

## CSA Notice and Request For Comment

### Proposed Amendments to

**National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations***

and to

**Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations***

**Reforms to Enhance the Client-Registrant Relationship (Client Focused Reforms)**

**June 21, 2018**

### Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing for a 120-day comment period proposed amendments (the **Proposed Amendments**) to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103** or the **Rule**) and Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**31-103CP** or the **Companion Policy**, together the **Instrument**). We are proposing amendments to the registrant conduct provisions in the Instrument in order to better align the interests of securities advisers, dealers and representatives (**registrants**) with the interests of their clients, to improve outcomes for clients, and to make clearer to clients the nature and the terms of their relationship with registrants. We are also proposing technical, non-substantive consistency changes to the Instrument.

This notice contains the following annexes:

- Annex A – Summary of comments on CSA Consultation Paper 33-404 *Proposals to Enhance the Obligations of Advisers, Dealers and Representatives Toward Their Clients* (**CP 33-404**) and responses
- Annex B – Proposed Amendments to NI 31-103
- Annex C – Blackline showing changes to 31-103CP under the Proposed Amendments

This notice will also be available on the following websites of CSA jurisdictions:

[www.lautorite.qc.ca](http://www.lautorite.qc.ca)  
[www.albertasecurities.com](http://www.albertasecurities.com)  
[www.bcsc.bc.ca](http://www.bcsc.bc.ca)  
[www.fcncb.ca](http://www.fcncb.ca)  
[nssc.novascotia.ca](http://nssc.novascotia.ca)  
[www.osc.gov.on.ca](http://www.osc.gov.on.ca)  
[www.fcaa.gov.sk.ca](http://www.fcaa.gov.sk.ca)  
[www.msc.gov.mb.ca](http://www.msc.gov.mb.ca)

## **Substance and purpose**

### ***Introduction – Client Focused Reforms***

The Proposed Amendments are part of the CSA's harmonized response to concerns we have identified relating to the client-registrant relationship as it stands today. After extensive consultations with stakeholders, we are proposing changes that we believe will achieve our stated goals of better aligning the interests of registrants with the interests of their clients, improving outcomes for clients, and making clearer to clients the nature and the terms of their relationships with registrants.

The CSA, the Investment Industry Regulatory Organization of Canada (**IIROC**) and the Mutual Fund Dealers Association of Canada (**MFDA**) (together referred to as the **SROs**) are committed to changes at the core of the Proposed Amendments which would require registrants to promote the best interests of clients and put clients' interests first. This is a fundamental change that focuses on the client's interests in the client-registrant relationship.

Under the Proposed Amendments, registrants will be required to:

- address conflicts of interest in the best interest of the client,
- put the client's interest first when making a suitability determination, and
- do more to clarify for clients what they should expect from their registrants.

The Proposed Amendments and the investor protection concerns that they seek to address are discussed in more detail below.

In preparing the Proposed Amendments, we have taken comments from the consultations into consideration. We have sought to make the Proposed Amendments scalable to fit registrants' different operating models, and to preserve the technology-neutral stance of the Instrument. Additional harmonized reforms that the CSA intends to develop at a later stage are discussed below.

The CSA have consulted with the SROs in developing the Proposed Amendments. We encourage all SRO members to provide their comments on the Proposed Amendments. It is our intention that our final amendments will be incorporated into SRO member rules and guidance; therefore, comments from all registrant categories will be beneficial to the rule development process.

### ***Overarching regulatory best interest standard***

The Ontario Securities Commission (**OSC**) and the Financial and Consumer Services Commission of New Brunswick (**FCNB**) carried out extensive consultations with stakeholders and the SROs regarding the adoption of an overarching regulatory best interest standard as proposed in CP 33-404. They are not proposing to adopt an overarching standard at this time.

The OSC and FCNB have worked with the CSA to develop a harmonized approach that infuses the client's best interest into the conflicts of interest and suitability reforms. This approach addresses the specific concerns they had in these areas and ensures the interests of the client are paramount.

Additionally, with this harmonized approach, they believe clients will immediately benefit from the reforms, and registrants will have certainty as to the fundamental regulatory obligations they owe to clients.

To the extent they do not see a change in behavior demonstrating that the Proposed Amendments achieve the outcomes they are seeking for investors, they will revisit this approach.

### ***Overview and scope of the Proposed Amendments***

We seek to enhance the client-registrant relationship by amending the following provisions in the Rule, supported with detailed guidance:

- know your client (**KYC**),
- know your product (**KYP**),
- suitability,
- conflicts of interest, and
- relationship disclosure information (**RDI**).

These provisions set out the fundamental obligations of registrants toward their clients and are essential to investor protection. They are designed to work together throughout the client-registrant relationship, as an extension of the duty of registrants to deal fairly, honestly and in good faith with their clients.

The Proposed Amendments relating to conflicts of interest and suitability include these critical provisions: registrants would have to address all existing and reasonably foreseeable conflicts of interest, including conflicts resulting from compensation arrangements and incentive practices, in the best interest of the client, and they would have to put the client's interest first when making suitability determinations.

The Proposed Amendments relating to KYC and KYP are designed to support these critical provisions. They are also intended to provide clarity about our expectations of what information

a registrant must collect about a client, and to increase rigour and transparency around the products and services that registrants make available to their clients. Additional enhancements to the suitability determination requirement would also include explicitly requiring registrants to consider certain factors, including costs and their impact, and to require these determinations to be made on a portfolio basis.

In addition to requiring that conflicts of interest be addressed in the best interest of the client, the Proposed Amendments relating to conflicts of interest also include restrictions on referral arrangements and strengthen the prohibitions on misleading marketing and advertising.

The Proposed Amendments relating to RDI provide for expanded disclosure about any restrictions on the products or services a registrant will make available to a client, including when the registrant uses proprietary products, and the impact on a client's investment returns that may result from such restrictions, as well as the potential impact of costs and charges. We are also proposing to introduce a new requirement to make key information publicly available so that potential clients are better able to choose a registrant that is likely to meet their expectations.

Finally, we propose corresponding changes to requirements and guidance concerning the training of representatives and maintenance of policies, procedures, controls and documentation to support the important role of registrants' internal compliance systems.

#### ***Other CSA consultations***

The CSA coordinated the policy considerations related to the key issues outlined in CP 33-404 and CSA Consultation Paper 81-408 *Consultation on the Option of Discontinuing Embedded Commissions*, published on January 10, 2017. As further outlined in [CSA Staff Notice 81-330](#) *Status Report on Consultation on Embedded Commissions and Next Steps* published today, we believe the Proposed Amendments relating to conflicts of interest will allow registrants flexibility in how they address the material conflict of interest presented by embedded commissions in a manner that is in the best interests of clients.

## **Background**

### ***Consultation Process***

NI 31-103 came into force on September 28, 2009 and introduced a harmonized, streamlined and modernized national registration regime. Since implementation, we have monitored the operation of the Instrument and have engaged in continuing dialogue with stakeholders with a view to further enhancing the regime.

The Proposed Amendments were developed after an extensive consultation process, beginning with the publication on October 25, 2012, of CSA Consultation Paper 33-403 *The Standard of Conduct for Advisers and Dealers: Exploring the Appropriateness of Introducing a Statutory Best Interest Duty When Advice is Provided to Retail Clients* (CP 33-403).

After publishing a status report<sup>1</sup> which indicated the key themes that emerged from the public comments on CP 33-403, we followed up with CP 33-404, published on April 28, 2016. CP 33-404 set out our key concerns with respect to the client-registrant relationship and invited comment on a number of potential reforms to address those concerns. CP 33-404 sought comment on proposed targeted reforms aimed at enhancing the obligations of registrants towards their clients, and a proposed overarching best interest standard that would serve as the principle that would govern the interpretation of all other client-related obligations. Both consultation papers were followed by in-person consultations in a variety of forums, as well as the publication of research on conflicts of interest relating to registrants' compensation arrangements and incentive practices.<sup>2</sup>

We published a status report on our findings in CSA Staff Notice 33-319 *Status Report on CSA Consultation Paper 33-404 Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives Toward Their Clients (SN 33-319)* on May 11, 2017, indicating that the CSA had identified certain reform areas that should be given higher priority. The Proposed Amendments were prioritized as they are fundamental to addressing the harms identified in CP 33-404.

We intend to develop and propose for comment additional reforms relating to some of the proposals discussed in CP 33-404. These are separate, longer-term projects, which will build on the comments we received on CP 33-404. We are not seeking comment on these potential reforms at this time. They include:

- reviewing proficiency standards,
- reviewing titles and designations, including the use of “advisor” to describe individuals who are not registered in a category of adviser,
- imposing a statutory fiduciary duty when a client grants discretionary authority in those jurisdictions which don't currently have this provision, and
- clarifying the role of ultimate designated persons and chief compliance officers.

### ***Response to Consultations***

The extensive consultation process, including several outreach sessions, has allowed us to gather critical information on investor needs and registrant practices and concerns. We have carefully considered this information in developing the Proposed Amendments, and have reviewed and, in some cases, narrowed our earlier proposals.

A summary of the comments we received on CP 33-404 and our responses to them are set out in Annex A. We thank all commenters for their helpful and detailed comments, and all participants in our outreach sessions and meetings.

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<sup>1</sup> CSA Staff Notice 33-316 – *Status Report on Consultation under CSA Consultation Paper 33-403: The Standard of Conduct for Advisers and Dealers: Exploring the Appropriateness of Introducing a Statutory Best Interest Duty When Advice is Provided to Retail Clients*, published December 17, 2013.

<sup>2</sup> CSA Staff Notice 33-318 *Review of Practices Firms Use to Compensate and Provide Incentives to their Representatives*, published in December 2016, provided the results of a survey conducted in 2014 to identify compensation arrangements and incentive practices that firms use to motivate their representatives' behavior that raise potential conflicts of interest. The SROs also published notices in December 2016 that raised similar concerns.

## Key Concerns

We have identified the following key investor protection concerns with respect to the client-registrant relationship, as discussed in more detail in CP 33-404:

- **Clients are not getting the value or returns they could reasonably expect from investing:** in their suitability analysis, some registrants fail to consider all of the factors relevant to helping clients meet their investing goals.
- **Expectations gap:** clients often have misplaced reliance on or trust in their registrants, which exacerbate the agency problem inherent in the client-registrant relationship and can result in sub-optimal investment decisions.
- **Conflicts of interest:** the application in practice of the current rules is, in many instances, less effective than intended in mitigating conflicts of interest.
- **Information asymmetry:** the current regulatory framework is, in many instances, less effective than intended in mitigating the consequences of the information and financial literacy asymmetry between clients and registrants.
- **Clients are not getting outcomes that the regulatory system is designed to give them:** this over-arching concern is to a large extent due to the combined effect of the concerns listed above.

Examples of the harms giving rise to these concerns include, among other things

- research that shows financial self-interest may inappropriately influence registrants' recommendations to clients,
- persistent findings in compliance reviews of inadequate KYC information collection, affecting registrants' capacity to make sound suitability determinations for clients, and
- the persistence of suitability as a leading source of client complaints.

## Summary of Proposed Amendments

### *Introduction*

As discussed above, the Proposed Amendments are client focused reforms that put the interest of the client before any other consideration relevant to the client registrant relationship. Throughout the Proposed Amendments, we also emphasize clarifying expectations for that relationship in order to address the expectations gap and information asymmetry concerns.

Some of the Proposed Amendments would impose new requirements, while others would codify best practices set out in existing CSA and SRO guidance. The combination of the codification of best practices and the introduction of new requirements will result in a new, higher standard of conduct for all registrants.

Unless otherwise noted, section references in the summary below are to provisions in the Instrument.

***KYC – section 13.2 [Know your client]***

The Proposed Amendments to the KYC requirements are our response to a primary area of concern in the industry and provide clarity on our expectations of what information a registrant must collect to ‘know a client’ and how frequently this information must be updated. These enhanced KYC requirements are intended to support the enhanced suitability determination requirement, which we propose to amend by requiring that registrants put the client’s interest first when determining suitability. This new requirement cannot be met without having complete and specific KYC information.

For example, we have noted that a proper assessment of a client’s risk profile is often lacking, owing to insufficient KYC. This in turn leads to unsuitable investment recommendations, which form the primary basis for complaints to Ombudsman for Banking Services and Investments services (**OBSI**) for the past several years.

The Proposed Amendments would thus clarify the content and scope of the KYC process by requiring the registrant to gather specific information on the client, such as the client’s personal circumstances, investment knowledge, risk profile and investment time horizon.

We propose to amend KYC requirements to require registrants to have a thorough understanding of their client, taking into consideration the nature of the specific client-registrant relationship. Registrants would be required to:

- gather sufficient information about the client to support an enhanced suitability determination obligation, and
- update KYC information at specified intervals

The Proposed Amendments would clarify the KYC requirements by means of the following changes:

- 13.2(2)(c) – explicitly sets out KYC information that must be collected by registrants in order for them to understand their clients well enough to meet their suitability determination obligations. The information required includes the client’s
  - personal circumstances
  - financial circumstances
  - investment needs and objectives
  - investment knowledge
  - risk profile
  - investment time horizon
- 13.2(3.1) – new subsection requiring registrants to take reasonable steps to obtain clients’ confirmation of the accuracy of their KYC information collected at account opening and when any significant change occurs

- 13.2(4.1) – new subsection specifying the circumstances when a client’s KYC information must be reviewed and updated, including
  - when the registrant knows or reasonably ought to know of a significant change in a client’s KYC information, and
  - in any event, at minimum intervals of
    - 12 months for managed accounts
    - 12 months prior to making a trade or recommendation for exempt market dealers
    - 36 months for other accounts

We propose significantly expanded guidance in 31-103CP with respect to our expectations for these requirements. This includes, among other things, discussions of

- our expectations with respect to the establishment of a client’s investment needs and objectives, taking into account the client’s financial goals, as well as the development of the client’s risk profile,
- the ways a registrant may tailor its KYC process to reflect its business model and the nature of its relationships with clients, and
- the collection of KYC information using technology.

***KYP – new section 13.2.1 [Know your product]***

There is currently no explicit Rule requirement concerning KYP, while the Companion Policy provides only limited principles-based guidance on our KYP expectations in the context of the proficiency and suitability requirements. We have determined that there should be an express KYP requirement in the Rule, as well as more detailed guidance in the Companion Policy, in order to codify our KYP expectations of firms and registrants as set out in previous CSA and SRO guidance. We have also determined that there should be greater detail in the Companion Policy to provide clarity on those expectations.

The Proposed Amendments to KYP are also intended to support an enhanced suitability determination requirement, as well as increase rigour and transparency around the securities and services that registrants make available to their clients.

Although we have not moved forward with certain of the KYP proposals from CP 33-404, several new elements have been added to registrants’ KYP obligations in the Proposed Amendments, such as a requirement that firms understand how securities that they make available to clients compare to similar securities available in the market and a requirement that firms maintain an offering of securities and services that is consistent with how they hold themselves out and market their services.

The Proposed Amendments would add a new section 13.2.1 *[Know your product]* to the Rule to impose explicit KYP requirements at both the registered firm and registered individual levels, including:

- 13.2.1(1) – obligations of a registered firm to



- take reasonable steps to understand the essential elements of the securities it makes available to clients, including how they compare with similar securities available in the market
  - approve the securities it will make available
  - monitor and reassess its approved securities
- 13.2.1(2) – principles-based requirement that a registered firm must maintain an offering of securities and services that is consistent with how it holds itself out
- 13.2.1(3) – obligations of registered individuals to take reasonable steps to
  - understand at a general level, the securities that are available for them to purchase, sell or recommend through their firm, and how those securities compare
  - thoroughly understand each specific security they purchase, sell or recommend to a client, including the impact of all of the costs associated with acquiring and holding the security
- 13.2.1(4) – registered individuals must only purchase or recommend securities approved by their firm
- 13.2.1(5) – registered firms must ensure that their registered individuals have the necessary information about each approved security
- 13.2.1(6),(7) – tailored requirements and exemptions relating to certain client directed trades and transfers, portfolio manager directed trades, and securities offered through order-execution-only services

We propose guidance in 31-103CP with respect to our expectations as to how registrants may meet their KYP obligations. The guidance is detailed and pays particular attention to setting out our views concerning the process of approving a security, product costs, compensation structures and the use of proprietary products, and the importance of taking related conflicts of interest into account.

### ***Suitability – section 13.3 [Suitability determination]***

The changes we propose to make to the suitability obligation are extensive, and are responsive to concerns about the current suitability process. As stated above, unsuitable recommendations generate the majority of complaints to OBSI, indicating an imbalance in the client-registrant relationship. We have chosen a regulatory approach which favours the client's interest above other considerations, while at the same time providing registrants with more specific requirements to enable them to make appropriate suitability determinations.

We propose enhanced suitability obligations that would introduce a new core requirement that registrants must put their clients' interests first when making a suitability determination. Enhanced suitability obligations would also include:

- explicitly requiring registrants to consider certain factors, including costs and their impact, in making suitability determinations,

- moving away from trade-based suitability to an overall portfolio-level suitability analysis, and
- prescribing triggering events that will require a registrant to reassess suitability.

The Proposed Amendments would make the following changes to section 13.3 [*Suitability determination*]:

- 13.3(1) – current suitability requirement replaced with new subsection providing that before a registrant acts by opening an account for a client, purchasing, selling, depositing, exchanging or transferring securities for a client’s account, taking any other investment action for a client or making a recommendation or decision to take any such action, the registrant must determine, on a reasonable basis, that the action
  - is suitable for the client, based on certain factors, including
    - KYC information
    - the registrant’s understanding of the security
    - the features and associated costs of the account type
    - the impact on the account
    - portfolio-level concentration and liquidity
    - the analysis of the actual and potential impact of costs
    - available alternatives at the firm
    - any other relevant factor under the circumstances
  - puts the client’s interest first
- 13.3(2) – new subsection prescribing trigger events that will require registrants to review a client’s account and the securities in the account in accordance with subsection 13.3(1) and take appropriate action, promptly after these events occur
  - a new registered individual is designated as responsible for the client’s account
  - a change in a security in the account
  - a change in the client’s KYC information
  - the registrant undertakes a required review or update of the client’s KYC information
  - the registrant becomes aware that a security in the client’s account or the account does not meet the criteria under subsection 13.3(1)
- 13.3(2.1) – new subsection replacing current provision for client-directed trades

We propose guidance in 31-103CP with respect to our expectations as to how registrants may meet their enhanced suitability obligations. We clarify that, in order to ensure that the suitability obligation has been met, our review will be undertaken on the basis of what a reasonable registrant would have done under the same circumstances.

***Conflicts of interest – Part 13: Division 2 [Conflicts of interest]***

Conflicts of interest have been identified as a key concern in the client-registrant relationship. We have adopted a best interest standard in the Proposed Amendments relating to conflicts of interest because that standard:

- reflects our expectation of how conflicts must be addressed,
- has been given clear meaning in relation to conflicts of interest, which will assist in effective compliance with our expectations, and
- will help address the expectations gap between clients and registrants as described in CP 33-404.

We have also determined that current conflicts of interest requirements require further reforms

- specifying that all conflicts of interest must be addressed, not only those that are material,
- expressly applying conflicts of interest obligations to registered individuals, as well as their sponsoring firms,
- adding guidance relating to particular conflicts of interest, such as conflicts arising from sales and incentive practices and compensation arrangements, including the acceptance of compensation from third parties (such as embedded commissions) and the use of proprietary products,
- restricting certain referral arrangements, and
- expanding recordkeeping in Part 11, particularly as it concerns sales practices, compensation arrangements and other incentive practices.

The conflicts of interest requirements are fundamental registrant conduct obligations that protect investors. The Proposed Amendments to the conflicts of interest requirements will raise the bar for registrant conduct. The Proposed Amendments would require all existing and reasonably foreseeable conflicts, not just material conflicts, to be addressed in the best interest of the client.

In order for a registered firm to properly address conflicts in the best interest of their clients, a firm must accurately identify all conflicts in a timely way. We expect that these Proposed Amendments will improve the timeliness of conflict reporting by registered individuals to their sponsoring firms and will help registered firms ensure that all existing and reasonably foreseeable conflicts are addressed in the best interest of the client, in a timely manner. With respect to conflicts that are not material, registered firms can satisfy the conflicts of interest rule by addressing those non-material conflicts in a manner that is proportionate to the limited risk that such conflicts may pose to affected clients. The Proposed Amendments to the Companion Policy contain additional guidance on how we expect registrants to address non-material conflicts.

The Proposed Amendments would make the following changes to Division 2 [*Conflicts of interest*] of Part 13:

- 13.4 [*A registered firm's responsibility to identify conflicts of interest*] and 13.4.1 [*A registered individual's responsibility to identify conflicts of interest*] – new and revised sections
  - expanding the obligation to take reasonable steps to identify *all* conflicts of interest (including those that are reasonably foreseeable) beyond those that are material
  - specifying that the obligation applies to both registered firms and registered individuals

- requiring registered individuals to promptly report conflicts of interest they identify to their sponsoring firms
- 13.4.2 [*A registered firm's responsibility to address conflicts of interest*] – new section requiring registered firms to address all conflicts of interest between the firm (including each individual acting on its behalf), and the firm's client, in the best interest of the client. If a conflict is not, or cannot, be addressed in the best interest of the client, then the registered firm must avoid that conflict
- 13.4.3 [*A registered individual's responsibility to address conflicts of interest*] – new section imposing on registered individuals the same obligations as set out in section 13.4.2, and also providing that they must not proceed with any activity related to an identified conflict of interest unless that conflict has been addressed in the best interest of the client and they have received the consent of their sponsoring firm
- 13.4.4 [*Conflicts of interest that must be avoided*] – new section setting out certain conflicts that must be avoided (subject to appropriate exceptions), including those involving
  - borrowing money from a client
  - lending money to a client
  - having control over the financial affairs of a client
- 13.4.5 [*Conflicts disclosure*] – new section extending disclosure requirements to all identified conflicts of interest that a reasonable client would want to know about and specifying
  - that disclosure must now include, in addition to the nature and extent of the conflict of interest
    - the potential impact and risk that it may have on the client, and
    - how it has been, or will be, addressed
  - that disclosure must be prominent, specific and written in plain language
  - the times when disclosure must be made
  - that disclosure is not in itself sufficient to satisfy the obligation to address conflicts of interest in the best interest of the client

### Division 3 [*Referral arrangements*]

- 13.7 [*Definitions – referral arrangements*] and 13.8 [*Permitted referral arrangements*] – expanded to
  - prohibit payment of a referral fee by a registrant unless
    - the party receiving the fee is also a registrant
    - the referral fee is compliant with new section 13.8.1
    - the terms of the referral arrangement are set out in a written agreement between the firm, and the other party to the referral
    - the registered firm records all referral fees

- the registered firm ensures that the information prescribed by subsection 13.10(1) [*disclosing referral arrangements to clients*] has been provided to the client in writing
- 13.8.1 [*Limitation on referral fees*] – new section providing that a referral fee must not
  - continue for longer than 36 months
  - constitute a series of payments that together exceed 25 percent of the fees or commissions collected from the client by the party who received the referral
  - increase the amount of fees or commissions that would otherwise be paid by a client to that registrant for the same product or service

#### Division 7 [*Misleading communications*]

- 13.18 [*Misleading Communications*] – new section providing that
  - registrants must not hold their services out in any manner that could reasonably be expected to deceive or mislead any person as to:
    - their proficiency, experience, or qualifications
    - the nature of the person’s relationship, or potential relationship, with the registrant
    - the products or services provided, or that may be provided
  - registered individuals must not use a title, designation, award, or recognition that is based partly or entirely on that registrant’s sales activity or revenue generation
  - registered individuals must not use a corporate officer title unless their sponsoring firm has appointed that registrant to that corporate office pursuant to applicable corporate law
  - registered individuals may only use a title or designation with the approval of their sponsoring firm

We also propose extensive new guidance in 31-103CP with respect to our expectations as to how registrants could meet enhanced conflicts of interest obligations. The guidance addresses, in view of the proposed elimination of the materiality threshold in section 13.4, the spectrum of materiality of conflicts of interest and our expectations concerning immaterial conflicts.

The guidance also identifies and directly addresses some conflicts of interest that give rise to key concerns and provides examples of controls that registered firms can consider putting in place when trying to address such conflicts in the best interest of their clients. These conflicts include:

- using proprietary products, including where firms make available both proprietary and non-proprietary products,
- receiving third party compensation,
- entering into referral arrangements, and
- internal compensation arrangements and incentive practices.

#### ***RDI – Part 14 [Handling client accounts – firms], Division 2 [Disclosure to clients]***

We have identified shortcomings in the relationship disclosure information that some clients receive from their registrants, despite the fact section 14.2 provides that: “A registrant must

deliver to a client all information that a reasonable investor would consider important about the client's relationship with the registrant" and sets out a list of mandated disclosures.

We are particularly concerned that registrants do not always provide adequate disclosure about

- their use of proprietary products,
- limitations on the products and services that they will make available to a client, (including restrictions based on the firm's registration category or terms and conditions on its registration, as well as business decisions to limit what the firm offers to clients based on their account type or the amount of money they invest), and
- the impact each of these things can have on investment returns.

