16(1) or 16(4) since no formal proceedings have yet occurred, but which could ultimately result in future legal proceedings, we recommend deleting the word "ever" and changing the wording to require disclosure of any failure to meet a financial obligation of $500.00 or more in the past 10 years for which there is still an outstanding	We agree with the suggestion. We have revised the wording to add a time frame of ten years for item16(2) – Debt Obligations

		amount owing. The commenter notes that credit records only provide information for the past 7 years – it is difficult to obtain and verify information beyond this timeline. An individual who has met all their financial obligations in the past 7 years and has a good credit rating should not be required to provide historical information which has no relevance to their current financial status. Any past financial issues which resulted in legal action, judgments, garnishments, bankruptcies are disclosed under Item 16(1) and 16(4) on the application.	
650.	**Collection and Use of Personal Information/Self Regulatory Organizations**	A commenter would like clarification as to whether this provision will be extended to both the amended Form 33-109F4 and the amended Notice of Termination, Form 33-109F1. If it does, we suggest that the provision be re-worded to indicate the inclusion of the Notice of Termination.	We have made the suggested changes.
651.	**Certification**	A commenter suggests that upon completion of Form 33-109F4 the system should automatically display a "Certificate of Agreement" and the applicant should be required to check a box to indicate that they read the agreement and understand the terms of the agreement prior to submitting the application to the sponsor firm.	We agree that an individual applicant that is making a submission should be attesting to the information they are submitting. The NRD Working Group has changed the 'submit to firm' page to include the same or similar information the firm attests to.
652.	**Schedule A**	A commenter notes that a "trade name" is a business name and therefore reference to trade names should be moved to the next section on business names.	We have revised the question.
653.	**Schedule C**	A commenter is of the view that this does not seem to list the 5 specific individual categories from section 2.6 of the proposed Rule. It is unclear if it will default to one of the 5 categories or if the form is correct. Please clarify.	This section has been substantially revised since the proposed changes were issued for comment. The form now includes the categories for commodities and futures.
654.	**Schedule G**	A commenter finds that the proposed form does not require information regarding name/address and immediate superior if current employment is with the sponsor firm. The commenter questions whether this information is based on information entered in Item 9 – Location of Employment. For "other employment or business activities", to simplify completion of this information the commenter recommends that the schedule be set up with check boxes to provide information relating to conflict of interest, client confusion etc. Example:	If the checkbox is selected, the firm name and address information will be automatically populated on NRD with the firm head office information. The "Supervisor" information will still be required along with all other items in this section. This change will not be made at this time, however a change request for NRD has been created that will be contemplated after the implementation of Registration Reform.

		o *Check here if the activity described above does not present any potential for confusion by clients or any conflict of interest arising from your proposed activities as a registrant.* *Disclose any potential for confusion by clients and any potential for conflicts of interest arising from your proposed activities as a registrant with affiliated or unaffiliated sponsoring firm(s) and with the other business described above.* o *Check here to confirm that the firm has policies & procedures for minimizing potential conflicts of interest* o *Check here to confirm that you are aware of these policies & procedures* *Is this business listed on any exchange?* o *Yes. If Yes, provide information* o *No* *Does this business result in a "shared premise" situation?* o *Yes If Yes, provide information* o *No*	
655.		A commenter expresses the view that the manner in which the question is drafted in Schedule G is unclear. The disclosure of employment activities with the sponsoring firm should be separate from the disclosure of the other business activities. The commenter provides the following recommendation for Schedule G. The commenter suggests that where the firm is required to confirm in the "conflict" section, create check boxes for the confirmation of: Potential for Confusion by Clients? (if YES, provide details) Potential for Conflict of Interest? (if YES, provide details) Policies & Procedures in Place at Firm to Minimize Conflict of Interest? (If No, provide details) Registrant Confirmation of Firm's Policies & Procedures	This change will not be made. The question is clear that outside business activities are required to be disclosed under current employment.
656.		A commenter suggests that since IDA member firms are required to provide the name and title of the officer who approved the outside activity/employment, the CSA should provide an area to	We disagree, Schedule G already provides for this information to be disclosed.

