Comment Summary and CSA Responses

ICE Futures Canada, Inc.	TriAct	IRESS
CanDeal	Flextrade Systems Inc.	Ross McKee
CIBC	PMAC	CNSX Markets Inc.
TMX Group	Akimbo Capital LP	Optima Capital Canada
ExpoWorld Ltd.	Heaps Capital Ltd.	EMDA
Chi-X ATS	Newedge Canada Inc.	Mark DesLauriers
TD Securities	LiquidNet Canada Inc.	GETCO
Jitneytrade Inc.	Softek	SIFMA
Simon Romano & Terrence Doherty	Alpha ATS	IIAC
Penson Financial Services Canada	Scotia Capital	

Please note that a summary of comments relating to proposed requirements included in the 2011 Proposal, other than those related to direct electronic access, was published on June 28, 2012.

Text of Proposed Provisions	Summary of Comments	CSA Response to Comment
Definitions	**Definition of "Direct Electronic Access"** A number of commenters requested further clarity as to what is intended by "additional order management" by a participating dealer in the definition of direct electronic access. Certain commenters queried whether the use of a participant dealer's risk controls or smart order router would constitute "additional order management".	The Proposed Amendments include a revised definition of direct electronic access that does not include the phrase "additional order management". The Proposed Amendments would further clarify in the Companion Policy that an order generated by an automated order system used by a DEA client and transmitted using the

Text of Proposed Provisions	Summary of Comments	CSA Response to Comment
		participant dealer's marketplace participant identifier would be considered to be a DEA order. We would still consider it to be a DEA order, even if the participant dealer's filters vary the destination of the order for regulatory purposes.
6. Provision of Direct Electronic Access (1) Only a participant dealer may provide direct electronic access. (2) A participant dealer may not provide direct electronic access to a registrant, unless the registrant is: (a) a participant dealer; or (b) a portfolio manager.	**Section 6(2)** Prohibition on EMDs to use DEA The majority view was not supportive of the proposal to limit the use of DEA by registrants to only participant dealers or portfolio managers. These commenters expressed the view that exempt market dealers (EMDs) should also be able to use DEA and asked the CSA to reconsider this provision. One commenter noted that it seemed inconsistent to allow unregistered firms or individuals to use DEA but not an EMD and that if the CSA wishes to take the position that UMIR rules must directly apply, then the CSA must exclude all non-IIROC firms or individuals as DEA clients – not just EMDs. Another commenter explained that this requirement could be circumvented by an EMD establishing an unregistered affiliate to whom access could be granted or by simply establishing an electronic link which does not fall within the definition of direct electronic access. It was also cited that the scope of the regulation should be specifically confined to certain circumstances where regulatory arbitrage is a concern, as broader application will curtail legitimate and important transactions. Commenters stated that prohibiting EMDs from using DEA could result in: • forcing EMDs to submit orders using non-DEA methods which would create added latency risk and less liquidity in Canadian marketplaces; • EMDs using a foreign broker that is not registered as an EMD or use other investment dealer firms; • restricting Canadian institutional customers' access to various other types of services,	We continue to be of the view that EMDs conducting brokerage activities that are similar to the activity of investment dealers should be subject to UMIR in order to lessen the incentive for regulatory arbitrage. Due to this overarching concern, we do not think it is appropriate to allow EMDs to trade using DEA. CSA registration staff are also examining policy issues related to firms that are registered as EMDs (See CSA Staff Notice 31-331 and IIROC Notice 12-0217). CSA registration staff are also examining policy issues related to firms that are registered as EMDs.

Text of Proposed Provisions	Summary of Comments	CSA Response to Comment
	including EMD services; • increased disharmony between requirements for EMDs and non-EMDs; • increased confusion and a negative impact on Canada's equity markets; • an unintended consequence of denying Canadian institutional investors access to the prime brokerage platforms of foreign broker-dealers. Commenters pointed out that many U.S. broker-dealers are registered in Canada as EMDs in order to facilitate part of their business in Canada and that the Proposed Instrument would prevent such U.S. broker-dealers from being DEA clients. A commenter also mentioned that the resources needed for a U.S. broker-dealer to institute a Canadian subsidiary and acquire IIROC membership to become an investment dealer would be significant and may outweigh the benefits of doing so.	The Proposed Amendments would clarify in the Companion Policy that a foreign dealer that is also registered as an exempt market dealer is eligible for DEA provided that it only uses DEA when acting in its capacity as a foreign dealer and not in its capacity as an exempt market dealer.
	With respect to section 6(2), one commenter suggested the use of a broader term than "portfolio manager" would be beneficial as other categories of buy-side registrants may be created in the future.	We are of the view that using a defined term such as "portfolio manager" provides specificity and clarity. If new registration categories are created in the future, we will consider whether it would be appropriate to add these new categories to NI 23-103.
	Another commenter noted that use of the term "registrant" may be problematic in that the term is defined to include a "person or company registered or required to be registered" and creates ambiguity as to whether a person or company that is relying upon a registration exemption is intended to be caught when the term "registrant" is used.	We are of the view that a person or company that is required to be registered would be caught by the use of the term "registrant" and would not be able to use DEA unless it is registered as a portfolio manager or restricted portfolio manager. If such an entity wishes to use DEA, it may apply for an exemption from this proposed requirement.
	Dual Registration of PM and EMD	We have proposed clarification in the Companion Policy that a