We believe clear disclosure of this information is important to ensure that clients have an adequate understanding of the relationship with their registrant. We therefore propose to add this information to the mandated disclosures in subsection 14.2(2).

Our research and consultations have also led us to conclude that we should expand disclosure requirements to recognize that expectations begin to be shaped before someone becomes a client of a registered firm. If investors have ready access to basic information about competing firms' products and services including the costs associated with those products and services, they will find it easier to choose a firm that is likely to meet their expectations.

We are therefore proposing a new provision that would require registered firms to make publicly available the information that potential clients would consider important in deciding whether to become a client. This is stated as a principle and a list of key things that must be covered. Firms are not required to try to anticipate *all* information that any investor *might* wish to consider, and there is no prescribed form or requirement to include an exhaustive product list. We anticipate that firms will post the information on their websites, or reply to requests by email or by giving out short print-on-demand documents.

To implement these requirements, the Proposed Amendments would make the following changes:

- 1.1 [*Definitions*] – new defined term “third-party compensation” added to simplify drafting and ensure clarity of regulatory purpose

Part 14 [*Handling client accounts – firms*],

New Division 1.1 [*Publicly available information*]

- 14.1.2 [*Duty to provide information*] – new requirement that a registered firm must make publicly available information that a reasonable investor would consider important in deciding whether to become a client of the firm, including general descriptions of:
  - the products, services and account types that it offers
  - any material limitations or restrictions on what is made available (e.g., minimum investments, qualified purchaser etc.)

- charges and other costs to clients
- any minimum account sizes or minimum charges
- any third-party compensation associated with the firm's products, services and accounts

#### Division 2 [*Disclosure to clients*]

- 14.2(0.1) – new defined term “proprietary product” added to simplify drafting and ensure clarity of regulatory purpose
- 14.2(2)(b) – current requirement for a general description of the products and services the registered firm offers to the client expanded to include express requirement to disclose whether
  - the firm will primarily or exclusively use proprietary products in the client's account
  - there are any restrictions on the products or services the registrant will provide to the client
- 14.2(2)(k) – current requirement for disclosure of the obligation to make suitability determinations is conformed with the suitability amendments in section 13.3
- 14.2(2)(l) – revises the current requirement to provide a client with the KYC information that the firm has collected from them, in order to remove ambiguity and clarify the regulatory intent consistent with the existing guidance in the Companion Policy
- 14.2(2)(o) – new requirement to explain the potential impact of each of the following on a client's investment returns
  - operating and transaction charges
  - embedded fees
  - having access to only a limited range of products or services

We also propose additional guidance in the Companion Policy, setting out our expectations as to how registrants can satisfy the new obligations in the Proposed Amendments. In doing so, we build on existing guidance about our expectations that registrants will present disclosure information to clients in a clear and meaningful way in order to ensure they understand the information presented, which is consistent with registrants' obligation to deal with clients fairly, honestly and in good faith.

#### ***Part 3 [Registration requirements – individuals], Division 2 [Education and experience requirements]***

In view of the proposals for strengthened requirements regarding conduct toward clients and KYP, we believe it is necessary to mandate registered firms to establish training programs for their registered representatives.

The Proposed Amendments would add:

- 3.4.1 [*Firm's obligation to provide training*] – new section requiring registered firms, other than investment fund managers, to provide training to their registered individuals on:
  - compliance with securities legislation, including
    - conflicts of interest requirements,
    - the KYC and KYP obligations, and
    - the obligation to make a suitability determination, and
  - prescribed elements of the securities available through the firm

We also propose new guidance in the Companion Policy setting out our expectation that registered firms will develop, implement and maintain training programs that include examples of how to identify conflicts of interest and how to address them in the best interests of their clients.

***Part 11 [Internal controls and systems], Division 2 [Books and records]***

Maintaining an effective compliance system is a cornerstone obligation of registered firms. The elements of an effective compliance system are detailed in Part 11 of the Rule and Companion Policy. We expect all registrants to review and amend their compliance systems to reflect the new requirements, which should be tailored to their size and scope of operations, including products, types of clients, risk and compensating controls and any other relevant factors.

In particular, we expect all registrants to implement changes to their policies, procedures and controls to address conflicts of interest in the best interest of their clients and to establish a framework where the registrant puts the client's interest first when making suitability determinations.

The Proposed Amendments include:

- 11.5 [*General requirements for records*] – recordkeeping requirements expanded to include
  - demonstrating compliance with KYP requirements
  - demonstrating how the firm has addressed, or plans to address, conflicts of interest identified under subsections 13.4 and 13.4.1 in the best interest of its clients
  - documenting the firm's
    - sales practices
    - compensation arrangements
    - incentive practices
  - demonstrating compliance with requirements about documenting the use of titles and designations by the firm's registered individuals
  - demonstrating compliance with the enhanced disclosure requirements discussed above

We also propose new guidance in the Companion Policy setting out our expectations as to how registrants may accommodate the Proposed Amendments in their compliance systems.



## Exemptions

The Proposed Amendments do not apply in the following situations:

- for registrants dealing with certain permitted clients, the Proposed Amendments relating to suitability and KYC requirements do not apply;
- for registrants dealing with clients in the context of order-execution-only (“discount brokerage services”), and portfolio manager directed trades, suitability and related KYP requirements do not apply;
- for registered investment fund managers, conflicts of interest obligations set out in sections 13.4 to 13.4.5 do not apply in respect of investment funds that are subject to National Instrument 81-107 *Independent Review Committee for Investment Funds*.

### ***Part 9 [Membership in an SRO], Custody obligations for mutual fund dealers registered in Québec that are MFDA members***

For clarity, we are also proposing an amendment to section 9.4 [*Exemptions from certain requirements for MFDA members*] by adding in subsection 9.4(3) that mutual fund dealers registered in Québec that are MFDA members may rely on certain of the exemptions in subsections 9.4(1) and (2) relating to custody of assets, provided the conditions of the exemption are met.

## Transition

We are considering a phased implementation schedule for the final amendments:

- Referrals – immediately upon coming into force, except 3 years to bring pre-existing arrangements into conformity;
- RDI – 1 year to provide publicly available information under new requirement; 2 years for the other new requirements;
- KYC, KYP, suitability and conflicts of interest – 2 years.

We invite your comments on this schedule.

## Questions

We invite views on the questions below. Please provide a specific response.

### ***Transactional relationships***

Exempt market dealers often have transactional or “episodic” relationships with their clients, in contrast to the ongoing character of client relationships in other categories. Would the Proposed Amendments pose implementation challenges unique to transactional relationships, or would they have other unintended consequences related to them?

### ***Conflicts that must be avoided***

Are there other specific conflicts of interest that cannot be addressed in the client’s best interest and must be avoided?

### ***Referral fees***

Does prohibiting a registrant from paying a referral fee to a non-registrant limit investors' access to securities related services? Would narrowing section 13.8.1 [*Limitation on referral fees*] to permit only the payment of a nominal one-time referral fee enhance investor protection?

### **Local Matters**

Where applicable, additional information that is relevant in a local jurisdiction only.

### **Request for comments**

We welcome your comments on the Proposed Amendments.

Please submit your comments in writing on or before October 19, 2018. If you are not sending your comments by email, please send a CD containing the submissions (in Microsoft Word format).

Address your submission to all of the CSA as follows:

British Columbia Securities Commission  
Alberta Securities Commission  
Financial and Consumer Affairs Authority of Saskatchewan  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
Financial and Consumer Services Commission of New Brunswick  
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island  
Nova Scotia Securities Commission  
Securities Commission of Newfoundland and Labrador  
Registrar of Securities, Northwest Territories  
Registrar of Securities, Yukon Territory  
Superintendent of Securities, Nunavut

Deliver your comments **only** to the addresses below. Your comments will be distributed to the other participating CSA members.

The Secretary  
Ontario Securities Commission  
20 Queen Street West  
22nd Floor, Box 55  
Toronto, Ontario M5H 3S8  
Fax: 416-593-2318  
[comments@osc.gov.on.ca](mailto:comments@osc.gov.on.ca)

Me Anne-Marie Beaudoin  
Corporate Secretary  
Autorité des marchés financiers  
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Montréal (Québec) H4Z 1G3  
Fax : 514-864-6381  
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We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Alberta Securities Commission at [www.albertasecurities.com](http://www.albertasecurities.com), the Autorité des marchés financiers at [www.lautorite.qc.ca](http://www.lautorite.qc.ca) and the Ontario Securities Commission at [www.osc.gov.on.ca](http://www.osc.gov.on.ca). Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

## Questions

Please refer your questions to any of the following:

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Market Regulation  
Alberta Securities Commission  
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Rhonda Horte  
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Office of the Yukon Superintendent of Securities  
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## **ANNEX A**

### **SUMMARY OF COMMENTS ON CONSULTATION PAPER 33-404 AND RESPONSES**

This annex summarizes, at a high level, the written public comments we received on CP 33-404 and our responses to those comments. Approximately 85% of the comment letters we received were from industry stakeholders (including registrants, industry associations and law firms), and approximately 15% of the comment letters were from non-industry stakeholders (including investors, investor advocates, academics and others).

For clarity, the comments and responses are organized as follows:

1. Comments and responses on the conflicts of interest proposals
2. Comments and responses on the KYC proposals
3. Comments and responses on the KYP proposals
4. Comments and responses on the suitability proposals
5. Comments and responses on the RDI proposals

#### **1. Comments and responses on the conflicts of interest proposals**

##### ***General***

We received mixed comments on the proposal with respect to conflicts of interest, although most commenters agreed that conflicts are an important area for the CSA to focus its efforts. There was disagreement about whether disclosure alone should be sufficient to address conflicts. Some commenters maintain that disclosure is an effective means of addressing conflicts and question the CSA research described in CP 33-404 on the limitations of disclosure.

A few commenters mentioned that requiring more disclosure could have a significant and disproportionate adverse effect on integrated firms and on capital raising. Others believe that the CSA will not be able to effectively address conflicts unless compensation and incentives issues are dealt with, and which disclosure alone will not address.

In addition, there was support for updating, expanding and enforcing National Instrument 81-105 *Mutual Fund Sales Practices* and Companion Policy 81-105 and for considering more generally monetary and non-monetary incentives internal to a dealer firm that favour the distribution of certain products over others, including proprietary products.



### ***Effectiveness of the current rules governing conflicts of interest***

Several commenters assert that existing rules are sufficient to regulate how registrants should respond to conflicts, whether in NI 31-103, SRO rules or professional codes of conduct, to address our concerns. It has been suggested that we should focus on enforcing these existing requirements and provide guidance to uphold the rule. In addition, several commenters suggested we align our proposals with SRO rules or clarify how our proposals differ from those requirements. If there is a gap for registrants that are not overseen by SROs, the commenters indicate that we should address it in order to ensure clients receive similar treatment regardless of the type of registrant or business model a registrant operates.

While some commenters think disclosure is an effective means of addressing conflicts, a few commenters believe that disclosure alone is not a sufficient remedy for dealing with conflicts, as it tends to reinforce trust in registrants.

Almost all commenters have expressed the view that the requirement that registrants have a “reasonable basis” for concluding that a client “fully understands” the implications and consequences of a conflict is problematic. They believe it would be difficult for a registrant to evidence this and satisfy regulators that such requirement has been met.

### ***Prioritizing the client’s interest***

Commenters were fairly equally divided about whether the requirement to prioritize the interests of a client ahead of the firm in resolving conflicts is appropriate. Many are in favor of prioritizing the client’s interest but are concerned about the practical implications of operationalizing such a standard. Others expressed the view that where multiple courses of action could be taken, the one that maximizes the interest of the client should be selected.

It has been suggested that we should provide specific guidance on the types of conflicts that are so significant they must be avoided and cannot be addressed through disclosure. In addition, the CSA should give examples of measures that may be taken to control conflicts in a manner that prioritizes the interest of the client. Finally, some commenters suggested that conflicts should be resolved in a manner that is “consistent with” the interests of the client, or “not detrimental to” the interests of the client.

### ***Specific registration categories or business models***

Several commenters raised concerns with the “one-size-fits-all” approach, namely applying the same standard to all registration categories and business models. Commenters expressed the view that this approach may present challenges for some firms, and have requested guidance to clarify our expectations for different registration categories and business models, such as firms that offer proprietary products.

### ***CSA Response***

Existing rules are not sufficient to achieve the outcome we are seeking of creating an obligation to respond to the conflict once identified and to prioritize the interest of clients ahead of the registrant.



Disclosure alone is not sufficient to address a conflict of interest in the best interest of clients. In other words, disclosure in conjunction with other controls must be used to address a conflict of interest in the best interest of clients. We also propose guidance on what would be appropriate controls to address different types of conflicts, and what conflicts are so significant that they must be avoided.

With respect to the “one-size-fits-all” approach under this new requirement, as introduced in CP 33-404, we do not propose scalability measures for the conflicts requirements. The conflict of interest standard is a fundamental registrant-conduct standard, similar to the fair dealing rule, which should not vary based on the registrant’s business model, registration category, or the type of client.

We propose an obligation to identify and respond to conflicts by both the representative and the firm and we use the same standard for both, and provide guidance on procedures and controls that firms could implement to address the conflicts.

Moreover, we considered carefully the concerns previously raised on conflicts that arise from compensation arrangements and incentive practices as prescribed in National Instrument 81-105. The Proposed Amendments related to the conflicts of interest will provide guidance to registrants on how to address various types of conflicts arising from compensation arrangements and incentive practices.

Finally, with respect to proprietary products, we propose more guidance in 31-103CP generally on how firms can manage conflicts raised by the sale of proprietary products, and how firms with different business models (e.g. integrated mutual fund dealers, exempt market dealers, firms that offer proprietary products in addition to non-proprietary products, firms that only offer proprietary products) could comply with the requirement under the proposed Rule.

## **2. Comments and responses on the KYC proposals**

### ***General***

In general, the commenters who provided comments on KYC proposals were critical of the proposed reforms to section 13.2 of NI 31-103. Several commenters believe that regulators are aiming for a one-size-fits-all approach to the collection of KYC information. They expressed the need for KYC obligations to be scalable in accordance with the level of service desired by clients.

### ***Level of proficiency on tax related matters***

Several commenters believe that collecting tax information when the representatives do not have any tax expertise does not serve the interest of investors, creating risks of reliance and a potential for errors which could harm clients. Because the required industry courses only provide a basic outline, registrants should not be encouraged through regulation to give advice on tax strategies. This could result in investors not seeking independent tax advice and could cause investors to believe that they are receiving tax or financial planning advice when this is not the scope of the agreed upon professional relationship.

Furthermore, many commenters believe that clients may perceive requests for this information as an intrusion in their affairs, and not all clients may be willing to provide this information. Finally, requiring the collection of tax information may increase significantly the costs of professional liability insurance and consequently, the service fees paid by clients.

However, certain commenters outlined that registrants should have a better understanding of clients' tax position and thus, receive more training in tax matters.

***Codification of the new account form or the specific form used to collect the prescribed KYC content***

The large majority of commenters disagree with codifying the specific form of the document, or a new account application form to collect the prescribed KYC information. The majority of commenters are of the opinion that the proposal to have a specific KYC form, as a distinct document from the other documents in the account opening package, would have the effect of inundating the client with paper work. Different practices are noted, for example some IIROC dealers do not provide for a specific KYC form.

In addition, some commenters believe that the CSA should delegate this direction to the SROs, as they are in a better position to monitor this activity and provide further guidance as needed. It has been suggested that the CSA should adopt a principles-based approach to the form of this document or set out specific guidance regarding minimum KYC criteria to be adopted by firms as part of their KYC protocols.

While several commenters expressed concerns about mandating a specific form of document, one commenter encouraged the CSA to work with scholarship plan dealers to establish uniform and consistent KYC information.

With respect to the form of the risk profiles, commenters are mostly negative on the risk profile proposal, with its requirement to carry out a "thorough exploration of the relevant subjective and objective factors". They view this requirement as not being within regulator expertise, and unresponsive to the variety of current business models.

***Signature of the KYC form***

Several commenters expressed an objection to this proposal, mainly for technological reasons as not all dealers have a paper-based KYC collection and approval process. One commenter has suggested that the word "signed" should have a definition consistent with current technology and would allow, for example, an on-line review and approval rather than requiring a signature on a physical piece of paper.

Additionally, one commenter has suggested that the CSA should provide guidance indicating sufficient flexibility to accommodate clients' preference for digital communications and to allow digital client acknowledgments and confirmations, for example by reply e-mail, in lieu of physical signatures. Another commenter outlined that registrants are already subject to extensive supervision by the dealer to ensure compliance with SRO rules. The majority of commenters believe that supervisory signatures would consume management time, and would not add meaningfully to investor protection.

With respect to the proposed requirement to update KYC information every 12 months, several commenters believe it would significantly detract from registrants' primary responsibility of advising their clients and managing their accounts. This is considered by the commenters as being costly and cumbersome. To mitigate this, and related consequences, it has been suggested to the CSA to preserve flexibility for registrants in refreshing KYC information. The commenters believe this should continue to be tailored for different advisory models. For example, the exempt market dealer model, with its challenges on the issue of whether or not there is a continuing client-registrant relationship, may be problematic in this respect.

Commenters also indicated that clients sometimes refuse to provide the requested information, while others choose not to disclose it without the registrant's knowledge.

### ***CSA Response***

In the KYC Proposed Amendments, we propose a more principles-based approach for KYC reforms, removing some of the more prescriptive elements proposed in CP 33-404, and keeping the requirements scalable across different types of client relationships and the level of service desired. In addition, the existing SRO rules have been taken into account.

As suggested by several commenters, we do not require the collection of tax information, but may in future focus on increasing the proficiency of representatives on basic tax issues. Moreover, we have not mandated a specific KYC form. However, we identify certain essential elements of KYC that should be mandated and required for all types of business models and client relationships.

We have also reexamined parts of the guidance on KYC in 31-103CP, which outlines our expectation on the due diligence process that firms should put in place regarding the KYC process, ensuring that the process is flexible enough to take into account various business models and the spectrum of client relationships and needs. In addition, 31-103CP contains guidance on other matters, including:

- key elements to be considered by the registrant with respect to the collection of KYC information,
- client's authorization for the KYC information collected both at initial account opening and upon material changes, and
- frequency with which the KYC information should be updated.

## **3. Comments and responses on the KYP proposals**

### ***General***

Commenters were generally very critical of the KYP proposals for both registered firms and representatives. Commenters generally agreed that the proposed reforms would be unworkable, be costly, advantage proprietary firms and cause serious unintended consequences.

The CSA considered the comments received on the KYP proposals for both registered firms and representatives and, in particular, considered the likelihood of the unintended consequences of

the KYP proposals raised by commenters if the reforms were to be implemented as proposed in CP 33-404. The CSA have significantly redesigned the proposals.

### ***KYP proposals for representatives***

Commenters generally agreed that the proposals that representatives have a thorough understanding of all securities on their firm's product list and how those securities compare to one another are not workable. They assert that it is not possible for a representative to have such an in-depth knowledge of every security on the firm's product list, unless the product list itself is limited, and not every representative has the expertise to sell all securities available at a registered firm. In addition, they assert that this requirement may pose challenges for certain types of registrants, including advising representatives of portfolio management firms (where the universe of securities may be available to those representatives) as well as firms with multiple divisions, where all securities offered by the firms may not be able to be sold by all representatives. Commenters expressed concern that such a requirement would cause the narrowing of product lists and reduced investor choice.

An alternative approach recommended was that representatives should know and understand the products they recommend in light of the needs of their clients, and that the CSA should focus instead on the process for product due diligence. Some commenters expressed support for a requirement that representatives know general categories of securities or asset classes, and the general range of products available to clients at the firm.

### ***KYP proposals for firms***

In CP 33-404, we asked commenters to respond to various questions relating to the differentiation of firms by product list (e.g., proprietary and mixed / non-proprietary) and proposed KYP requirements for certain firms to undertake a market investigation, product comparison, and a product list optimization process. As we are not proceeding with these reforms as proposed, we have outlined and responded in a general way to the concerns raised by commenters.

The vast majority of commenters were very critical of the KYP proposals for registered firms. Some commenters felt that the distinction between proprietary and mixed/non-proprietary firms would not be clear or meaningful, and some commenters felt that the definition of what is "proprietary" would need careful consideration even if the distinction had value. In any event, a major concern of commenters related to the fact that the KYP requirements differed between these two types of firm and that the requirements applying to mixed/non-proprietary firms were onerous. Commenters generally agreed that the proposed requirements for mixed/non-proprietary firms to undertake a market investigation, product comparison, and a product list optimization process would be costly, would advantage proprietary firms, and would cause serious unintended consequences, such as:

- firms will narrow their product lists;
- firms may move to a proprietary model;
- reduced choice for investors;
- small firms would exit the industry / there would be industry consolidation;
- there would be an adverse impact on independent product manufacturers.

### ***CSA Response***

We have considered the comments received and have redesigned the KYP proposals for representatives. The KYP Proposed Amendments include:

- a more practical and workable requirement that registered individuals generally understand the securities available for them to trade in or recommend to clients, and generally understand how those securities compare to one another; and
- a requirement that registered individuals thoroughly understand securities they trade in or recommend to clients.

We have maintained the emphasis from CP 33-404 on a representative understanding all costs associated with a security being recommended and the impact of those costs.

We have also considered the comments received on the KYP proposals for firms and recognize the concern of commenters that there may be serious unintended consequences if they were to be implemented as proposed in CP 33-404. We have therefore significantly redesigned the proposals, and have not carried forward the market investigation, product comparison and product list optimization requirements for firms, nor have we imposed requirements that are differentiated between proprietary and mixed/non-proprietary firms.

We have instead proposed reforms that are designed to increase rigour and transparency around the securities and services that registrants make available to their clients. These reforms are intended to work together with reforms to conflicts of interest and RDI, and support enhanced suitability determination requirements. In addition, we have proposed a principles-based requirement that a firm must ensure that the securities and services it offers are consistent with how it holds itself out to clients.

## **4. Comments and responses on the suitability proposals**

### ***General***

The comments received on the suitability proposed reforms were significant, extensive in most instances and occasionally divided, such as on the issues of what makes an investment “most likely” to achieve a client’s needs and objectives, and what it means to accept an instruction to “hold” an investment. A remark that was recurrent in many comments on the suitability proposed reforms was related to how the proposals would be assessed and reviewed by in-house compliance staff and be enforced by regulators.

In addition, commenters believe that the requirement to perform a suitability analysis at least once every 12 months raises challenges for most registrant categories or business models. It has been suggested that this may be overly cumbersome, inefficient and costly or simply unnecessary for clients with modest balances and where no changes have occurred in client circumstances during the year.

Finally, many commenters do not believe it is necessary for a significant market event to trigger a new and full suitability analysis in all instances where the client is exposed as it may not lead to a different outcome. According to several commenters, it is unlikely that a market event, even

if significant, will have changed the nature of the risk profile of a particular security or the client's portfolio. Likewise, the commenters observed that a material change in the risk profile of a single issuer should not, in a portfolio that is suitable, be cause for an immediate suitability analysis in all instances.

#### ***Financial strategies as part of the suitability determination process***

As per the proposal to consider other basic financial strategies in determining suitability, the majority of comments received noted that this approach assumes that all clients want or need a) a full financial plan, or b) to have their entire investment strategy and the composition of their portfolio (re)assessed, regardless of the clients' expectations or the registrant's business model. Most believe this requirement may result in registrants providing advice in areas where they do not have the required expertise.

#### ***Potential challenges of the implementation of the requirement to ensure that a purchase, sale, hold or exchange of a product is the "most likely" to achieve the client's investment needs and objectives***

With respect to the requirement to ensure that a purchase, sale, hold or exchange of a product is the "most likely" to achieve the client's investment needs and objectives, most commenters are of the opinion that this standard would be highly susceptible to after-the-fact second-guessing, which would expose firms to unnecessary compliance costs and potential legal and regulatory risks.

Some commenters believe that this requirement could establish unrealistic client expectations of guaranteed outcomes and needs to be clarified. Others suggested replacing the phrase "most likely" by something that acknowledges the decision was made in the context of subjective factors that were present at the time, such as "likely in the context in which the decision was made."

Other formulations such as "reasonably likely to achieve" and "reasonable under the circumstances" were suggested by commenters. Finally, several commenters believe that this requirement would result in fewer product choices for investors as firms look to reduce their product shelves to be able to comply with the requirement. They are of the view that this could also result in a reduction of qualified, experienced registrants available to service a wide range of investors.

#### ***Key elements determining the suitability of an investment***

Commenters outlined that by increasingly clarifying the scope of the rule with respect to these requirements, the CSA run the risk of standardizing practices, with implications for loss of competitiveness and operating costs, as well as the need to multiply the exceptions to be managed. These commenters recommend a more principle-based approach rather than a detailed, prescriptive approach.

#### ***CSA Response***

We agree with comments that the use of the phrase "most likely" and referring to "client's investment objectives" could establish unrealistic client expectations of guaranteed outcomes. Instead, the CSA propose that there must be "a reasonable basis" to conclude that an investment

action taken by a registrant satisfies prescribed criteria for a suitability determination. That determination would not only require that an investment action taken by a registrant be suitable based on prescribed factors, but also that it puts the client's interest first.