		enter this information.	
657.	**Schedule J**	A commenter notes that for individuals who are insurance licensed the name of the insurance agency they represent is required and this should be requested on the form.	We have revised the question in the form.
658.	**Schedules K, L and M General Comment**	A commenter finds that an inconsistent format is used for Disclosure Items 14 – 15 and 16. The commenter finds these sections confusing and it is unclear when information is required for an individual only or for an individual and a firm over which the individual exercised control as a partner director etc. The following are the commenter's recommendations: • Use the same format for all Disclosure sections • Include "instruction" at the beginning of each section to indicate if information is required for both individual applicant and/or firm when they were a partner, director, etc.	We disagree with this suggestion.
659.	**Schedule K**	A commenter suggests that this should be divided into 2 separate sections – one for an individual (a & b) and another section to be completed for a firm (c & d).	We disagree with this suggestion.
660.		A commenter notes that applicants are not required to disclose any offence for which a pardon has been granted, providing the pardon has not been revoked. Disclosure however, is required even though an absolute or conditional discharge has been granted. The commenter also notes that a person whose criminal record consists only of absolute or conditional discharges is not able or required to apply for a pardon. Under the Criminal Records Act an absolute or conditional discharge handed down by the court on or after July 24, 1992 will automatically be removed from the Canadian Police Information Centre (**CPIC**) computer system one year (absolute discharge) or three years (conditional discharge) after the court decision. Absolute and Conditional discharges received before July 24, 1992 are removed upon written request from the individual. The commenter further notes that an individual who may have committed a serious crime and receives a pardon is not required to disclose the information, however, an individual who may have committed a much lesser crime and received an absolute discharge is required to disclose it. The commenter expressed the view that this discrepancy does not ensure fairness and a level	We agree and have revised the wording.

		playing field for all applicants and does not address the issue of suitability for registration. The commenter recommends that the CSA reconsider the disclosure requirements and reword Question 14 to indicate that applicants are not required to disclose the following: a) offences for which a pardon has been granted under the Criminal Records Act (Canada) and such pardon has not been revoked. b) offences for which an absolute or conditional discharge was granted and which has been purged from the criminal records in accordance with the Criminal Records Act. c) offences under the Young Offenders Act (Canada). The commenter expresses the view that it is the responsibility of the individual to ensure that records have been removed from CPIC prior to submission of an application. This commenter notes that it conducts CPIC checks for all new hires. If applicants have been granted a conditional or absolute discharge and the record has been removed under the Criminal Records Act this will not be disclosed on the report. A commenter also recommends that consideration be given to allowing registrants to apply to have their criminal records removed from the NRD system when a pardon is granted or a conditional or absolute discharge has been removed from CPIC under the Criminal Records Act.	
661.	**Schedule L**	A commenter found that section (a) & (b) make no reference to civil proceedings against a firm, however the information is required on the schedule (see Schedule K). The commenter notes that an applicant who responds NO to this question would not see Schedule K and therefore would not know that this information was also required for a firm.	We have revised the wording.
662.	**Schedule M**	A commenter notes that section 16.1(a) repeats "against you or the firm" but this phrase is not included in 16.1(b)(c) or (d). The commenter suggests removing "or the firm" from Item 16.1(a), or repeating it in Section 16.1(b)(c) and (d) to be consistent.	We have revised the wording.

663.		A commenter suggests that schedule M should be divided into 2 sections – one for discharged bankruptcies and one for un-discharged bankruptcies. The commenter fails to see the relevance or value of providing a list of all creditors for any discharged bankruptcies.	We have revised the wording.
	FORM 33-109F6 – Application for registration as a dealer, adviser or investment fund manager for securities and/or derivatives		
664.	**Sections D to G**	A commenter is concerned that the documents required to be submitted in these sections are operational and may become available to the public under freedom of information requests. The commenter believes that these types of documents are properly regarded as proprietary trade secrets and should be treated as such in the hands of the securities regulators.	All CSA jurisdictions have similar legislation that restricts the release of the information received in applications for registration under freedom of information and protection of privacy laws. In addition there are also local policies in place similar to OSC Policy 13-601- *Public Availability of Material Filed Under the Securities Act*, that state applications for registration are confidential.
665.		A commenter questions whether this information needs to be provided by existing registrants or existing registrants who will be required to register in a new or an additional category. The commenter believes that the existing registrants should be exempted from having to provide this information.	As at the effective date of the proposed Rule, all firm applicants that have not yet applied for registration will be required to use the new Form 33-109F6. If the old Application for Registration as Dealer or Adviser is submitted on or after the effective date, Staff will be returning the entire new business application to you. All firms that have already been granted registration by the effective date of the proposed Rule will not be required to submit a new Form 33-109F6. If your firm is registered by the effective date of the proposed Rule and is seeking registration in an additional category, it would only be required to submit a Form 33-109F5 - *Change of Registration Information.* For example, if you are a portfolio manager and wish to add the category of fund manager, a Form 33-109F5 must be submitted. If you are a limited market dealer and need to replace your category with that of an exempt market dealer, again the Form 33-109F5 must be submitted. The Director may require the Form 33-109F6 be filed for firms that applied before the effective date of the proposed Rule or for existing registrants but only under exceptional circumstances.