Text of Proposed Provisions	Summary of Comments	CSA Response to Comment
	Certain commenters noted that section 6(2) would result in an odd situation for an entity registered both as a portfolio manager and EMD since it would be able to trade as a discretionary adviser but would not be able to use DEA when it acts as an EMD.	portfolio manager or a restricted portfolio manager that is also registered as an EMD may continue to use DEA in its capacity as a portfolio manager or a restricted portfolio manager but not in its capacity as an EMD.
	Individual Investors Using DEA The majority view of commenters is that individuals should be permitted to use DEA when they have adequate knowledge, experience and financial resources and that it should be left to participating dealers to determine whether or not an individual should be granted DEA. One commenter was of the view that while standards applicable to individual DEA clients may need to be higher in certain regards, the language in the instrument and companion policy seems to imply that the standards may need to be higher in all regards which would unduly disadvantage individual clients in favour of institutional clients. One other commenter was not supportive of providing DEA to individuals. Its view was that this would further complicate the regulatory process around the provision of DEA and would open the possibility of currently registered individuals, such as "pro-traders", relinquishing their registration status in favour of DEA in an attempt to transfer ultimate regulatory responsibility to the dealer providing DEA and away from themselves.	The Companion Policy would state that there are circumstances where individuals are sophisticated and have access to the necessary technology to use DEA. In these cases, it is up to the participant dealer offering DEA to determine the appropriate standards required to ensure it is not exposed to undue risk in providing DEA to an individual.
7. Standards for DEA Clients (1) Before granting direct electronic access to a client, a participant dealer must: (a) establish, maintain and apply appropriate standards for direct electronic access; and (b) assess and document whether each client meets the standards established by the participant dealer for direct electronic access. (2) The standards established by the participant dealer pursuant to subsection (1) must include that:	Commenters expressed support for using the proposed standards rather than using an eligible client list. One commenter noted however that there may be confusion for investors who use more than one dealer with different standards and that there may be pressure on dealers to adopt the lowest standards used by other participant dealers.	We agree that the proposed standards, which are in line with global standards, are the most appropriate for the Canadian markets.

Text of Proposed Provisions	Summary of Comments	CSA Response to Comment
(a) the client has appropriate resources to meet any financial obligations that may result from the use of direct electronic access by that client; (b) the client has appropriate arrangements in place to ensure that all personnel using direct electronic access on behalf of the client have knowledge of and proficiency in the use of the order entry system that the client will use; (c) the client has knowledge of and has the ability to comply with all applicable marketplace and regulatory requirements; and (d) the client has in place adequate arrangements to monitor the entry of orders through direct electronic access. (3) A participant dealer must confirm with the DEA client, at least annually, that the DEA client continues to meet the standards established by the participant dealer, including those set out in subsection (2).		
8. Written Agreement Prior to granting direct electronic access to a client, a participant dealer must enter into a written agreement with the client that provides that as a DEA client: (a) the DEA client's trading activity will comply with marketplace and regulatory requirements; (b) the DEA client's trading activity will comply with the product limits or credit or other financial limits specified by the participant dealer; (c) the DEA client will maintain all technology facilitating direct electronic access in an electronically and physically secure manner and will prohibit personnel, other than those authorized by the participant dealer, to use the direct electronic access granted; (d) the DEA client will fully cooperate with the participant dealer in connection with any investigation or	In general, commenters agreed with the proposal for a written agreement however one commenter suggested that the prescriptive elements be moved to the Companion Policy as guidance. One commenter asked the CSA to reconsider if a written agreement is essential as incorporating new provisions into current agreements would be burdensome. **Section 8(d)** A couple of commenters noted that providing access to information deemed necessary for an investigation may create breaches in privacy law and breaches of foreign laws.	The CSA are of the view that the prescriptive elements of the written agreement are important in assisting a participant dealer to address its risks associated with providing direct electronic access. As a result these elements continue to be included in the Proposed Amendments. Our research indicates that this provision does not create breaches in privacy law and is very unlikely to breach foreign law.