We propose further guidance in 31-103CP and various examples which illustrate how we expect the firm to implement this requirement.

Additionally, we propose a requirement that suitability be assessed on a portfolio basis, rather than trade-by-trade only and specify circumstances when suitability should be reassessed.

## **5. Comments and responses on the RDI proposals**

### ***General***

The comments received on the RDI proposals were generally supportive of the principles of transparency, meaningful disclosure and clarity as they relate to the client-registrant relationship. However, there were warnings against adding to the amount of RDI that registrants are already required to deliver. It was suggested that many clients do not read the existing disclosures because they find them to be too long. There were also several commenters who said that it would be better to wait and see the effects of implementing the Client Relationship Model Phase 2 and mutual funds Point of Sale requirements before making further enhancements to client disclosure requirements.

There was support for additional guidance on RDI, but no consensus. Some commenters felt it would be unnecessary. Some suggested principles-based guidance would be better than a prescriptive approach to enable flexibility among business models. One argued for mandated RDI forms, taking the view that guidance alone would be ineffective. There were several strong objections to the proposition in the proposed general disclosure guidance that registrants should have a "reasonable basis for concluding that a client fully understands the implications and consequences for the client of the content being disclosed" from commenters who felt it would be very difficult to operationalize.

### ***Registration in a restricted category***

Several commenters were supportive of the proposal that firms registered in a restricted category would be required to include that information in their RDI. They agreed that this information would enable investors to make more informed decisions, and thought the proposal would be workable. Several others objected because they felt that "restricted" would be perceived as having negative connotations and an implication that some types of firms are better than others.

Commenters also objected to the proposed requirement for restricted firms to inform clients that a full range of securities would not be considered in their suitability analyses. They questioned the practical benefits of having such a requirement, and raised the potential for the unintended consequence that investors might assume that suitable products offered by a restricted registrant are insufficient for their needs. It was suggested that the proposed disclosure for restricted category firms assumes, wrongly, that all investors have a realistic option of becoming a client of

a full service firm. Some investor advocates argued that disclosure would be inadequate, based on the limitations of what investors understand about their investment options.

### ***Use of proprietary products***

Many commenters supported disclosure concerning the use of “proprietary products”, at least in principle. However, there were concerns about client confusion about the meaning of the phrase, particularly when extended to the concept of a firm with a “mixed /non-proprietary” product shelf. Commenters expressed concerns that the potential for unintended consequences outweighs the potential benefits of such disclosure. Common objections relating to the challenge of making the information meaningful to clients included:

- some firms that would be categorized as mixed/non-proprietary may offer a much broader range of products than others,
- what a given firm offers some types of client may differ from what it offers others,
- proportions of proprietary and non-proprietary products may change frequently, and
- there may be a perceived implication that one type of product is inherently better.

### ***CSA Response***

We acknowledge the concern that to be genuinely useful, client communications, including RDI, must not be allowed to become overly long and complex. We are also mindful of the dangers of the other unintended consequences noted by commenters.

At the same time, we remain convinced that clear information about product costs, the use of proprietary products and limitations on the products or services that will be made available to clients are important to client’s understanding of what to expect from the relationship with their registrant.

We therefore revisited our proposals for RDI and re-focused them on the elements that we believe will make a real difference for clients. The Proposed Amendments require firms to provide the listed information, but we no longer propose prescriptive detail. Consistent with the Proposed Amendments regarding KYP, firms would not be required to categorize themselves as “proprietary” or “mixed/non-proprietary.” Firms would only have to tell each client if their account will consist primarily or exclusively of proprietary products (this essentially carries forward guidance added to the Companion Policy in 2017). Firms would have to tell each client about any restrictions on the products or services that would be provided to them. Firms would have to explain the impact charges, ongoing product fees and restrictions on products or services might have on a client, but can exercise professional judgment as to how best to do that in the circumstances, provided some basic guidance added to the Companion Policy is taken into account.

Our expectations for clear, meaningful and above all, not misleading, communications with clients are stressed with additions to the guidance in the Companion Policy. This is found both in the sections concerning RDI guidance and in proposed new Part 13, Division 7 [*Misleading communications*].



**PROPOSED AMENDMENTS TO  
NATIONAL INSTRUMENT 31-103  
REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS**

1. **National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations is amended by this Instrument.**
2. **Section 1.1 is amended by adding the following definition:**

“third-party compensation” means any monetary or non-monetary benefit provided, or expected to be provided, directly or indirectly to a registrant by a party other than the registrant’s client in connection with the client’s purchase or ownership of a security through the registrant;.
3. **Subsection 3.4(1) is amended by replacing “features and risks of each security the individual recommends.” with “features, returns and risks, and the initial and ongoing costs and the impact of those costs, of each security the individual recommends.”.**
4. **Division 2 of Part 3 is amended by adding the following section:**

**3.4.1 Firm’s obligation to provide training**

  - (1) A registered firm must provide training to its registered individuals on:
    - (a) compliance with securities legislation including, without limitation, the obligations respecting conflicts of interest, the know your client and know your product obligations, and the obligation to make a suitability determination;
    - (b) the structure, features, returns and risk, and the initial and ongoing costs and the impact of those costs, of the securities available through the registered firm for the registered individuals to purchase or sell for, or recommend to, clients.
  - (2) Paragraph (1)(b) does not apply to an investment fund manager in respect of its activities as investment fund manager..
5. **The title of Division 3 of Part 3 is amended by replacing “a self-regulatory organization” with “an SRO”.**
6. **Section 3.16 is amended**
  - (a) **in paragraph (1)(b) by adding “determination” after “suitability”, and**
  - (b) **in paragraph (2)(a) by adding “determination” after “suitability”.**
7. **The title of Part 9 is amended by replacing “a self-regulatory organization” with “an SRO”.**
8. **Subsection 9.3(1) is amended**
  - (a) **in paragraph (j) by adding “determination” after “suitability”, and**
  - (b) **by repealing paragraph (k).**
9. **Subsection 9.3(2) is amended**
  - (a) **in paragraph (e) by adding “determination” after “suitability”, and**
  - (b) **by repealing paragraph (f).**
10. **Subsection 9.4(1) is amended**
  - (a) **in paragraph (i) by adding “determination” after “suitability”, and**

- (b) **by repealing paragraph (j).**
11. **Subsection 9.4(2) is amended**
- (a) **in paragraph (c) by adding “determination” after “suitability”, and**
- (b) **by repealing paragraph (d).**
12. **Subsection 9.4(3) is replaced with the following:**
- (3) The exemptions in subsections (1) and (2) do not apply in Québec, except for paragraphs (1)(m), (1)(m.2) to (1)(n.2) and paragraphs (2)(g), (2)(g.2) to (2)(h.2), as applicable, provided the conditions of the exemption are met..
13. **Subsection 9.4(4) is replaced with the following:**
- (4) Subject to subsection (3), the requirements listed in subsection (1), other than paragraph (1)(h), do not apply to a mutual fund dealer registered in Québec to the extent equivalent requirements to those listed in subsection (1) are applicable to the mutual fund dealer under the regulations in Québec..
14. **Subsection 11.5(2) is amended**
- (a) **in paragraph (l) by adding “, 13.2.1 [know your product]” after “13.2 [know your client]”,**
- (b) **in paragraph (l) by adding “determination” after “suitability”,**
- (c) **in paragraph (o) by adding “, training” after “compliance”,**
- (d) **in paragraph (o) by replacing “.” with “,”, and**
- (e) **by adding the following paragraphs:**
- (p) demonstrate how the firm has addressed, and plans to address, the conflicts of interest identified under sections 13.4 [a registered firm's responsibility to identify conflicts of interest] and 13.4.1 [a registered individual's responsibility to identify conflicts of interest] in the best interest of its clients;
- (q) document
- (i) the firm's sales practices, compensation arrangements and incentive practices, and
- (ii) other compensation arrangements and incentive practices from which the firm or its registered individuals, or any affiliate or associate of that firm, benefit;
- (r) demonstrate compliance with section 13.18 [misleading communications];
- (s) demonstrate compliance with section 14.1.2 [duty to provide information]..
15. **The title of Division 1 of Part 13 is amended by replacing “Know your client and suitability” with “Know your client, know your product and suitability determination”.**
16. **Section 13.2 is amended**
- (a) **in subsection (1) by replacing “paragraph 2(b)” with “paragraph (2)(b)”,**
- (b) **by replacing paragraph (2)(c) with the following:**
- (c) ensure that it has sufficient information regarding all of the following to enable it to meet its obligations under section 13.3 [suitability determination] or, if applicable, the suitability requirement imposed by an SRO:
- (i) the client's personal circumstances;
- (ii) the client's financial circumstances;
- (iii) the client's investment needs and objectives;

- (iv) the client's investment knowledge;
- (v) the client's risk profile;
- (vi) the client's investment time horizon, and,

**(c) by adding the following subsection:**

- (3.1) A registrant must take reasonable steps to obtain a client's confirmation of the accuracy of the information collected under subsection (2), including any significant changes to the information.,

**(d) by adding the following subsection:**

- (4.1) Without limiting subsection (4),
  - (a) a registrant must review the information collected under this section
    - (i) if the registrant knows, or reasonably ought to know, of a significant change in the client's information collected under this section,
    - (ii) no less than once every 12 months for managed accounts,
    - (iii) if the registrant is an exempt market dealer, within 12 months before making a trade for, or recommendation to, the client,
    - (iv) in any other case, no less than once every 36 months,
  - (b) a registrant must update the information required under this section if, following the review of information under paragraph (4.1)(a), there has been a change in the information.,

**(e) in subsection (6) by replacing "does" with "and subsection (4.1) do",**

**(f) in paragraph (6)(a) by adding "[suitability determination]" after "(2)", and**

**(g) by replacing paragraph (6)(b) with the following:**

- (b) the account of the permitted client to which the waiver applies is not a managed account..

**17. Division 1 of Part 13 is amended by adding the following section:**

**13.2.1 Know your product**

- (1) A registered firm must not make a security available to clients unless the firm
  - (a) takes reasonable steps to understand the security, including all of the following:
    - (i) the structure, features, returns and risks of the security;
    - (ii) the initial and ongoing costs of the security and the impact of those costs;
    - (iii) how the security compares to similar securities available in the market;
  - (b) approves the security to be made available to clients, and
  - (c) monitors and reassesses the security, including monitoring for significant changes to the security.
- (2) A registered firm must maintain an offering of securities and services that is consistent with how the firm holds itself out.
- (3) A registered individual must not purchase or sell a security for, or recommend a security to, a client unless the registered individual takes reasonable steps to understand
  - (a) at a general level, the securities that are available through the registered firm for the registered individual to purchase or sell for, or recommend to, clients and how those securities compare;

- (b) the security, including
    - (i) the structure, features, returns and risks of the security, and
    - (ii) the initial and ongoing costs of the security and the impact of those costs.
- (4) A registered individual must not purchase a security for, or recommend a security to, a client unless the registered individual's sponsoring firm has approved that security to be made available to clients.
- (5) A registered firm must ensure that its registered individuals have the necessary information about each security approved by the registered firm to be made available to clients to enable the registered individuals to comply with subsection (3).
- (6) In the case of a security transferred by a client from another registered firm that is accepted by the registered firm or of a client-directed trade of a security, the requirements of subsections (1) and (3) apply to a registered firm or registered individual, as the case may be, only insofar as, under those requirements,
  - (a) the firm must not permit the security to be transferred into the client's account or the trade in the security to be made unless the firm
    - (i) takes reasonable steps to understand the structure, features, returns and risks of the security,
    - (ii) takes reasonable steps to understand the initial and ongoing costs of the security and the impact of those costs, and
    - (iii) monitors and reassesses the security, including monitoring for significant changes to the security; and
  - (b) the individual must not permit the security to be transferred into the client's account or the trade in the security to be made unless the individual takes reasonable steps to understand
    - (i) the structure, features, returns and risks of the security; and
    - (ii) the initial and ongoing costs of the security and the impact of those costs.
- (7) This section does not apply to a registered dealer in respect of a security if either of the following applies:
  - (a) it makes the security available to a client only through an order-execution only service;
  - (b) it purchases or sells the security for a client only as directed by a registered adviser acting for the client..

**18. The heading to section 13.3 is amended by adding "determination" after "Suitability".**

**19. Section 13.3 is amended**

**(a) by replacing subsections (1) and (2) with the following:**

- (1) Before a registrant acts by opening an account for a client, purchasing, selling, depositing, exchanging or transferring securities for a client's account, taking any other investment action for a client or making a recommendation or decision to take any such action, the registrant must determine, on a reasonable basis, that the action satisfies the following criteria:
  - (a) the action is suitable for the client, based on the following factors:
    - (i) the client's information collected in accordance with section 13.2 [*know your client*];
    - (ii) the registrant's understanding of the security required in accordance with section 13.2.1 [*know your product*];
    - (iii) the features and associated costs of the account type made available to the client;

- (iv) the impact of the action on the client's account, including considering the account's concentration and liquidity;
    - (v) the overall concentration and liquidity across all of the client's accounts at the firm;
    - (vi) the potential and actual impact of costs on the client's returns;
    - (vii) a consideration of a reasonable range of alternative actions available to the registrant through the registered firm at the time the determination is made;
    - (viii) any other factor that is relevant under the circumstances, and
  - (b) the action puts the client's interest first.
- (2) A registrant must review the client's account and the securities in the client's account to determine whether the criteria in subsection (1) are met, and take appropriate action as necessary, promptly after any of the following occurs:
- (a) a new registered individual is designated as responsible for the client's account;
  - (b) there is a change in a security in the client's account that may result in the security or account not meeting the criteria in subsection (1);
  - (c) there is a change in the client's information collected in accordance with subsection 13.2(2) that may result in a security or the client's account not meeting the criteria in subsection (1);
  - (d) the registrant has reviewed the client's information in accordance with subsection 13.2(4) or (4.1);
  - (e) the registrant becomes aware that a security or the client's account does not meet the criteria in subsection (1).
- (2.1) Despite subsection (1), if a registrant receives an instruction from a client to take an action which would not meet the criteria in subsection (1), the registrant may carry out the client's instruction if the registrant has
- (a) informed the client of the basis for the determination that the action would not meet the criteria in subsection (1),
  - (b) recommended to the client an alternative action that meets the criteria in subsection (1), and
  - (c) received written or electronically recorded confirmation of the client's instruction to proceed with the action despite the determination referred to in paragraph (a)., **and**
- (b) **by replacing paragraph (4)(b) with the following:**
- (b) the account of the permitted client to which the waiver applies is not a managed account..
- 20. The heading to section 13.4 is amended by replacing "Identifying and responding to" with "A registered firm's responsibility to identify".**
- 21. Section 13.4 is amended**
- (a) **by replacing subsection (1) with the following:**
- (1) A registered firm must take reasonable steps to identify existing conflicts of interest, and conflicts of interest that are reasonably foreseeable, between
    - (a) the firm, including each individual acting on the firm's behalf, and
    - (b) the client., **and**
- (b) **by repealing subsections (2) to (4).**
- 22. Division 2 of Part 13 is amended by adding the following sections:**
- 13.4.1 A registered individual's responsibility to identify conflicts of interest**

- (1) A registered individual must take reasonable steps to identify existing conflicts of interest, and conflicts of interest that are reasonably foreseeable, between the registered individual and the client.
- (2) If a registered individual identifies a conflict of interest under subsection (1), the registered individual must promptly report that conflict of interest to the registered individual's sponsoring firm.

#### **13.4.2 A registered firm's responsibility to address conflicts of interest**

- (1) A registered firm must address, in the best interest of a client, all conflicts of interest between itself, including each individual acting on its behalf, and the client.
- (2) A registered firm must avoid any conflict of interest between the firm, including each individual acting on its behalf, and a client if the conflict is not, or cannot be, addressed in the best interest of the client.

#### **13.4.3 A registered individual's responsibility to address conflicts of interest**

- (1) A registered individual must address, in the best interest of a client, all conflicts of interest between the individual and the client.
- (2) A registered individual must avoid any conflict of interest between the registered individual and a client if the conflict is not, or cannot be, addressed in the best interest of the client.
- (3) A registered individual must not engage in any dealing or advising activity in connection with a conflict of interest identified by the registered individual under subsection 13.4.1(1) [*a registered individual's responsibility to identify conflicts of interest*], unless
  - (a) the conflict has been addressed in the best interest of the client, and
  - (b) the registered individual's sponsoring firm has given the registered individual its consent to proceed with the activity.

#### **13.4.4 Conflicts of interest that must be avoided**

- (1) A registrant must not borrow money, arrange a guarantee in relation to money the registrant has borrowed, or borrow securities or any other assets, from a client, unless either of the following applies:
  - (a) in the case of borrowed money, the client is a financial institution whose business includes lending money to the public, and the loan to the registrant is in the normal course of the financial institution's business;
  - (b) if the registrant is a registered individual, all of the following apply:
    - (i) the client is a related person, as defined by the *Income Tax Act* (Canada), of the registered individual;
    - (ii) the registered individual provides prior written notice to his or her sponsoring firm;
    - (iii) the registered individual obtains the prior written approval of his or her sponsoring firm to carry out the otherwise prohibited transaction.
- (2) Despite any other provision of this Instrument, a registrant must not lend money, provide a guarantee in relation to a loan of money, extend credit, provide margin or lend securities or any other asset, to a client, unless any of the following apply:
  - (a) the activity is permitted under rules of an SRO applicable to the registrant;
  - (b) the registrant is an investment fund manager lending money on a short term basis to an investment fund that it manages, if the loan is for the purpose of funding redemptions of its securities or meeting expenses incurred by the investment fund in the normal course of its business;
  - (c) if the registrant is a registered individual, all of the following apply:
    - (i) the client is a related person, as defined by the *Income Tax Act* (Canada), of the registered individual;

- (ii) the registered individual provides prior written notice to his or her sponsoring firm;
  - (iii) the registered individual obtains the prior written approval of his or her sponsoring firm to carry out the otherwise prohibited transaction.
- (3) A registrant must not act under a power of attorney from a client, act as a trustee with respect to a trust in which a client is the settlor or beneficiary, or act as a trustee or executor in respect of the estate of a client, or otherwise have full or partial control or authority over the assets of a client, unless either of the following applies:
  - (a) the activity is permitted under rules of an SRO applicable to the registrant;
  - (b) if the registrant is a registered individual, all of the following apply:
    - (i) the client is a related person, as defined by the *Income Tax Act* (Canada), of the registered individual;
    - (ii) the registered individual provides prior written notice to his or her sponsoring firm;
    - (iii) the registered individual obtains the prior written approval of his or her sponsoring firm to carry out the otherwise prohibited appointment.
- (4) Despite subsection (3), a registered adviser and its advising representatives may have full or partial control or authority over the assets of a client if those assets are held in a managed account.

#### **13.4.5 Conflicts of interest disclosure**

- (1) A registered firm must disclose in writing a conflict of interest identified under subsections 13.4(1) [*a registered firm's responsibility to identify conflicts of interest*] and 13.4.1(2) [*a registered individual's responsibility to identify conflicts of interest*] to a client whose interests are affected by such conflict where a reasonable client would expect to be informed of such conflict.
- (2) Without limiting subsection (1), the information delivered to a client under that subsection must include a description of each of the following:
  - (a) the nature and extent of the conflict of interest;
  - (b) the potential impact on and risk that the conflict of interest may pose to the client;
  - (c) how the conflict of interest has been, or will be, addressed.
- (3) The disclosure required under subsection (1) must be prominent, specific and written in plain language.
- (4) A registered firm must disclose a conflict of interest to a client under subsection (1):
  - (a) before opening an account for the client if the conflict might be present throughout the relationship between the registered firm and the client; and
  - (b) when the conflict of interest first arises or, in the case of a transaction that presents a conflict of interest, before entering into the transaction with the client.
- (5) A registered firm must not rely solely on disclosure to address, in the best interest of the client, conflicts of interest identified under subsections 13.4(1) [*a registered firm's responsibility to identify conflicts of interest*] and 13.4.1(2) [*a registered individual's responsibility to identify conflicts of interest*].

#### **13.4.6 Investment fund managers**

Sections 13.4 to 13.4.5 do 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*.

### **23. Section 13.7 is amended**

- (a) **by replacing “pay” with “provide” in the definition of “referral arrangement”,**

- (b) **by replacing** “compensation” **with** “monetary or non-monetary benefit” **in the definition of “referral fee”, and**
- (c) **by replacing** “paid” **with** “provided” **in the definition of “referral fee”.**

**24. Section 13.8 is replaced with the following:**

**13.8 Permitted referral arrangements**

- (1) A registered firm, or an individual acting on its behalf, must not provide a referral fee to another person or company unless all of the following apply:
  - (a) the person or company receiving the referral fee is a registered individual or a registered firm;
  - (b) the referral fee complies with section 13.8.1 [*limitation on referral fees*];
  - (c) before a client is referred to the registrant, the terms of the referral arrangement are set out in a written agreement between the registered firms;
  - (d) the registered firm records all referral fees;
  - (e) the registered firm ensures that the information required under subsection 13.10(1) [*disclosing referral arrangements to clients*] is provided to the client in writing before the party receiving the referral opens an account for the client or provides services to the client.
- (2) A registered firm, or an individual acting on its behalf must not accept a referral fee from another person or company unless all of the following apply:
  - (a) the referral fee complies with section 13.8.1 [*limitation on referral fees*];
  - (b) before a client is referred by the registrant, the terms of the referral arrangement are set out in a written agreement between the registered firm and the person or company receiving the referral of the client;
  - (c) the registered firm records all referral fees;
  - (d) the registered firm ensures that the information prescribed by subsection 13.10(1) [*disclosing referral arrangements to clients*] is provided to the client in writing before the party receiving the referral either opens an account for the client or provides services to the client.

**13.8.1 Limitation on referral fees**

A registrant must not provide or receive a referral fee if one or more of the following applies:

- (a) the referral fee constitutes a series of payments that continue longer than 36 months from the date of the referral;
- (b) the referral fee constitutes a series of payments that together exceed 25% of the fees or commissions collected from the client by the party who received the referral;
- (c) the referral fee results in an increase in the amount of fees or commissions that would otherwise be paid by a client to the party who received the referral for the same product or service..

**25. Subsection 13.10(1) is amended**

- (a) **by replacing** “The written disclosure of the referral arrangement required by paragraph 13.8(c) [*permitted referral arrangements*] must include” **with** “For the purposes of paragraphs 13.8(1)(e) and (2)(d) [*permitted referral arrangements*], the information required by this subsection is all of”,
- (b) **in paragraph (a) by replacing** “paragraph 13.8(a);” **with** “paragraphs 13.8(1)(c) and (2)(b) [*permitted referral arrangements*], as applicable;”, **and**
- (c) **in paragraph (f) by deleting** “if a referral is made to a registrant,”.

**26. Section 13.11 is repealed.**



27. **Section 13.12 is repealed.**

28. **Paragraph 13.17(1)(a) is replaced with the following:**

- (a) division 2 [*conflicts of interest*] of Part 13, except section 13.5 [*restrictions on certain managed account transactions*] and section 13.6 [*disclosure when recommending related or connected securities*];.

29. **Part 13 is amended by adding the following division:**

*Division 7 Misleading communications*

**13.18 Misleading communications**

- (1) A registered individual must not hold himself or herself out, and a registered firm must not hold itself or its registered individuals out, in a manner that could reasonably be expected to deceive or mislead a person as to any of the following matters:
  - (a) the proficiency, experience, or qualifications of the registrant;
  - (b) the nature of the person's relationship, or potential relationship, with the registrant;
  - (c) the products or services provided, or to be provided, by the registrant.
- (2) Without limiting subsection (1), a registered individual must not use any of the following:
  - (a) a title, designation, award, or recognition that is based partly or entirely on that registered individual's sales activity or revenue generation;
  - (b) a corporate officer title unless their sponsoring firm has appointed that registered individual to that corporate office pursuant to applicable corporate law;
  - (c) a title or designation, unless the individual's sponsoring firm has approved the use by that registered individual of that title or designation..

30. **The heading to section 14.1.1 is amended by adding “ – investment fund managers” after “Duty to provide information”.**

31. **Part 14 is amended by adding the following division:**

*Division 1.1 Publicly available information*

**14.1.2 Duty to provide information**

- (1) A registered firm must make publicly available information that a reasonable investor would consider important in deciding whether to become a client of the registered firm, including general descriptions of the following:
  - (a) the products and services that it offers and any material limitations on those products and services;
  - (b) the types of account that it offers;
  - (c) the charges and other costs to clients, including any current fee schedule associated with its products, services and accounts;
  - (d) any minimum account sizes or minimum charges that apply to its products, services and accounts;
  - (e) any third-party compensation associated with its products, services and accounts;
  - (f) any restrictions on the clients to whom it makes products, services or accounts available.
- (2) This section does not apply to a registered firm in respect of products and services that are offered exclusively to permitted clients..

