

The following draft of proposed National Instrument 31-103 shows how this Instrument would be changed if certain provisions of proposed amendments to the *Securities Act* (Ontario) come into force. For more information, please refer to [OSC Notice and Request for Comment – Draft Act amendments and consequential amendments to proposed National Instrument 31-103 Registration Requirement](#).

## NATIONAL INSTRUMENT 31-103 REGISTRATION REQUIREMENTS

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**NATIONAL INSTRUMENT 31-103  
REGISTRATION REQUIREMENTS**

**PART 1 – DEFINITIONS**

**Definitions**

1.1 (1) In this Instrument

“Canadian financial institution” has the same meaning as in section 1.1 of National Instrument 45-106 *Prospectus and Registration Exemptions*;

“connected issuer” has the same meaning as in section 1.1 of National Instrument 33-105 *Underwriting Conflicts*;

“fully-managed account” means an account of a client that is managed by an adviser through discretionary authority granted by the client;

“IDA” means the Investment Dealers Association of Canada;

“marketplace” has the same meaning as in section 1.1 of National Instrument 21-101 *Marketplace Operation*;

“MFDA” means the Mutual Fund Dealers Association of Canada;

“permitted client” means

- (a) a Canadian financial institution or a Schedule III bank;
- (b) the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada);
- (c) a subsidiary of any person or company referred to in paragraph (a) or (b), if the person or company owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of the subsidiary;
- (d) a person or company registered under the securities legislation of a jurisdiction of Canada as an adviser or dealer, other than a scholarship plan dealer or a restricted dealer;
- (e) a pension fund that is regulated by either the federal Office of the Superintendent of Financial Institutions or a pension commission or similar regulatory authority of a jurisdiction of Canada;
- (f) an entity organized in a foreign jurisdiction that is analogous to any of the entities referred to in paragraphs (a) to (e);
- (g) the Government of Canada or a jurisdiction of Canada, or any crown corporation, agency or wholly-owned entity of the Government of Canada or a jurisdiction of Canada;
- (h) a municipality, public board or commission in Canada and a metropolitan community, school board, the Comité de gestion de la taxe scolaire de l’île de Montréal or an intermunicipal management board in Québec;
- (i) a trust company or trust corporation registered or authorized to carry on business under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in a jurisdiction of Canada or a foreign jurisdiction, acting on behalf of a fully-managed account managed by the trust company or trust corporation, as the case may be;
- (j) a person or company acting on behalf of a fully-managed account managed by the person or company, if the person or company is registered or authorized to carry on business as an adviser or the equivalent under the securities legislation of a jurisdiction of Canada or a foreign jurisdiction;
- (k) an investment fund that is advised by a person or company registered as a portfolio manager under the securities legislation of a jurisdiction of Canada;

- (l) a registered charity under the *Income Tax Act* (Canada) that obtains advice on the securities to be traded from an eligibility adviser, as defined in National Instrument 45-106 *Prospectus and Registration Exemptions*, or an adviser registered under the securities legislation of the jurisdiction of the registered charity;
- (m) an individual who beneficially owns, directly or indirectly, financial assets, as defined in National Instrument 45-106 *Prospectus and Registration Exemptions*, having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds \$5 million or its equivalent in another currency as certified by the individual;
- (n) a person or company that is entirely owned, legally and beneficially, by an individual or individuals referred to in paragraph (m), who hold its or their ownership interest in the person or company directly or through a trust the trustee of which is a trust company referred to in paragraph (i); or
- (o) a corporation that has shareholders' equity of at least \$100 million on a consolidated basis or its equivalent in another currency;

“registered firm” means a registered dealer, a registered adviser, or a registered investment fund manager;

“registered individual” means an individual who is registered

- (a) to trade or advise on behalf of a registered firm,
- (b) in the category of ultimate designated person, or
- (c) in the category of chief compliance officer;

“related issuer” has the same meaning as in section 1.1 of National Instrument 33-105 *Underwriting Conflicts*; and

“Schedule III bank” means an authorized foreign bank named in Schedule III of the *Bank Act* (Canada).

(2) Except in Part 8, in Alberta, British Columbia and Saskatchewan, a reference to “security” or “securities” in this Instrument includes “exchange contract” or “exchange contracts”.

## PART 2 – CATEGORIES OF REGISTRATION AND PERMITTED ACTIVITIES

### Dealer and underwriter categories

2.1 (1) A dealer or underwriter, if required to be registered, must be registered by the regulator in one or more of the following categories:

- (a) investment dealer, being a dealer or underwriter that is permitted to trade in, or act as an underwriter in respect of, any security;
- (b) mutual fund dealer, being a dealer that is only permitted to trade in securities of
  - (i) mutual funds, and
  - (ii) except in Québec, investment funds that are labour sponsored investment fund corporations or labour sponsored venture capital corporations under provincial legislation;
- (c) scholarship plan dealer, being a dealer that is only permitted to trade in securities of scholarship plans, educational plans or educational trusts;
- (d) exempt market dealer, being
  - (i) a dealer that is only permitted to trade
    - A) in securities that are distributed under an exemption from the prospectus requirement,
    - B) in securities that are distributed under a prospectus if the distribution may have been made under an exemption from the prospectus requirement,

- C) in securities that, if the trade were a distribution, may have been distributed under an exemption from the prospectus requirement, and
  - D) on behalf of a client, any securities acquired by the client in a circumstance described in subparagraph (A), (B) or (C), if the trade is with a registered dealer, and
    - (ii) an underwriter that is only permitted act as an underwriter in respect of a distribution of securities that may be made under an exemption from the prospectus requirement;
  - (e) restricted dealer, being a dealer that is limited by conditions on its registration to trading in a specified security, class of security or the securities of a class of issuers.
- (2) Despite subsection (1)(b), in British Columbia a mutual fund dealer is only permitted to trade in securities of
- (i) mutual funds,
  - (ii) investment funds that are labour sponsored investment fund corporations or labour sponsored venture capital corporations under provincial legislation, and
  - (iii) securities of scholarship plans, educational plans or educational trusts.
- (3) This section does not apply in Ontario.

Note: In Ontario, proposed ss 26(2) to (4) of the *Securities Act* (Ontario), available at [www.fin.gov.on.ca/english/consultations](http://www.fin.gov.on.ca/english/consultations), would set out categories of registration for dealers and underwriters.

#### Exemption from dealer registration for advisers

2.2 (1) The dealer registration requirement does not apply to a registered adviser, or an adviser that is exempt from registration under section 8.16 [*international adviser*], that buys or sells a security of a pooled fund administered by the adviser for a fully-managed account that is created and managed by the adviser.

(2) The exemption in subsection (1) is not available if the fully-managed account or pooled fund is created or used primarily for the purpose of qualifying for the exemption.

(3) The exemption in subsection (1) is not available unless the adviser, within 5 business days of its first use of the exemption, provides written notice to the regulator that it is relying on the exemption.

#### Adviser categories

2.3 (1) An adviser, if required to be registered, must be registered by the regulator in one of the following categories:

- (a) portfolio manager, being an adviser that is permitted to advise in any security;
- (b) restricted portfolio manager, being an adviser that is limited by conditions on its registration to advising in specified securities, classes of securities or the securities of a class of issuers.

(2) This section does not apply in Ontario.

Note: In Ontario, proposed s. 26(5) of the *Securities Act* (Ontario), available at [www.fin.gov.on.ca/english/consultations](http://www.fin.gov.on.ca/english/consultations), would set out categories of registration for advisers.

#### Exemption from adviser registration for dealers without discretionary authority

2.4 (1) The adviser registration requirement does not apply to a registered dealer that advises a client in connection with a security in which the dealer is permitted to trade if

- (a) the advice is provided by a dealing representative, and
- (b) the dealer does not manage the client's investment portfolio through discretionary authority granted by the client.

- (2) This section does not apply in Ontario.

Note: In Ontario, proposed s. 34(1)2 of the *Securities Act* (Ontario), available at [www.fin.gov.on.ca/english/consultations](http://www.fin.gov.on.ca/english/consultations), would provide an exemption from adviser registration for dealers without discretionary authority.

#### **Exemption from adviser registration for IDA members with discretionary authority**

2.5 The adviser registration requirement does not apply to an IDA member that manages a client's investment portfolio through discretionary authority granted by the client.

#### **Investment fund manager category**

2.6 (1) An investment fund manager, if required to be registered, must be registered by the regulator in the category of investment fund manager, being a person or company that is permitted to direct the business, operations or affairs of an investment fund.

- (2) This section does not apply in Ontario.

Note: In Ontario, proposed s. 25(3) of the *Securities Act* (Ontario), available at [www.fin.gov.on.ca/english/consultations](http://www.fin.gov.on.ca/english/consultations), would set out the category of registration for investment fund managers.

#### **Individual categories**

2.7 (1) An individual, if required to be registered to act on behalf of a registered firm, must be registered by the regulator in one or more of the following categories:

- (a) dealing representative;
- (b) advising representative;
- (c) associate advising representative;
- (d) ultimate designated person;
- (e) chief compliance officer.

- (2) This section does not apply in Ontario.

Note: In Ontario, proposed ss 25(1) to (2) of the *Securities Act* (Ontario), available at [www.fin.gov.on.ca/english/consultations](http://www.fin.gov.on.ca/english/consultations), would set out individual categories of registration.

#### **Associate advising representative – approved advising only**

2.8 (1) An associate advising representative of a registered adviser must not advise in securities unless, before giving the advice, the advice is approved by an advising representative designated by the adviser.

(2) A registered adviser that designates an advising representative for the purpose of subsection (1) must notify the regulator of the designation no later than the 5th business day following the date of the designation.

#### **Ultimate designated person**

2.9 (1) A registered firm must have an individual who is registered under securities legislation in the category of ultimate designated person to perform the functions described in section 5.24 [*ultimate designated person – functions*].

- (2) An individual must not act as the ultimate designated person of a registered firm unless the individual is
- (a) the chief executive officer or sole proprietor of the registered firm,
  - (b) an officer in charge of a division of the registered firm, if the activity that requires the firm to register occurs only within the division, or
  - (c) an individual acting in a capacity similar to that of an officer described in paragraph (a) or (b).



### Chief compliance officer

**2.10 (1)** A registered firm must have an individual who is registered under securities legislation in the category of chief compliance officer to perform the functions described in section 5.25 [*chief compliance officer – functions*].

**(2)** An individual must not act as the chief compliance officer for a registered firm unless the individual is an officer or partner of the registered firm, or the firm's sole proprietor.

## PART 3 – SRO MEMBERSHIP

### IDA membership for investment dealers

**3.1 (1)** No person or company may be registered as an investment dealer unless the person or company is a member of the IDA.

**(2)** No individual may be registered to act on behalf of an investment dealer unless the individual is an approved person under the by-laws, regulations and policies of the IDA.

### MFDA membership for mutual fund dealers

**3.2** Except in Québec, no person or company may be registered as a mutual fund dealer unless the person or company is a member of the MFDA.

### Exceptions for SRO members

**3.3 (1)** A registrant that is a member of the IDA, or a dealing representative of a member of the IDA, is exempt from each requirement in the following sections that applies to a registered dealer, or a dealing representative, if the registrant complies with the by-laws, regulations and policies of the IDA that deal with the same subject matter:

- (a) section 4.18 [*capital requirement*];
- (b) section 4.19 [*report capital deficiency*];
- (c) section 4.21 [*insurance – dealer*];
- (d) section 4.25 [*notice of change, claim, or cancellation*];
- (e) section 4.26 [*appointment of auditor*];
- (f) section 4.27 [*direction to auditor*];
- (g) section 4.28 [*delivering financial information – dealer*];
- (h) section 5.4 [*providing relationship disclosure information*];
- (i) section 5.5 [*suitability*];
- (j) section 5.7 [*margin*];
- (k) section 5.8 [*disclosure when recommending use of borrowed money*];
- (l) section 5.10 [*holding client assets in trust*];
- (m) section 5.11 [*securities subject to safekeeping agreement*];
- (n) section 5.12 [*securities not subject to safekeeping agreement*];
- (o) section 5.18 [*confirmation of trade – general*];
- (p) except in Québec, section 5.29 [*dispute resolution service*].

(2) Except in Québec, the provisions listed in subsection (1) do not apply to a registrant that is a member or approved person of the MFDA if the registrant complies with the by-laws, rules and policies of the MFDA that deal with the same subject matter.

(3) In Québec, the provisions listed in subsection (1) do not apply to a mutual fund dealer or a dealing representative of a mutual fund dealer if the registrant complies with the regulation on mutual fund dealer requirements in Québec.

## **PART 4 – FIT AND PROPER REQUIREMENTS**

### ***Division 1: Proficiency requirements***

#### **Definitions**

**4.1** In this Division

“Branch Manager Proficiency Exam” means the examination prepared and administered by the RESP Dealers Association of Canada and so designated by that Association;

“Canadian Investment Funds Exam” means the examination prepared and administered by the Investment Funds Institute of Canada and so designated by that Institute;

“Canadian Securities Exam” means the examination prepared and administered by the CSI Global Education Inc. and so designated by that corporation;

“CFA Charter” means the charter earned through the Chartered financial analyst examination program prepared and administered by the CFA Institute and so designated by that institute;

“Canadian Investment Manager designation” means the designation earned through the Canadian investment manager program prepared and administered by the CSI Global Education Inc. and so designated by that corporation;

“Investment Funds in Canada Exam” means the examination prepared and administered by the Institute of Canadian Bankers and so designated by that Institute;

“New Entrants Exam” means the examination prepared and administered by the CSI Global Education Inc. and so designated by that corporation;

“PDO Exam” means

- (a) the Officers’, Partners’ and Directors’ Exam prepared and administered by the Investment Funds Institute of Canada and so designated by that Institute, or
- (b) the Partners, Directors and Senior Officers Exam prepared and administered by the CSI Global Education Inc. and so designated by that corporation;

“Sales Representative Proficiency Exam” means the examination prepared and administered by the RESP Dealers Association of Canada and so designated by that Association; and

“Series 7 Exam” means the program prepared and administered by the Financial Industry Regulatory Authority in the United States of America and so designated by that regulator.

#### **U.S. equivalency**

**4.2** In this Division, an individual is not required to have passed the Canadian Securities Exam if the individual has passed the Series 7 Exam and the New Entrants Exam.

#### **Proficiency principle**

**4.3** When a registered individual performs an activity that requires registration, the individual must have the education and experience reasonably necessary to perform the activity.

#### **Time limits on examination proficiency**

**4.4 (1)** Subject to subsection (2), an individual must not be registered in a category unless the individual passed the examination or successfully completed the program required in this Division for the category within 36 months of the date the individual applied for registration.