Text of Proposed Provisions	Summary of Comments	CSA Response to Comment
proceeding by any marketplace, regulation services provider, securities regulatory authority or law enforcement agency with respect to trading conducted pursuant to the direct electronic access granted, including, upon request by the participant dealer, providing access to such information to the marketplace, regulation services provider, securities regulatory authority or law enforcement agency that is necessary for the purposes of any such investigation or proceeding; (e) the DEA client acknowledges that the participant dealer may (i) reject an order; (ii) vary, correct or cancel an order entered on a marketplace; and (iii) discontinue accepting orders from the DEA client; (f) the DEA client will immediately inform the participant dealer if it fails or reasonably expects not to meet the standards set by the participant dealer; (g) when trading for the accounts of its clients, pursuant to subsection 11(2), the DEA client will ensure that the orders of its clients will flow through the systems of the DEA client and will be subject to appropriate risk management and supervisory controls, policies and procedures; (h) the DEA client will not trade for the accounts of its clients, pursuant to subsection 11(2), unless (i) such clients meet the standards established by the participant dealer pursuant to section	**Section 8(e)** One commenter expressed concern with allowing a participant dealer to vary or cancel any trade made by the client for any reason and suggested that changes to orders not be a required term of the agreement but rather be optional and subject to negotiation between the parties. **Section 8(g)** One commenter suggested that the standard to "ensure" that the orders of its clients will flow through the systems of the DEA client and will be subject to appropriate risk management and supervisory controls, policies and procedures should be changed to a "reasonability" standard. **Addition of other provisions** Some commenters suggested including additional provisions in the proposed written agreement including: • the client is to provide a list of employees who are authorized to use the DEA identifier	DEA providers are currently able to cancel or vary any trade made by their clients under the written agreement prescribed under TSX Policy 2-502 and other marketplaces have adopted similar provisions. We are of the view that under certain circumstances it may be necessary for a participant dealer to cancel or vary an order to ensure that it is able to manage the risks to its business. As a result, we have maintained this requirement in the Proposed Amendments. The proposed provision now states that the client will "take all reasonable steps to ensure that the orders of its clients will flow through the systems of the client and will be subject to reasonable risk management and supervisory controls, policies and procedures". We have included an additional provision in the written agreement that requires the DEA

Text of Proposed Provisions	Summary of Comments	CSA Response to Comment
7; and (ii) a written agreement is in place between the DEA client and its clients that sets out the terms of the access provided.	and update this list as necessary • an undertaking by the DEA client that the DEA client identifier will be used exclusively by the DEA client and its authorized employees. Another commenter suggested that an agreement among the DEA client, participating dealer and marketplace be required to clearly set out the roles and responsibilities of each party in the sponsored client relationship and formalize the commitments in place from the client to the dealer and the dealer to the marketplace.	client to inform the participant dealer in writing of all individuals acting on the client's behalf that it has authorized to use its DEA client identifier to the participant dealer and to update this list as necessary. We note that a participant dealer is also able to introduce additional requirements or provisions in the written agreement it feels are necessary to manage its specific risks. We are of the view that a marketplace may require such a tri-party agreement under subsection 7(2) of the Instrument if it deems this to be necessary to manage the risks of DEA trading on its platform.
9. Training of DEA Clients (1) Prior to granting direct electronic access to a client, and as necessary after direct electronic access is granted, a participant dealer must satisfy itself that the client has adequate knowledge of applicable marketplace and regulatory requirements and the standards established pursuant to section 7. (2) If a participant dealer concludes that a client does not have adequate knowledge with respect to applicable marketplace and regulatory requirements, or standards established pursuant to section 7, the participant dealer must ensure the necessary training is provided to the client prior to granting direct electronic access to the client. (3) A participant dealer must ensure that the DEA client	One commenter requested clarification on the CSA's expectations for establishing if a DEA client's knowledge is adequate and the type of training to be provided to DEA clients. This commenter also asked the CSA to reconsider a statement in the Companion Policy that asserts that dealers may need to "require clients to have the same training required of marketplace participants" given the filtering of the DEA client's trading.	The Companion Policy would clarify that what constitutes "reasonable knowledge" will depend on the particular client's trading activity and the resulting risks presented by each specific client. The training, must at a minimum, enable the client to understand the applicable marketplace and regulatory requirements and how trading on the marketplace system occurs. The Proposed Amendments do not impose a requirement that DEA