32. **Section 14.2 is amended**

**(a) by adding the following subsection:**

- (0.1) In this section, “proprietary product” means a security of an issuer if one or more of the following apply:
- (a) the issuer of the security is a connected issuer of the registered firm;
  - (b) the issuer of the security is a related issuer of the registered firm;
  - (c) the registered firm or an affiliate of the registered firm is the investment fund manager or portfolio manager of the issuer of the security.,

**(b) by replacing paragraph (2)(b) with the following:**

- (b) a general description of the products and services the registered firm offers to the client, including
- (i) whether the firm will primarily or exclusively provide proprietary products to the client;
  - (ii) whether there are any other restrictions on the products or services the registrant will provide to the client,;

**(c) in paragraph (2)(h) by replacing “compensation” with “third-party compensation that may be”,**

**(d) in paragraph (2)(h) by deleting “by any other party” before “in relation to”,**

**(e) in paragraph (2)(h) by replacing “a client may purchase through the registered firm” with “the client may purchase through the firm”,**

**(f) by replacing paragraph (2)(k) with the following:**

- (k) a statement that the registered firm must determine that any investment action it takes, recommends or decides on, for the client is suitable for the client and puts the client’s interests first,;

**(g) in paragraph (2)(l) by replacing “a registered firm must collect” with “the registered firm has collected”,**

**(h) in paragraph (2)(n) by replacing “.” with “;”, and**

**(i) by adding the following paragraph:**

- (o) an explanation of the impact on a client’s investment returns from each of the following:
- (i) the charges described in paragraphs (f) and (g);
  - (ii) any investment fund management expense fees or other ongoing fees the client may directly or indirectly incur in connection with the securities purchased for the client’s account;
  - (iii) any restrictions on the products or services that the registered firm will provide to the client..

**33. The first column of Appendix G is amended by replacing “section 13.3 [suitability]” with “section 13.3 [suitability determination]”.**

**34. Appendix G is amended by deleting the following row:**

section 13.12 [restriction on lending to clients]	1. Dealer Member Rule 17.11; and 2. Dealer Member Rule 100 [Margin Requirements]
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**35. The first column of Appendix H is amended by replacing “section 13.3 [suitability]” with “section 13.3 [suitability determination]”.**

**36. Appendix H is amended by deleting the following row:**

section 13.12 [restriction on lending to clients]	1. Rule 3.2.1 [Client Lending and Margin]; and 2. Rule 3.2.3 [Advancing Mutual Fund Redemption Proceeds]
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- 37.** (1) Subject to subsection (2), this Instrument comes into force on •.
- (2) [Transition measures to be considered further.]

**COMPANION POLICY 31-103 CP  
REGISTRATION REQUIREMENTS, EXEMPTIONS  
AND ONGOING REGISTRANT OBLIGATIONS**

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**COMPANION POLICY 31-103 CP  
REGISTRATION REQUIREMENTS, EXEMPTIONS  
AND ONGOING REGISTRANT OBLIGATIONS**

**Part 1 Definitions and fundamental concepts**

**1.1 Introduction**

**Purpose of this Companion Policy**

This Companion Policy sets out how the Canadian Securities Administrators (the CSA or we) interpret or apply the provisions of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) and related securities legislation.

**Numbering system**

Except for Part 1, the numbering of Parts, Divisions and sections in this Companion Policy corresponds to the numbering in NI 31-103. Any general guidance for a Part or a Division appears immediately after the Part or Division name. Any specific guidance on sections in NI 31-103 follows any general guidance. If there is no guidance for a Part, Division or section, the numbering in this Companion Policy will skip to the next provision that does have guidance.

All references in this Companion Policy to sections, Parts and Divisions are to NI 31-103, unless otherwise noted.

**Additional requirements applicable to registrants**

For additional requirements that may apply to them, registrants should refer to:

- National Instrument 31-102 *National Registration Database* (NI 31-102) and the Companion Policy to NI 31-102
- National Instrument 33-109 *Registration Information* (NI 33-109) and the Companion Policy to NI 33-109
- National Policy 11-204 *Process for Registration in Multiple Jurisdictions* (NP 11-204), and
- securities and derivatives legislation in their jurisdiction

Registrants that are members of ~~a self-regulatory organization (SRO)~~ an SRO must also comply with their SRO's requirements.

**Disclosure and notices**

***Delivering disclosure and notices to the principal regulator***

Under section 1.3, registrants must deliver all disclosure and notices required under NI 31-103 to the registrant's principal regulator. This does not apply to notices under sections 8.18 [*international dealer*] and 8.26 [*international adviser*]. Registrants must deliver these notices to the regulator in each jurisdiction where they are registered or relying on an exemption from registration.

***Electronic delivery of documents***

These documents may be delivered electronically. Registrants should refer to National Policy 11-201 *Electronic Delivery of Documents* (NP 11-~~102~~201).

See Appendix A for contact information for each regulator.

**Clear and meaningful disclosure to clients**

We expect registrants to present disclosure information to clients in a clear and meaningful manner in order to ensure clients understand the information presented. Registrants should ensure that investors can readily understand the information. These requirements are consistent with the obligation to deal fairly, honestly and in good faith with clients.

**1.2 Definitions**

Unless defined in NI 31-103, terms used in NI 31-103 and in this Companion Policy have the meaning given to them in the securities legislation of each jurisdiction or in National Instrument 14-101 *Definitions*. See Appendix B for a list of some terms that are not defined in NI 31-103 or this Companion Policy but are defined in other securities legislation.



In this Companion Policy “regulator” means the regulator or securities regulatory authority in a jurisdiction.

### **Permitted client**

The following discussion provides guidance on the term “permitted client”, which is defined in section 1.1.

“Permitted client” is used in the following sections:

- 8.18 [*international dealer*]
- 8.22.1 [*short-term debt*]
- 8.26 [*international adviser*]
- 13.2 [*know your client*]
- 13.3 [*suitability [determination](#)*]
- 13.13 [*disclosure when recommending the use of borrowed money*]
- 14.2 [*relationship disclosure information*]
- 14.2.1 [*pre-trade disclosure of charges*]
- 14.4 [*when the firm has a relationship with a financial institution*]
- 14.5.2 [*restriction on self-custody and qualified custodian requirement*]
- 14.14.1 [*additional statements*]
- 14.14.2 [*security position cost information*]
- 14.17 [*report on charges and other compensation*]
- 14.18 [*investment performance report*]

### ***Exemptions from registration when dealing with permitted clients***

Sections 8.18 and 8.26 exempt international dealers and international advisers from the registration requirement if they deal with certain permitted clients and meet certain other conditions.

Section 8.22.1 exempts certain financial institutions from the dealer registration requirement when dealing in a short-term debt instrument with permitted clients.

### ***Exemptions from other requirements when dealing with permitted clients***

Under section 13.3, permitted clients may waive their right to have a registrant determine that a trade is suitable. In order to rely on this exemption, the registrant must determine that a client is a permitted client at the time the client waives their right to suitability.

Under sections 13.13 and 14.4, registrants do not have to provide certain disclosures to permitted clients. In order to rely on these exemptions, registrants must determine that a client is a permitted client at the time the client opens an account.

Under sections 14.2, 14.2.1, 14.14.1, 14.14.2, 14.17 and 14.18, registrants do not have to provide certain disclosures or reports to a permitted client that is not an individual.

Under paragraph 14.5.2(7)(d), registered firms are not required to ensure that cash or securities of permitted clients, that are not individuals or investment funds, are held with a qualified custodian if the permitted client has acknowledged in writing that the permitted client is aware that this qualified custodian requirement will not apply to the firm. In order to rely on this exemption, we expect registered firms to determine that the client is a permitted client that is not an individual or investment fund at the time the client acknowledges that its right to a qualified custodian will not apply.

### ***Determining assets***

The definition of permitted client includes monetary thresholds based on the value of the client's assets. The monetary thresholds in paragraphs (o) and (q) of the definition are intended to create "bright-line" standards. Investors who do not satisfy these thresholds do not qualify as permitted clients under the applicable paragraph.

#### **Paragraph (o) of the definition**

Paragraph (o) refers to an individual who beneficially owns financial assets with an aggregate realizable value that exceeds \$5 million, before taxes but net of any related liabilities.

In general, determining whether financial assets are beneficially owned by an individual should be straightforward. However, this determination may be more difficult if financial assets are held in a trust or in other types of investment vehicles for the benefit of an individual.

Factors indicating beneficial ownership of financial assets include:

- possession of evidence of ownership of the financial asset
- entitlement to receive any income generated by the financial asset
- risk of loss of the value of the financial asset, and
- the ability to dispose of the financial asset or otherwise deal with it as the individual sees fit

For example, securities held in a self-directed RRSP for the sole benefit of an individual are beneficially owned by that individual. Securities held in a group RRSP are not beneficially owned if the individual cannot acquire and deal with the securities directly.

"Financial assets" is defined in section 1.1 of National Instrument 45-106 *Prospectus Exemptions* (NI 45-106).

Realizable value is typically the amount that would be received by selling an asset.

#### **Paragraph (q) of the definition**

Paragraph (q) refers to a person or company that has net assets of at least \$25 million, as shown on its last financial statements. "Net assets" under this paragraph is total assets minus total liabilities.

### **1.3 Fundamental concepts**

This section describes the fundamental concepts that form the basis of the registration regime:

- requirement to register
- business trigger for trading and advising, and
- fitness for registration

A registered firm is responsible for the conduct of the individuals whose registration it sponsors. A registered firm

- must undertake due diligence before sponsoring an individual to be registered to act on its behalf (see further guidance in Part 4 *Due diligence by firms* of the Companion Policy to NI 33-109)
- has an ongoing obligation to monitor and supervise its registered individuals in an effective manner (see further guidance in section 11.1 of this Companion Policy)

Failure of a registered firm to take reasonable steps to discharge these responsibilities may be relevant to the firm's own continued fitness for registration.

#### **Requirement to register**

The requirement to register is found in securities legislation. Firms must register if they are:

- in the business of trading
- in the business of advising

- holding themselves out as being in the business of trading or advising
- acting as an underwriter, or
- acting as an investment fund manager

Individuals must register if they trade, underwrite or advise on behalf of a registered dealer or adviser, or act as the ultimate designated person (UDP) or chief compliance officer (CCO) of a registered firm. Except for the UDP and the CCO, individuals who act on behalf of a registered investment fund manager do not have to register.

However, all permitted individuals of any registrant must file Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals* (Form 33-109F4).

There is no renewal requirement for registration, but fees must be paid every year to maintain registration.

### ***Multiple categories***

Registration in more than one category may be necessary. For example, an adviser that also manages an investment fund may have to register as a portfolio manager and an investment fund manager. An adviser that manages a portfolio and distributes units of an investment fund may have to register as a portfolio manager and as a dealer.

### ***Registration exemptions***

NI 31-103 provides exemptions from the registration requirement. There may be additional exemptions in securities legislation. Some exemptions do not need to be applied for if the conditions of the exemption are met. In other cases, on receipt of an application, the regulator has discretion to grant exemptions for specified dealers, advisers or investment fund managers, or activities carried out by them if registration is required but specific circumstances indicate that it is not otherwise necessary for investor protection or market integrity.

### ***Business trigger for trading and advising***

We refer to trading or advising in securities for a business purpose as the “business trigger” for registration.

We look at the type of activity and whether it is carried out for a business purpose to determine if an individual or firm must register. We consider the factors set out below, among others, to determine if the activity is for a business purpose. For the most part, these factors are from case law and regulatory decisions that have interpreted the business purpose test for securities matters.

### ***Factors in determining business purpose***

This section describes factors that we consider relevant in determining whether an individual or firm is trading or advising in securities for a business purpose and, therefore, subject to the dealer or adviser registration requirement.

This is not a complete list. We do not automatically assume that any one of these factors on its own will determine whether an individual or firm is in the business of trading or advising in securities.

#### ***(a) Engaging in activities similar to a registrant***

We usually consider an individual or firm engaging in activities similar to those of a registrant to be trading or advising for a business purpose. Examples include promoting securities or stating in any way that the individual or firm will buy or sell securities. If an individual or firm sets up a business to carry out any of these activities, we may consider them to be trading or advising for a business purpose.

#### ***(b) Intermediating trades or acting as a market maker***

In general, we consider intermediating a trade between a seller and a buyer of securities to be trading for a business purpose. This typically takes the form of the business commonly referred to as a broker. Making a market in securities is also generally considered to be trading for a business purpose.

#### ***(c) Directly or indirectly carrying on the activity with repetition, regularity or continuity***

Frequent or regular transactions are a common indicator that an individual or firm may be engaged in trading or advising for a business purpose. The activity does not have to be their sole or even primary endeavour for them to be in the business.

We consider regularly trading or advising in any way that produces, or is intended to produce, profits to be for a business purpose. We also consider any other sources of income and how much time an individual or firm spends on all activities associated with the trading or advising.

**(d) *Being, or expecting to be, remunerated or compensated***

Receiving, or expecting to receive, any form of compensation for carrying on the activity, including whether the compensation is transaction or value based, indicates a business purpose. It does not matter if the individual or firm actually receives compensation or in what form. Having the capacity or the ability to carry on the activity to produce profit is also a relevant factor.

**(e) *Directly or indirectly soliciting***

Contacting anyone to solicit securities transactions or to offer advice may reflect a business purpose. Solicitation includes contacting someone by any means, including advertising that proposes buying or selling securities or participating in a securities transaction, or that offers services or advice for these purposes.

***Business trigger examples***

This section explains how the business trigger might apply to some common situations.

***(a) Securities issuers***

A securities issuer is an entity that issues or trades in its own securities. In general, securities issuers with an active non-securities business do not have to register as a dealer if they:

- do not hold themselves out as being in the business of trading in securities
- trade in securities infrequently
- are not, or do not expect to be, compensated for trading in securities
- do not act as intermediaries, and
- do not produce, or intend to produce, a profit from trading in securities

During the start-up stage, securities issuers may not yet be actively carrying on their intended business. We consider a start-up securities issuer to have an “active non-securities business” if the entity is raising capital to start a non-securities business. Although the entity does not need to be producing a product or delivering a service, we would expect it to have a bona fide business plan to do so, containing milestones and the time anticipated to reach those milestones. For example, technology companies may raise money with only a business plan for many years before they start producing a product or delivering a service. Similarly, junior exploration companies may raise money with only a business plan long before they find or extract any resources.

However, securities issuers may have to register as dealers if they are in the business of trading. Conduct that would indicate that security issuers are in the business includes frequently trading in securities. While frequent trading is a common indicator of being in the business of trading, we recognize that trading may be more frequent during the start-up stage, as an issuer needs to raise capital to launch and advance the business. If the trading is primarily for the purpose of advancing the issuer’s business plan, then the frequency of the activities alone should not result in the issuer being in the business of trading in securities. If the capital raising and use of that capital are not advancing the business, the issuer may need to register as a dealer.

Securities issuers may also have to register as a dealer if they

- employ or contract individuals to perform activities on their behalf that are similar to those performed by a registrant (other than underwriting in the normal course of a distribution or trading for their own account)
- actively solicit investors, subject to the discussion below, or
- act as an intermediary by investing client money in securities

For example, an investment fund manager that carries on the activities described above may have to register as a dealer.

Many issuers actively solicit through officers, directors or other employees. If these individuals’ activities are incidental to their primary roles with an issuer, they would likely not be in the business of trading. Factors that would suggest that the issuer and these individuals are in the business of trading are:

- the principal purpose of the individual's employment is raising capital through distributions of the issuer's securities;
- the individuals spend the majority of their time raising capital in this manner;
- the individuals' compensation or remuneration is based solely or primarily on the amount of capital they raise for the issuer.

Securities issuers that are distributing securities are subject to the prospectus requirements unless an exemption is available. Regulators have the discretionary authority to require an underwriter for a prospectus distribution.

**(b) Venture capital and private equity**

This guidance does not apply to labour sponsored or venture capital funds as defined in National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106).

Venture capital and private equity investing are distinguished from other forms of investing by the role played by venture capital and private equity management companies (collectively, VCs). This type of investing includes a range of activities that may require registration.

VCs typically raise money under one of the prospectus exemptions in NI 45-106, including for trades to "accredited investors". The investors typically agree that their money will remain invested for a period of time. The VC uses this money to invest in securities of companies that are usually not publicly traded. The VC usually becomes actively involved in the management of the company, often over several years.

Examples of active management in a company include the VC having:

- representation on the board of directors
- direct involvement in the appointment of managers
- a say in material management decisions

The VC looks to realize on the investment either through a public offering of the company's securities, or a sale of the business. At this point, the investors' money can be returned to them, along with any profit.

Investors rely on the VC's expertise in selecting and managing the companies it invests in. In return, the VC receives a management fee or "carried interest" in the profits generated from these investments. They do not receive compensation for raising capital or trading in securities.

Applying the business trigger factors to the VC activities as described above, there would be no requirement for the VC to register as:

- a portfolio manager, if the advice provided in connection with the purchase and sale of companies is incidental to the VC's active management of these companies, or
- a dealer, if both the raising of money from investors and the investing of that money by the VC (in securities of companies that are usually not publicly traded) are occasional and uncompensated activities

If the VC is actively involved in the management of the companies it invests in, the investment portfolio would generally not be considered an investment fund. As a result, the VC would not need to register as an investment fund manager.

The business trigger factors and investment fund manager analysis may apply differently if the VC engages in activities other than those described above.

**(c) One-time activities**

In general, we do not require registration for one-time trading or advising activities. This includes trading or advising that:

- is carried out by an individual or firm acting as a trustee, executor, administrator, personal or other legal representative, or
- relates to the sale of a business

**(d) Incidental activities**

If trading or advising activity is incidental to a firm's primary business, we may not consider it to be for a business purpose.

For example, merger and acquisition specialists that advise the parties to a transaction between companies are not normally required to register as dealers or advisers in connection with that activity, even though the transaction may result in trades in securities and they will be compensated for the advice. If the transaction results in trades in the securities of the company to an acquirer, this is considered incidental to the acquisition transaction. However, if the merger and acquisition specialists also engage in capital raising from prospective investors (including private placements), they will need to consider whether such activity would be in the business of trading and require registration.

Another example is professionals, such as lawyers, accountants, engineers, geologists and teachers, who may provide advice on securities in the normal course of their professional activities. We do not consider them to be advising on securities for a business purpose. For the most part, any advice on securities will be incidental to their professional activities. This is because they:

- do not regularly advise on securities
- are not compensated separately for advising on securities
- do not solicit clients on the basis of their securities advice, and
- do not hold themselves out as being in the business of advising on securities

### ***Registration trigger for investment fund managers***

Investment fund managers are subject to a registration trigger. This means that if a firm carries on the activities of an investment fund manager, it must register. However, investment fund managers are not subject to the business trigger.

### **Fitness for registration**

The regulator will only register an applicant if they appear to be fit for registration. Following registration, individuals and firms must maintain their fitness in order to remain registered. If the regulator determines that a registrant has become unfit for registration, the regulator may suspend or revoke the registration. See Part 6 of this Companion Policy for guidance on suspension and revocation of individual registration. See Part 10 of this Companion Policy for guidance on suspension and revocation of firm registration.

### ***Terms and conditions***

The regulator may impose terms and conditions on a registration at the time of registration or at any time after registration. Terms and conditions imposed at the time of registration are generally permanent, for example, in the case of a restricted dealer who is limited to specific activities. Terms and conditions imposed after registration are generally temporary. For example, if a registrant does not maintain the required capital, it may have to file monthly financial statements and capital calculations until the regulator's concerns are addressed.

### ***Opportunity to be heard***

Applicants and registrants have an opportunity to be heard by the regulator before their application for registration is denied. They also have an opportunity to be heard before the regulator imposes terms and conditions on their registration if they disagree with the terms and conditions.

### ***Assessing fitness for registration – firms***

We assess whether a firm is or remains fit for registration through the information it is required to provide on registration application forms and as a registrant, and through compliance reviews. Based on this information, we consider whether the firm is able to carry out its obligations under securities legislation. For example, registered firms must be financially viable. A firm that is insolvent or has a history of bankruptcy may not be fit for registration.

In addition, when determining whether a firm whose head office is outside Canada is, and remains, fit for registration, we will consider whether the firm maintains registration or regulatory organization membership in the foreign jurisdiction that is appropriate for the securities business it carries out there.

### ***Assessing fitness for registration – individuals***

We use three fundamental criteria to assess whether an individual is or remains fit for registration:

- proficiency

- integrity, and
- solvency

**(a) Proficiency**

Individual applicants must meet the initial proficiency requirements by demonstrating that they have the applicable education, training and experience ~~requirements~~ prescribed by securities legislation ~~and demonstrate as well as~~ knowledge of securities legislation ~~and the securities they recommend.~~ Registered. Once registered, the individuals are required to know the securities that are available for them to purchase and sell for, or recommend to, clients as part of the know your product obligation. They should continually update their knowledge and training to keep pace with new securities, services and developments in the industry that are relevant to their business. Firms are required to provide training to their registered individuals.

See Part 3 and section 13.2.1 of this Companion Policy for more specific guidance on proficiency and on the know your product obligation.

**(b) Integrity**

Registered individuals must conduct themselves with integrity and have an honest character. The regulator will assess the integrity of individuals through the information they are required to provide on registration application forms and as registrants, and through compliance reviews. For example, applicants are required to disclose information about conflicts of interest, such as other employment or partnerships, service as a member of a board of directors, or relationships with affiliates, and about any regulatory or legal actions against them.

**(c) Solvency**

The regulator will assess the overall financial condition of an individual applicant or registrant. An individual that is insolvent or has a history of bankruptcy may not be fit for registration. Depending on the circumstances, the regulator may consider the individual's contingent liabilities. The regulator may take into account an individual's bankruptcy or insolvency when assessing their continuing fitness for registration.

## **Part 2 Categories of registration for individuals**

### **2.1 Individual categories**

#### **Multiple individual categories**

Individuals who carry on more than one activity requiring registration on behalf of a registered firm must:

- register in all applicable categories, and
- meet the proficiency requirements of each category

For example, an advising representative of a portfolio manager who is also the firm's CCO must register in the categories of advising representative and CCO. They must meet the proficiency requirements of both of these categories.

#### **Individual registered in a firm category**

An individual can be registered in both a firm and individual category. For example, a sole proprietor who is registered in the firm category of portfolio manager must also be registered in the individual category of advising representative.

### **2.2 Client mobility exemption – individuals**

#### **Conditions of the exemption**

The mobility exemption in section 2.2 allows registered individuals to continue dealing with and advising clients who move to another jurisdiction, without registering in that other jurisdiction. Section 8.30 [*client mobility exemption – firms*] contains a similar exemption for registered firms.

The exemption becomes available when the client (not the registrant) moves to another jurisdiction. An individual may deal with up to five "eligible" clients in each other jurisdiction. Each of the client, their spouse and any children are an eligible client.

An individual may only rely on the exemption if:

- they and their sponsoring firm are registered in their principal jurisdiction
- they and their sponsoring firm only act as a dealer, underwriter or adviser in the other jurisdiction as permitted under their registration in their principal jurisdiction
- they comply with Part 13 *Dealing with clients – individuals and firms*
- they act fairly, honestly and in good faith in their dealings with the eligible client, and
- their sponsoring firm has disclosed to the eligible client that the individual and if applicable, their sponsoring firm, are exempt from registration in the other jurisdiction and are not subject to the requirements of securities legislation in that jurisdiction

As soon as possible after an individual first relies on this exemption, their sponsoring firm must complete and file Form 31-103F3 *Use of mobility exemption* (Form 31-103F3) with the other jurisdiction.

### **Limits on the number of clients**

Sections 2.2 and 8.30 are independent of each other: individuals may rely on the exemption from registration in section 2.2 even though their sponsoring firm is registered in the local jurisdiction (and is not relying on the exemption from registration in section 8.30). The limits in sections 2.2 and 8.30 are per jurisdiction.

For example a firm using the exemption in section 8.30 could have 10 clients in each of several local jurisdictions where it is not registered. An individual may also use the exemption in section 2.2 to have 5 clients in each of several jurisdictions where the individual is not registered.

The individual limits are per individual. For example several individuals working for the same firm could each have 5 clients in the same local jurisdiction and each individual could still rely on the exemption in section 2.2. However, the firm may not exceed its 10 client limit if it wants to rely on the exemption in section 8.30. If the firm exceeds the 10 client limit, the firm must be registered in the local jurisdiction.

## **Part 3 Registration requirements – individuals**

### *Division 1 General proficiency requirements*

#### **Application of proficiency requirements**

Part 3 sets out the initial and ongoing proficiency requirements for

- dealing representatives and chief compliance officers of mutual fund dealers, scholarship plan dealers and exempt-market dealers respectively
- advising representatives, associate advising representatives and chief compliance officers of portfolio managers
- chief compliance officers of investment fund managers

The regulator is required to determine the individual's fitness for registration and may exercise discretion in doing so.

Section 3.3 does not provide proficiency requirements for dealing representatives of investment dealers since the IIROC Rules provide those requirements for the individuals who are approved persons of IIROC member firms.

### **Exam based requirements**

Individuals must pass exams – not courses – to meet the education requirements in Part 3. For example, an individual must pass the Canadian Securities Course Exam, but does not have to complete the Canadian Securities Course. Individuals are responsible for completing the necessary preparation to pass an exam and for proficiency in all areas covered by the exam.