**(2)** If an individual passed the examination or successfully completed the program required in this Division for a category more than 36 months before the date the individual applied for registration, the individual must not be registered in the category unless the individual

- (a) was registered in the category in a jurisdiction of Canada for 12 months during the 36 month period before the date the individual applied for registration, or
- (b) gained 12 months of relevant experience during the 36 month period before the date the individual applied for registration.

#### **Mutual fund dealer – dealing representative**

**4.5** A dealing representative of a mutual fund dealer must not trade on behalf of the mutual fund dealer unless the representative

- (a) has passed the Canadian Investment Funds Exam, the Canadian Securities Exam, or the Investment Funds in Canada Exam, or
- (b) has met the requirements of section 4.11 [*portfolio manager – advising representative*].

#### **Mutual fund dealer – chief compliance officer**

**4.6** A mutual fund dealer must not designate an individual as its chief compliance officer under subsection 2.10(1) [*chief compliance officer*] unless the individual

- (a) has met the requirements of section 4.13 [*portfolio manager – chief compliance officer*], or
- (b) has passed
  - (i) the Canadian Investment Funds Exam, the Canadian Securities Exam, or the Investment Funds in Canada Exam, and
  - (ii) the PDO Exam.

#### **Scholarship plan dealer – dealing representative**

**4.7** A dealing representative of a scholarship plan dealer must not trade on behalf of the scholarship plan dealer unless the representative has passed the Sales Representative Proficiency Exam.

#### **Scholarship plan dealer – chief compliance officer**

**4.8** A scholarship plan dealer must not designate an individual as its chief compliance officer under subsection 2.10(1) [*chief compliance officer*] unless the individual has passed

- (a) the Sales Representative Proficiency Exam,
- (b) the Branch Manager Proficiency Exam, and
- (c) the PDO Exam.

#### **Exempt market dealer – dealing representative**

**4.9** A dealing representative of an exempt market dealer must not trade on behalf of the exempt market dealer unless the individual

- (a) has passed the Canadian Securities Exam, or

- (b) meets the requirements of section 4.11 [*portfolio manager – advising representative*].

**Exempt market dealer – chief compliance officer**

**4.10** An exempt market dealer must not designate an individual as its chief compliance officer under subsection 2.10(1) [*chief compliance officer*] unless the individual has passed the Canadian Securities Exam.

**Portfolio manager – advising representative**

**4.11** An advising representative of a portfolio manager must not act as an adviser on behalf of the portfolio manager unless the representative

- (a) has earned a CFA Charter and has 12 months of relevant investment management experience in the 36-month period before applying for registration, or
- (b) has received the Canadian Investment Manager designation and has 48 months of relevant investment management experience, 12 months of which was in the 36-month period before applying for registration.

**Portfolio manager – associate advising representative**

**4.12** An associate advising representative of a portfolio manager must not act as an adviser on behalf of the portfolio manager unless the representative

- (a) has completed Level 1 of the Chartered Financial Analyst Program and has 24 months of relevant investment management experience, or
- (b) has received the Canadian Investment Manager designation and has 24 months of relevant investment management experience.

**Portfolio manager – chief compliance officer**

**4.13** A portfolio manager must not designate an individual as its chief compliance officer under subsection 2.10(1) [*chief compliance officer*] unless the individual

- (a) has been previously registered as an advising representative of a portfolio manager in a jurisdiction of Canada,
- (b) has
  - (i) earned a CFA Charter or a professional designation as a lawyer, Chartered Accountant, Certified General Accountant or Certified Management Accountant in a jurisdiction of Canada, a notary in Québec, or the equivalent in a foreign jurisdiction,
  - (ii) passed the Canadian Securities Exam and the PDO Exam, and
  - (iii) either
    - A) worked for a registered dealer or a registered adviser for three years, or
    - B) provided professional services in the securities industry for three years and worked for a registered dealer or a registered adviser for 12 months, or
- (c) has passed the Canadian Securities Exam and the PDO Exam and has either
  - (i) worked for a registered dealer or a registered adviser for five years, including for three years in a compliance capacity, or
  - (ii) worked for five years for a Canadian financial institution in a compliance capacity relating to portfolio management and worked for a registered dealer or a registered adviser for 12 months.

#### Restricted portfolio manager – chief compliance officer

**4.14** A restricted portfolio manager must not designate an individual as its chief compliance officer under subsection 2.10(1) [*chief compliance officer*] unless the individual has met the requirements of section 4.13 [*portfolio manager – chief compliance officer*].

#### Investment fund manager – chief compliance officer

**4.15** An investment fund manager must not designate an individual as its chief compliance officer under subsection 2.10(1) [*chief compliance officer*] unless the individual

- (a) has
  - (i) earned a CFA Charter or a professional designation as a lawyer, Chartered Accountant, Certified General Accountant or Certified Management Accountant in a jurisdiction of Canada, a notary in Québec, or the equivalent in a foreign jurisdiction,
  - (ii) passed the Canadian Securities Exam and the PDO Exam, and
  - (iii) either
    - A) worked for an investment fund manager for three consecutive years, or
    - B) provided professional services in the securities industry for three consecutive years and worked for an investment fund manager for 12 consecutive months, or
- (b) has
  - (i) passed the Canadian Investment Funds Exam, the Canadian Securities Exam, or the Investment Funds in Canada Exam,
  - (ii) passed the PDO Exam, and
  - (iii) worked for a registered investment fund manager for five consecutive years, including for three consecutive years in a compliance capacity.

#### Grandfathered registrants

**4.16 (1)** If, on the date this Instrument comes into force, an individual is registered in a category referred to in a section of this Division, the individual is exempt from that section.

**(2)** Despite subsection (1), an individual who is a dealing representative of a scholarship plan dealer on the date this Instrument comes into force is exempt from section 4.7 [*scholarship plan dealer – dealing representative*] until 12 months after this Instrument comes into force.

### **Division 2: Solvency requirements**

#### Exemption for certain exempt market dealers

**4.17** This Division does not apply to an exempt market dealer that does not handle, hold, or have access to any client assets, including cheques and other similar instruments.

#### Capital requirement

**4.18 (1)** A registered firm must ensure that its excess working capital, as calculated using Form 31-103F1 *Calculation of excess working capital*, is not less than zero.

- (2)** For the purpose of completing Form 31-103F1 *Calculation of excess working capital*, the minimum capital is
  - (a) \$25,000, for an adviser,
  - (b) \$50,000, for a dealer, and

- (c) \$100,000, for an investment fund manager.

(3) A registered firm must calculate its excess working capital as at the end of each month by completing Form 31-103F1 *Calculation of excess working capital* no later than the 20th business day after the end of the month.

#### Report capital deficiency

4.19 If, at any time, the excess working capital of a registered firm, as calculated using Form 31-103F1 *Calculation of excess working capital*, is less than zero, the registered firm must notify the regulator as soon as practicable.

#### Subordination agreement – notice requirement

4.20 If a registered firm has executed a subordination agreement for the purpose of reducing its long-term related party debt on Form 31-103F1 *Calculation of excess working capital*, the firm must notify the regulator 5 days before it

- (a) repays the loan or any part of the loan, or
- (b) terminates the agreement.

#### Insurance – dealer

4.21 (1) A registered dealer must maintain bonding or insurance with a single loss limit in the highest of the following amounts:

- (a) \$50,000 per employee, agent and dealing representative or \$200,000, whichever is less;
- (b) one per cent of the total client assets that the dealer handles, holds or has access to, as calculated using the dealer's most recent financial records, or \$25,000,000, whichever is less;
- (c) one per cent of the dealer's total assets, as calculated using the dealer's most recent financial records, or \$25,000,000, whichever is less;
- (d) the amount determined to be appropriate by a resolution of the board of directors of the dealer.

(2) A registered dealer must maintain bonding or insurance, provided by an insurer lawfully carrying on business in the local jurisdiction,

- (a) that contains the clauses set out in Appendix A,
- (b) that provides for a double aggregate limit or a full reinstatement of coverage, and
- (c) whose terms are otherwise acceptable to the regulator.

(3) In Québec, this section does not apply to a scholarship plan dealer.

#### Insurance – adviser

4.22 (1) A registered adviser that does not handle, hold, or have access to client assets, including cheques and other similar instruments, must maintain bonding or insurance with a single loss limit of \$50,000.

(2) A registered adviser that handles, holds, or has access to client assets, including cheques and other similar instruments, must maintain bonding or insurance with a single loss limit in the highest of the following amounts:

- (a) one per cent of assets under management that the adviser handles, holds, or has access to, as calculated using the adviser's most recent financial records, or \$25,000,000, whichever is less;
- (b) one per cent of the adviser's total assets, as calculated using the adviser's most recent financial records, or \$25,000,000, whichever is less;
- (c) \$200,000;
- (d) the amount determined to be appropriate by a resolution of the board of directors of the adviser.

(3) A registered adviser must maintain bonding or insurance, provided by an insurer lawfully carrying on business in the local jurisdiction,

- (a) that contains the clauses set out in Appendix A,
- (b) that provides for a double aggregate limit or a full reinstatement of coverage, and
- (c) whose terms are otherwise acceptable to the regulator.

#### **Insurance – investment fund manager**

**4.23 (1)** A registered investment fund manager must maintain bonding or insurance with a single loss limit in the highest of the following amounts:

- (a) one per cent of assets under management, as calculated using the investment fund manager's most recent financial records, or \$25,000,000, whichever is less;
- (b) one per cent of the investment fund manager's total assets, as calculated using the investment fund manager's most recent financial records, or \$25,000,000, whichever is less;
- (c) \$200,000;
- (d) the amount determined to be appropriate by a resolution of the directors of the investment fund manager.

(2) A registered investment fund manager must maintain bonding or insurance, provided by an insurer lawfully carrying on business in the local jurisdiction,

- (a) that contains the clauses set out in Appendix A,
- (b) that provides for a double aggregate limit or a full reinstatement of coverage, and
- (c) whose terms are otherwise acceptable to the regulator.

#### **Global financial institution bonds**

**4.24** For the purposes of this Division, a registered firm may maintain bonding or insurance that benefits, or names as an insured, another person or company only if the bond provides that, without regard to the claims, experience or any other factor referable to that other person or company,

- (a) the registered firm has the right to claim directly against the insurer in respect of losses, and any payment or satisfaction of such losses must be made directly to the registered firm, and
- (b) the individual or aggregate limits under the policy may only be affected by claims made by or on behalf of
  - (i) the registered firm, or
  - (ii) a subsidiary of the registered firm whose financial results are consolidated with those of the registered firm.

#### **Notice of change, claim or cancellation**

**4.25** A registered firm must, as soon as practicable, notify the regulator in writing of any change in, claim made under, or cancellation of any insurance policy required under this Division.

### ***Division 3: Financial records***

#### **Appointment of auditor**

**4.26** A registered firm must appoint an auditor that is authorized to sign an auditor's report by the laws of a jurisdiction of Canada or a foreign jurisdiction and that meets the professional standards of that jurisdiction.

### Direction to auditor

**4.27 (1)** A registered firm must direct its auditor in writing to conduct any audit or review required by the regulator during its registration and must deliver a copy of the direction to the regulator

- (a) with its application for registration, and
- (b) no later than the 5th business day after the registered firm changes its auditor.

**(2)** The regulator may order a registered firm to direct its auditor, at the registered firm's expense, to conduct any audit or review required by the regulator and deliver the audit or review to the regulator as soon as practicable.

**(3)** Subsection (2) does not apply in Ontario.

Note: In Ontario, proposed s. 27(4) of the *Securities Act* (Ontario), available at [www.fin.gov.on.ca/english/consultations](http://www.fin.gov.on.ca/english/consultations), would provide the regulator with the authority described in subsection 4.27(2).

### Delivering financial information – dealer

**4.28 (1)** A registered dealer must deliver to the regulator no later than the 90th day after the end of its fiscal year

- (a) its annual financial statements for the fiscal year, and
- (b) a completed Form 31-103F1 *Calculation of excess working capital*, showing the calculation of the dealer's excess working capital as at the end of the fiscal year and as at the end of the immediately preceding fiscal year.

**(2)** A registered dealer must deliver to the regulator no later than the 30th day after the end of the first, second and third quarter of its fiscal year

- (a) its financial statements for the quarter, and
- (b) a completed Form 31-103F1 *Calculation of excess working capital*, showing the calculation of the dealer's excess working capital as at the end of the quarter and as at the end of the immediately preceding quarter.

### Delivering financial information – adviser

**4.29** A registered adviser must deliver to the regulator no later than the 90th day after the end of its fiscal year

- (a) its annual financial statements for the fiscal year, and
- (b) a completed Form 31-103F1 *Calculation of excess working capital*, showing the calculation of the adviser's excess working capital as at the end of the fiscal year and as at the end of the immediately preceding fiscal year.

### Delivering financial information – investment fund manager

**4.30 (1)** A registered investment fund manager must deliver to the regulator no later than the 90th day after the end of its fiscal year

- (a) its annual financial statements for the fiscal year,
- (b) a completed Form 31-103F1 *Calculation of excess working capital*, showing the calculation of the investment fund manager's excess working capital as at the end of the fiscal year and as at the end of the immediately preceding fiscal year, and
- (c) a description of any net asset value adjustment made during the fiscal year.

**(2)** A registered investment fund manager must deliver to the regulator no later than the 30th day after the end of the first, second and third quarter of its fiscal year

- (a) its financial statements for the quarter,



- (b) a completed Form 31-103F1 *Calculation of excess working capital*, showing the calculation of the investment fund manager's excess working capital as at the end of the quarter and as at the end of the immediately preceding quarter, and
  - (c) a description of any net asset value adjustment made during the quarter.
- (3) A description of a net asset value adjustment referred to in this section must include
- (a) the cause of the adjustment,
  - (b) the dollar amount of the adjustment, and
  - (c) the effect of the adjustment on net asset value per unit or share and any corrections made to purchase and sale transactions affecting either the investment fund or security holders of the investment fund.

### Content of annual financial statements

4.31 The annual financial statements delivered to the regulator under this Division must include

- (a) an income statement, a statement of retained earnings and a statement of cash flows, each for the fiscal year, and
- (b) a balance sheet as at the end of the fiscal year, signed by at least one director of the registered firm.

### Preparation of financial statements

4.32 (1) The annual and quarterly financial statements delivered to the regulator under this Division must be prepared in accordance with generally accepted accounting principles, except that the statements are to be prepared on an unconsolidated basis.

(2) The annual financial statements delivered to the regulator under this Division must be accompanied by an auditor's report that is prepared in accordance with generally accepted auditing standards.

### Cooperation with auditor

4.33 A registrant must not withhold, destroy or conceal any information or documents or otherwise fail to cooperate with a reasonable request made by an auditor of the registered firm in the course of an audit.

### Financial records for certain exempt market dealers

4.34 (1) An exempt market dealer that does not handle, hold or have access to client assets, including cheques and other similar instruments, is exempt from sections 4.26 [*appointment of auditor*] to 4.31 [*content of financial statements*] and subsection 4.32(2) [*preparation of financial statements*].