Text of Proposed Provisions	Summary of Comments	CSA Response to Comment
receives any relevant changes and updates to applicable marketplace and regulatory requirements or standards established pursuant to section 7.		clients have the same training as marketplace participants, but we are of the view that the participant dealer, in managing its risks with respect to providing DEA, may determine this level of knowledge is needed for its DEA clients.
10. DEA Client Identifier (1) Upon granting direct electronic access to a client, a participant dealer must assign to the client a DEA client identifier. (2) A participant dealer that assigns a DEA client identifier pursuant to subsection (1) must immediately provide the DEA client identifier and the associated client name to: (a) all regulation services providers monitoring trading; (b) any recognized exchange or recognized quotation and trade reporting system that directly monitors the conduct of its members or users and enforces requirements set pursuant to subsection 7.1(1) or 7.3(1) respectively of NI 23-101 and to which the DEA client has access; and (c) any exchange or quotation and trade reporting system that is recognized for the purposes of this Instrument and that directly monitors the conduct of its members or users and enforces requirements set pursuant to subsection 7.1(1) or 7.3(1) respectively of NI 23-101 and to which the DEA client has access. (3) A participant dealer must ensure that each order entered by a DEA client using direct electronic access provided by that participant dealer includes the appropriate DEA client identifier. (4) If a client ceases to be a DEA client, the participant dealer must promptly inform: (a) all regulation services providers monitoring trading; (b) any recognized exchange or recognized quotation and	Many commenters expressed concern with respect to disclosing client identifiers to marketplaces. Another commenter suggested that the CSA require participant dealers to disclose trader IDs for DEA clients to marketplaces but not disclose the identity of the DEA client. One commenter requested clarification if the proposal is something other than a participant dealer assigning each of its DEA clients an ID that would be unique among all of its DEA clients.	Proposed subsection 4.6(2) of the Instrument would require that a DEA client identifier be provided to each marketplace to which the DEA client has direct electronic access through the participant dealer but would only require the names of DEA clients associated with a DEA client identifier to be disclosed to regulation services providers and marketplaces that conduct their own market regulation under proposed subsection 4.6(3) of the Instrument. We consider it necessary for a participant dealer to produce such information to a marketplace so that the marketplace can better identify DEA flow on its marketplace to better identify its risks. It is proposed that the DEA client identifier be in the form and manner required by a regulation services provider, or recognized exchange or quotation and trade reporting system that directly monitors the conduct of its members or users. The current practice of a participant

Text of Proposed Provisions	Summary of Comments	CSA Response to Comment
trade reporting system that directly monitors the conduct of its members or users and enforces requirements set pursuant to section 7.1(1) or 7.3(1) respectively of NI 23-101 and to which the DEA client had access; and (c) any exchange or quotation and trade reporting system that is recognized for the purposes of this Instrument and that directly monitors the conduct of its members or users and enforces requirements set pursuant to subsection 7.1(1) or 7.3(1) respectively of NI 23-101 and to which the DEA client had access.		dealer assigning a unique ID to each of its DEA clients would be considered to be an acceptable form.
11. Trading by DEA Clients (1) Except as provided in subsection (2), a participant dealer must only provide direct electronic access to a client that is trading for its own account. (2) When using direct electronic access, the following DEA clients may trade for their own account or for the accounts of their clients: (a) a participant dealer; (b) a portfolio manager; and (c) an entity that is authorized in a category analogous to the entities referred to in paragraphs (a) and (b) in a foreign jurisdiction that is a signatory to the International Organization of Securities Commissions' Multilateral Memorandum of Understanding. (3) Where a DEA client is using direct electronic access to trade for the accounts of its clients, pursuant to subsection (2), the clients' orders must flow through the systems of the DEA client before being entered on a marketplace directly or indirectly through a participant dealer. (4) A participant dealer must ensure that where a DEA client is trading for the accounts of its clients, the DEA client has established and maintains appropriate risk management and supervisory controls, policies and procedures.	**11(2)** Some commenters expressed the view that this section is too limiting. Another commenter urged the CSA to have discussions with marketplace participants that have established global affiliate networks to ensure that existing systems with adequate risk management controls are not unintentionally excluded in this proposed section	We think that the restriction proposed in this section is necessary in order to manage the risks that DEA trading may pose.

Text of Proposed Provisions	Summary of Comments	CSA Response to Comment
(5) A DEA client must not provide access to or pass on its direct electronic access to another person or company.		
13. DEA Client Identifiers A marketplace must not permit a marketplace participant to provide direct electronic access unless the marketplace's systems support the use of DEA client identifiers.	One commenter pointed out that the language in this section may go beyond current practices and therefore may be more than a codification of current marketplace practices. Specifically, this commenter noted that there is no existing order marker or tag used to identify DMA clients, rather the participants of the TSX and TSXV provide these exchanges with a list of trader IDs through which direct market access clients send order flow.	This requirement would codify the current practice of assigning a unique ID to a DEA client and providing this unique identifier to the regulation services provider or marketplace conducting its own market regulation.