#### **3.3 Time limits on examination requirements**

Under section 3.3, there is a time limit on the validity of exams prescribed in Part 3. Individuals must pass an exam within 36 months before they apply for registration. However, this time limit does not apply if the individual:

- was registered in an active capacity (i.e., not suspended), in the same category in a jurisdiction of Canada at any time during the 36-month period before the date of their application; or



- has gained relevant securities industry experience for a total of 12 months during the 36-month period before the date of their application: these months do not have to be consecutive, or with the same firm or organization

These time limits do not apply to the CFA Charter or the CIM designation, since we do not expect the holders of these designations to have to retake the courses forming part of the requirements applicable to these designations. However, if the individual no longer has the right to use the CFA Charter or the CIM designation, by reason of revocation of the designation or otherwise, we may consider the reasons for such a revocation to be relevant in determining an individual's fitness for registration. Registered individuals are required to notify the regulator of any change in the status of their CFA Charter or the CIM designation within 10 days of the change, by submitting Form 33-109F5 *Change of Registration Information* in accordance with NI 31-102.

When assessing an individual's fitness for registration, the regulator may consider

- the date on which the relevant examination was passed, and
- the length of time between any suspension and reinstatement of registration during the 36-month period

See Part 6 of this Companion Policy for guidance on the meaning of "suspension" and "reinstatement".

### **Relevant securities industry experience**

The securities industry experience under paragraph 3.3(2)(b) should be relevant to the category applied for. It may include experience acquired:

- during employment at a registered dealer, a registered adviser or an investment fund manager
- in related investment fields, such as investment banking, securities trading on behalf of a financial institution, securities research, portfolio management, investment advisory services or supervision of those activities
- in legal, accounting or consulting practices related to the securities industry
- in other professional service fields that relate to the securities industry, or
- in a securities-related business in a foreign jurisdiction

### *Division 2 Education and experience requirements*

See Appendix C for a chart that sets out the proficiency requirements for each individual category of registration.

### **Granting exemptions**

The regulator may grant an exemption from any of the education and experience requirements in Division 2 if it is satisfied that an individual has qualifications or relevant experience that is equivalent to, or more appropriate in the circumstances than, the prescribed requirements.

### **Proficiency for representatives of restricted dealers and restricted portfolio managers**

The regulator will decide on a case-by-case basis what education and experience are required for registration as:

- a dealing representative or CCO of a restricted dealer, and
- an advising representative or CCO of a restricted portfolio manager

The regulator will determine these requirements when it assesses the individual's fitness for registration.

## **3.4 Proficiency – initial and ongoing**

### **Proficiency principle**

Under section 3.4, registered individuals must not perform an activity that requires registration unless they have the education, ~~training and experience that a reasonable person would consider necessary to perform the activity competently, including understanding the structure, features and risks of each security they recommend to a client (also referred to as know your product or KYP).~~

~~The requirement to understand the structure, features and risks of each security recommended to a client is a proficiency requirement. This requirement is in addition to the suitability obligation in section 13.3 and applies even where there is an exemption from the suitability obligation such as, for example, the exemption in subsection 13.3(4) in respect of permitted clients. CCOs must also not perform an activity that requires registration unless they have the education, training and experience that a reasonable person would consider necessary to perform the activity competently. CCOs must have a good understanding of the regulatory requirements applicable to the firm and individuals acting on its behalf. CCOs must also have~~In the case of CCOs, this includes the knowledge and ability to design and implement an effective compliance system.

## **Responsibility of the firm**

The responsibility of registered firms to oversee the compliance of registered individuals acting on their behalf extends to ensuring that they are proficient at all times. A registered firm must not permit an individual they sponsor to perform an activity if the proficiency requirements are not met.

### **3.4.1 Firm's obligation to provide training**

#### **Compliance training**

Under section 3.4.1, firms must provide compliance training. We expect firms to develop, implement and maintain an ongoing compliance training program to ensure that everyone at the firm understands the standards of conduct, acts with integrity when dealing with clients, and understands their role in the compliance system. In particular, registered individuals should be trained in relation to their conflicts of interest, know your client (also referred to as KYC), know your product (also referred to as KYP) and suitability determination obligations, including product training to ensure their registered representatives have a sufficient understanding of the securities and their risks.

The firm's training program should include ongoing communication and training on changes in regulatory requirements or the firm's policies and procedures. The firm's training program should be in writing, reviewed and kept up to date. The training program materials should include examples of:

- how to identify existing and reasonably foreseeable conflicts of interest between a registered individual and their client
- how to address conflicts of interest in the best interest of their client, and
- how to put the client's interest first when making suitability determinations for their client

Firms should perform evaluations to test the effectiveness of their ongoing training program at regular intervals. These evaluations should be designed to allow for the identification and documentation of any gaps, which should be reported in writing to the firm's UDP. The scope of the testing, and the methods used in the testing, will depend on the nature, size and complexity of its business and should be documented as part of the firm's evaluation.

If a firm only has one individual who is registered in a category that authorizes the individual to act as a dealer or an adviser on behalf of the registered firm (small firm), we do not expect the firm to have a training program in place. However, we expect a small firm to still be able to demonstrate that it has all the required elements of an effective compliance system.

#### **Training to support the know your product obligation**

As part of their know your product obligation, firms must also assess whether any additional training or proficiency requirements are necessary in order for their registered individuals to understand the securities and make appropriate suitability determinations. See section 13.2.1 of this Companion Policy for additional guidance on the know your product obligation.

#### **Outsourcing of training**

~~Firms should perform their own analysis of all securities they recommend to clients and provide product training to ensure their registered representatives have a sufficient understanding of the securities and their risks to meet their suitability obligations under section 13.3. Similarly, registered individuals should have a thorough understanding of a security before they recommend it to a client (also referred to as know-your-product or KYP).~~

Although a firm may outsource elements of its training program, the firm remains responsible for demonstrating that its registered individuals have been trained on the firm's policies and procedures.

### **3.11 Portfolio manager – advising representative**

### **3.12 Portfolio manager – associate advising representative**

The 12 months of relevant investment management experience referred to in section 3.11 and 24 months of relevant investment management experience referred to in section 3.12 do not have to be consecutive, or with the same firm or organization.

For individuals with a CFA charter, the regulator will decide on a case-by-case basis whether the experience they gained to earn the charter qualifies as relevant investment management experience.

### **Relevant investment management experience**

The relevant investment management experience requirement is in addition to the specific course or designation requirements for each category of registration. We will assess whether an individual has acquired relevant investment management experience on a case-by-case basis. This section describes factors we may consider in assessing certain types of experience.

Relevant investment management experience under sections 3.11 and 3.12 may vary according to the level of specialization of the individual. It may include:

- securities research and analysis experience, demonstrating an ability in, and understanding of, portfolio analysis or portfolio security selection, or
- management of investment portfolios on a discretionary basis, including investment decision making, rebalancing and evaluating performance

### ***Advising representatives***

An advising representative may have discretionary authority over investments of others. Accordingly, this category of registration involves the most onerous proficiency requirements. We expect an individual who seeks registration as an advising representative to demonstrate a high quality of experience that is clearly relevant to discretionary portfolio management. This section sets out specific examples of experience that may satisfy the relevant investment management experience requirement for advising representatives.

#### ***(a) Discretionary portfolio management***

We may consider experience performing discretionary portfolio management in a professional capacity to be sufficient to meet the relevant investment management experience requirement for registration as an advising representative. Such experience may include working at:

- an adviser registered or operating under an exemption from registration in a foreign jurisdiction
- an insurance company
- a pension fund
- a government, corporate, bank or trust company treasury
- an IIROC member firm

#### ***(b) Assistant or associate portfolio management***

We may consider experience supporting registered portfolio managers or other professional discretionary asset managers to be sufficient to meet the relevant investment management experience requirement for registration as an advising representative. This may include:

- working with portfolio managers to formulate, draft and implement written investment policy statements for clients, and
- researching and analysing individual securities for potential inclusion in investment portfolios

#### ***(c) Research analyst with an IIROC member firm or registered adviser***

We may consider experience performing research and analysis of individual securities with recommendations for the purpose of determining their suitability for inclusion in client investment portfolios to be sufficient to meet the relevant investment management experience requirement for registration as an advising representative.

### ***Associate advising representatives***

This category may be appropriate for individuals who meet the minimum education and experience requirements in section 3.12 but do not meet the more onerous requirements for registration as an advising representative under section 3.11. In evaluating the experience required to obtain registration as an associate advising representative, we take into account that the advice provided by an associate advising representative must be approved by an advising representative in accordance with section 4.2. Experience gained as an associate advising representative does not automatically qualify an individual to be registered as an advising representative.

We will assess on a case-by-case basis whether such experience meets the more stringent quality of experience required for registration as an advising representative. This section sets out specific examples of experience that may satisfy the relevant investment management experience requirement for associate advising representatives.

**(a) *Client relationship management***

We may consider client relationship management experience with a registered portfolio manager firm to be sufficient to meet the relevant investment management experience requirement for registration as an associate advising representative where the applicant has assisted portfolio managers in tailoring strategies for specific clients. This may include experience assisting the portfolio managers in assessing suitability, creating investment policy statements, determining asset allocation, monitoring client portfolios and performing research and analysis on the economy or asset classes generally.

We recognize that many individuals who perform client relationship management services may not provide specific advice and therefore may not trigger the registration requirement. For example, some client services representatives conduct activities such as marketing the services of the firm by providing general information about the registrant firm and its services that do not include a strategy tailored to any specific client. While some client service representatives may accompany advising representatives or associate advising representatives to meetings with clients and provide assistance with marketing and client development activities, without registration they may not themselves develop an investment policy statement for the client, provide specific information such as recommending a particular model portfolio for the client or explain the implications of discretionary portfolio decisions that were made by the client's advising representative.

**(b) *Corporate finance***

We may consider corporate finance experience involving valuing and analysing securities for initial public offerings, debt and equity financings, takeover bids and mergers to be sufficient to meet the relevant investment management experience requirement for registration as an associate advising representative where this experience demonstrates an ability in, and understanding of, portfolio analysis or portfolio securities selection.

**Some types of experience remain highly case-specific**

While the quality and nature of the experience discussed above may differ from individual to individual and we assess experience on a case-by-case basis, there are some types of experience that are even more highly case-specific. This section sets out specific examples of case specific experience that may satisfy the relevant investment management experience requirement for advising representatives and associate advising representatives.

**(a) *IIROC registered representatives***

Some registered representatives may offer a broad range of products involving security-specific research and analysis of their own, in addition to meeting with clients to review and discuss know-your-client and investment suitability. We may consider this to be sufficient experience to meet the relevant investment management experience requirement for registration as an advising representative. Other registered representatives may sell mostly or exclusively a limited number of model portfolios or "portfolio solutions" to clients based on their investment objectives, risk profile or other factors unique to the individual client. We may consider this sufficient experience to meet the relevant investment management experience requirement for registration as an associate advising representative.

However, where an individual is restricted to the sale of mutual funds, we may not consider such experience to be sufficient to meet the relevant investment management experience requirement for registration as an advising representative or associate advising representative.

**(b) *Consultants***

Consulting services relating to portfolio manager selection and monitoring may be highly specific to the individual or firm providing the services and may vary greatly among consultants in the sophistication of research and analysis and specificity of advice. Some may be responsible for hiring and ongoing monitoring of advisers or sub-advisers, while others may simply provide a desired asset allocation and list of recommended advisers based on the investment objectives of the client. We would generally expect to see a very high degree of sophistication and specificity in the analysis provided by the consultant and a high degree of investor reliance on the consultant in order for the individual to meet the relevant investment management experience requirement for registration as an advising representative.

Research and analysis to review and monitor the performance of registered portfolio managers, and referring clients for discretionary money management based on that review and monitoring, may meet the relevant investment management experience requirement for registration as an associate advising representative. We would not expect that general financial planning advice and referrals to portfolio managers alone would meet the threshold for relevant investment management experience required for registration as an advising representative or associate advising representative.

In some situations, the activities submitted as relevant investment management experience involve or may involve providing specific advice to clients and therefore may require registration. We also recognize that many individuals who provide portfolio manager selection and monitoring do not provide specific advice and therefore may not trigger the registration requirement. We may consider the following factors in determining whether a consultant is required to register:

- the client contracts directly with the consultant, rather than with the portfolio managers
- the consultant manages the hiring and evaluation of the portfolio managers
- there is reliance by the client on the consultant
- there are client expectations about the services to be provided by the consultant

*Division 3      Membership in ~~a self-regulatory organization~~ an SRO*

### **3.16      Exemptions from certain requirements for SRO-approved persons**

Section 3.16 exempts registered individuals who are dealing representatives of IIROC or MFDA members from the requirements in NI 31-103 for suitability and disclosure when recommending the use of borrowed money. This is because IIROC and the MFDA have their own rules for these matters.

~~In Québec, these requirements do~~ This exemption does not apply to dealing representatives of a mutual fund dealer ~~to the extent that equivalent requirements are applicable to those dealing representatives under regulations in Québec registered only in Québec. Those dealing representatives are subject to the suitability determination obligation in section 13.3 and to the disclosure requirement when recommending the use of borrowed money in section 13.13.~~

This section also exempts registered individuals who are dealing representatives of IIROC from the know your client obligations in section 13.2.

We expect registered individuals who are dealing representatives of IIROC or MFDA members to comply with the by-laws, rules, regulations and policies of IIROC or the MFDA, as applicable (SRO provisions). These individuals cannot rely on the exemptions in section 3.16 unless they are complying with the corresponding SRO provisions specified in NI 31-103. We regard compliance with IIROC or MFDA procedures, interpretations, notices, bulletins and practices as relevant to compliance with the applicable SRO provisions.

For these purposes, an individual that has an exemption from an SRO provision and complies with the terms of that exemption would be considered to have complied with that SRO provision.

## **Part 4      Restrictions on registered individuals**

### **4.1      Restriction on acting for another registered firm**

We will consider exemption applications on a case-by-case basis. When reviewing a registered firm's application for relief from this restriction, we will consider if:

- there are valid business reasons for the individual to be registered with both firms
- the individual will have sufficient time to adequately serve both firms
- the applicant's sponsoring firms have demonstrated that they have policies and procedures addressing any conflicts of interest that may arise as a result of the dual registration, and
- the sponsoring firms will be able to deal with these conflicts, including supervising how the individual will deal with these conflicts.

In the case of paragraph 4.1(1)(b), namely a dealing, advising or associate advising representative acting for another registered firm, affiliation of the firms may be one of the factors that we would consider in respect of an exemption application.

We note that the prohibitions in section 4.1 are in addition to the conflicts of interest provisions set out in section 13.4 [*identifying and responding to conflicts of interest*]. See section 13.4 for further guidance on individuals who serve on boards of directors.

## **4.2 Associate advising representatives – pre-approval of advice**

The associate advising representative category allows an individual to work at a registered adviser while completing the proficiency requirements for an advising representative. For example, a previously registered advising representative could work in an advising capacity while acquiring the relevant work experience required for an advising representative under section 3.11.

Associate advising representatives are not required to subsequently register as a full advising representative since this category also accommodates individuals who provide specific advice to clients, but do not manage client portfolios without supervision.

As required by section 4.2, registered firms must designate an advising representative to approve the advice provided by an associate advising representative. The designated advising representative must approve the advice before the associate advising representative gives the advice. The appropriate processes for approving the advice will depend on the circumstances, including the associate advising representative's level of experience.

Registered firms that have associate advising representatives must:

- document their policies and procedures for meeting the supervision and approval obligations as required under section 11.1
- implement controls as required under section 11.1
- maintain records as required under section 11.5, and
- notify the regulator of the names of the advising representative and the associate advising representative whose advice they are approving no later than the seventh day after the advising representative is designated

## **Part 5 Ultimate designated person and chief compliance officer**

Sections 11.2 and 11.3 require registered firms to designate a UDP and a CCO. The UDP and CCO must be registered and perform the compliance functions set out in sections 5.1 and 5.2. While the UDP and CCO have specific compliance functions, they are not solely responsible for compliance – it is the responsibility of the firm as a whole.

### **The same person as UDP and CCO**

The UDP and the CCO can be the same person if they meet the requirements for both registration categories. We prefer firms to separate these functions, but we recognize that it might not be practical for some registered firms.

### **UDP or CCO as advising or dealing representative**

The UDP or CCO may also be registered in trading or advising categories. For example, a small registered firm might conclude that one individual can adequately function as UDP and CCO, while also carrying on advising and trading activities. We may have concerns about the ability of a UDP or CCO of a large firm to conduct these additional activities and carry out their UDP, CCO and advising responsibilities at the same time.

## **5.1 Responsibilities of the ultimate designated person**

The UDP is responsible for promoting a culture of compliance and overseeing the effectiveness of the firm's compliance system. They do not have to be involved in the day to day management of the compliance group. There are no specific education or experience requirements for the UDP. However, they are subject to the proficiency principle in section 3.4.

## **5.2 Responsibilities of the chief compliance officer**

The CCO is an operating officer who is responsible for the monitoring and oversight of the firm's compliance system. This includes:

- establishing or updating policies and procedures for the firm's compliance system, and
- managing the firm's compliance monitoring and reporting according to the policies and procedures

At the firm's discretion, the CCO may also have authority to take supervisory or other action to resolve compliance issues.

The CCO must meet the proficiency requirements set out in Part 3. No other compliance staff have to be registered unless they are also advising or trading. The CCO may set the knowledge and skills necessary or desirable for individuals who report to them.

If a firm is registered in multiple categories, the CCO must meet the most stringent of the proficiency requirements of the firm's categories of registration.

Firms must designate one CCO. However, in large firms, the scale and kind of activities carried out by different operating divisions may warrant the designation of more than one CCO. We will consider applications, on a case-by-case basis, for different individuals to act as the CCO of a firm's operating divisions.

We will not usually register the same person as CCO of more than one firm unless the firms are affiliated, and the scale and kind of activities carried out make it reasonable for the same person to act as CCO of more than one firm. We will consider applications, on a case-by-case basis, for the CCO of one registered firm to act as the CCO of another registered firm.

Paragraph 5.2(c) requires the CCO to report to the UDP any instances of non-compliance with securities legislation that:

- create a reasonable risk of harm to a client or to the market, or
- are part of a pattern of non-compliance

The CCO should report non-compliance to the UDP even if it has been corrected.

Paragraph 5.2(d) requires the CCO to submit an annual report to the board of directors.

## **Part 6 Suspension and revocation of registration – individuals**

The requirements for surrendering registration and additional requirements for suspending and revoking registration are found in the securities legislation of each jurisdiction. The guidance for Part 6 relates to requirements under both securities legislation and NI 31-103.

There is no renewal requirement for registration. A registered individual may carry on the activities for which they are registered until their registration is:

- suspended automatically under NI 31-103
- suspended by the regulator under certain circumstances, or
- surrendered by the individual

### **6.1 If individual ceases to have authority to act for firm**

Under section 6.1, if a registered individual ceases to have authority to act on behalf of their sponsoring firm because their working relationship with the firm ends or changes, the individual's registration with the registered firm is suspended until reinstated or revoked under securities legislation. This applies whether the individual or the firm ends the relationship.

If a registered firm terminates its working relationship with a registered individual for any reason, the firm must complete and file a notice of termination on Form 33-109F1 *Notice of Termination of Registered Individuals and Permitted Individuals* (Form 33-109F1) no later than ten days after the effective date of the individual's termination. This includes when an individual resigns, is dismissed or retires.

The firm must file additional information about the individual's termination prescribed in Part 5 of Form 33-109F1 (except where the individual is deceased), no later than 30 days after the date of termination. The regulator uses this information to determine if there are any concerns about the individual's conduct that may be relevant to their ongoing fitness for registration. Under NI 33-109, the firm must provide this information to the individual on request.

## **Suspension**

An individual whose registration is suspended must not carry on the activity they are registered for. The individual otherwise remains a registrant and is subject to the jurisdiction of the regulator. A suspension remains in effect until the regulator reinstates or revokes the individual's registration.

If an individual who is registered in more than one category is suspended in one of the categories, the regulator will consider whether to suspend the individual's registration in other categories or to impose terms and conditions, subject to an opportunity to be heard.

### ***Automatic suspension***

An individual's registration will automatically be suspended if:

- they cease to have a working relationship with their sponsoring firm
- the registration of their sponsoring firm is suspended or revoked, or
- they cease to be an approved person of an SRO.

An individual must have a sponsoring firm to be registered. If an individual leaves their sponsoring firm for any reason, their registration is automatically suspended. Automatic suspension is effective on the day that an individual no longer has authority to act on behalf of their sponsoring firm.

Individuals do not have an opportunity to be heard by the regulator in the case of any automatic suspension.

### ***Suspension in the public interest***

An individual's registration may be suspended if the regulator exercises its power under securities legislation and determines that it is no longer in the public interest for the individual to be registered. The regulator may do this if it has serious concerns about the ongoing fitness of the individual. For example, this may be the case if an individual is charged with a crime, in particular fraud or theft.

### **Reinstatement**

"Reinstatement" means that a suspension on a registration has been lifted. Once reinstated, an individual may resume carrying on the activity they are registered for. If a suspended individual joins a new sponsoring firm, they will have to apply for reinstatement under the process set out in NI 33-109. In certain cases, the reinstatement or transfer to the new firm will be automatic.

### ***Automatic transfers***

Subject to certain conditions set out in NI 33-109, an individual's registration may be automatically reinstated if they:

- transfer directly from one sponsoring firm to another registered firm in the same jurisdiction
- join the new sponsoring firm within 90 days of leaving their former sponsoring firm
- seek registration in the same category as the one previously held, and
- complete and file Form 33-109F7 *Reinstatement of Registered Individuals and Permitted Individuals* (Form 33-109F7)

This allows individuals to engage in activities requiring registration from their first day with the new sponsoring firm.

Individuals are not eligible for an automatic reinstatement if they:

- have new information to disclose regarding regulatory, criminal, civil or financial matters as described in Item 9 of Form 33-109F7, or
- as a result of allegations of criminal activity, breach of securities legislation or breach of SRO rules:
  - were dismissed by their former sponsoring firm, or
  - were asked by their former sponsoring firm to resign

In these cases, the individual must apply to have their registration reinstated under NI 33-109 using Form 33-109F4.

### **6.2 If IIROC approval is revoked or suspended**

### **6.3 If MFDA approval is revoked or suspended**

Registered individuals acting on behalf of member firms of an SRO are required to be an approved person of the SRO.



If an SRO suspends or revokes its approval of an individual, the individual's registration in the category requiring SRO approval will be automatically suspended. This automatic suspension of individuals does not apply to mutual fund dealers registered only in Québec.

If an SRO suspends an individual for reasons that do not involve significant regulatory concerns and subsequently reinstates the individual's approval, the individual's registration will usually be reinstated by the regulator as soon as possible.

## **Revocation**

### **6.6 Revocation of a suspended registration – individual**

If an individual's registration has been suspended under Part 6 but not reinstated, it will be automatically revoked on the second anniversary of the suspension.

“Revocation” means that the regulator has terminated the individual's registration. An individual whose registration has been revoked must submit a new application if they want to be registered again.

## **Surrender or termination of registration**

If an individual wants to terminate their registration in one or more of the non-principal jurisdictions where the individual is registered, the individual may apply to surrender their registration at any time by completing Form 33-109F2 *Change or Surrender of Individual Categories* (Form 33-109F2) and having their sponsoring firm file it.

If an individual wants to terminate their registration in their principal jurisdiction, Form 33-109F1 must be filed by the individual's sponsoring firm. Once Form 33-109F1 is filed, the individual's termination of registration will be reflected in all jurisdictions.

## **Part 7 Categories of registration for firms**

The categories of registration for firms have two main purposes:

- to specify the type of business that the firm may conduct, and
- to provide a framework for the requirements the registrant must meet

### **Firms registered in more than one category**

A firm may be required to register in more than one category. For example, a portfolio manager that manages an investment fund must register both as a portfolio manager and as an investment fund manager.

### **Individual registered in a firm category**

An individual can be registered in both a firm and individual category. For example, a sole proprietor who is registered in the firm category of portfolio manager must also be registered in the individual category of advising representative.

### **7.1 Dealer categories**

Section 7.1 of NI 31-103 sets out the dealer registration categories and permitted activities for each category. For example, investment dealers may act as a dealer or an underwriter in respect of any security or transaction. All other dealer categories are limited:

- a mutual fund dealer may only act as a dealer in respect of mutual funds and certain other investment funds
- a scholarship plan dealer may only act as a dealer in respect of scholarship plans, educational plans and educational trusts
- a restricted dealer may only act as a dealer or an underwriter in accordance with the terms and conditions of its registration.

### **Exempt market dealer**

Under paragraph 7.1(2)(d), an exempt market dealer may only act as a dealer or an underwriter in the “exempt market”. The permitted activities of an exempt market dealer are determined by reference to the prospectus exemptions in securities legislation (e.g., the accredited investor, minimum amount investment and offering memorandum exemptions in NI 45-106).