(2) An exempt market dealer that does not handle, hold or have access to client assets, including cheques and other similar instruments, must deliver to the regulator, no later than the 30th day after the end of each quarter of its fiscal year, its financial statements for the quarter certified by the chief executive officer and the chief financial officer of the dealer or, if no such officers have been appointed, individuals acting on behalf of the dealer in a similar capacity.

(3) The regulator may order an exempt market dealer to direct an auditor, at the registered firm's expense, to conduct any audit or review required by the regulator and deliver the audit or review to the regulator as soon as practicable.

(4) Subsection (3) does not apply in Ontario.

Note: In Ontario, proposed s. 27(4) of the *Securities Act* (Ontario), available at [www.fin.gov.on.ca/english/consultations](http://www.fin.gov.on.ca/english/consultations), would provide the regulator with the authority described in subsection 4.34(3).

## PART 5 – CONDUCT RULES

### Division 1: Relationship with clients

#### Exemption for investment fund managers

5.1 This Division does not apply to an investment fund manager.

#### Account opening documentation

5.2 (1) A registered firm must maintain account opening documentation for each client.

(2) Subsection (1) does not apply to an exempt market dealer in respect of a client whose assets, including cheques and other similar instruments, the exempt market dealer does not handle, hold or have access to.

#### Know-your-client

5.3 (1) A registrant must take reasonable steps to

- (a) establish the identity of a client and, where there may be cause for concern, the reputation of the client,
- (b) ascertain whether a client is an insider of an issuer,
- (c) ensure that it has sufficient information about a client to enable it to meet its regulatory obligations when it
  - (i) makes a recommendation to the client,
  - (ii) accepts an instruction to trade from the client, or
  - (iii) makes a discretionary purchase or sale of a security on behalf of the client, and
- (d) establish the creditworthiness of a client, if the registered firm is financing the client's acquisition of a security.

(2) For the purpose of establishing the identity of a client that is a corporation under paragraph (1)(a), the registrant must establish the nature of the client's business and the identity of any individual who is a beneficial owner, directly or indirectly, of more than ten per cent of the client.

(3) In paragraph (1)(b), "insider" has the meaning ascribed to that term in the Act except that "reporting issuer", as it appears in the definition of "insider", is to be read as "issuer".

(4) A registrant must make reasonable efforts to keep the information required under this section current.

(5) Paragraph (1)(c) does not apply if

- (a) the client is a permitted client that has waived, in writing, the requirements under subsections 5.5(1) and (2) [*suitability*], or
- (b) the client is a permitted client and the registrant is an exempt market dealer.

(6) Paragraph (1)(d) does not apply if the client is a permitted client and the registrant is an exempt market dealer.

(7) Despite subsections (5) and (6), this section does not apply if the client is a registered firm, a Canadian financial institution or a Schedule III bank.

#### Providing relationship disclosure information

5.4 (1) A registrant must provide a client with relationship disclosure information before the registrant first

- (a) purchases or sells a security for the client, or

- (b) advises the client to purchase, sell or hold a security.

(2) If there is a significant change to the relationship disclosure information provided to a client under subsection (1), the registrant must make reasonable efforts to notify its clients of the change in a timely manner, and wherever practicable before the registrant next

- (a) purchases or sells a security for the client, or
- (b) advises the client to purchase, sell or hold a security.

(3) For the purpose of this section, "relationship disclosure information" means information that a reasonable client would consider important respecting the client's relationship with the registrant and includes, subject to subsections (4), (5) and (6), the following:

- (a) a description of the nature of the client's account or the type of account held by the client;
- (b) a discussion that identifies which products or services offered by the registered firm will meet the client's investment objectives and how they will do so;
- (c) a discussion of investment risk factors and types of risks that should be considered by the client when making an investment decision, including the risk of using borrowed money to finance a purchase of a security;
- (d) a description of the conflicts of interest that the registered firm is required to disclose under securities legislation;
- (e) disclosure of all service fees and charges in respect of the operation of the client's accounts;
- (f) a description of the costs the client will pay in making and holding investments and the compensation paid to the registered firm in relation to the different types of products that the client may purchase through the registered firm;
- (g) a description of the content and frequency of reporting for each account or portfolio of the client;
- (h) information about how the client can contact the firm;
- (i) notice that a dispute resolution service is available to mediate any dispute that might arise between the client and the firm regarding a product or service of the firm;
- (j) the information a registered firm is required to collect about the client under section 5.3 [*know-your-client*].

(4) Despite subsection (3), relationship disclosure information provided by an exempt market dealer to a client is not required to include the information referred to in paragraphs (3)(a), (e) and (g) if the dealer does not handle, hold or have access to the client's assets, including cheques and other similar instruments.

(5) In addition to the information required under subsection (3), relationship disclosure information provided by a dealer must include a description of the nature and scope of the firm's obligation to assess whether a purchase or sale of a security is suitable for a client prior to executing the transaction or at any other time.

(6) In addition to the information required under subsection (3), relationship disclosure information provided by an adviser must include the following:

- (a) if the client's account is a fully-managed account, a description of the adviser's discretionary authority;
- (b) a description of how the adviser will ensure that investments made are suitable for the client based on the information provided by the client;
- (c) a statement that there is no guarantee, implied or otherwise, that the investments made will be successful;
- (d) a discussion of investment risk factors and types of risks that should be considered by the client when deciding to invest using an adviser;

- (e) if the client's account is a fully-managed account and a person or company exempted from registration under section 8.17 [*sub-advisers*] provides advice in respect of the account, information about the role of the person or company and their relationship to the client.

(7) This section does not apply to an exempt market dealer in respect of a permitted client.

### Suitability

**5.5 (1)** A registrant must take reasonable steps to ensure that before it makes a recommendation to, or accepts instructions from, a client or makes a discretionary purchase or sale of a security on behalf of a client, the proposed purchase or sale is suitable for the client with reference to the client's

- (a) financial circumstances,
- (b) risk tolerance,
- (c) investment knowledge, and
- (d) investment needs and objectives.

**(2)** If a client instructs a registrant to buy, sell or hold a security and in the registrant's opinion, acting reasonably, following the instruction would not be suitable for the client, the registrant must inform the client of the registrant's opinion and must not buy or sell the security unless the client instructs the registrant to proceed nonetheless.

**(3)** This section does not apply in respect of a permitted client if

- (a) the permitted client has waived, in writing, the requirements under subsections (1) and (2), or
- (b) the registrant is an exempt market dealer.

**(4)** Despite subsection (3), this section does not apply if the client is a registered firm, a Canadian financial institution or a Schedule III bank.

### Sale or assignment of client account

**5.6** If a registered firm proposes to sell or assign a client's account in whole or in part to another registrant, the registered firm must, prior to the sale or assignment, give a written explanation to the client of the proposal and inform the client of the client's right to withdraw the client's account.

### Margin

**5.7** A registrant must not lend, extend credit or provide margin to a client.

### Disclosure when recommending use of borrowed money

**5.8 (1)** If a registrant recommends that a client should use borrowed money to finance any part of a purchase of a security, the registrant must, before the purchase, provide the client with a written statement in substantially the following form:

*"Using borrowed money to finance the purchase of securities involves greater risk than a purchase using cash resources only. If you borrow money to purchase securities, your responsibility to repay the loan and pay interest as required by its terms remains the same even if the value of the securities purchased declines."*

**(2)** Subsection (1) does not apply if

- (a) the registrant has provided the client with the statement described under subsection (1) no earlier than the 180th day before the date of the proposed purchase,
- (b) the proposed purchase is on margin and the client's margin account is maintained with a registered firm that is a member of the IDA or the MFDA, or
- (c) the client is a permitted client.

### Disclosure when opening an account in a financial institution

**5.9 (1)** If a registered firm opens a client account to trade in securities in an office or branch of a Canadian financial institution or a Schedule III bank, the registered firm must give the client a written notice stating that it is a separate legal entity from the Canadian financial institution or Schedule III bank and, unless otherwise advised by the registrant, securities purchased from or through the registrant

- (a) are not insured by a government deposit insurer,
- (b) are not guaranteed by the Canadian financial institution or Schedule III bank, and
- (c) may fluctuate in value.

**(2)** A registered firm that is subject to subsection (1) must receive a written confirmation from the client that the client has read and understood the notice before the registered firm

- (a) purchases or sells a security for the client, or
- (b) advises the client to purchase, sell or hold a security.

**(3)** This section does not apply to a registered firm if the client is a permitted client.

### *Division 2: Client assets*

#### Holding client assets in trust

**5.10 (1)** A registered firm that holds client assets, including cheques and other similar instruments, must hold the assets separate and apart from its own property and in trust for the client.

**(2)** A registered firm that holds cash on behalf of a client must hold the cash separate and apart from the property of the firm in a designated trust account with a Canadian financial institution or a Schedule III bank.

#### Securities subject to safekeeping agreement

**5.11** A registered firm that holds unencumbered securities for a client under a written safekeeping agreement must

- (a) segregate the securities from all other securities,
- (b) identify the securities as being held in safekeeping for the client in
  - (i) the registrant's security position record,
  - (ii) the client's ledger, and
  - (iii) the client's statement of account, and
- (c) release the securities only on an instruction from the client.

#### Securities not subject to safekeeping agreement

**5.12 (1)** A registered firm that holds unencumbered securities for a client that are either fully paid for or are excess margin securities, but that are not held under a written safekeeping agreement, must

- (a) segregate and identify the securities as being held in trust for the client, and
- (b) describe the securities as being held in segregation on
  - (i) the registrant's security position record,
  - (ii) the client's ledger, and
  - (iii) the client's statement of account.

(2) If a client is indebted to a registered firm, the registered firm may sell or lend the securities described in subsection (1), but only to the extent reasonably necessary to cover the indebtedness.

(3) Securities described in subsection (1) may be segregated in bulk.

#### Reduction of debit balances

5.13 (1) In this section,

“derivatives account” includes a commodity futures account;

“free credit balance”

- (a) includes money received from, or held for the account of, clients by a registered firm,
  - (i) for investment pending the investment and payment for securities purchased by the clients from or through the registered firm where the registered firm does not own such securities at the time of purchase or has not purchased them on behalf of the clients, pending the purchase thereof by the registered firm, and
  - (ii) as proceeds of securities purchased from clients or sold by the registered firm for the account of clients where securities have been delivered to the registered firm but payment has not been made pending payment of such proceeds to the clients, and
- (b) does not include money that is committed to be used on a specific settlement date as payment for securities if the registered firm who maintains the securities account prepares financial statements on a settlement date basis.

(2) If a registered firm maintains two or more accounts for a client, one of which is a derivatives account that contains a debit balance of more than \$5,000, the registered firm must transfer from any account containing a free credit balance as much of the free credit balance as is necessary to eliminate, or reduce to the greatest extent possible, the debit balance in the derivatives account.

(3) Subsection (2) does not apply to a registered firm in respect of a client's securities and derivatives accounts if the client has given directions to the registered firm in writing, or orally if subsequently confirmed in writing,

- (a) to transfer an amount that is less than the amount otherwise required to be transferred, or
- (b) not to transfer any amount from the securities account to the derivatives account.

(4) A registered firm who maintains a securities account and a derivatives account for the same client may make a transfer of any amount of a free credit balance from the securities account to the derivatives account, or, from the derivatives account to the securities account of the client if

- (a) the transfer is made in accordance with a written agreement between the registered firm and the client, and
- (b) the transfer is not a transfer referred to in subsections (2) and (3).

#### Account supervision

5.14 A registered adviser must ensure that the account of each client is supervised separately and distinctly from the accounts of other clients.

### *Division 3: Record-keeping*

#### Records – general requirements

5.15 (1) A registered firm must maintain records to

- (a) accurately record its business activities, financial affairs, and client transactions, and
- (b) demonstrate compliance with applicable requirements of securities legislation.

- (2) Such records must include, but are not limited to, records that
- (a) permit timely creation and audit of financial statements and other financial information required to be filed or delivered to the securities regulatory authority,
  - (b) permit determination of the registered firm's capital position,
  - (c) demonstrate compliance with the registered firm's capital and insurance requirements,
  - (d) demonstrate compliance with internal control procedures,
  - (e) demonstrate compliance with the firm's policies and procedures,
  - (f) permit the identification and segregation of client cash, securities, and other property,
  - (g) identify all transactions conducted on behalf of the registered firm and each of its clients, including the parties to the transaction and the terms of the purchase or sale,
  - (h) provide an audit trail for
    - (i) client instructions and orders, and
    - (ii) each trade transmitted or executed for a client or by the registered firm on its own behalf,
  - (i) permit creation of account activity reports for clients,
  - (j) provide securities pricing as may be required by securities legislation,
  - (k) demonstrate compliance with client account opening requirements,
  - (l) document correspondence with clients, and
  - (m) document compliance and supervision actions taken by the firm.

**Records – form, accessibility and retention**

- 5.16** (1) A registered firm must keep its records safe and in a durable form.
- (2) 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 regulator, and thereafter the record may be kept in a manner that permits it to be provided to the regulator in a reasonable period of time.
- (3) A record provided under subsection (2) must be in a form that is capable of being read by the regulator.
- (4) A registered firm must keep
- (a) an activity record for seven years from the date of the act, and
  - (b) a relationship record for seven years from the date the person or company ceases to be a client of the registered firm.
- (5) In subsection (4),
- “activity record” includes
- (a) a confirmation of a transaction required under section 5.18 [*confirmation of trade – general*],
  - (b) a communication between the registrant and the client made in respect of a purchase or sale of a security, including a record of an oral communication,
  - (c) a statement of account and portfolio required under section 5.22 [*statements of account and portfolio*],

- (d) a referral of the client that is subject to Division 2 [*referral arrangements*] of Part 6; and

“relationship record” means a document, other than an activity record, that describes the relationship between a registrant and a client of the registrant including

- (a) a communication between the registrant and the client not made in respect of a purchase or sale of a security, including a record of an oral communication,
- (b) an agreement entered into between the registrant and the client,
- (c) a client complaint,
- (d) relationship disclosure information provided to the client under section 5.4 [*providing relationship disclosure information*].

#### ***Division 4: Account activity reporting***

#### **Exemption for investment fund managers and exempt market dealers**

**5.17** This Division does not apply to

- (a) an investment fund manager, or
- (b) an exempt market dealer that does not handle, hold, or have access to client assets, including cheques and other similar instruments.

#### **Confirmation of trade – general**

**5.18 (1)** Subject to subsection (2), a registered dealer that has acted on behalf of a client in connection with a trade or series of trades in a security must promptly send or deliver to the client, or to a registered adviser acting for the client if the client consents, a written confirmation of the transaction, setting out,

- (a) the quantity and description of the security traded,
- (b) the consideration,
- (c) the commission, sales charge, service charge and any other amount charged in respect of the trade,
- (d) whether the registered dealer acted as principal or agent,
- (e) the date and the name of the marketplace, if any, on which the transaction took place, or if applicable, a statement that the transaction took place on more than one marketplace or over more than one day,
- (f) the name of the dealing representative, if any, in the transaction,
- (g) the settlement date of the trade, and
- (h) if applicable, that the security is a security of the registrant, a security of a related issuer of the registrant or, in the course of a distribution, a security of a connected issuer of the registrant.

**(2)** If the transaction involved more than one trade or if the transaction took place on more than one marketplace the information referred to in subsection (1) above may be set out in the aggregate if the confirmation also contains a statement that additional details concerning the transaction will be provided to the client upon request and without additional charge.

**(3)** If a trade is made in a security of a mutual fund, scholarship plan, educational plan or educational trust, the confirmation required under subsection (1) must contain, in addition to the requirements of subsection (1), the price per share or unit at which the trade was effected.

**(4)** 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.



(5) For the purpose of paragraph (1)(f), a dealing representative may be identified by means of a code or symbol if the confirmation also contains a statement that the name of the dealing representative will be provided to the client on request of the client.

#### Reporting trades otherwise

5.19 (1) If a registered firm sends or delivers to a client a report, other than a confirmation under section 5.18 [*confirmation of trade – general*], of a trade in a security that the registered firm made with or on behalf of the client, including a report of a trade made by or at the direction of a registrant that is managing the investment portfolio of the client through discretionary authority granted by the client, the report must state, if applicable, that the security is a security of the registered firm, a security of a related issuer of the registered firm or, in the course of a distribution, a security of a connected issuer of the registered firm.

(2) Subsection (1) does not apply if the security is a security of a mutual fund that is an affiliate of the registered firm and the names of the registered firm and the fund are sufficiently similar to disclose that they are affiliated.

#### Semi-annual confirmations for certain automatic plans

5.20 The requirement under section 5.18 [*confirmation of trade – general*] to send or deliver a confirmation promptly does not apply to a registered dealer in respect of a trade if

- (a) the client gave the dealer prior written notice that the trade is made under the client's participation in an automatic payment plan or an automatic withdrawal plan in which a trade is made at least monthly,
- (b) the registered dealer sent a confirmation as required under section 5.18 [*confirmation of trade – general*] for the first trade made under the plan after receiving the notice referred to under paragraph (a),
- (c) the trade is in a security of a mutual fund, scholarship plan, educational plan or educational trust, and
- (d) the registered dealer sends or delivers the information required under section 5.18 [*confirmation of trade – general*] for the trade semi-annually to the client or, if the client consents, to a registered adviser acting for the client.

#### Confirmation of trade – exemption

5.21 A registered dealer is not required to send or deliver to a client a written confirmation of a trade in a security of a mutual fund if the investment fund manager of the mutual fund sends or delivers the client a written confirmation containing the information required to be sent under section 5.18 [*confirmation of trade – general*].

#### Statements of account and portfolio

5.22 (1) A registered dealer must send or deliver a statement of account to each client not less than once every three months showing any debit or credit balance and the details of securities held for or owned by the client, unless the client has requested statements on a monthly basis in which case the registered dealer must send or deliver statements monthly.

(2) The statement required by subsection (1) must list the securities held for the client and indicate clearly which securities are held for safekeeping or in segregation.

(3) Subject to subsection (4), a registered adviser must send or deliver to each client not less than once every three months, a statement of the portfolio of the client under the registered adviser's management, unless the client has requested statements on a monthly basis in which case the registered adviser must send or deliver statements monthly.

(4) If a client has provided the consent referred to in subsection 5.18(1) [*confirmation of trade – general*], the registered adviser must send or deliver to the client not less than once every month, a statement of the portfolio of the client under the registered adviser's management.

### Division 5: Compliance

#### Compliance system

5.23 (1) A registered firm must establish, maintain and apply a system of controls and supervision sufficient to

- (a) provide reasonable assurance that the firm and each individual acting on its behalf complies with securities legislation, and
- (b) manage the risks associated with its business in conformity with prudent business practices.

(2) The system of controls referred to in subsection (1) must be documented in the form of written policies and procedures.

#### **Ultimate designated person – functions**

**5.24** The ultimate designated person of a registered firm must

- (a) supervise the activities of the firm that are directed towards ensuring compliance with securities legislation by the firm and each individual acting on its behalf, and
- (b) promote compliance with securities legislation within the firm.

#### **Chief compliance officer – functions**

**5.25** The chief compliance officer of a registered firm must

- (a) establish and maintain policies and procedures for assessing compliance by the firm, and individuals acting on its behalf, with securities legislation,
- (b) monitor and assess compliance by the firm, and individuals acting on its behalf, with securities legislation,
- (c) report to the ultimate designated person as soon as practicable if the chief compliance officer becomes aware of any circumstances indicating that the firm, or any individual acting on its behalf, is in substantial non-compliance with securities legislation, and
- (d) submit an annual report to the board of directors or partnership for the purpose of assessing compliance by the firm, and individuals acting on its behalf, with securities legislation.

#### **Access to board or partnership**

**5.26** A registered firm must permit its ultimate designated person and its chief compliance officer to directly access the board of directors or partnership at such times as either of them may independently deem necessary or advisable in view of his or her responsibilities.

### ***Division 6: Complaint handling***

#### **Exemption for investment fund managers and exempt market dealers**

**5.27** This Division does not apply to

- (a) an investment fund manager, or
- (b) an exempt market dealer in respect of a permitted client.

#### **Complaints**

**5.28** A registered firm must document, and effectively and fairly respond to, each complaint made to the registered firm about any product or service offered by the firm or a representative of the firm.

#### **Dispute resolution service**

**5.29 (1)** 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.

**(2)** If a person or company makes a complaint to a registered firm about any trading or advising activity of the firm or one of its representatives, the registered firm must as soon as practicable inform the person or company of how to contact and use

- (a) the dispute resolution service in which the firm participates, or
- (b) the dispute resolution service of the securities regulatory authority, if it provides a dispute resolution service.

#### **Policies and procedures on complaint handling**

**5.30** A registered firm must have policies and procedures on documenting and responding to complaints made about its products and services.

#### **Reporting to the securities regulatory authority**

**5.31 (1)** On January 30 and July 30 of each year, a registered firm must deliver a report containing the following information to the securities regulatory authority:

- (a) each complaint made to the firm during the reporting period,
  - (b) each complaint that was resolved during the reporting period,
  - (c) each complaint that remained unresolved as of the end of the reporting period.
- (2)** In subsection (1), “reporting period” means, for information that must be delivered on
- (a) January 30, from July 1 to December 31 of the prior year, and
  - (b) July 30, from January 1 to June 30 of the current year.

#### **Firms registered in Québec**

**5.32** A registered firm in Québec complies with Division 6 if it complies with sections 168.1.1 to 168.1.3 of the Québec *Securities Act*.

### ***Division 7: Non-resident registrants***

#### **Notice to clients**

**5.33** A registered firm whose head office is not located in the local jurisdiction must provide its clients in the local jurisdiction

- (a) a statement in writing disclosing the non-resident status of the registrant,
- (b) the registrant's jurisdiction of residence,
- (c) the name and address of the agent for service of process of the registrant in the local jurisdiction, and
- (d) the nature of risks to clients that legal rights may not be enforceable in the local jurisdiction.

#### **Compliance with requests**

**5.34** A registered firm whose head office is not located in the local jurisdiction must comply with requests under the securities regulatory authority's investigation powers and orders under the securities legislation in the jurisdiction in relation to the firm's dealings with clients in the jurisdiction to the extent those powers and orders would be enforceable against the firm if the firm were resident in the jurisdiction.

#### **Custody of assets**

**5.35 (1)** A registered firm whose head office is not located in a jurisdiction of Canada must make reasonable efforts to ensure that all client assets are held

- (a) directly by the client,
- (b) on behalf of the client by a custodian or sub-custodian that

- (i) meets the guidelines prescribed for acting as a sub-custodian of the portfolio securities of a mutual fund in Part 6 of National Instrument 81-102 *Mutual Funds*, and
  - (ii) is subject to the Bank for International Settlements' framework for international convergence of capital measurement and capital standards, or
  - (c) on behalf of the client by a registered dealer that is a member of an SRO that is a member of Canadian Investor Protection Fund or other comparable compensation fund or contingency trust fund.
- (2) Section 5.10 [*holding client assets in trust*] does not apply to a registered firm that is subject to subsection (1).

## PART 6 – CONFLICTS OF INTEREST

### *Division 1: General*

#### Identifying and responding to conflicts of interest

**6.1 (1)** A registered firm must make reasonable efforts to identify existing conflicts of interest and conflicts the registered firm, acting reasonably, would expect to arise between the firm, including each individual acting on the firm's behalf, and its clients.

(2) A registered firm must respond to a conflict of interest identified under subsection (1).

(3) If a client, acting reasonably, would expect to be informed of a conflict of interest identified under subsection (1), the registered firm must disclose the nature and extent of the conflict of interest to the client.

(4) This section does not apply to an investment fund manager in respect of an investment fund that is subject to National Instrument 81-107 *Independent Review Committee for Investment Funds*.

#### Prohibition on certain managed account transactions

**6.2 (1)** In this section, "responsible person" means, for a registered adviser,

- (a) the adviser, and
- (b) each of the following who has access to, or participates in formulating, an investment decision to be made on behalf of a client of the adviser or advice to be given to a client of the adviser:
  - (i) a partner, director, officer, employee or agent of the adviser,
  - (ii) an affiliate of the adviser,
  - (iii) a partner, director, officer, employee or agent of an affiliate of the adviser,
  - (iv) an associate of a person or company listed in subparagraph (i), (ii) or (iii).

(2) A registered adviser must not cause an investment portfolio managed by it to

- (a) purchase or sell a security of an issuer in which a responsible person is a partner, officer, director, or employee, or for which a responsible person is an agent, unless this fact is disclosed to the client and the written consent of the client to the purchase is obtained before the purchase,
- (b) purchase or sell a security in which a responsible person has direct or indirect beneficial ownership, or over which a responsible person exercises control or direction, unless this fact is disclosed to the client and the client consents to the purchase in writing before the purchase,
- (c) purchase or sell a security from or to another investment portfolio managed by the adviser or a responsible person including an investment fund for which the adviser or responsible person acts as adviser, or
- (d) provide a guarantee or loan to a responsible person.

## Registrant relationships

**6.3** An individual registered as a dealing, advising or associate advising representative of a registered firm must not act as an officer, partner or director of another registered firm that is not an affiliate of the first-mentioned registered firm.

## Issuer disclosure statement

- 6.4** (1) In this section, “issuer disclosure statement” means, for a registered firm,
- (a) a list of the related issuers of the registered firm,
  - (b) a concise statement of the nature of the relationship between the registered firm each related issuer of the registered firm, and
  - (c) in the course of a distribution, a concise statement of the nature of the relationship between the registered firm the connected issuers of the registered firm.
- (2) A registered firm must maintain a current issuer disclosure statement.
- (3) When a registrant opens an account for a client, the registrant must provide the client with a current issuer disclosure statement.
- (4) If there is a significant change to a registered firm’s issuer disclosure statement, the registered firm must make reasonable efforts to notify its clients of the change in a timely manner, and wherever practicable before the registrant next
- (a) purchases or sells, for the client, a security of a related issuer, or in the course of a distribution, a connected issuer, or
  - (b) advises the client to purchase, sell or hold a security of a related issuer, or in the course of a distribution, a connected issuer.
- (5) A registrant may notify a client under subsection (3) by providing the client with
- (a) a revised issuer disclosure statement, or
  - (b) a written notice describing the change.
- (6) For the purposes of this section, “related issuer” and “connected issuer” do not include a mutual fund that is an affiliate of a registered firm if the names of the registered firm and the mutual fund are sufficiently similar to disclose that they are affiliated.
- (7) This section does not apply to a registered firm if it does not act as an adviser or a dealer in respect of,
- (a) its own securities,
  - (b) securities of a related issuer of the registered firm, or
  - (c) in the course of a distribution, securities of a connected issuer of the registered firm.
- (8) This section does not apply to a registered dealer in respect of a client if
- (a) the dealer does not trade for the client other than to execute the client’s order to purchase or sell a security,
  - (b) the dealer does not advise the client in respect of trades, and
  - (c) the restrictions described in paragraphs (a) and (b) are set out in the dealer’s account agreement with the client.

## Recommendations

**6.5** A registered firm must not make a recommendation in any medium of communication to buy, sell or hold its own securities, securities of a related issuer or, in the course of a distribution, securities of a connected issuer of the registered firm, unless

- (a) the recommendation is in a publication that
  - (i) is published or distributed by the registered firm regularly in the ordinary course of its business, and
  - (ii) includes in a conspicuous position and large type, a complete statement of the relationship or connection between the registered firm and the issuer,
- (b) the registered firm is acting as an underwriter in a distribution of the securities,
- (c) the recommendation is in respect of a security of a mutual fund that is an affiliate of the registered firm and the names of the registered firm and the fund are sufficiently similar to disclose that they are affiliated, or
- (d) the recommendation is in respect of a security of a scholarship or educational plan or trust that is an affiliate of the registered firm and the names of the registered firm and the scholarship or educational plan or trust are sufficiently similar to disclose that they are affiliated.

## Limitations on advising

**6.6 (1)** A registered firm must not act as an adviser in respect of a security of the registered firm, a related issuer of the registered firm or, in the course of a distribution, a connected issuer of the registered firm.

**(2)** Subsection (1) does not apply if

- (a) the registered firm is acting as an adviser in respect of a fully-managed account and the transaction is made in accordance with subsection 4.1(4) of National Instrument 81-102 *Mutual Funds*,
- (b) the registered firm is acting as an adviser in respect of an account that is not a fully-managed account and the registered firm, before or concurrently with providing the advice, makes a written or oral statement to the client of the relationship between the registered firm and the issuer of the securities,
- (c) the client is a registered dealer, or
- (d) the client is a related issuer of the registered firm.

## Allocating investment opportunities fairly

**6.7 (1)** A registered adviser must ensure fairness in allocating investment opportunities among its clients.

**(2)** A registered adviser must provide a client with a copy of the written policies required under section 5.23 [*compliance system*] that respond to the requirement under subsection (1)

- (a) when the adviser opens an account for the client, and
- (b) if there is a significant change to the policies last provided to the client, the earlier of
  - (i) the 45th day after the date the policies were changed, or
  - (ii) as soon as practicable after next advising the client to purchase, sell or hold a security.

## Acquiring a registered firm's securities or assets

**6.8 (1)** A person or company must give the regulator written notice at least 30 days before the acquisition if it proposes to acquire,

- (a) directly or indirectly, beneficial ownership of, or control or direction over, ten per cent or more of the securities of a registered firm, or
- (b) a substantial part of the assets of a registered firm.