In short, an exempt market dealer may act as a dealer or underwriter in a distribution by an issuer, including a reporting issuer, if the distribution is being made under an exemption from the prospectus requirement. An exempt market dealer may not act as a dealer or underwriter in a distribution that is being made under a prospectus (a prospectus distribution). The investment dealer category or, in the case of a mutual fund prospectus distribution, the mutual fund dealer category, are the appropriate dealer registration categories for prospectus distributions.

This distinction is explained further below.

### **Trades that are distributions**

Under subparagraph 7.1(2)(d)(i), exempt market dealers are permitted to trade in securities if the trade is a distribution made under a prospectus exemption. This includes trading in securities of investment funds and reporting issuers provided the securities are distributed under an exemption from the prospectus requirement. For example, where a reporting issuer is making a prospectus offering through an investment dealer, an exempt market dealer may participate in a private placement of securities of the same class, if those securities are actually distributed by the reporting issuer under a prospectus exemption. Certain form and fee requirements may apply to the private placement of securities under exemptions from the prospectus requirement.

Permitted activities under subparagraph 7.1(2)(d)(i) also include participating in a resale of securities, where the resale is *deemed* to be a distribution under National Instrument 45-102 *Resale of Securities* (NI 45-102). For example, if a reporting issuer makes a private placement of common shares to an accredited investor in reliance on the accredited investor exemption in NI 45-106, the shares will generally be subject to a four-month restricted period. If the accredited investor wishes to resell the shares to another accredited investor within the four-month restricted period, the resale will be deemed to be a distribution under NI 45-102. An exempt market dealer may participate in this resale if made in reliance on a prospectus exemption. However, once the four-month restricted period has expired, and the shares become freely trading, an exempt market dealer may not participate in the resale if common shares of the issuer are listed, quoted or traded on a marketplace, whether the transaction is on-exchange or off-exchange, due to the restriction in subparagraph 7.1(2)(d)(ii). Secondary trading in listed securities should be conducted through an investment dealer in accordance with the rules and requirements applicable to investment dealers.

### **Trades that are not distributions**

Exempt market dealers are permitted to participate in a resale of securities, if all the conditions in subparagraph 7.1(2)(d)(ii) are met. These include that a prospectus exemption would have been available to the seller if the trade were a distribution and the class of securities is not listed, quoted or traded on a domestic or foreign marketplace. In determining whether a prospectus exemption is available for the purposes of subparagraph 7.1(2)(d)(ii), it is necessary to consider the terms of the prospectus exemption. For example, if the terms of the exemption provide that the exemption is only available to an issuer, it is not available for the resale of securities (e.g., offering memorandum exemption).

In short, exempt market dealers are permitted to:

- trade or underwrite securities if the trade is a distribution made under a prospectus exemption
- participate in the resale of securities that are subject to resale restrictions
- participate in the resale of securities, if a prospectus exemption would be available to the seller if the trade were a distribution and the class of securities is not listed, quoted or traded on a marketplace.

Exempt market dealers are not permitted to

- establish an omnibus account with an investment dealer and trade listed securities through the investment dealer on behalf of their clients, since this activity is trading in listed securities contrary to subparagraph 7.1(2)(d)(ii)
- participate in a distribution of securities offered under a prospectus in any capacity, including as a dealer (agent, finder, selling group member) or underwriter. This includes participating in the sale of special warrants convertible into prospectus qualified securities, since this activity is an “act in furtherance” of the trade of a prospectus qualified security contrary to subparagraph 7.1(2)(d)(i).

### **Restricted dealer**

The restricted dealer category in paragraph 7.1(2)(e) permits specialized dealers that may not qualify under another dealer category, to carry on a limited trading business. It is intended to be used only if there is a compelling case for the proposed trading to take place outside the other registration categories.

The regulator will impose terms and conditions that restrict the dealer's activities. The CSA will co-ordinate terms and conditions for restricted dealers.

## **7.2 Adviser categories**

The registration requirement in section 7.2 applies to advisers who give "specific advice". Advice is specific when it is tailored to the needs and circumstances of a client or potential client. For example, an adviser who recommends a security to a client is giving specific advice.

### **Restricted portfolio manager**

The restricted portfolio manager category in paragraph 7.2(2)(b) permits individuals or firms to advise in specific securities, classes of securities or securities of a class of issuers.

The regulator will impose terms and conditions on a restricted portfolio manager's registration that limit the manager's activities. For example, a restricted portfolio manager might be limited to advising in respect of a specific sector, such as securities of oil and gas issuers.

## **7.3 Investment fund manager category**

Investment fund managers direct the business, operations or affairs of an investment fund. They organize the fund and are responsible for its management and administration. If an entity is uncertain about whether it must register as an investment fund manager, it should consider whether the fund is an "investment fund" for the purposes of securities legislation. See section 1.2 of the Companion Policy to NI 81-106 for guidance on the general nature of investment funds.

For additional guidance on the investment fund manager registration requirement in Alberta, British Columbia, Manitoba, Nova Scotia, New Brunswick, Northwest Territories, Nunavut, Prince Edward Island, Saskatchewan and Yukon see Multilateral Policy 31-202 *Registration Requirement for Investment Fund Manager*. Newfoundland and Labrador, Ontario and Québec have adopted Multilateral Instrument 32-102 *Registration Exemptions for Non-Resident Investment Fund Managers* and Companion Policy 32-102CP *Registration Exemptions for Non-Resident Investment Fund Managers*, which provide limited exemptions from, and guidance on, the investment fund manager registration requirement for non-resident investment fund managers.

An investment fund manager may:

- advertise to the general public a fund it manages without being registered as an adviser, and
- promote the fund to registered dealers without being registered as a dealer

If an investment fund manager acts as portfolio manager for a fund it manages, it should consider whether it may have to be registered as an adviser. If it distributes units of the fund directly to investors, it should consider whether it may have to be registered as a dealer.

In most fund structures, the investment fund manager is a separate legal entity from the fund itself. However, in situations where the board of directors or the trustee(s) of an investment fund direct the business, operations or affairs of the investment fund, the fund itself may be required to register in the investment fund manager category. To address the investor protection concerns that may arise from the investment fund manager and the fund being the same legal entity, and the practical issues of applying the ongoing requirements of a registrant on the fund, terms and conditions may be imposed.

An investment fund manager may delegate or outsource certain functions to service providers. However, the investment fund manager is responsible for these functions and must supervise the service provider. See Part 11 of this Companion Policy for more guidance on outsourcing.

### **Investment fund complexes or groups with more than one investment fund manager**

Determining whether investment fund registration is necessary involves applying a functional test that examines the activities being carried out to determine whether an entity is directing the business, operations or affairs of an investment fund. Typically an investment fund has only one investment fund manager. However, there may be limited circumstances where investment fund complexes or groups may have more than one entity within the fund complex that is acting as an investment fund manager. Although the investment fund manager functions are often delegated to one entity within the fund complex, there may be more than one entity in the group subject to investment fund manager registration, absent an exemption from registration. We will consider exemption applications on a case-by-case basis to allow only one investment fund manager within the fund complex to be registered in appropriate circumstances.

## **Part 8 Exemptions from the requirement to register**

NI 31-103 provides several exemptions from the registration requirement. There may be additional exemptions in securities legislation. If a firm is exempt from registration, the individuals acting on its behalf are also exempt from registration. A person or company cannot rely on the exemptions in Divisions 1, 2 and 3 of this Part in a local jurisdiction if the person or company is registered to conduct the activities covered by the exemption in that jurisdiction. We expect registrants to conduct activities within a jurisdiction under their category of registration, in full compliance with securities legislation, including the requirements of NI 31-103.

#### *Division 1 Exemptions from dealer and underwriter registration*

We provide no specific guidance for the following exemptions because there is guidance on them in the Companion Policy to NI 45-106:

- 8.12 [*mortgages*]
- 8.17 [*reinvestment plan*]

### **8.5 Trades through or to a registered dealer**

#### **No solicitation or contact**

Section 8.5 provides an exemption from the dealer registration requirement for trades made

- through an appropriately registered dealer, or
- to an appropriately registered dealer that is purchasing for that dealer's account.

The exemption in paragraph 8.5(1)(a) for trades made through a registered dealer is not available if the person relying on it solicits or contacts purchasers of the securities directly. For example, if an individual acts in furtherance of a trade by soliciting or contacting potential purchasers of securities (sometimes referred to as a finder) and then the sale to the purchaser is executed through a registered dealer, the individual would not qualify for this exemption.

A person may utilize the exemption for acts in furtherance of a trade in relation to working with issuers or appropriately registered dealers, provided they do not directly solicit or contact purchasers.

#### **Cross-border trades (jitneys)**

Section 8.5 provides an exemption from the dealer registration requirement if the trade is made through a registered dealer, provided the person relying on the exemption has no direct contact with the purchaser of the security. On that basis, the execution of a trade through or to an appropriately registered dealer by a dealer located in another jurisdiction would qualify under this exemption.

However, if for example a dealer in the United States that is not registered in Alberta contacts a potential purchaser in Alberta to solicit the purchase of securities, this trade does not qualify for this exemption. The dealer in the United States must instead contact a dealer registered in Alberta, and have that dealer contact potential purchasers in Alberta.

#### **Plan administrators**

A plan administrator can rely on this exemption to place sell orders with dealers in respect of shares of issuers held by plan participants. Section 8.16 [*plan administrator*] covers the activity of the plan administrator receiving sell orders from plan participants.

#### **8.5.1 Trades through a registered dealer by registered adviser**

Section 8.5.1 provides that the dealer registration requirement does not apply to a registered adviser for incidental trading activities. The exemption is only available if the trade is made through a registered dealer or a dealer exempt from registration. For example, a portfolio manager may not use the exemption to trade units of a pooled fund it manages, without involving a registered dealer or having another exemption available, including the exemption in section 8.6.

### **8.6 Investment fund trades by adviser to managed account**

Registered advisers often use investment funds which they or their affiliates have created as a way to efficiently invest their clients' money. In issuing units of those funds to managed account clients, they are in the business of trading in securities. Under the exemption in section 8.6, a registered adviser does not have to register as a dealer for a trade in a security of an investment fund if:

- the adviser or an affiliate of the adviser acts as the fund's adviser,
- the adviser or an affiliate of the adviser acts as the fund's investment fund manager, and
- the distribution of units of the fund is made only into the adviser's clients' managed accounts.

Subsection 8.6(2) limits the availability of this exemption to legitimate managed accounts. The exemption is not available in respect of accounts that are in substance non-discretionary accounts and that have been created primarily for the purpose of distributing investment funds of the adviser to an investor without the involvement of a registered dealer.

An adviser relying on this exemption is required to provide written notice of its reliance on the exemption.

The exemption in section 8.6 is also available to those who qualify for the international adviser exemption under section 8.26.

## **8.18 International dealer**

### **General principle**

This exemption allows international dealers to provide limited services to permitted clients without having to register in Canada. The term "permitted client" is defined in section 1.1. International dealers that seek wider access to Canadian investors must register in an appropriate category.

### **Notice requirement**

If a firm is relying on the exemption in more than one jurisdiction, it must provide an initial notice by filing a Form 31-103F2 *Submission to Jurisdiction and Appointment of Agent for Service* (Form 31-103F2) with the regulator in each jurisdiction where it relies on the exemption. If there is any change to the information in the firm's Form 31-103F2, it must update it by filing a replacement Form 31-103F2 with them.

So long as the firm continues to rely on the exemption, it must file an annual notice with each regulator. Subsection 8.18(5) does not prescribe a form of annual notice. An email or letter will therefore be acceptable.

In Ontario, compliance with the filing and fee payment requirements applicable to an unregistered exempt international dealer under Ontario Securities Commission Rule 13-502 *Fees* satisfies the annual notification requirement in subsection (5).

## **8.19 Self-directed registered education savings plan**

We consider the creation of a self-directed registered education savings plan, as defined in section 8.19, to be a trade in a security, whether or not the assets held in the plan are securities. This is because the definition of "security" in securities legislation of most jurisdictions includes "any document constituting evidence of an interest in a scholarship or educational plan or trust".

Section 8.19 provides an exemption from the dealer registration requirement for the trade when the plan is created but only under the conditions described in subsection 8.19(2).

### **8.22.1 Short-term debt**

This exemption allows specified financial institutions to trade short-term debt instruments with permitted clients, without having to register. The exemption is available in all jurisdictions of Canada, except Ontario. In Ontario, there are alternate exemptions that may be available for trading in short-term debt instruments, including the exemptions in section 35.1 of the *Securities Act* (Ontario) and section 4.1 of the Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions*.

## *Division 2 Exemptions from adviser registration*

### **8.24 IIROC members with discretionary authority**

Section 8.24 contains an exemption from the requirement to register as an adviser for registered dealers that are members of IIROC and their dealing representatives. The exemption is available when they act as an adviser in respect of a client's managed account. The term "managed account" is defined in section 1.1 of NI 31-103. This exemption is available for all managed accounts, including where the client is a pooled fund or investment fund.

### **8.25 Advising generally**

Section 8.25 contains an exemption from the requirement to register as an adviser if the advice is not tailored to the needs of the recipient.

In general, we would not consider advice about specific securities to be tailored to the needs of the recipient if it:

- is a general discussion of the merits and risks of the security
- is delivered through investment newsletters, articles in general circulation newspapers or magazines, websites, e-mail, Internet chat rooms, bulletin boards, television or radio, and
- does not claim to be tailored to the needs and circumstances of any recipient

This type of general advice can also be given at conferences. However, if a purpose of the conference is to solicit the audience and generate specific trades in specific securities, we may consider the advice to be tailored or we may consider the individual or firm giving the advice to be engaged in trading activity.

Under subsection 8.25(3), if an individual or firm relying on the exemption has a financial or other interest in the securities they recommend, they must disclose the interest to the recipient when they make the recommendation.

## **8.26 International adviser**

This exemption allows international advisers to provide limited services to certain permitted clients without having to register in Canada. International advisers that seek wider access to Canadian investors must register in an appropriate category.

### **Incidental advice on Canadian securities**

An international adviser relying on the exemption in section 8.26 may advise in Canada on foreign securities without having to register. It may also advise in Canada on securities of Canadian issuers, but only to the extent that the advice is incidental to its acting as an adviser for foreign securities.

However, this is not an exception or a “carve-out” that allows some portion of a permitted client's portfolio to be made up of Canadian securities chosen by the international adviser without restriction. Any advice with respect to Canadian securities must be directly related to the activity of advising on foreign securities. Permissible incidental advice would include, for example:

- an international adviser, when advising on a portfolio with a particular investment objective, such as gold mining companies, could advise on securities of a Canadian gold mining company within that portfolio, provided that the portfolio is otherwise made up of foreign securities
- an international adviser, having a mandate to advise on equities traded on European exchanges could advise with respect to the securities of a Canadian corporation traded on a European exchange, to the extent the Canadian corporation forms part of the mandate

### **Revenue derived in Canada**

An international adviser is only permitted to undertake a prescribed amount of business in Canada. In making the calculation required under paragraph 8.26(4)(d), it is necessary to include all revenues derived from portfolio management activities in Canada, which would include any sub-adviser arrangements. However, the calculation of aggregate consolidated gross revenue derived in Canada does not include the gross revenue of affiliates that are registered in a jurisdiction of Canada.

An international adviser is not required to monitor Canadian revenue on an ongoing basis. Eligibility for the exemption is assessed with reference to revenues as of the end of the adviser's last financial year. The 10% threshold in paragraph 8.26(4)(d) is determined by looking back at the revenue of the firm and its affiliates "during its most recently completed financial year".

### **Notice requirement**

If a firm is relying on the exemption in more than one jurisdiction, it must provide an initial notice by filing a Form 31-103F2 with the regulator in each jurisdiction where it relies on the exemption. If there is any change to the information in the firm's Form 31-103F2, it must update it by filing a replacement Form 31-103F2 with them.

So long as the firm continues to rely on the exemption, it must file an annual notice with each regulator. Subsection 8.26(5) does not prescribe a form of annual notice. An email or letter will therefore be acceptable.

In Ontario, compliance with the filing and fee payment requirements applicable to an unregistered exempt international firm under Ontario Securities Commission Rule 13-502 *Fees* satisfies the annual notification requirement in subsection (5).

#### **8.26.1 International sub-adviser**

This exemption permits a foreign sub-adviser to provide advice to certain registrants, without having to register as an adviser in Canada. In these arrangements, the registrant is the foreign sub-adviser's client, and it receives the advice, either for its own benefit or for the benefit of its clients. One of the conditions of this exemption is that the registrant has entered into an agreement with its client that it is responsible for losses that arise out of certain failures by the sub-adviser.

We expect that a registrant taking on this liability will conduct appropriate initial and ongoing due diligence on the sub-adviser and ensure the investments are suitable for the registrant's client. We also expect that the registrant will maintain records of the due diligence conducted. See Part 11 of this Companion Policy for more guidance.

#### *Division 4      Mobility exemption – firms*

### **8.30      Client mobility exemption – firms**

The mobility exemption in section 8.30 allows registered firms to continue dealing with and advising clients who move to another jurisdiction, without registering in that other jurisdiction. Section 2.2 [*client mobility exemption – individuals*] contains a similar exemption for registered individuals.

The exemption becomes available when the client (not the registrant) moves to another jurisdiction. A registered firm may deal with up to 10 “eligible” clients in each other jurisdiction. Each of the client, their spouse and any children are an eligible client.

A firm may only rely on the exemption if:

- it is registered in its principal jurisdiction
- it only acts as a dealer, underwriter or adviser in the other jurisdiction as permitted under its registration in its principal jurisdiction
- the individual acting on its behalf is eligible for the exemption in section 2.2
- it complies with Parts 13 *Dealing with clients – individuals and firms* and 14 *Handling client accounts – firms*, and
- it acts fairly, honestly and in good faith in its dealings with the eligible client

#### **Firm's responsibilities for individuals relying on the exemption**

In order for a registered individual to rely on the exemption in section 2.2, their sponsoring firm must disclose to the eligible client that the individual and if applicable, the firm, are exempt from registration in the other jurisdiction and are not subject to the requirements of securities legislation in that jurisdiction.

As soon as possible after an individual first relies on the exemption in section 2.2, their sponsoring firm must complete and file Form 31-103F3 in the other jurisdiction.

The registered firm must have appropriate policies and procedures for supervising individuals who rely on a mobility exemption. Registered firms must also keep appropriate records to demonstrate they are complying with the conditions of the mobility exemption.

See the guidance in section 2.2 of this Companion Policy on the client mobility exemption available to individuals.

## **Part 9      Membership in ~~a self-regulatory organization~~ an SRO**

### **9.3      Exemptions from certain requirements for IIROC members**

### **9.4      Exemptions from certain requirements for MFDA members**

NI 31-103 has two distinct sections, sections 9.3 and 9.4, which distinguish the exemptions which are available on the basis of whether or not the member of IIROC or the MFDA is registered in another category. This clarifies our intent with respect to the exemptions for SRO members and recognizes that IIROC and the MFDA have rules in these areas.

Sections 9.3 and 9.4 contain exemptions from certain requirements for investment dealers that are IIROC members, and for mutual fund dealers that are MFDA members ~~and in Québec, for mutual fund dealers to the extent equivalent requirements are applicable under the regulations in Québec~~. However, if an SRO member is registered in another category, these sections do not exempt them from their obligations as a registrant in that category. For example, if a firm is registered as an investment fund manager and as an investment dealer with IIROC, section 9.3 does not exempt them from their obligations as an investment fund manager under NI 31-103.

[Mutual fund dealers registered in that category in Québec that are MFDA members are exempt from section 12.12 relating to the delivery of financial information, as well as sections 14.5.2 to 14.6.2 relating to the custody of assets. Subsection 9.4\(3\) provides that these dealers may rely on certain of the exemptions in subsections 9.4\(1\) and \(2\) relating to custody of assets, provided the conditions of the exemption are met; these exemptions are set out in paragraphs 9.4\(1\)\(m\), \(1\)\(m.2\) to \(1\)\(n.2\) and paragraphs 9.4\(2\)\(g\), \(2\)\(g.2\) to \(2\)\(h.2\).](#)

However SRO members that are registered in multiple categories may use the forms prescribed by the SROs, on certain conditions. See sections 12.1, 12.12 and 12.14 for requirements on calculating working capital and the delivery of working capital calculations for SRO members that are registered in multiple categories.

We expect registered firms that are members of IIROC or the MFDA to comply with the by-laws, rules, regulations and policies of IIROC or the MFDA, as applicable (SRO provisions). These firms cannot rely on the exemptions in Part 9 unless they are complying with the corresponding SRO provisions specified in NI 31-103. We regard compliance with IIROC or MFDA procedures, interpretations, notices, bulletins and practices as relevant to compliance with the applicable SRO provisions.

For these purposes, a firm that has an exemption from an SRO provision and complies with the terms of that exemption would be considered to have complied with that SRO provision.

## **Part 10 Suspension and revocation of registration – firms**

The requirements for surrendering registration and additional requirements for suspending and revoking registration are found in the securities legislation of each jurisdiction. The guidance for Part 10 relates to requirements under both securities legislation and NI 31-103.

There is no renewal requirement for registration but firms must pay fees every year to maintain their registration and the registration of individuals acting on their behalf. A registered firm may carry on the activities for which it is registered until its registration is:

- suspended automatically under NI 31-103
- suspended by the regulator under certain circumstances, or
- surrendered by the firm

*Division 1 When a firm's registration is suspended*

### **Suspension**

A firm whose registration has been suspended must not carry on the activity it is registered for. The firm otherwise remains a registrant and is subject to the jurisdiction of the regulator. A suspension remains in effect until the regulator reinstates or revokes the firm's registration.

If a firm that is registered in more than one category is suspended in one of the categories, the regulator will consider whether to suspend the firm's registration in other categories or to impose terms and conditions, subject to an opportunity to be heard.

#### **Automatic suspension**

A firm's registration will automatically be suspended if:

- it fails to pay its annual fees within 30 days of the due date
- it ceases to be a member of IIROC, or
- except in Québec, it ceases to be a member of the MFDA

Firms do not have an opportunity to be heard by the regulator in the case of any automatic suspension.

#### **10.1 Failure to pay fees**

Under section 10.1, a firm's registration will be automatically suspended if it has not paid its annual fees within 30 days of the due date.

#### **10.2 If IIROC membership is revoked or suspended**



Under section 10.2, if IIROC suspends or revokes a firm's membership, the firm's registration as an investment dealer is suspended until reinstated or revoked.

### **10.3 If MFDA membership is revoked or suspended**

Under section 10.3, if the MFDA suspends or revokes a firm's membership, the firm's registration as a mutual fund dealer is suspended until reinstated or revoked. Section 10.3 does not apply in Québec.

#### ***Suspension in the public interest***

A firm's registration may be suspended if the regulator exercises its power under securities legislation and determines that it is no longer in the public interest for the firm to be registered. The regulator may do this if it has serious concerns about the ongoing fitness of the firm or any of its registered individuals. For example, this may be the case if a firm or one or more of its registered or permitted individuals is charged with a crime, in particular fraud or theft.

#### ***Reinstatement***

"Reinstatement" means that a suspension on a registration has been lifted. Once reinstated, a firm may resume carrying on the activity it is registered for.

*Division 2      Revoking a firm's registration*

#### **Revocation**

### **10.5 Revocation of a suspended registration – firm**

### **10.6 Exception for firms involved in a hearing or proceeding**

Under sections 10.5 and 10.6, if a firm's registration has been suspended under Part 10 and has not been reinstated, it is revoked on the second anniversary of the suspension, except if a hearing or proceeding concerning the suspended registrant has commenced. In this case the registration remains suspended.

"Revocation" means that the regulator has terminated the firm's registration. A firm whose registration has been revoked must submit a new application if it wants to be registered again.

#### **Surrender**

A firm may apply to surrender its registration in one or more categories at any time. There is no prescribed form for an application to surrender. A firm should file an application to surrender registration with its principal regulator. If Ontario is a non-principal jurisdiction, it should also file the application with the regulator in Ontario. See the Companion Policy to Multilateral Instrument 11-102 *Passport System* for more details on filing an application to surrender.

Before the regulator accepts a firm's application to surrender registration, the firm must provide the regulator with evidence that the firm's clients have been dealt with appropriately. This evidence does not have to be provided when a registered individual applies to surrender registration. This is because the sponsoring firm will continue to be responsible for meeting obligations to clients who may have been served by the individual.

The regulator does not have to accept a firm's application to surrender its registration. Instead, the regulator can act in the public interest by suspending, or imposing terms and conditions on, the firm's registration.

When considering a registered firm's application to surrender its registration, the regulator typically considers the firm's actions, the completeness of the application and the supporting documentation.