(2) The notice required under subsection (1) must include all relevant facts regarding the acquisition to permit the regulator to determine if it is

- (i) likely to give rise to conflicts of interest,
- (ii) likely to hinder the registered firm in complying with securities legislation,
- (iii) inconsistent with an adequate level of investor protection, or
- (iv) otherwise prejudicial to the public interest.

(3) If, within 30 days of the regulator's receipt of a notice under subsection (1), the regulator notifies the person or company making the acquisition that the regulator objects to the acquisition, the acquisition must not occur until the regulator approves it.

(4) Following receipt of a notice of objection under subsection (3), the person or company who submitted the notice to the regulator may request the regulator to hold a hearing on the matter.

(5) Subsection (1) does not apply to

- (a) an acquisition by a registered firm in the ordinary course of its business of trading in securities, or
- (b) an amalgamation, merger, arrangement or reorganization in which the direct or indirect beneficial ownership of a registered firm does not change.

### **Settling securities transactions**

**6.9** A registered firm must not require a person or company to settle that person's or company's transaction with the registered firm through that person's or company's account at a Canadian financial institution as a condition, or on terms that would appear to a reasonable person to be a condition, of supplying a product or service, unless this method of settlement is reasonably necessary to provide the specific product or service that the person or company has requested.

### **Tied selling**

**6.10** No person or company shall require another person or company

- (a) to buy, sell or hold particular securities as a condition, or on terms that would appear to a reasonable person to be a condition, of supplying or continuing to supply products or services, or
- (b) to buy, sell or use any products or services as a condition, or on terms that would appear to a reasonable person to be a condition, of buying or selling particular securities.

## ***Division 2: Referral arrangements***

### **Definitions – referral arrangements**

**6.11** For the purposes of this section to section 6.15 [*application and transition to prior referral arrangements*]

“client” includes a prospective client;

“referral arrangement” means any arrangement in which a registrant agrees to pay or receive a referral fee; and

“referral fee” means any form of compensation, direct or indirect, paid for the referral of a client to or from a registrant.

### **Permitted referral arrangements**

**6.12** A registrant must not participate in a referral arrangement unless,

- (a) before a client is referred by or to the registrant, the terms of the referral arrangement are set out in a written agreement between
  - (i) the registrant,
  - (ii) the person or company making or receiving the referral, and
  - (iii) if the registrant is a registered individual, the registered firm on whose behalf the registered individual acts,
- (b) the registrant or, if the registrant acts on behalf of a registered firm, the registered firm, records all referral fees on its records, and
- (c) the registrant ensures that the information prescribed by subsection 6.13(1) [*disclosing referral arrangements to clients*] is provided to the client in writing before the earlier of opening the client's account or any services are provided to the client under the referral arrangement.

#### **Disclosing referral arrangements to clients**

**6.13 (1)** Written disclosure of the referral arrangement as required by subsection 6.12(c) [*permitted referral arrangements*] must include the following:

- (a) the name of each party to the referral arrangement;
- (b) the purpose and material terms of the referral arrangement, including the nature of the services to be provided by each party;
- (c) any conflicts of interest resulting from the relationship between the parties to the referral arrangement and from any other element of the referral arrangement;
- (d) the method of calculating the referral fee and, to the extent possible, the amount of the fee;
- (e) the category of registration of each registrant that is a party to the agreement with a description of the activities that the registrant is authorized to engage in under that category and, giving consideration to the nature of the referral, the activities that the registrant is not permitted to engage in;
- (f) if a referral is made to a registrant, a statement that all activity requiring registration resulting from the referral arrangement will be provided by the registrant receiving the referral;
- (g) any other information that a reasonable client would consider important in evaluating the referral arrangement.

**(2)** If there is a change to the information set out in subsection (1), the registrant must ensure that written disclosure of that change is provided to each client affected by the change as soon as practicable and no later than the 30th day before the date on which a referral fee is next paid or received.

#### **Reasonable diligence when referring clients**

**6.14** A registrant that refers a client to another person or company must take reasonable steps to satisfy itself that the person or company has the appropriate qualifications to provide the services, and if applicable, is registered to provide those services.

#### **Application and transition to prior referral arrangements**

**6.15 (1)** Sections 6.12 [*permitted referral arrangements*] to 6.14 [*reasonable diligence when referring clients*] apply to a referral arrangement entered into before this Instrument came into force if a referral fee is paid under the referral arrangement after this Instrument comes into force.

**(2)** Subsection (1) does not apply until the 180th day after this Instrument comes into force.



## PART 7 – SUSPENSION AND REVOCATION OF REGISTRATION

### Activities requiring registration are prohibited

**7.1** If the registration of a registered firm or a registered individual in a category is suspended, he, she or it must not act as a dealer, an adviser, or an investment fund manager in that category.

### Suspension of registered firm

**7.2 (1)** If the registration of a registered firm in a category is suspended, the registration of each registered dealing, advising or associate advising representative in that category is suspended.

**(2)** This section does not apply in Ontario.

Note: In Ontario, proposed s. 30(2) of the *Securities Act* (Ontario), available at [www.fin.gov.on.ca/english/consultations](http://www.fin.gov.on.ca/english/consultations), would provide for the suspension of registration in the circumstances described in section 7.2.

### Suspension of IDA approval

**7.3 (1)** If the IDA revokes or suspends a registered firm's membership, the firm's registration in the category of investment dealer is suspended.

**(2)** If the IDA revokes or suspends a registered individual's approval, the individual's registration in the category of investment dealer is suspended.

**(3)** This section does not apply in Ontario.

Note: In Ontario, proposed s. 30(1)2-3 of the *Securities Act* (Ontario), available at [www.fin.gov.on.ca/english/consultations](http://www.fin.gov.on.ca/english/consultations), would provide for the suspension of registration in the circumstances described in section 7.3.

### Suspension of MFDA approval

**7.4 (1)** If the MFDA revokes or suspends a registered firm's membership, the firm's registration in the category of mutual fund dealer is suspended.

**(2)** If the MFDA revokes or suspends a registered individual's approval, the individual's registration in the category of mutual fund dealer is suspended.

**(3)** This section does not apply in Québec or Ontario.

Note: In Ontario, proposed s. 30(1)2-3 of the *Securities Act* (Ontario), available at [www.fin.gov.on.ca/english/consultations](http://www.fin.gov.on.ca/english/consultations), would provide for the suspension of registration in the circumstances described in section 7.4.

### Failure to pay fees

**7.5 (1)** A registered firm is suspended on the 30th day after the date its annual fees were due if the firm has not paid its annual fees.

**(2)** In subsection (1), "annual fees" means

- (a)** in Alberta, the fee required under section 8 of Alta. Reg. 115/95 – Securities Regulation,
- (b)** in British Columbia, the fee required under section 22 of Securities Regulation B.C. Reg 196/97,
- (c)** in Québec, the fee required under section 271.5 of the Québec Securities Regulation, and
- (d)** in Saskatchewan, the annual registration fee required to be paid by a registrant under section 176 of The Securities Regulations (Saskatchewan).

**(3)** This section does not apply in Ontario.

Note: In Ontario, proposed s. 30(1)1 of the *Securities Act* (Ontario), available at [www.fin.gov.on.ca/english/consultations](http://www.fin.gov.on.ca/english/consultations), would provide for the suspension of registration for the failure to pay fees.

### Termination of employment, etc.

7.6 (1) If a registered individual ceases to have an employment, partnership or agency relationship with a registered firm, the individual's registration with the registered firm is suspended on the date the relationship ceased.

(2) This section does not apply in Ontario.

Note: In Ontario, proposed ss 30(3) and (4) of the *Securities Act* (Ontario), available at [www.fin.gov.on.ca/english/consultations](http://www.fin.gov.on.ca/english/consultations), would provide for the suspension of registration in the circumstances described in section 7.6.

### Revocation of registration

7.7 (1) If a registration has been suspended under this Part and it has not been reinstated, the registration is revoked on the second anniversary following the suspension.

(2) This section does not apply in Ontario.

Note: In Ontario, proposed s. 30(5) of the *Securities Act* (Ontario), available at [www.fin.gov.on.ca/english/consultations](http://www.fin.gov.on.ca/english/consultations), would provide for the revocation of registration in the circumstances described in section 7.7.

### Exception – hearing

7.8 (1) Despite 7.7 [*revocation of registration*], if a hearing concerning a suspended registrant is commenced under the Act, the registration remains suspended until a decision has been made by the regulator or the securities regulatory authority.

(2) This section does not apply in Ontario.

Note: In Ontario, proposed s. 30(6) of the *Securities Act* (Ontario), available at [www.fin.gov.on.ca/english/consultations](http://www.fin.gov.on.ca/english/consultations), would provide for the exception to a revocation of registration set out in section 7.8.

## PART 8 – EXEMPTIONS FROM REGISTRATION

### *Division 1: General*

#### Interpretation

8.1 (1) In this Division, each of the following terms has the same meaning ascribed to the term in section 1.1 of National Instrument 45-106 *Prospectus and Registration Exemptions*: “director”, “executive officer”, “person” and “subsidiary”.

(2) In this Division, an exemption from the dealer registration requirement is deemed to be an exemption from the underwriter registration requirement.

#### Investment fund distributing through dealer

8.2 The dealer registration requirement does not apply to an investment fund or the investment fund manager of the fund that distributes a security of the investment fund's own issue only through a registered dealer.

#### Issuer distributing through dealer

8.3 The dealer registration requirement does not apply to an issuer that is trading in securities for the purpose of distributing a security of its own issue for its own account if the trading is done only through a registered dealer.

#### Investment fund reinvestment

8.4 (1) Subject to subsections (3), (4) and (5), the dealer registration requirement does not apply to an investment fund or the investment fund manager of the fund trading in a security with a security holder of the investment fund if the trade is permitted by a plan of the investment fund and is in a security of the investment fund's own issue if

- (a) a dividend or distribution out of earnings, surplus, capital or other sources payable in respect of the investments fund's securities are applied to the purchase of the security that is of the same class or series as the securities to which the dividends or distributions out of earnings, surplus, capital or other sources are attributable, or

- (b) subject to subsection (2), the security holder makes an optional cash payment to purchase the security of the investment fund that is of the same class or series of securities described in paragraph (a) that trade on a marketplace.

(2) The aggregate number of securities issued under the optional cash payment referred to in paragraph (1)(b) must not exceed, in any fiscal year of the investment fund during which the trade takes place, two per cent of the issued and outstanding securities of the class to which the plan relates as at the beginning of the fiscal year.

(3) A plan that permits a trade described in subsection (1) must be available to every security holder in Canada to which the dividend or distribution is out of earnings, surplus, capital or other sources available.

(4) No sales charge is payable on a trade described in subsection (1).

(5) The most recent prospectus of the investment fund, if any, must set out

- (a) details of any deferred or contingent sales charge or redemption fee that is payable at the time of the redemption of the security,
- (b) any right that the security holder has to make an election to receive cash instead of securities on the payment of a dividend or making of a distribution by the investment fund, and
- (c) instructions on how the right referred to in paragraph (b) can be exercised.

#### **Additional investment in investment funds**

**8.5** The dealer registration requirement does not apply to an investment fund or the investment fund manager of the fund in respect of a trade in a security of the investment fund's own issue with a security holder of the investment fund if

- (a) the security holder initially acquired securities of the investment fund as principal for an acquisition cost of not less than \$150,000 paid in cash at the time of the trade,
- (b) the trade is for a security of the same class or series as the securities initially acquired, as described in paragraph (a), and
- (c) the security holder, as at the date of the trade, holds securities of the investment fund that have
  - (i) an acquisition cost of not less than \$150,000, or
  - (ii) a net asset value of not less than \$150,000.

#### **Private investment fund – loan and trust pools**

**8.6 (1)** The dealer registration requirement does not apply in respect of a trade in a security of an investment fund if the investment fund

- (a) is administered by a trust company or trust corporation that is registered or authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada,
- (b) has no promoter or manager other than the trust company or trust corporation referred to in paragraph (a), and
- (c) co-mingles the money of different estates and trusts for the purpose of facilitating investment.

(2) Despite subsection (1), a trust company or trust corporation registered under the laws of Prince Edward Island that is not registered under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in another jurisdiction of Canada is not a trust company or trust corporation for the purpose of paragraph (1)(a).

(3) The investment fund manager registration requirement does not apply to a trust company or trust corporation that administers an investment fund referred to in subsection (1).

### Private investment club – investment fund manager exemption

**8.7** The investment fund manager registration requirement does not apply to a person or company that directs the business, operations or affairs of an investment fund if the investment fund

- (a) has no more than 50 beneficial security holders,
- (b) does not seek and has never sought to borrow money from the public,
- (c) does not and has never distributed its securities to the public,
- (d) does not pay or give any remuneration for investment advice or in respect of trades in securities, except normal brokerage fees, and
- (e) for the purpose of financing the operations of the investment fund, requires holders to make contributions in proportion to the value of the securities held by them.

### Mortgages

**8.8 (1)** In this section, “syndicated mortgage” means a mortgage in which two or more persons participate, directly or indirectly, as lenders in the debt obligation that is secured by the mortgage.

**(2)** Subject to subsection (3), the dealer registration requirement does not apply in respect of a trade in a mortgage on real property in a jurisdiction of Canada by a person who is registered or licensed, or exempted from registration or licensing, under mortgage brokerage or mortgage dealer legislation of that jurisdiction.

**(3)** In Alberta, British Columbia, Manitoba, Québec and Saskatchewan, subsection (2) does not apply in respect of a trade in a syndicated mortgage.

**(4)** This section does not apply in Ontario.

Note: In Ontario, proposed para. 5 of s. 35 of the *Securities Act* (Ontario), available at [www.fin.gov.on.ca/english/consultations](http://www.fin.gov.on.ca/english/consultations), would provide the exemption from the dealer registration requirement set out in section 8.8.

### Personal Property Security legislation

**8.9 (1)** The dealer registration requirement does not apply in respect of a trade in a security evidencing indebtedness secured by or under a security agreement, secured in accordance with personal property security legislation of a jurisdiction of Canada that provides for the granting of security in personal property.

**(2)** This section does not apply in Ontario.

Note: In Ontario, proposed para. 4 of s. 35 of the *Securities Act* (Ontario), available at [www.fin.gov.on.ca/english/consultations](http://www.fin.gov.on.ca/english/consultations), would provide the exemption from the dealer registration requirement set out in section 8.9.

### Variable insurance contract

**8.10 (1)** In this section,

“contract”, “group insurance”, “insurance company”, “life insurance” and “policy” have the respective meanings assigned to them in the legislation for a jurisdiction referenced in Appendix A of National Instrument 45-106 *Prospectus and Registration Exemptions*; and

“variable insurance contract” means a contract of life insurance under which the interest of the purchaser is valued for purposes of conversion or surrender by reference to the value of a proportionate interest in a specified portfolio of assets.

**(2)** The dealer registration requirement does not apply in respect of a trade in a variable insurance contract by an insurance company if the variable insurance contract is

- (a) a contract of group insurance,

- (b) a whole life insurance contract providing for the payment at maturity of an amount not less than 75 per cent of the premium paid up to age 75 years for a benefit payable at maturity,
- (c) an arrangement for the investment of policy dividends and policy proceeds in a separate and distinct fund to which contributions are made only from policy dividends and policy proceeds, or
- (d) a variable life annuity.

### Schedule III banks and cooperative associations – evidence of deposit

**8.11 (1)** The dealer registration requirement does not apply in respect of a trade in an evidence of deposit issued by a Schedule III bank or an association governed by the *Cooperative Credit Associations Act* (Canada).

**(2)** This section does not apply in Ontario.

Note: In Ontario, proposed clause (e) of the definition of “security” in s. 1(1) of the *Securities Act* (Ontario), available at [www.fin.gov.on.ca/english/consultations](http://www.fin.gov.on.ca/english/consultations), would provide the exemption from the dealer registration requirement set out in section 8.11.

### Plan administrators

**8.12 (1)** The dealer registration requirement does not apply in respect of a trade of a security of an issuer by a trustee, custodian, or administrator acting on behalf of, or for the benefit of employees, executive officers, directors or consultants of the issuer or of a related entity of the issuer with

- (a) the issuer,
- (b) a current or former employee, executive officer, director or consultant of the issuer or a related entity of the issuer,
- (c) a permitted assign of a person referred to in paragraph (b),

if the trade is pursuant to a plan of the issuer and the security is obtained directly from the issuer or from a current or former employee, executive officer, director or consultant of the issuer or of a related entity of the issuer or through a registered dealer.

**(2)** In this section,

“consultant” has the same meaning as in section 2.22 of National Instrument 45-106 *Prospectus and Registration Exemptions*;

“permitted assign” has the same meaning as in section 2.22 of National Instrument 45-106 *Prospectus and Registration Exemptions*;

“plan” means a plan or program established or maintained by an issuer providing for the acquisition of securities of the issuer by employees, executive officers, directors or consultants of the issuer or of a related entity of the issuer; and

“related entity” has the same meaning as in section 2.22 of National Instrument 45-106 *Prospectus and Registration Exemptions*.

### Reinvestment plan

**8.13 (1)** Subject to subsections (3), (4) and (5), the dealer registration requirement does not apply in respect of the following trades by an issuer, or by a trustee, custodian or administrator acting for or on behalf of the issuer, to a security holder of the issuer if the trades are permitted by a plan of the issuer:

- (a) a trade in a security of the issuer’s own issue if a dividend or distribution out of earnings, surplus, capital or other sources payable in respect of the issuer’s securities is applied to the purchase of the security, and
- (b) subject to subsection (2), a trade in a security of the issuer’s own issue if the security holder makes an optional cash payment to purchase the security of the issuer that trades on a marketplace.

(2) The aggregate number of securities issued under the optional cash payment referred to in subsection (1)(b) must not exceed, in any financial year of the issuer during which the trade takes place, 2% of the issued and outstanding securities of the class to which the plan relates as at the beginning of the financial year.

(3) A plan that permits the trades described in subsection (1) must be available to every security holder in Canada to which the dividend or distribution out of earnings, surplus, capital or other sources is available.

(4) This section does not apply to a trade in a security of an investment fund.

(5) Subject to section 8.4.1 [*transition – reinvestment plan*] of National Instrument 45-106, if the security traded under a plan described in subsection (1) is of a different class or series than the security to which the dividend or distribution is attributable, the issuer or the trustee, custodian or administrator must have provided to each participant that is eligible to receive a security under the plan either a description of the material attributes and characteristics of the security traded under the plan or notice of a source from which the participant can obtain the information without charge.

### Advising generally

**8.14 (1)** The adviser registration requirement does not apply to a person or company that engages in, or holds himself, herself or itself out as engaging in, the business of advising others, either through direct advice or through publications or other media, as to the investing in or the buying or selling of securities, including classes of securities and the securities of a class of issuers, not purporting to be tailored to the needs of the person or company receiving the advice.

(2) If a person or company that is exempt from the adviser registration requirement by reason of subsection (1) recommends buying, selling or holding a specified security, a class of securities or the securities of a class of issuers in which any of the following has a financial or other interest, the adviser must disclose the interest concurrently with providing the advice:

- (a) the adviser;
- (b) any partner, director or officer of the adviser;
- (c) any person or company that would be an insider of the adviser if the adviser were a reporting issuer.

(3) For the purpose of subsection (2), “financial or other interest” includes

- (a) ownership, beneficial or otherwise, in the security or in another security issued by the same issuer,
- (b) an option in the security, including the terms of the option,
- (c) a commission or other compensation received, or expected to be received, from any person or company in connection with a trade in the security,
- (d) a financial arrangement regarding the security with any person or company, and
- (e) a financial arrangement with any underwriter or other person or company who has any interest in the securities.

(4) This section does not apply in Ontario.

Note: In Ontario, proposed ss 34(1)1 and 34(2)-(3) of the *Securities Act* (Ontario), available at [www.fin.gov.on.ca/english/consultations](http://www.fin.gov.on.ca/english/consultations), would provide the exemption from the adviser registration requirement set out in section 8.14.

### International dealer

**8.15 (1)** In this section

“debt security” has the same meaning as in section 1.1 of National Instrument 45-106 *Prospectus and Registration Exemptions*;

“foreign security” means

- (a) a security issued by an issuer incorporated, formed or created under the laws of a jurisdiction other than Canada or any province or territory of Canada, and

- (b) a security issued by a country other than Canada or by any political division of the country;

“international dealer” means a dealer that is registered under the securities legislation of the foreign jurisdiction in which its head office or principal place of business is located in a category of registration that permits the dealer to carry on the activities in that jurisdiction that registration as a dealer would permit the dealer to carry on in the local jurisdiction.

- (2) Subject to subsection (3), the registration requirement does not apply to an international dealer
- (a) carrying on those activities, other than sales of securities, that are reasonably necessary to facilitate a distribution of securities that are offered primarily abroad,
  - (b) trading in debt securities with a permitted client in the course of a distribution, where the debt securities are offered primarily abroad and a prospectus has not been filed with a Canadian securities regulatory authority for the distribution,
  - (c) trading in a debt security that is a foreign security with a permitted client, other than in the course of the distribution by which the foreign debt security was issued,
  - (d) trading in foreign securities with a permitted client, except in the course of a distribution for which a prospectus has been filed with a Canadian securities regulatory authority,
  - (e) trading in foreign securities with an investment dealer, or
  - (f) trading in any securities with an investment dealer that is acting as principal

if the international dealer is acting as principal or as agent for the issuer of the securities, for another permitted client, or for a person that is not a resident of Canada.

(3) An international dealer may not rely on subsection (2) unless it has delivered to the securities regulatory authority an executed Form 35-101F1 *Submission to Jurisdiction and Appointment of Agent for Service*.

- (4) An international dealer may not rely on subsection (2) to trade with a permitted unless it first notifies the client,
- (i) that it is not registered in Canada,
  - (ii) of the international dealer’s jurisdiction of residence,
  - (iii) of the name and address of the agent for service of process of the international dealer in the local jurisdiction, and
  - (iv) that there may be difficulty enforcing legal rights against the international dealer because it is resident outside Canada and all or substantially all of its assets are situated outside Canada.

(5) For the purpose of subsection (4), “permitted client” excludes a person or company referred to in paragraph (d) of the definition of permitted client in section 1.1.

- (6) The definition of “international dealer” does not apply in Ontario.

Note: In Ontario, proposed s. 1(1) of the *Securities Act* (Ontario), available at [www.fin.gov.on.ca/english/consultations](http://www.fin.gov.on.ca/english/consultations), would provide a definition for “international dealer”.

### International adviser

8.16 (1) In this section

“international adviser” means an adviser that

- (a) has its head office or principal place of business in a foreign jurisdiction,
- (b) is registered, or operates under an exemption from registration, under the securities legislation of the foreign jurisdiction in which its head office or principal place of business is located in a category of

registration that permits it to carry on the activities in that jurisdiction that a registered adviser is permitted to carry on in the local jurisdiction, and

- (c) engages in the business of an adviser in the foreign jurisdiction in which its head office or principal place of business is located.

(2) The adviser registration requirement does not apply to an international adviser that is acting as an adviser for a permitted client if

- (a) it delivers to the securities regulatory authority, before relying on this subsection, an executed Form 31-103F2 *Submission to Jurisdiction and Appointment of Agent for Service*,
- (b) it notifies the client, before advising the client,
  - (i) that it is not registered in Canada,
  - (ii) of the international adviser's jurisdiction of residence,
  - (iii) of the name and address of the agent for service of process of the international adviser in the local jurisdiction, and
  - (iv) that there may be difficulty enforcing legal rights against the international adviser because it is resident outside Canada and all or substantially all of its assets are situated outside Canada,
- (c) it does not advise clients in Canada with respect to securities of Canadian issuers, unless providing advice on securities of a Canadian issuer is incidental to providing advice on securities of a foreign issuer, and
- (d) during its most recent fiscal year, not more than ten per cent of the aggregate consolidated gross revenue of the international adviser, its affiliates and its affiliated partnerships is derived from the portfolio management activities of the international adviser, its affiliates and its affiliated partnerships in Canada.

(3) The definition of "international adviser" does not apply in Ontario.

Note: In Ontario, proposed s. 1(1) of the *Securities Act* (Ontario), available at [www.fin.gov.on.ca/english/consultations](http://www.fin.gov.on.ca/english/consultations), would provide a definition for "international adviser".

### Sub-advisers

8.17 The adviser registration requirement does not apply to a person or company, not ordinarily resident in the jurisdiction, in connection with that person or company acting as an adviser for a registered adviser, or for a dealer acting as a portfolio manager as permitted by section 2.5 [*exemption from adviser registration for IDA members with discretionary authority*], if

- (a) the obligations and duties of the person or company so acting as an adviser are set out in a written agreement with the registrant,
- (b) the registrant contractually agrees with its clients on whose behalf investment advice is or portfolio management services are to be provided to be responsible for any loss that arises out of the failure of the person or company so acting as an adviser
  - (i) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the registrant and each client of the registrant for whose benefit the advice is or portfolio management services are to be provided, or
  - (ii) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances,
- (c) the registrant cannot be relieved by its clients from its responsibility for loss under paragraph (b),
- (d) the person or company so acting as an adviser, if a resident of a jurisdiction, is registered as an adviser in the jurisdiction,



- (e) the person or company so acting as an adviser has no direct contact with the registrant's clients unless the registrant is present, and
- (f) in Manitoba, the person or company so acting as an adviser is not registered in any jurisdiction of Canada.

#### Self-directed registered educational savings plans

**8.18** The dealer registration requirement does not apply to a trade in a self-directed RESP to a subscriber if

- (a) the trade is made by
  - (i) a mutual fund dealer or a person who is registered as a dealing representative of a mutual fund dealer and who is acting on behalf of the mutual fund dealer, or
  - (ii) a Canadian financial institution or, in Ontario, a financial intermediary or a person who is an officer, salesperson or employee of a Canadian financial institution or, in Ontario, a financial intermediary and who is acting on behalf of the Canadian financial institution or, in Ontario, the financial intermediary, and
- (b) the self-directed RESP restricts its investments in securities to securities in which the person or company who traded the self-directed RESP is permitted to trade.

#### Specified debt

**8.19 (1)** In this section, "permitted supranational agency" means

- (a) the African Development Bank, established by the Agreement Establishing the African Development Bank which came into force on September 10, 1964, that Canada became a member of on December 30, 1982;
- (b) the Asian Development Bank, established under a resolution adopted by the United Nations Economic and Social Commission for Asia and the Pacific in 1965;
- (c) the Caribbean Development Bank, established by the Agreement Establishing the Caribbean Development Bank which came into force on January 26, 1970, as amended, that Canada is a founding member of;
- (d) the European Bank for Reconstruction and Development, established by the Agreement Establishing the European Bank for Reconstruction and Development and approved by the *European Bank for Reconstruction and Development Agreement Act (Canada)*, that Canada is a founding member of;
- (e) the Inter-American Development Bank, established by the Agreement establishing the Inter-American Development Bank which became effective December 30, 1959, as amended from time to time, that Canada is a member of;
- (f) the International Bank for Reconstruction and Development, established by the Agreement for an International Bank for Reconstruction and Development approved by the *Bretton Woods and Related Agreements Act (Canada)*; and
- (g) the International Finance Corporation, established by Articles of Agreement approved by the *Bretton Woods and Related Agreements Act (Canada)*.

**(2)** The dealer registration requirement does not apply to a trade of a debt security

- (a) of or guaranteed by the Government of Canada or the government of a jurisdiction of Canada,
- (b) of or guaranteed by a government of a foreign jurisdiction if the debt security has an approved credit rating from an approved credit rating organization,
- (c) of or guaranteed by any municipal corporation in Canada, or secured by or payable out of rates or taxes levied under the law of a jurisdiction of Canada on property in the jurisdiction and to be collected by or through the municipality in which the property is situated,

- (d) of or guaranteed by a Canadian financial institution or a Schedule III bank, other than debt securities that are subordinate in right of payment to deposits held by the issuer or guarantor of those debt securities,
- (e) of the Comité de gestion de la taxe scolaire de l'île de Montréal, or
- (f) of or guaranteed by a permitted supranational agency if the debt securities are payable in the currency of Canada or the United States of America.

(3) Paragraphs (2)(a) and (c) do not apply in Ontario.

Note: In Ontario, proposed para. 1 and 2 of s. 35 of the *Securities Act* (Ontario), available at [www.fin.gov.on.ca/english/consultations](http://www.fin.gov.on.ca/english/consultations), would provide the exemption from the dealer registration requirement set out in paragraphs (2)(a) and (c) of section 8.19.

### ***Division 2: Mobility exemptions***

#### **Definitions – mobility exemptions**

**8.20** In this Division,

“eligible client” means, for a person or company, a client of the person or company if the client

- (a) is an individual and was a client of the person or company immediately before the client became a resident of the local jurisdiction, or
- (b) is a spouse or child of a client referred to in paragraph (a);

“NI 31-101” means National Instrument 31-101 *National Registration System*;

“non-principal jurisdiction” means, for a person or company, each jurisdiction of Canada that is not the principal jurisdiction of the person or company;

“principal jurisdiction” means, for a person or company, the jurisdiction of the principal regulator;

“principal regulator” means

- (a) for a person or company other than an individual, the securities regulatory authority or the regulator in the jurisdiction of Canada in which the person or company’s head office is located, and
- (b) for an individual, the securities regulatory authority or the regulator in the jurisdiction of Canada in which the individual’s working office is located; and

“working office” has the same meaning as in NI 31-101.