#### ***The firm's actions***

The regulator may consider whether the firm:

- has stopped carrying on activity requiring registration
- proposes an effective date to stop carrying on activity requiring registration that is within six months of the date of the application to surrender, and
- has paid any outstanding fees and submitted any outstanding filings at the time of filing the application to surrender

### ***Completeness of the application***

Among other things, the regulator may look for:

- the firm's reasons for ceasing to carry on activity requiring registration
- satisfactory evidence that the firm has given all of its clients reasonable notice of its intention to stop carrying on activity requiring registration, including an explanation of how it will affect them in practical terms, and
- satisfactory evidence that the firm has given appropriate notice to the SRO, if applicable

### ***Supporting documentation***

The regulator may look for:

- evidence that the firm has resolved all outstanding client complaints, settled all litigation, satisfied all judgments or made reasonable arrangements to deal with and fund any payments relating to them, and any subsequent client complaints, settlements or liabilities
- confirmation that all money or securities owed to clients has been returned or transferred to another registrant, where possible, according to client instructions
- up-to-date audited financial statements with an auditor's comfort letter
- evidence that the firm has satisfied any SRO requirements for withdrawing membership, and
- an officer's or partner's certificate supporting these documents

## **Part 11 Internal controls and systems**

### **General business practices – outsourcing**

Registered firms are responsible and accountable for all functions that they outsource to a service provider. Firms should have a written, legally binding contract that includes the expectations of the parties to the outsourcing arrangement.

Registered firms should follow prudent business practices and conduct a due diligence analysis of prospective third-party service providers. This includes third-party service providers that are affiliates of the firm. Due diligence should include an assessment of the service provider's reputation, financial stability, relevant internal controls and ability to deliver the services.

Firms should also:

- ensure that third-party service providers have adequate safeguards for keeping information confidential and, where appropriate, disaster recovery capabilities
- conduct ongoing reviews of the quality of outsourced services
- develop and test a business continuity plan to minimize disruption to the firm's business and its clients if the third-party service provider does not deliver its services satisfactorily, and
- note that other legal requirements, such as privacy laws, may apply when entering into outsourcing arrangements

The regulator, the registered firm and the firm's auditors should have the same access to the work product of a third-party service provider as they would if the firm itself performed the activities. Firms should ensure this access is provided and include a provision requiring it in the contract with the service provider, if necessary.

#### *Division 1 Compliance*

### **11.1 Compliance system**

#### **General principles**

Section 11.1 requires registered firms to establish, maintain and apply policies and procedures that establish a system of controls and supervision (a compliance system) that:

- provides assurance that the firm and individuals acting on its behalf comply with securities legislation, and
- manages the risks associated with the firm's business in accordance with prudent business practices

Operating an effective compliance system is essential to a registered firm's continuing fitness for registration. It provides reasonable assurance that the firm is meeting, and will continue to meet, all requirements of applicable securities laws and SRO rules and is managing risk in accordance with prudent business practices. A compliance system should include internal controls and monitoring systems that are reasonably likely to identify non-compliance at an early stage and supervisory systems that allow the firm to correct non-compliant conduct in a timely manner.

The responsibilities of the UDP are set out in section 5.1 and those of the CCO in section 5.2. However, compliance is not only a responsibility of a specific individual or a compliance department of the firm, but rather is a firm-wide responsibility and an integral part of the firm's activities. Everyone ~~in~~<sup>at</sup> the firm should understand the standards of conduct for their role. This includes the board of directors, partners, management, employees and agents, whether or not they are registered.

Having a UDP and CCO, and in larger firms, a compliance group and other supervisory staff, does not relieve anyone else in the firm of the obligation to report and act on compliance issues. A compliance system should identify those who will act as alternates in the absence of the UDP or CCO.

### **Elements of an effective compliance system**

While policies and procedures are essential, they do not make an acceptable compliance system on their own. An effective compliance system also includes internal controls, day to day and systemic monitoring, and supervision elements.

#### ***Internal controls***

Internal controls are an important part of a firm's compliance system. They should mitigate risk and protect firm and client assets. They should be designed to assist firms in monitoring compliance with securities legislation and managing the risks that affect their business, including risks that may relate to:

- safeguarding of client and firm assets
- accuracy of books and records
- trading, including personal and proprietary trading
- conflicts of interest, [including referral arrangements](#)
- money laundering
- business interruption
- hedging strategies
- marketing and sales practices, [including the use of titles and designations by the firm's registered individuals](#), and
- the firm's overall financial viability

[Internal controls should also be specifically designed to assist firms in monitoring compliance with the know your client, know your product and suitability determination obligations.](#)

#### ***Monitoring and supervision***

Monitoring and supervision are essential elements of a firm's compliance system. They consist of day to day monitoring and supervision, and overall systemic monitoring.

##### ***(a) Day to day monitoring and supervision***

In our view, an effective monitoring and supervision system includes:

- monitoring to identify specific cases of non-compliance or internal control weaknesses that might lead to non-compliance

- referring non-compliance or internal control weaknesses to management or other individuals with authority to take supervisory action to correct them
- taking supervisory action to correct them, and
- minimizing the compliance risk in key areas of a firm's operations

In our view, effective day to day monitoring should include, among other things

- approving new account documents
- reviewing and, in some cases, approving transactions
- approving marketing materials
- [approving information made publicly available that a reasonable investor would consider important in deciding whether to become a client of the firm](#), and
- preventing inappropriate use or disclosure of non-public information.

Firms can use a risk-based approach to monitoring, such as reviewing an appropriate sample of transactions.

The firm's management is responsible for the supervisory element of correcting non-compliance or internal control weaknesses. However, at a firm's discretion, its CCO may be given supervisory authority, but this is not a necessary component of the CCO's role.

Anyone who supervises registered individuals has a responsibility on behalf of the firm to take all reasonable measures to ensure that each of these individuals:

- deals fairly, honestly and in good faith with their clients
- [addresses conflicts of interest in the best interest of their clients](#)
- [puts the client's interests first when making suitability determinations for their clients](#)
- complies with securities legislation
- complies with the firm's policies and procedures, and
- maintains an appropriate level of proficiency

#### **(b) Systemic monitoring**

Systemic monitoring involves assessing, and advising and reporting on the effectiveness of the firm's compliance system. This includes ensuring that:

- the firm's day to day supervision is reasonably effective in identifying and promptly correcting cases of non-compliance and internal control weaknesses
- policies and procedures are enforced and kept up to date, and
- everyone at the firm generally understands and complies with the policies and procedures, and with securities legislation

#### **Specific elements**

More specific elements of an effective compliance system include:

##### **(a) Visible commitment**

Senior management and the board of directors or partners should demonstrate a visible commitment to compliance.

##### **(b) Sufficient resources and training**

The firm should have sufficient resources to operate an effective compliance system. Qualified individuals (including anyone acting as an alternate during absences) should have the responsibility and authority to monitor the firm's compliance, identify any instances of non-compliance and take supervisory action to correct them.

~~The firm should provide training to ensure that everyone at the firm understands the standards of conduct and their role in the compliance system, including ongoing communication and training on changes in regulatory requirements or the firm's policies and procedures.~~

**(c) Detailed policies and procedures**

The firm should have detailed written policies and procedures that:

- identify the internal controls the firm will use to ensure compliance with legislation and manage risk
- set out the firm's standards of conduct for compliance with securities and other applicable legislation and the systems for monitoring and enforcing compliance with those standards
- clearly outline who is expected to do what, when and how
- are readily accessible by everyone who is expected to know and follow them
- are updated when regulatory requirements and the firm's business practices change, ~~and~~
- take into consideration the firm's obligation under securities legislation to deal fairly, honestly and in good faith with its clients.
- take into consideration the firm's obligation to address conflicts of interest in the best interest of its clients, and
- take into consideration the firm's obligation to put the client's interest first when making suitability determinations for its clients.

Registered firms should have compliance systems that are thorough and effective in all locations of business of the firm, not just the firm's head office.

**(d) Detailed records**

The firm should keep records of activities conducted to identify compliance deficiencies and the action taken to correct them.

**Setting up a compliance system**

It is up to each registered firm to determine the most appropriate compliance system for its operations. Registered firms should consider the size and scope of their operations, including products, types of clients or counterparties, risks and compensating controls, and any other relevant factors.

For example, a large registered firm with diverse operations may require a large team of compliance professionals with several divisional heads of compliance reporting to a CCO dedicated entirely to a compliance role.

All firms must have policies, procedures and systems to demonstrate compliance. However, some of the elements noted above may be unnecessary or impractical for smaller registered firms.

We encourage firms to meet or exceed industry best practices in complying with regulatory requirements.

**11.2 Designating an ultimate designated person**

Under subsection 11.2(1), registered firms must designate an individual to be the UDP. Firms should ensure that the individual understands and is able to perform the obligations of a UDP under section 5.1. The UDP must be:

- the chief executive officer (CEO) of the registered firm or the individual acting in a similar capacity, if the firm does not have a CEO. The person acting in a similar capacity to a CEO is the most senior decision maker in the firm, who might have the title of managing partner or president, for example
- the sole proprietor of the registered firm, or
- the officer in charge of a division of the firm that carries on all of the registerable activity if the firm also has significant other business activities, such as insurance, conducted in different divisions. This is not an option if

the core business of the firm is trading or advising in securities and it only has some other minor operations conducted in other divisions. In this case, the UDP must be the CEO or equivalent.

To designate someone else as the UDP requires an exemptive relief order. Given that the intention of section 11.2 is to ensure that responsibility for its compliance system rests at the very top of a firm, we will only grant relief in rare cases.

We note that in larger organizations, the UDP is sometimes supported by an officer who has a compliance oversight role and title within the organization and who is more senior than the CCO. We have no objection to such arrangements, but it must be understood that they can in no way diminish the UDP's regulatory responsibilities.

If the person designated as the UDP no longer meets these requirements, and the registered firm is unable to designate another UDP, the firm should promptly advise the regulator of the actions it is taking to designate a new UDP who meets these requirements.

### **11.3 Designating a chief compliance officer**

Under subsection 11.3(1), registered firms must designate an individual to be the CCO. Firms should ensure that the individual understands and is able to perform the obligations of a CCO under section 5.2.

The CCO must meet the applicable proficiency requirements in Part 3 and be:

- an officer or partner of the registered firm, or
- the sole proprietor of the registered firm

If the CCO no longer meets any of the above conditions and the registered firm is unable to designate another CCO, the firm should promptly advise the regulator of the actions it is taking to designate an appropriate CCO.

#### *Division 2 Books and records*

Under securities legislation, the regulator may access, examine and take copies of a registered firm's records. The regulator may also conduct regular and unscheduled compliance reviews of registered firms.

### **11.5 General requirements for records**

Under subsection 11.5(1), registered firms must maintain records to accurately record their business activities, financial affairs and client transactions, and demonstrate compliance with securities legislation.

The following discussion provides guidance for the various elements of the records described in subsection 11.5(2).

#### **Financial affairs**

The records required under paragraphs 11.5(2)(a), (b) and (c) are records firms must maintain to help ensure they are able to prepare and file financial information, determine their capital position, including the calculation of excess working capital, and generally demonstrate compliance with the capital and insurance requirements.

#### **Client transactions**

The records required under paragraphs 11.5(2)(g), (h), (i), (l) and (n) are records firms must maintain to accurately and fully document transactions entered into on behalf of a client. We expect firms to maintain notes of communications that could have an impact on the client's account or the client's relationship with the firm. These communications include

- oral communications
- all e-mail, regular mail, fax and other written communications

While we do not expect registered firms to save every voicemail or e-mail, or to record all telephone conversations with clients, we do expect that registered firms maintain records of all communications relating to orders received from their clients.

The records required under paragraph 11.5(2)(g) should document buy and sell transactions, referrals, margin transactions and any other activities relating to a client's account. They include records of all actions leading to trade execution, settlement and clearance, such as trades on exchanges, alternative trading systems, over-the-counter markets, debt markets, and distributions and trades in the prospectus-exempt market.

Examples of these records are:

- trade confirmation statements
- summary information about account activity
- communications between a registrant and its client about particular transactions, and
- records of transactions resulting from securities a client holds, such as dividends or interest paid, or dividend reinvestment program activity

### **Know your client**

Paragraph 11.5(2)(l) requires firms to maintain records that demonstrate compliance with the know your client obligations in section ~~13.2~~ 13.2, the know your product obligations in section 13.2.1 and the suitability determination obligations in section 13.3. ~~This includes records for unsuitable trades in subsection 13.3(2).~~

We expect firms to establish, maintain and apply policies, procedures and controls relating to the know your client process, in accordance with their category of registration, their business model, their client's type of account and the nature of the relationship with their clients. We also expect firms to maintain adequate documentation to support their supervision of the know your client process.

These policies, procedures and controls should include, at a minimum, a process for:

- determining the appropriate level of know your client information to be collected in the circumstances
- determining how subjective elements of know your client, including investment time horizon, investment objectives and risk profile are established for clients and demonstrating this process, and
- a process for determining what is a significant change in a client's information

We expect firms to maintain records to evidence a client's confirmation of the accuracy of their know your client information.

### **Know your product**

We expect firms to establish, maintain and apply policies, procedures and controls relating to the know your product process, in accordance with the firm's category of registration and its business model, and maintain adequate documentation to support their supervision of the know your product process. These policies, procedures and controls should include, at a minimum, a process for reviewing, approving and monitoring all securities offered to its clients. See section 13.2.1 of this Companion Policy for more guidance on the know your product obligation.

### **Suitability determinations**

Registrants should document the basis upon which they make a suitability determination. We expect registrants to maintain records documenting all relevant facts, including key assumptions, the scope of data considered, and the analysis performed in making the suitability determination.

We expect firms to:

- establish policies and procedures for making a suitability determination (including the criteria used and when it is performed) and demonstrate that the suitability process is consistently applied across the firm,
- maintain adequate documentation of the suitability determination for each recommendation and decision made, and
- establish a process to periodically review a sample of client files to ensure that the suitability process is consistently applied throughout the firm. Results of this review should be documented and independently reviewed by the CCO or an individual holding a senior position in the firm. Areas of non-compliance should be discussed with staff in a timely manner and highlighted in training sessions. Significant compliance issues should be escalated to the firm's UDP to ensure that corrective action is taken in a timely manner.

Firms must also maintain records for unsuitable trades in subsection 13.3(2.1), including the obligation to:

- document of the actions taken by the registrant to address the issues identified, and
- maintain the investor's written or electronic instructions to proceed with the trade.

In our view, a pattern of unsuitable trades that are reported as having been directed by a client may be an indication that a registrant does not comply with the obligation to make a suitability determination. We expect firms to establish, maintain and apply policies, procedures and controls to identify a pattern of unsuitable trades.

## **Client relationship**

The records required under paragraphs 11.5(2)(k) and (m) should document information about a registered firm's relationship with its client and relationships that any representatives have with that client.

These records include:

- communication between the firm and its clients, such as disclosure provided to clients and agreements between the registrant and its clients
- account opening information
- change of status information provided by the client
- disclosure and other relationship information provided by the firm
- margin account agreements
- communications regarding a complaint made by the client
- actions taken by the firm regarding a complaint
- communications that do not relate to a particular transaction, and
- conflicts records

Each record required under paragraph 11.5(2)(k) should clearly indicate the name of the accountholder and the account the record refers to. A record should include information only about the accounts of the same accountholder or group. For example, registrants should have separate records for an individual's personal accounts and for accounts of a legal entity that the individual owns or jointly holds with another party.

Where applicable, the financial details should note whether the information is for an individual or a family. This includes spousal income and net worth. The financial details for accounts of a legal entity should note whether the information refers to the entity or to the owner(s) of the entity.

If the registered firm permits clients to complete new account forms themselves, the forms should use language that is clear and avoids terminology that may be unfamiliar to unsophisticated clients.

## **Conflicts of interest**

### **General principles**

The records required under paragraphs 11.5(2)(p), (q) and (r) are records that registered firms must maintain to demonstrate compliance with their obligations in Part 13. Registered firms must document and demonstrate how they have addressed the conflicts of interest identified under sections 13.4.1 and 13.4.2 in the best interest of the client. A registered firm's policies and procedures for addressing conflicts should set out a process for the firm and its registered individuals to:

- identify existing and reasonably foreseeable conflicts of interest,
- determine the level of risk to the client's interest that the conflict poses, and
- address the conflict in proportion to the risk that the conflict poses to their client's interests.

### **Degree of materiality**

We expect firms to use their discretion when deciding how much detail to provide when describing a conflict and how it has been addressed. As the materiality of a conflict increases, we expect to see greater detail about the conflict and how it is being addressed. For example, we expect to see more detailed documentation for conflicts related to sales practices, compensation arrangements, incentive practices, referral arrangements, the use of proprietary products and services, and product-shelf development conflicts.



If the materiality of a particular conflict of interest is low then the registered firm may record that conflict in a more general way, such as by category or type of conflict as opposed to recording each instance of such a conflict and how the firm has addressed this conflict in each instance. For example, subject to compliance with applicable securities legislation or SRO rules, if a firm has established a code of conduct or policy that limits the receipt of gifts or promotional items from third parties then, depending on the circumstances, it may be sufficient for that firm to record the details of its policy and the related procedures and controls, and how violations of that policy are addressed.

### **Referral arrangements**

Registered firms must document all referral arrangements between the registered firm, its registered individuals, and another person or company, as well as all fees paid or received by the registered firm or its registered individuals pursuant to such arrangements. As part of its obligations under paragraph 11.5(2)(p), the registered firm must demonstrate how it has addressed or plans to address, conflicts related to referral arrangements in the client's best interest, and why the registered firm has determined that the specific referral is in the client's best interest. We expect that the registered firm will also document the due diligence analysis of the parties to which it is referring clients.

### **Sales practices, compensation arrangements and incentive practices**

As part of a firm's obligations under paragraph 11.5(2)(q) we expect registered firms to document, where applicable:

- sales practices set by the firm including:
  - sales targets and revenue quotas to which its registered individuals are subject,
  - sales targets and revenue quotas for the sale of proprietary products
- compensation arrangements set by the firm including:
  - how the firm compensates its registered individuals
- other compensation arrangements that the registered firm or its registered individuals benefit from including:
  - how issuers, related or connected parties to those issuers, related or connected parties to the registered firm, or investment fund managers compensate the registered firm, including through embedded commissions
- incentive practices set by the firm, including:
  - monetary and non-monetary benefits provided by the registered firm to its registered individuals as incentives
- other incentive practices that the registered firm or its registered individuals benefit from, including:
  - monetary and non-monetary benefits that the registered firm or its registered individuals receive from issuers, related or connected parties to those issuers, related or connected parties to the registered firm, or investment fund managers including:
    - a list of issuers, or related or connected parties to those issuers, that have provided incentives such as shelf fees, due diligence fees, shares, options, warrants, performance fees, or production bonuses
    - how the registered firm tracks and oversees such benefits

### **Misleading business titles and designations**

Section 13.18 prohibits registrants from, among other things, using titles or designations that could reasonably be expected to deceive or mislead existing and prospective clients. Under paragraph 11.5(2)(r), we expect the registered firm to have policies and procedures relating to the use of titles and designations that promote transparency for potential and existing clients, particularly for more vulnerable and less sophisticated investors.

These policies and procedures should also include guidance on what titles and designations may be used and describe any restrictions or prohibitions related to titles and designations, including the requirement for pre-approval of their registered individuals' use of titles and designations. The registered firm should clearly communicate these policies and procedures to their registered individuals and enforce them accordingly.

## **Publicly available information**

Section 14.1.2 requires registered firms that offer dealing or advising services to non-permitted clients to make publicly available information that a reasonable investor would consider important in deciding whether to become a client of the firm. We expect firms to provide factual information and avoid unsubstantiated claims or comparisons. Under paragraph 11.5(2)(s), we expect registered firms to have policies and procedures relating to this information.

### **Internal controls**

The records required under paragraphs 11.5(2)(d), (e), (f), (j), (o), (p) and (eg) are records firms must maintain to support the internal controls and supervision components of their compliance system.

### **11.6 Form, accessibility and retention of records**

#### **Third party access to records**

Paragraph 11.6(1)(b) requires registered firms to keep their records in a safe location. This includes ensuring that no one has unauthorized access to information, particularly confidential client information. Registered firms should be particularly vigilant if they maintain books and records in a location that may be accessible by a third party. In this case, the firm should have a confidentiality agreement with the third party.

*Division 3      Certain business transactions*

### **11.8 Tied selling**

Section 11.8 prohibits an individual or firm from engaging in abusive sales practices such as selling a security on the condition that the client purchase another product or service from the registrant or one of its affiliates. These types of practices are known as “tied selling”. In our view, this section would be contravened if, for example, a financial institution agreed to lend money to a client only if the client acquired securities of mutual funds sponsored by the financial institution.

However, section 11.8 is not intended to prohibit relationship pricing or other beneficial selling arrangements similar to relationship pricing. Relationship pricing refers to the practice of industry participants offering financial incentives or advantages to certain clients.

### **11.9 Registrant acquiring a registered firm’s securities or assets**

#### **Notice requirement**

Under section 11.9, registrants must give the regulator notice if they propose to acquire an ownership interest in voting securities (or securities convertible into voting securities) or assets of another registered firm or the parent of another registered firm. This notice must be delivered to the principal regulator of the registrant proposing to make the acquisition and to the principal regulator of the registered firm they propose to acquire, if that firm is registered in Canada. If the principal regulator of both firms is the same, only one notice is required.

Registrants acquiring securities or assets of another registered firm for a client in nominee name do not need to provide notice under section 11.9. For purposes of this section, a substantial part of the assets of the registered firm would include a registered firm’s book of business, a business line or a division of the firm, among other things. This notice gives the regulator an opportunity to consider ownership issues that may affect a firm’s fitness for registration.

#### **Filing of the notice with the principal regulator**

It is intended that the notice filed with the principal regulator(s) will be shared with other regulators with an interest in the proposed acquisition. Therefore, although only the principal regulator(s) will receive a notice, other jurisdictions may object to the proposed acquisition under subsections 11.9(4) and 11.9(5). The registrant will have an opportunity to be heard in any jurisdiction that has objected to the proposed acquisition. It is our intent, however, to coordinate the review of these notices and any decisions to object to these proposed acquisitions.

Subsection 11.9(4) does not apply in British Columbia. However, the regulator in British Columbia may exercise discretion under section 36 or 161 of the BC *Securities Act* (BCSA) to impose conditions, restrictions or requirements on the registrant’s registration or to suspend or revoke the registration if it decides that an acquisition would affect the registrant’s fitness for registration or be prejudicial to the public interest. In these circumstances, the registrant would be entitled to an opportunity to be heard, except if the regulator issues a temporary order under section 161 of the BCSA.

#### **Content of the notice**

When preparing the notice under section 11.9, registrants should consider including the following information to help the regulator assess the proposed transaction:

- the proposed closing date for the transaction
- the business reasons for the transaction
- the corporate structure, both before and after the closing of the proposed transaction, including all affiliated companies and subsidiaries of the acquirer and any registered firm involved in the proposed transaction whether interests in a company, partnership or trust are held directly or through a holding company, trust or other entity
- information on the operations and business plans of the acquirer and any registered firm involved in the proposed transaction, including any changes to Item 3.1 of Form 33-109F6 *Firm Registration* such as primary business activities, target market, and the products and services provided to clients of any registered firm involved in the proposed transaction
- any significant changes to the business operations of any registered firm involved in the proposed transaction, including changes to the CCO, the UDP, key management, directors, officers, permitted individuals or registered individuals
- whether the registered firms involved in the proposed transaction have written policies and procedures to address conflicts of interest that may arise following the transaction and information on how such conflicts of interest have been or will be addressed.
- whether the registered firms involved in the proposed transaction have adequate resources to ensure compliance with all applicable conditions of registration
- a confirmation that any registered firm involved in the proposed transaction will comply with section 4.1 following the transaction
- details of any client communications in connection with the transaction that have been made or are planned or an explanation of why no communications to clients are anticipated
- whether a press release will be issued in relation to the proposed transaction

#### **11.10 Registered firm whose securities are acquired**

##### **Notice requirement**

Under section 11.10, registered firms must notify their principal regulator if they know or have reason to believe that any individual or firm is about to acquire 10% or more of the voting securities (or securities convertible into voting securities) of the firm or the firm's parent. This notice gives the regulator an opportunity to consider ownership issues that may affect a firm's fitness for registration. We expect this notice to be sent as soon as the registered firm knows or has reason to believe such an acquisition is going to take place.

##### **Filing of the notice with the principal regulator**

It is intended that the notice filed with the principal regulator(s) will be shared with other regulators with an interest in the proposed acquisition. Therefore, although only the principal regulator(s) will receive a notice, other jurisdictions may object to the proposed acquisition under subsections 11.10(5) and 11.10(6). The registered firm will have an opportunity to be heard in any jurisdiction that has objected to the proposed acquisition. It is our intent, however, to coordinate the review of these notices and any decisions to object to these proposed acquisitions.

##### **Application for registration**

We expect any individual or firm that acquires assets of a registered firm and is not already a registrant will have to apply for registration. We will assess their fitness for registration when they apply.

Subsection 11.10(5) does not apply in British Columbia. However, the regulator in British Columbia may exercise discretion under section 36 or 161 of the BCSA to impose conditions, restrictions or requirements on the registrant's registration or to suspend or revoke the registration if it decides that an acquisition would affect the registrant's fitness for registration or be prejudicial to the public interest. In these circumstances, the registrant would be entitled to an opportunity to be heard, except if the regulator issues a temporary order under section 161 of the BCSA.