#### **Notice to non-principal regulator**

**8.21 (1)** As soon as practicable after relying on an exemption under section 8.23 [*mobility exemption – registered firm*] or section 8.24 [*mobility exemption – registered individual*], the person or company must file a completed Form 31-103F3.

**(2)** Subsection (1) does not apply if the person or company is required to file Form 31-101F1 or Form 31-101F2 under NI 31-101.

#### **Notice of change of principal regulator**

**8.22 (1)** A person or company relying on section 8.23 [*mobility exemption – registered firm*] or section 8.24 [*mobility exemption – registered individual*] must file a completed Form 31-103F3, as soon as practicable, if

- (a) for a person or company, other than an individual, the person or company changes its head office to another principal jurisdiction, or
- (b) for an individual, the location of the individual’s working office changes to another principal jurisdiction.

(2) Subsection (1) does not apply if a person or company is required to file Form 31-101F2 under NI 31-101.

**Mobility exemption – registered firm**

**8.23** If the local jurisdiction is a non-principal jurisdiction, the registration requirement does not apply to a person or company if the person or company

- (a) is registered as a dealer or adviser in its principal jurisdiction,
- (b) is trading or advising in securities with an eligible client,
- (c) does not trade or advise in securities in the local jurisdiction other than as it is permitted to in its principal jurisdiction according to its category of registration,
- (d) has 10 or fewer eligible clients in the local jurisdiction, and
- (e) complies with section 8.25 [*mobility exemption conditions*].

**Mobility exemption – registered individual**

**8.24** If the local jurisdiction is a non-principal jurisdiction, the registration requirement does not apply to an individual if

- (a) the individual is registered in his or her principal jurisdiction as a dealing, advising or associate advising representative,
- (b) the individual's registered firm is registered in its principal jurisdiction,
- (c) the individual is trading or advising in securities with an eligible client,
- (d) the individual does not trade or advise in securities in the local jurisdiction other than as it is permitted to in its principal jurisdiction according to its category of registration,
- (e) in the local jurisdiction, the individual trades or advises in securities for no more than five eligible clients, and
- (f) the individual complies with section 8.25 [*mobility exemption conditions*].

**Mobility exemption conditions**

**8.25** For the purposes of paragraphs 8.23(e) and 8.24(f) the person or company must

- (a) disclose to an eligible client, before it relies on an exemption in section 8.23 [*mobility exemption – registered firm*] or 8.24 [*mobility exemption – registered individual*], that the person or company
  - (i) is exempt from registration in the local jurisdiction, and
  - (ii) is not subject to requirements otherwise applicable under local securities legislation, and
- (b) act fairly, honestly and in good faith in the course of its dealings with an eligible client.

**PART 9 – EXEMPTION**

**Exemption**

**9.1 (1)** The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

**(2)** Despite subsection (1), in Ontario only the regulator may grant such an exemption.

**(3)** Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

## PART 10 – TRANSITION

### Change of registration categories – firms

- 10.1** On the date this Instrument comes into force, a person or company registered in a category referred to in
- (a) column 1 of Appendix C [*new category names – firms*], opposite the name of the local jurisdiction, is deemed to be registered as an investment dealer,
  - (b) column 2 of Appendix C [*new category names – firms*], opposite the name of the local jurisdiction, is deemed to be registered as a mutual fund dealer,
  - (c) column 3 of Appendix C [*new category names – firms*], opposite the name of the local jurisdiction, is deemed to be registered as a scholarship plan dealer,
  - (d) column 4 of Appendix C [*new category names – firms*], opposite the name of the local jurisdiction, is deemed to be registered as a restricted dealer,
  - (e) column 5 of Appendix C [*new category names – firms*], opposite the name of the local jurisdiction, is deemed to be registered as a portfolio manager, and
  - (f) column 6 of Appendix C [*new category names – firms*], opposite the name of the local jurisdiction, is deemed to be registered as a restricted portfolio manager.
- (2) In Newfoundland and Labrador, a person or company registered as a limited market dealer or an international dealer on the date this Instrument comes into force is deemed to be registered as an exempt market dealer.

### Change of registration categories – individuals

- 10.2** On the date this Instrument comes into force, an individual registered in a category referred to in
- (a) column 1 of Appendix D [*new category names – individuals*], opposite the name of the local jurisdiction, is deemed to be registered as a dealing representative,
  - (b) column 2 of Appendix D [*new category names – individuals*], opposite the name of the local jurisdiction, is deemed to be registered as an advising representative, and
  - (c) column 3 of Appendix D [*new category names – individuals*], opposite the name of the local jurisdiction, is deemed to be registered as an associate advising representative.

### Registration of investment fund managers

- 10.3** (1) The requirement to register as an investment fund manager does not apply to a person or company that is acting as an investment fund manager on the date this Instrument comes into force
- (a) until six months after this Instrument comes into force, or
  - (b) if the person or company applies for registration as an investment fund manager within six months of this Instrument coming into force, until the regulator has accepted or refused the registration.
- (2) Despite paragraph 4.18(2)(c) [*capital requirement*], for the purpose of calculating excess working capital, the minimum capital is \$50,000 for a registered dealer or registered adviser that is acting as an investment fund manager on the date this Instrument comes into force.
- (3) Subsection (2) expires six months after this Instrument comes into force.
- (4) Section 4.23 [*insurance – investment fund manager*] does not apply to a registered dealer or registered adviser that is acting as an investment fund manager on the date this Instrument comes into force.
- (5) Subsection (4) expires six months after this Instrument comes into force.

### Registration of exempt market dealers

**10.4 (1)** In this section, “a dealer in the exempt market” means

- (a) a dealer who trades in securities referred to in subparagraph 2.1(1)(d)(i) (A), (B) or (C), or
- (b) a person or company who acts as an underwriter in respect of a distribution of securities that may be made under an exemption from the prospectus requirement.

**(2)** Despite section 2.1 [*dealer and underwriter categories*], a person or company that is a registered firm on the date this Instrument comes into force and is a dealer in the exempt market on that date, is not required to register as an exempt market dealer

- (a) until six months after this Instrument comes into force, or
- (b) if the dealer applies for registration as an exempt market dealer within six months of this Instrument coming into force, until the regulator has accepted or refused the registration.

**(3)** Despite section 2.7 [*individual categories*], an individual who is a registered individual on the date this Instrument comes into force and is a dealer in the exempt market on that date, is not required to register as a dealing representative of an exempt market dealer

- (a) until six months after this Instrument comes into force, or
- (b) if the individual applies to be registered as a dealing representative of an exempt market dealer within six months of this Instrument coming into force, until the regulator has accepted or refused the registration.

**(4)** A person or company that is not registered under securities legislation and is a dealer in the exempt market on the date this Instrument comes into force, is exempt from the dealer registration requirement and the underwriter registration requirement

- (a) until six months after this Instrument comes into force, or
- (b) if the person or company applies for registration as an exempt market dealer, or a dealing representative of an exempt market dealer within six months of this Instrument coming into force, until the regulator has accepted or refused the registration.

**(5)** Despite section 4.16 [*grandfathered registrants*], an individual who is a dealer in the exempt market on the date this Instrument comes into force is exempt from section 4.9 [*exempt market dealer – dealing representative*] until 12 months after this Instrument comes into force.

### Registration of ultimate designated persons

**10.5** If a person or company is a registered firm on the date this Instrument comes into force, section 2.9 [*ultimate designated person*] does not apply to the firm

- (a) until one month after this Instrument comes into force, or
- (b) if an individual applies to be registered as the ultimate designated person of the firm within one month of this Instrument coming into force, until the regulator has accepted or refused the registration.

### Registration of chief compliance officers

**10.6 (1)** If a person or company is a registered firm on the date this Instrument comes into force, section 2.10 [*chief compliance officer*] does not apply to the firm

- (a) until one month after this Instrument comes into force, or
- (b) if an individual applies to be registered as the chief compliance officer of the firm within one month of this Instrument coming into force, until the regulator has accepted or refused the registration.

(2) If an individual applies, within one month of this Instrument coming into force, to be registered as the chief compliance officer of a person or company that is a registered firm on the date this Instrument comes into force, Division 1 [*proficiency requirements*] of Part 4 does not apply in respect of the individual.

(3) Despite subsection (2), if an individual applies, within six months of this Instrument coming into force, to be registered as the chief compliance officer of a person or company that is acting as an investment fund manager on the date this Instrument comes into force, section 4.15 [*investment fund manager – chief compliance officer*] does not apply in respect of the individual until 12 months after this Instrument comes into force.

(4) Despite subsection (2), if an individual applies, within six months of this Instrument coming into force, to be registered as the chief compliance officer of a person or company that is a dealer in the exempt market on the date this Instrument comes into force, section 4.10 [*exempt market dealer – chief compliance officer*] does not apply in respect of the individual until 12 months after this Instrument comes into force.

(5) In subsection (4), “a dealer in the exempt market” means

- (a) a dealer who trades in securities referred to in subparagraph 2.1(1)(d)(i) (A), (B) or (C), or
- (b) a person or company who acts as an underwriter in respect of a distribution of securities that may be made under an exemption from the prospectus requirement.

#### **Relationship disclosure information**

10.7 (1) Section 5.4 [*providing relationship disclosure information*] does not apply to a person or company that is a registrant on the date this Instrument comes into force.

(2) Subsection (1) expires 6 months after this Instrument comes into force.

#### **Complaint handling**

10.8 (1) In each jurisdiction of Canada except Québec, a person or company that is a registered firm on the date this Instrument comes into force is exempt from section 5.29 [*dispute resolution service*] and section 5.31 [*reporting to the securities regulatory authority*].

(2) Subsection (1) expires 6 months after this Instrument comes into force.

#### **Referral arrangements**

10.9 (1) Division 2 [*referral arrangements*] of Part 6 does not apply to a person or company that is a registrant on the date this Instrument comes into force.

(2) Subsection (1) expires 6 months after this Instrument comes into force.

#### **Capital requirements**

10.10 (1) A person or company that is a registered firm on the date this Instrument comes into force is exempt from sections 4.18 [*capital requirement*] to 4.20 [*subordination agreement – notice requirement*] if it complies with each provision listed in Appendix E [*non-harmonized capital requirements*] across from the name of the local jurisdiction.

(2) Subsection (1) expires 12 months after this Instrument comes into force.

#### **Insurance requirements**

10.11 (1) A person or company that is a registered firm on the date this Instrument comes into force is exempt from sections 4.21 [*insurance – dealer*] to 4.25 [*notice of change, claim or cancellation*] if it complies with each provision listed in Appendix F – [*non-harmonized insurance requirements*] across from the name of the local jurisdiction.

(2) Subsection (1) expires 6 months after this Instrument comes into force.

**PART 11 – EFFECTIVE DATE**

**Effective date**

**11.1** This instrument comes into force on [●].

## FORM 31-103F1 CALCULATION OF EXCESS WORKING CAPITAL

\_\_\_\_\_

Firm Name

Capital Calculation  
(as at \_\_\_\_\_ with comparative figures as at \_\_\_\_\_)

	Component	Current period	Prior period
1.	Current assets		
2.	Less current assets not readily convertible into cash (e.g., prepaid expenses)		
3.	Adjusted current assets Line 1 minus line 2 =		
4.	Current liabilities		
5.	Add 100 per cent of long-term related party debt unless the firm and the lender have executed a subordination agreement in the form set out in Appendix B and the firm has delivered a copy of the agreement to the regulator		
6.	Adjusted current liabilities Line 4 plus line 5 =		
7.	Adjusted working capital Line 3 minus line 6 =		
8.	Less minimum capital		
9.	Less market risk		
10.	Less any deductible under the firm's bonding or insurance policy		
11.	Less Guarantees		
12.	Less unresolved differences		
13.	<b>Excess working capital</b>		

**Notes:**

This form must be prepared on an unconsolidated basis.

**Line 8. Minimum Capital** – The amount on this line must be not less than (a) \$25,000 for an adviser, (b) \$50,000 for a dealer, and (c) \$100,000 for an investment fund manager.

**Line 9. Market Risk** – The amount on this line must be calculated according to the instructions set out in Schedule 1 to this Form.

**Line 11. Guarantees** – If the registered firm is guaranteeing the liability of another party, the total amount of the guarantee must be included in the capital calculation.

**Line 12. Unresolved differences** – Any unresolved differences that could result in a loss from either firm or client assets must be included in the capital calculation.

The examples below are intended to provide guidance as to how to calculate unresolved differences:

(i) If there is an unresolved difference relating to client securities, the amount to be reported on Line 12 will be equal to the market value of the client securities that are short, plus the applicable margin rate for those securities.

(ii) If there is an unresolved difference relating to the registrant's investments, the amount to be reported on Line 12 will be equal to the market value of the investments (securities) that are short.



(iii) If there is an unresolved difference relating to cash, the amount to be reported on Line 12 will be equal to the amount of the shortfall in cash.

**Management Certification**

**Registered Firm Name:** \_\_\_\_\_

We have examined the attached capital calculation and certify that the firm is in compliance with the capital requirements as at \_\_\_\_\_.

<b>Name and Title</b>	<b>Signature</b>	<b>Date</b>
1. _____ _____	_____	_____
2. _____ _____	_____	_____

**Schedule 1 of Form 31-103F1 Calculation of excess working capital  
(calculating line 9 [market risk])**

1. All securities are to be valued at market as of the reporting date. The margin rates to be used are those outlined below:

**(a) Bonds, Debentures, Treasury Bills and Notes**

(i) Bonds, debentures, treasury bills and other securities of or guaranteed by the Government of Canada, of the United Kingdom, of the United States of America or guaranteed by any province of Canada:

within 1 year	1% of market value multiplied by the fraction determined by dividing the number of days to maturity by 365
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over 1 year	5% of market value
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(ii) All other bonds, debentures and notes:

within 1 year	3% of market value multiplied by the fraction determined by dividing the number of days to maturity by 365
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over 1 year	10% of market value
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**(b) Bank Paper**

Deposit certificates, promissory notes or debentures issued by a Canadian chartered bank (and of Canadian chartered bank acceptances) maturing:

within 1 year	2% of market value multiplied by the fraction determined by dividing the number of days to maturity by 365
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over 1 year	10% of market value
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**(c) Mutual Funds**

Securities of mutual funds qualified by prospectus for sale in any province of Canada must be margined at the following rates:

Money Market Funds (as defined in National Instrument 81-102) – 5% of market value.

All Other Mutual Funds – 50% of market value.

**(d) Stocks**

On securities (other than bonds and debentures) including rights and warrants listed on any recognized stock exchange in Canada or the United States:

Long Positions – Margin Required

Securities selling at \$2.00 or more – 50% of market value

Securities selling at \$1.75 to \$1.99 – 60% of market value

Securities selling at \$1.50 to \$1.74 – 80% of market value

Securities selling under \$1.50 to 100% of market value

Short Positions – Credit Required

Securities selling at \$2.00 or more – 150% of market value

Securities selling at \$1.50 to \$1.99 - \$3.00 per share

Securities selling at \$0.25 to \$1.49 – 200% of market value

Securities selling at less than \$0.25 – market value plus \$0.25 per shares

(e) **For all other securities** – 100% of market value.

**FORM 31-103F2**  
**SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE**

*(sections 8.15 [international dealer] and 8.16 [international adviser])*

1. Name of registered firm (the "Registered Firm"):
2. Jurisdiction of incorporation of the Registered Firm:
3. Name of agent for service of process (the "Agent for Service"):
4. Address for service of process on the Agent for Service:
5. The Registered Firm designates and appoints the Agent for Service at the address stated above as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal or other proceeding (a "Proceeding") arising out of or relating to or concerning the Registered Firm's activities in the local jurisdiction and irrevocably waives any right to raise as a defense in any such proceeding any alleged lack of jurisdiction to bring such Proceeding.
6. The Registered Firm irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial and administrative tribunals of the local jurisdiction and any administrative proceeding in the local jurisdiction, in any Proceeding arising out of or related to or concerning the Registered Firm's activities in the local jurisdiction.
7. Until six years after the Registered Firm ceases to be registered, the Registered Firm must file
  - a. a new Submission to Jurisdiction and Appointment of Agent for Service in this form no later than the 30<sup>th</sup> day before the date this Submission to Jurisdiction and Appointment of Agent for Service is terminated; and
  - b. an amended Submission to Jurisdiction and Appointment of Agent for Service no later than the 30<sup>th</sup> day before any change in the name or above address of the Agent for Service.
8. This Submission to Jurisdiction and Appointment of Agent for Service is governed by and construed in accordance with the laws of the local jurisdiction.

Dated:

(Signature of Registered Firm or authorized signatory)

(Name and Title of authorized signatory)

**Acceptance**

The undersigned accepts the appointment as Agent for Service of (Insert name of Registered Firm) under the terms and conditions of the foregoing Submission to Jurisdiction and Appointment of Agent for Service.

Dated:

(Signature of Agent for Service or authorized signatory)

(Name and Title of authorized signatory)

**FORM 31-103F3  
NOTICE OF PRINCIPAL REGULATOR**

*(section 8.21 [notice to non-principal regulator] and  
section 8.22 [notice of change of principal regulator])*

1. **Date:** \_\_\_\_\_

2. **Information about person or company**

NRD # (if applicable): \_\_\_\_\_

Name: \_\_\_\_\_

3. **Principal regulator**

The securities regulatory authority or regulator in the following jurisdiction is the principal regulator for the person or company: \_\_\_\_\_

4. **Previous notice filed**

If the person or company has previously filed a Form 31-103F3, indicate the principal regulator noted in the previous notice: \_\_\_\_\_

5. **Reasons for principal regulator**

The principal regulator for the person or company is its principal regulator

(a) based on the location of its head office (for a registered firm) or working office (for a registered individual) (check box), or

(b) on the following basis provide details:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**APPENDIX A – BONDING AND INSURANCE CLAUSES**

*(section 4.21 [insurance – dealer], section 4.22 [insurance – adviser]  
and section 4.23[insurance – investment fund manager])*

Clause	Name of Clause	Details
A	Fidelity	This clause insures against any loss through dishonest or fraudulent act of employees.
B	On Premises	This clause insures against any loss of money and securities or other property through robbery, burglary, theft, hold-up, or other fraudulent means, mysterious disappearance, damage or destruction while within any of the insured's offices, the offices of any banking institution or clearing house or within any recognized place of safe-deposit.
C	In Transit	This clause insures against any loss of money and securities or other property through robbery, burglary, theft, hold-up, misplacement, mysterious disappearance, damage or destruction, while in transit in the custody of any employee or any person acting as messenger except while in the mail or with a carrier for hire other than an armoured motor vehicle company.
D	Forgery or Alterations	This clause insures against any loss through forgery or alteration of any cheques, drafts, promissory notes or other written orders or directions to pay sums in money, excluding securities.
E	Securities	This clause insures against any loss through having purchased or acquired, sold or delivered, or extended any credit or acted upon securities or other written instruments which prove to have been forged, counterfeited, raised or altered, or lost or stolen, or through having guaranteed in writing or witnessed any signatures upon any transfers, assignments or other documents or written instruments.

APPENDIX B – SUBORDINATION AGREEMENT

(Line 5 of Form 31-103F1 Calculation of excess working capital)

The subordination agreement made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

Between:

\_\_\_\_\_  
(hereinafter called the "Lender")

- and

\_\_\_\_\_  
(hereinafter called the "Registrant")

WHEREAS the Registrant is engaged in business as a \_\_\_\_\_ and such business is carried on in the City/Town of \_\_\_\_\_, Province of \_\_\_\_\_.

WHEREAS ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_ , the Registrant borrowed from the Lender a sum of \$ \_\_\_\_\_, repayable with interest at the rate of \_\_\_\_ per annum (hereinafter called the "loan"), the sum being needed for the carrying on of the business of the Registrant;

NOW THEREFORE, this agreement witnesses that, in consideration of \$1 paid by the parties to each other, receipt of this sum being acknowledged by each of the parties, the parties agree as follows:

1. The loan and all monies payable in respect thereof are hereby declared to be subordinate to, and the repayment of the loan, and all monies repayable in respect thereof, is hereby postponed to all claims of other present and future creditors of the Registrant, to the extent that all such creditors shall in the event of the dissolution, winding-up, liquidation, insolvency or bankruptcy of the Registrant be paid their existing claims in full in priority to the claims of the Lender and before the Lender shall have any claim upon any property belonging or which belonged to the Registrant or shall have any right to receive any payment in respect to the loan.
2. The Registrant must notify the Director of the Provincial Securities Commission prior to repayment of the loan or any part thereof. The Director may require further documentation after receiving this notification from the Registrant.
3. Interest can be paid at the agreed upon rate and time provided that the payment of such interest does not result in a capital deficiency.
4. During the term of this agreement, any loan or advance or posting of security for a loan or advance by the Registrant to the Lender, shall be deemed to be a payment on account of the loan which is the subject of this agreement.
5. In this agreement "Registrant" shall include every successor thereof and every successor to the Registrant or of any such successor or to any part of such business and every firm which contains the Registrant or any partner thereof.
6. This agreement shall be binding upon and to the benefit of the parties hereto and their respective legal representatives.
7. The agreement shall remain in full force and effect until it is terminated. This agreement may be only terminated by the Lender once notification pursuant to clause 2 of this agreement is received by the Director of the Provincial Securities Commission.

DATED AT \_\_\_\_\_, in the Province of \_\_\_\_\_,

the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

In the Presence of:

Name: \_\_\_\_\_

On behalf of: \_\_\_\_\_

(Lender)

Name: \_\_\_\_\_

On behalf of: \_\_\_\_\_

(Registrant)

Notes:

- (1) This form should be executed in triplicate with one duly executed copy to be delivered to the Provincial Securities Commission.
- (2) A breach of this subordination agreement will be considered by the Provincial Securities Commission sufficient cause for immediate suspension of registration.



## APPENDIX C – NEW CATEGORY NAMES - FIRMS

*(Section 10.1 [change of registration categories – firms])*

	Column 1 <i>[investment dealer]</i>	Column 2 <i>[mutual fund dealer]</i>	Column 3 <i>[scholarship plan dealer]</i>	Column 4 <i>[restricted dealer]</i>	Column 5 <i>[portfolio manager]</i>	Column 6 <i>[restricted portfolio manager]</i>
Alberta	investment dealer	mutual fund dealer	scholarship plan dealer	<i>[blank]</i>	investment counsel or portfolio manager	<i>[blank]</i>
British Columbia	investment dealer	mutual fund dealer	scholarship plan dealer	exchange contracts dealer, special limited dealer	investment counsel or portfolio manager	<i>[blank]</i>
Manitoba	investment dealer	mutual fund dealer	scholarship plan dealer	<i>[blank]</i>	investment counsel or portfolio manager	<i>[blank]</i>
New Brunswick	investment dealer	mutual fund dealer	scholarship plan dealer	<i>[blank]</i>	investment counsel and portfolio manager	<i>[blank]</i>
Newfoundland & Labrador	investment dealer	mutual fund dealer	scholarship plan dealer	<i>[blank]</i>	investment counsel or portfolio manager	<i>[blank]</i>
Nova Scotia	investment dealer	mutual fund dealer	scholarship plan dealer	<i>[blank]</i>	investment counsel or portfolio manager	<i>[blank]</i>
Ontario	investment dealer	mutual fund dealer	scholarship plan dealer	<i>[blank]</i>	investment counsel or portfolio manager	<i>[blank]</i>
Prince Edward Island	investment dealer	mutual fund dealer	scholarship plan dealer	<i>[blank]</i>	investment counsel or portfolio manager	<i>[blank]</i>
Québec	- unrestricted practice dealer - unrestricted practice dealer (introducing broker) -unrestricted practice dealer (International Financial Centre) -discount broker	firm in group-savings-plan brokerage	scholarship plan dealer	- Québec Business investment company (QBIC) Debt securities dealer - restricted practice Dealer - firm in investment contract brokerage -unrestricted practice dealer	- unrestricted practice adviser - unrestricted practice adviser (International Financial Centre)	- restricted practice advisor

	Column 1 <i>[investment dealer]</i>	Column 2 <i>[mutual fund dealer]</i>	Column 3 <i>[scholarship plan dealer]</i>	Column 4 <i>[restricted dealer]</i>	Column 5 <i>[portfolio manager]</i>	Column 6 <i>[restricted portfolio manager]</i>
				(Nasdaq)		
Saskatchewan	investment dealer	mutual fund dealer	scholarship plan dealer	<i>[blank]</i>	investment counsel or portfolio manager	<i>[blank]</i>
Northwest Territories	investment dealer	mutual fund dealer	scholarship plan dealer	<i>[blank]</i>	investment counsel or portfolio manager	<i>[blank]</i>
Nunavut	investment dealer	mutual fund dealer	scholarship plan dealer	<i>[blank]</i>	investment counsel or portfolio manager	<i>[blank]</i>
Yukon	broker	broker	scholarship plan dealer	<i>[blank]</i>	broker	<i>[blank]</i>

## APPENDIX D – NEW CATEGORY NAMES - INDIVIDUALS

*(Section 10.2 [change of registration categories – individuals])*

	Column 1 <i>[dealing representative]</i>	Column 2 <i>[advising representative]</i>	Column 3 <i>[associate advising representative]</i>
Alberta	Officer (Trading), Salesperson, Salesperson/Branch Manager	Officer (Advising), Advising Employee	Junior Officer (Advising)
British Columbia	Salesperson, trading partner, trading director, trading officer	Advising employee, advising partner, advising director, advising officer	
Manitoba			
New Brunswick	<ul style="list-style-type: none"> <li>- salesperson</li> <li>- officer (trading)</li> <li>- partner (trading)</li> </ul>	<ul style="list-style-type: none"> <li>- representative (advising)</li> <li>- officer (advising)</li> <li>- partner (advising)</li> <li>- sole proprietor (advising)*</li> </ul>	<ul style="list-style-type: none"> <li>- associate officer (advising)</li> <li>- associate partner (advising)</li> <li>- associate representative (advising)</li> </ul>
Newfoundland & Labrador			
Nova Scotia	<ul style="list-style-type: none"> <li>- salesperson</li> <li>- officer – trading</li> <li>- partner- trading</li> <li>- director - trading</li> </ul>	<ul style="list-style-type: none"> <li>- officer- advising</li> <li>- officer – counselling</li> <li>- partner- advising</li> <li>- partner- counselling</li> <li>- director- advising</li> <li>- director- counselling</li> </ul>	
Ontario	Salesperson, Officer (Trading), Partner (Trading), Sole Proprietor	Advising Representative, Officer (Advising), Partner (Advising), Sole Proprietor	
Prince Edward Island			
Québec	Representative, Representative - Group Savings Plan (SalesPerson), Representative - Scholarship Plan (SalesPerson)	Representative (Portfolio Manager), Representative (Advise), Representative Options, Representative Futures	
Saskatchewan	Officer (Trading), Partner (Trading), Salesperson	Officer (Advising), Partner (Advising), Employee (Advising)	
Northwest Territories			
Nunavut			
Yukon			

## APPENDIX E – NON-HARMONIZED CAPITAL REQUIREMENTS

*(Section 10.10 [capital requirements])*

Alberta	Sections 23 and 24 of the <i>Alberta Securities Commission Rules (General)</i>
British Columbia	Sections 19, 20, 24 and 25 of the <i>Securities Rules</i> . Sections 2.1(i), 2.3(i), 8.3, 9.4, 10.3, 12.3, 13.3, 14.4, 15.4 and 16.3 of BC Policy 31-601 <i>Registration Requirements</i> .
Manitoba	
New Brunswick	
Newfoundland & Labrador	
Nova Scotia	
Ontario	Sections 96, 97, 107, 108, 109, 111 of the Ontario Regulation 1015 made under the <i>Securities Act</i> , as those sections read on [date that is 1 day before their revocation].
Prince Edward Island	
Québec	Sections 207 to 209, 211 and 212 of the Québec Securities Regulation
Saskatchewan	Sections 19 and 24 of <i>The Securities Regulations (Saskatchewan)</i> as they read immediately prior to the implementation of this regulation
Northwest Territories	
Nunavut	
Yukon	

## APPENDIX F – NON-HARMONIZED INSURANCE REQUIREMENTS

*(Section 10.11 [insurance requirements])*

Alberta	Sections 25 and 26 of the <i>Alberta Securities Commission Rules (General)</i>
British Columbia	Sections 21 and 22 of the <i>Securities Rules</i> . Sections 2.1(h), 2.2(g), 2.3(h) and 2.5(h) of BC Policy 31-601 <i>Registration Requirements</i> .
Manitoba	
New Brunswick	
Newfoundland & Labrador	
Nova Scotia	
Ontario	Sections 96, 97, 107, 108, 109, 111 of the Ontario Regulation 1015 made under the <i>Securities Act</i> , as those sections read immediately before revocation.
Prince Edward Island	
Québec	Section 213 and 214 of the Québec Securities Regulation.
Saskatchewan	Section 33 of <i>The Securities Act, 1988</i> (Saskatchewan) as it read immediately prior to the implementation of this regulation. Sections 20, 21 and 22 of <i>The Securities Regulations</i> (Saskatchewan) as they read immediately prior to the implementation of this regulation.
Northwest Territories	
Nunavut	
Yukon	