## **Content of the notice**

Refer to the guidance in section 11.9.

## **Part 12 Financial condition**

### *Division 1 Working capital*

#### **12.1 Capital requirements**

##### **Frequency of working capital calculations**

Section 12.1 requires registered firms to notify the regulator as soon as possible if their excess working capital is less than zero.

Registered firms should know their working capital position at all times. This may require a firm to calculate its working capital every day. The frequency of working capital calculations depends on many factors, including the size of the firm, the nature of its business and the stability of the components of its working capital. For example, it may be sufficient for a sole proprietor firm with a dedicated and stable source of working capital to do the calculation on a monthly basis.

##### **Form 31-103F1 Calculation of excess working capital**

##### **Application of NI 52-107 Acceptable Accounting Principles and Auditing Standards**

Form 31-103F1 *Calculation of Excess Working Capital* (Form 31-103F1) must be prepared using the accounting principles used to prepare financial statements in accordance with National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (NI 52-107). Refer to section 12.10 of this Companion Policy and Companion Policy 52-107 *Acceptable Accounting Principles and Auditing Standards* (52-107CP) for further guidance on audited financial statements.

##### **IIROC and MFDA member firms that are also registered in another category**

IIROC and MFDA member firms that are also registered in a category that does not require SRO membership must still comply with the financial filing requirements in Part 12 *Financial condition*, even if they are relying on the exemptions in sections 9.3 and 9.4. Provided certain conditions are met, SRO members that are registered in other categories may be permitted to calculate their working capital in accordance with the SRO forms and file the SRO forms instead of Form 31-103F1.

For example, if the SRO firm is also an investment fund manager, it will need to report any net asset value (NAV) adjustments quarterly in order to comply with the investment fund manager requirements, notwithstanding that its SRO has no such requirements. However, they may be permitted to calculate their working capital in accordance with the SRO forms and file the SRO forms instead of Form 31-103F1. See sections 12.1, 12.12 and 12.14 for the requirements on delivery of working capital calculations for SRO members that are registered in multiple categories.

##### **Working capital requirements are not cumulative**

The working capital requirements for registered firms set out in section 12.1 are not cumulative. If a firm is registered in more than one category, it must meet the highest capital requirement of its categories of registration, except for those investment fund managers who are also registered as portfolio managers and meet the requirements of the exemption in section 8.6. These investment fund managers need only meet the lower capital requirement for portfolio managers.

##### **If a registrant becomes insolvent or declares bankruptcy**

The regulator will review the circumstances of a registrant's insolvency or bankruptcy on a case-by-case basis. If the regulator has concerns, it may impose terms and conditions on the registrant's registration, such as close supervision and delivering progress reports to the regulator, or it may suspend the registrant's registration.

#### **12.2 Subordination agreement**

Non-current related party debt must be deducted from a firm's working capital on Form 31-103F1, unless the firm and the lender have executed a subordination agreement in the form set out in Appendix B of NI 31-103 and delivered a copy of that agreement to the regulator. A portion of the non-current loan becoming current would not impact the original subordination agreement; the firm would have to notify the regulator if the firm repays the loan or any part of the non-current portion of the loan. However, the current portion of the originally-intended non-current subordinated loan would have to be included in Line 4 of Form 31-103F1, and could not be included in Line 5 of Form 31-103F1. This may not be the total amount of the original loan as set out in the subordination agreement, and as such the amount in the subordination agreement would not agree to Line 5 of Form 31-103F1.

Related party debt due on demand or repayable by the firm at any time, including pursuant to a revolving line of credit, is an example of a current liability. These types of liabilities are not eligible to be subordinated for the purposes of calculating excess working capital. The amount of current related party debt must be included in line 4 – *Current liabilities* of Form 31-103F1.

Firms must deliver subordination agreements to the regulator on the earlier of 10 days after the execution of the agreement or the date on which the firm excludes the amount of the related party debt from its excess working capital calculation. A firm may not exclude the amount until the subordination agreement is executed and delivered to the regulator.

The firm's obligations under section 12.2 to notify the regulator 10 days before it repays the loan or terminates the subordination agreement apply regardless of the terms of any loan agreement. Firms should ensure the terms of their loan agreements do not conflict with their regulatory requirements.

If a subordinated related party debt is being increased and the incremental increase is to be subordinated, the subordination agreement submitted to the regulator should only report the incremental increase. Firms should not report the full balance of the related party debt, as noted on the statement of financial position, on the new subordination agreement unless the previous subordination agreement is terminated and notification of this termination is made in accordance with section 12.2.

In conjunction with the submission of a new subordination agreement, the regulator may request that the firm provide a schedule detailing the total outstanding subordinated debt.

The regulator may request that additional documentation be provided in conjunction with the firm's notice of repayment of a subordinated debt in order to assess whether the firm will have sufficient excess working capital following the repayment. This may include updated interim financial information and a completed Form 31-103F1.

At the time the firm submits a notice of repayment, the firm should provide an updated schedule to the regulator, detailing the total outstanding subordinated debt following the repayment.

## *Division 2 Insurance*

### **Insurance coverage limits**

Registrants must maintain bonding or insurance that provides for a "double aggregate limit" or a "full reinstatement of coverage" (also known as "no aggregate limit"). The insurance provisions state that the registered firm must "maintain" bonding or insurance in the amounts specified. We do not expect that the calculation would differ materially from day to day. If there is a material change in a firm's circumstances, it should consider the potential impact on its ability to meet its insurance requirements.

Most insurers offer aggregate limit policies that contain limits based on a single loss and on the number or value of losses that occur during the coverage period.

Double aggregate limit policies have a specified limit for each claim. The total amount that may be claimed during the coverage period is twice that limit. For example, if an adviser maintains a financial institution bond of \$50,000 for each clause with a double aggregate limit, the adviser's coverage is \$50,000 for any one claim and \$100,000 for all claims during the coverage period.

Full reinstatement of coverage policies and no aggregate limit policies have a specified limit for each claim but no limit on the number of claims or losses during the coverage period. For example, if an adviser maintains a financial institution bond of \$50,000 for each clause with a full reinstatement of coverage provision, the adviser's maximum coverage is \$50,000 for any one claim, but there is no limit on the total amount that can be claimed under the bond during the coverage period.

### **Insurance requirements are not cumulative**

Insurance requirements are not cumulative. For example, a firm registered in the categories of portfolio manager and investment fund manager need only maintain insurance coverage for the higher of the amounts required for each registration category. Despite being registered as both a portfolio manager and an investment fund manager, when calculating the investment fund manager insurance requirement under subsection 12.5(2), an investment fund manager should only include the total assets under management of its own investment funds. It is only with respect to its own funds that the registrant is acting as an investment fund manager.

## **12.4 Insurance – adviser**

The insurance requirements for advisers depend in part on whether the adviser holds or has access to client assets.

An adviser will be considered to hold or have access to client assets if they do any of the following:

- hold client securities or cash for any period
- accept funds from clients, for example, a cheque made payable to the registrant
- accept client money from a custodian, for example, client money that is deposited in the registrant's bank or trust accounts before the registrant issues a cheque to the client
- have the ability to gain access to client assets
- have, in any capacity, legal ownership of, or access to, client funds or securities
- have the authority, such as under a power of attorney, to withdraw funds or securities from client accounts
- have authority to debit client accounts to pay bills other than investment management fees
- act as a trustee for clients
- act as fund manager or general partner for investment funds, or
- use a custodian that is not functionally independent of the adviser and that, if used, allows the registered firm to access client assets

A registered firm will generally be considered to have access to client assets through the use of a custodian that is not functionally independent of the firm when any of the following apply:

- the registered firm and the custodian share the same mind and management such that the registered firm and the custodian would not reasonably be considered to be operating independently
- the custodial activities are performed by personnel that are not separate from, or are unable to act independently from, personnel of the registered firm

## **12.6 Global bonding or insurance**

Registered firms may be covered under a global insurance policy. Under this type of policy, the firm is insured under a parent company's policy that covers the parent and its subsidiaries or affiliates. Firms should ensure that the claims of other entities covered under a global insurance policy do not affect the limits or coverage applicable to the firm.

### *Division 4 Financial reporting*

## **12.10 Annual financial statements**

## **12.11 Interim financial information**

### **Accounting Principles**

Registrants are required to deliver annual financial statements and interim financial information that comply with NI 52-107. Depending on the financial year, a registrant will look to different parts of NI 52-107 to determine which accounting principles and auditing standards apply:

- Part 3 of NI 52-107 applies for financial years beginning on or after January 1, 2011;
- Part 4 of NI 52-107 applies to financial years beginning before January 1, 2011.

Part 3 of NI 52-107 refers to Canadian GAAP applicable to publicly accountable enterprises, which is IFRS as incorporated into the Handbook. Under Part 3 of NI 52-107, annual financial statements and interim financial information delivered by a registrant must be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises except that any investments in subsidiaries, jointly controlled entities and associates must be accounted for as specified for separate financial

statements in International Accounting Standard 27 Consolidated and Separate Financial Statements. Separate financial statements are sometimes referred to as non-consolidated financial statements.

Subsection 3.2(3) of NI 52-107 requires annual financial statements to include a statement and description about this required financial reporting framework. Section 2.7 of 52-107CP provides guidance on subsection 3.2(3). We remind registrants to refer to these provisions in NI 52-107 and 52-107CP in preparing their annual financial statements and interim financial information.

Part 4 of NI 52-107 refers to Canadian GAAP for public enterprises, which is Canadian GAAP as it existed before the mandatory effective date for the adoption of IFRS, included in the Handbook as Part V. Under Part 4 of NI 52-107, annual financial statements and interim financial information delivered by a registrant must be prepared in accordance with Canadian GAAP for public enterprises except that the financial statements and interim financial information must be prepared on a non-consolidated basis.

## 12.14 Delivering financial information – investment fund manager

### NAV errors and adjustments

Section 12.14 requires investment fund managers to periodically deliver to the regulator, among other things, a completed Form 31-103F4 *Net Asset Value Adjustments* if any NAV adjustment has been made. A NAV adjustment is necessary when there has been a material error and the NAV per unit does not accurately reflect the actual NAV per unit at the time of computation.

Some examples of the causes of NAV errors are:

- mispricing of a security
- corporate action recorded incorrectly
- incorrect numbers used for issued and outstanding units
- incorrect expenses and income used or accrued
- incorrect foreign exchange rates used in the valuation, and
- human error, such as inputting an incorrect value

We expect investment fund managers to have policies that clearly define what constitutes a material error that requires an adjustment, including threshold levels, and how to correct material errors. If an investment fund manager does not have a threshold in place, it may wish to consider the threshold in IFIC Bulletin Number 22 *Correcting Portfolio NAV Errors* or adopt a more stringent policy.

## Part 13 Dealing with clients – individuals and firms

Division 1 *Know your client, [know your product](#) and suitability [determination](#)*

### 13.2 Know your client

#### General principles

Registrants act as gatekeepers of the integrity of the capital markets. They should not, by act or omission, facilitate conduct that brings the market into disrepute. As part of their gatekeeper role, registrants are required to establish the identity of, and conduct due diligence on, their clients under the know your client (or KYC) obligation in section 13.2. ~~Complying with the KYC obligation can help ensure that trades are completed in accordance with securities laws.~~ KYC information ~~forms~~ [helps form](#) the basis for determining ~~whether trades in securities are suitable for investors. This helps~~ [suitability, in order to](#) protect the client, the registrant and the integrity of the capital markets. The KYC obligation requires registrants to take reasonable steps to obtain and periodically update information about their clients. [The KYC process is an ongoing one which does not end after the initial KYC analysis is complete.](#)

#### [Establishing the identity and reputation of the client](#)

##### [Clients that are individuals](#)

[Registrants must collect information to establish the identity of the clients that are individuals. Registrants must also take reasonable steps to confirm the accuracy of the information collected, in order to form a reasonable belief that they know the identity of the individual.](#)

##### *Verifying a client's reputation*

Paragraph 13.2(2)(a) requires registrants to make inquiries if they have cause for concern about a client's reputation. ~~The registrant must~~ [and to](#) make all reasonable inquiries necessary to resolve the concern. This includes making a reasonable effort to determine, for example, the nature of the client's business or the identity of beneficial owners where the client is a

corporation, partnership or trust. See subsection 13.2(3) for additional guidance on identifying clients that are corporations, partnerships or trusts.

### ***Identifying insiders***

Under paragraph 13.2(2)(b), a registrant must take reasonable steps to establish whether the client is an insider of a reporting issuer or any other issuer whose securities are publicly traded. We consider “reasonable steps” to include explaining to the client what an insider is and what it means for securities to be publicly traded.

For purposes of this paragraph, “reporting issuer” has the meaning given to it in securities legislation and “other issuer” means any issuer whose securities are traded in any public market. This includes domestic, foreign, exchange-listed and over-the-counter markets. ~~This definition, but~~ does not include issuers whose securities have been distributed through a private placement and are not freely tradeable.

A registrant need not ascertain whether the client is an insider if the only securities traded for the client are mutual fund securities and scholarship plan securities referred to in paragraphs 7.1(2)(b) and 7.1(2)(c). However, we encourage firms, when selling highly concentrated pooled funds, to enquire as to whether a client is an insider of the issuer of any securities held by the fund, notwithstanding the exemption provided in subsection 13.2(7). In addition, we remind registrants that they remain subject to the requirement in paragraph 13.2(2)(b) when they trade any other securities than those listed in paragraphs 7.1(2)(b) and 7.1(2)(c).

This exemption does not change an insider's reporting and conduct responsibilities.

### ***Clients that are corporations, partnerships or trusts***

Subsection 13.2(3) requires registrants to establish the identity of any person who owns or controls 25% or more of the shares of a client that is a corporation or exercises control over the affairs of a client that is a partnership or trust. We remind registrants that this is in addition to the requirement in paragraph 13.2(2)(a) which requires registrants to make inquiries if they have cause for concern about a client's reputation. If a registrant has cause for concern about a particular client that is a corporation, partnership or trust, they may need to identify all beneficial owners of such entity.

### **KYC for conducting suitability determination**

#### **Understanding the client**

We expect the KYC process to result in registrants thoroughly understanding the client. KYC information must not be made to correspond or match with a security, account or portfolio. In addition, a registrant may need to ask different questions to gather sufficient information in a particular area. For example, we expect registrants to have a meaningful understanding of what their client's investment needs and objectives are, and it is not sufficient to simply ask the client if their investment objectives fall into one of a short list of pre-determined product-focused options, such as “growth”, “income” or “balanced”, or to limit the KYC process to a mechanical attribution of clients into such limited options.

#### **Interaction with the client**

The process of collecting and updating the client's information requires a meaningful interaction with the client, even if that interaction does not take the form of a face-to-face conversation and regardless of the medium used. Registrants should take the opportunity of the initial KYC collection to explain the client's role in keeping KYC information current with the registrant.

Tools such as questionnaires and investment policy statements may be used to facilitate the collection of KYC information and to document the client's investment needs and objectives.

#### **Providing assistance to clients**

While some of the information collected can be readily obtained from the client, other elements may require explanation and further discussion with the client. For example, clients may need assistance in articulating what their investment needs and objectives are, or may also provide instructions that are unclear or seem inconsistent with their KYC information. In these situations, the registrant should make further inquiries of the client. We expect particular care to be exercised by registrants concerning more vulnerable and less sophisticated clients.

The registrant should not simply assume that the client will understand the KYC questions and related discussions or interactions. The KYC questions should therefore be in plain language and provide to the client explanations of what each question or item relates to and what relevant terms and expressions mean, including:



- financial circumstances
- investment needs and objectives
- investment knowledge
- risk profile, and
- investment time horizon

### **Collection of KYC information and use of technology**

Responsibilities arising from the KYC obligation cannot be delegated. A registrant must not rely on a third party, such as a referral agent, for KYC information. Although technological tools or services may be used to facilitate the collection of KYC information, the registrant is responsible for the KYC process regardless of the tools or services used.

The KYC obligation is the same whether a registrant operates under the traditional model of interacting with clients face-to-face or via an online platform or other technology, although the extent of information gathered to support a registrant discharging its KYC obligation may vary.

### **Tailoring the KYC process**

A registrant should tailor its KYC process to reflect its business model and the nature of its relationships with clients. Paragraph 13.2(2)(c) outlines the information to be collected, although the depth of inquiry and what constitutes sufficient information required to support a suitability determination will vary according to the nature of the client's relationship with the registrant, the securities and services to be provided to the client, the client's personal and financial circumstances, the client's investment needs and objectives, and the registrant's business model. For example, extensive KYC information will be required if the registrant offers a fully-customized service or is a portfolio manager with discretionary authority for a client with relatively complex financial circumstances.

### **KYC information to support use of prospectus exemptions**

Registrants should develop a KYC process that provides for the collection of sufficient information about the client to allow the registrant to determine if the client meets the requirements of a prospectus exemption that is proposed to be relied on.

### **Client's personal circumstances**

Subparagraph 13.2(2)(c)(i) requires the registrant to ensure that it has sufficient information on the client's personal circumstances. For individuals, this includes:

- date of birth
- address and contact information
- civil status or family situation
- number of dependants
- employment status and occupation
- whether someone other than the client is authorised to provide instructions on the account, and
- whether someone other than the client has a financial interest in the account.

For non-individuals, this includes:

- legal name
- head office address and contact information
- type of legal entity, i.e. corporation, trust, or other entity

- form and details regarding the organization of the legal entity, i.e. articles of incorporation, trust deed, or other constating documents
- nature of business, and
- persons authorized to provide instructions on the account and details of any restrictions on their authority.

### **Client's financial circumstances**

Subparagraph 13.2(2)(c)(ii) requires the registrant to ensure that it has sufficient information on the client's financial circumstances. A client's financial circumstances include, where applicable:

- annual income
- liquidity needs
- financial assets
- net worth, and
- whether the client is using leverage or borrowing to finance the purchase of securities.

Registrants should obtain a breakdown of financial assets, including deposits and type of securities such as mutual funds, listed securities, exempt securities, and net worth, which should cover all types of assets and liabilities. This can help establish that the information collected accurately reflects the client's financial circumstances and will assist the registrant in their suitability determination of any investment made.

### **Client's liquidity needs**

Liquidity needs are an important aspect of a client's financial circumstances. The registrant should ascertain the extent to which a client wishes or needs to access all or a portion of their investments to meet their ongoing and short-term expenses and financial obligations or fund major planned expenditures. Liquidity needs also include money set aside for unanticipated financial emergencies, such as job loss or disability.

When assessing a client's liquidity needs, a registrant should consider whether the client has any other means to cover their expenditures, whether the needs are expected or unexpected, and whether, once the need materializes, the money will be withdrawn on a regular basis, such as once a month or once a year.

### **Leverage or borrowing to finance the purchase of securities**

Understanding a client's financial circumstances includes whether or not a client is using leverage or is borrowing to finance the purchase or carrying of securities. When a client uses leverage or borrows money to invest, or borrows against the value of their investments, we expect the registrant to gather more specific details regarding the client's financial circumstances, including, for example, information regarding the client's cash flow, debts and breakdown of financial assets. This will help the registrant with their suitability determination for an investment funded or carried through borrowing.

### **Client's investment objectives**

Subparagraph 13.2(2)(c)(iii) requires the registrant to ensure that it has sufficient information on the client's investment needs and objectives. A client's investment objectives are the results they want to achieve when investing, such as capital preservation, income generated by invested capital, capital growth or speculation. A client's investment objectives help establish what particular type of investments are needed to fulfill the purpose of the account or portfolio. Investment needs and objectives are determined based on the client's financial goals, financial needs, and any applicable investment constraints and preferences.

Financial goals can be monetary targets driven by specific future liquidity needs. A client's financial goals can be set for short or long term, but should be specific and measurable. The registrant's approach in ascertaining their clients' investment objectives should include an opportunity for clients to express their financial goals in meaningful terms, such as saving for retirement to maintain a certain lifestyle, increasing wealth by a certain percentage in a specific number of years, investing for purchase of a home, or investing for the post-secondary education of the investor's children.

When establishing a client's investment objectives, a registrant should consider setting out the investment return that would be required to meet the client's financial goals, taking into account the client's risk profile. A registrant should also provide explanations to the client as to whether the outcome of their account or portfolio is on track to achieve their financial goals.

Depending on the nature of the relationship with the client, and the securities and services offered by the registrant, registrants should take into account whether there are any other priorities, such as paying down high interest debt or directing cash into a savings account, that are more likely to achieve the client's investment objectives and financial goals than a transaction in securities.

### **Client's investment knowledge**

Subparagraph 13.2(2)(c)(iv) requires the registrant to ensure that it has sufficient information on the client's investment knowledge, which is the client's understanding of financial markets, the relative risk and limitations of various types of investments, and how the level of risk taken affects potential returns. This supports assessing the client's risk profile.

We expect registrants to inquire about the client's level of awareness and previous experiences with finances and investments. This inquiry should not only rely on self-assessment by the client. A registrant should also make further inquiries if the information provided by the client appears to be inconsistent with their level of investment knowledge. For example, a client may indicate that they have limited investment knowledge and experience, while also indicating a willingness to take on a high level of risk. In these circumstances, a registrant should take into account the client's investment knowledge when assessing the client's risk profile.

### **Client's risk profile**

#### **Determination of the client's risk profile**

Subparagraph 13.2(2)(c)(v) requires the registrant to ensure that it has sufficient information on the client's risk profile. Understanding the client's risk profile, namely a client's relationship toward investment risk, is an important step in the KYC process and an essential element a registrant should consider when making a suitability determination for a client. Establishing a client's risk profile involves understanding the client's willingness to take risk, sometimes referred to as risk tolerance or risk attitude, and their ability to endure potential financial loss, sometimes referred to as risk capacity. Risk tolerance and risk capacity act as separate, considerations that limit how much risk a client is willing and able to take. Therefore, the risk profile for a client should reflect the lower of the client's willingness to accept risk and the client's capacity to withstand declines in the value of their portfolio. Other factors may be relevant for a registrant to consider when establishing a client's risk profile, such as loss aversion, or the tendency to prefer avoiding losses to realizing equivalent gains.

Registrants should have in place a thorough process for assessing the level of risk a client is willing and able to take, including:

- assessing a client's capacity for loss,
- appropriately interpreting client responses to questions and not attributing inappropriate weight to certain answers, and
- identifying clients that are more suited to placing their money in cash deposits or guaranteed products because they are unwilling or unable to accept the risk of loss of capital.

Assessing a client's capacity for loss involves the registrant having an understanding of the client's financial circumstances, including liquidity needs, debts, income and assets. Another consideration in determining risk capacity is how much of a client's total investments a particular investment or account represents. Age and life stage can also be important considerations when assessing a client's capacity to withstand loss.

The process for developing a client's risk profile should be supportable and reliable. The questions and answers that are used to establish the level of risk a client is willing and able to take should be documented. The questions should be fair, clear and not misleading.

Tools such as questionnaires should be designed to arrive at a meaningful risk profile for the client. Registrants should monitor the use of tools used to aid in the risk profiling process and recognize and mitigate any limitations inherent in the use of the tool. For example, questions which are used to determine a client's risk tolerance should not be limited to a range of risk levels within certain types of securities. A registrant who is only gathering risk tolerance information, especially for exempt market products, may not obtain a meaningful understanding of what is a client's actual risk tolerance. In our view, having a single category for risk tolerance, applied to all clients, is not acceptable.

A client's risk profile should not be manipulated to justify recommending higher-risk products, and clients should not be influenced by a representative as to the way they respond to questions related to risk tolerance.

### **Resolving conflicts between a client's expectations and risk profile**

A client's investment needs and objectives may conflict with the level of risk that they are willing and able to take. In these circumstances, the registrant should discuss this conflict in detail with the client. Clients may also have unrealistic expectations, for example the expectation to earn high returns with little risk. A desire to meet unrealistic expectations may lead clients with a lower risk tolerance to invest in higher-risk products that are unsuitable for them. A detailed discussion of the relationship between risk and return is critical to establishing realistic expectations.

Registrants should not override the risk a client is willing and able to accept on the basis that the client's expectations on returns to meet their investment objectives cannot otherwise be met given the risk profile associated with their KYC responses. The registrant should identify any mismatches in the client's investment needs and objectives, risk tolerance and capacity for loss. The questions at the source of this conflict should be revisited with the client. If a client's goals or return objectives cannot be achieved without taking greater risk than they are able or willing to take, alternatives should be clearly explained such as saving more, spending less or retiring later.

Where after discussion, it is determined that the client does not have the capacity or tolerance to sustain the potential losses and volatility associated with a higher risk portfolio, the registrant should explain to the client that their need or expectation for a higher return cannot realistically be met, and as a result, the higher risk portfolio is unsuitable. The interaction with the client and end results should be properly documented.

### **Client's investment time horizon**

Subparagraph 13.2(2)(c)(vi) requires the registrant to ascertain the client's investment time horizon. When a client identifies their investment time horizon, the registrant has the responsibility to assess its feasibility and reasonableness in comparison to the client's liquidity needs, age, investment objectives, risk profile, and other particular circumstances. The length of the client's investment time horizon impacts the types of investments that may be suitable for the client. Investors with a longer investment time horizon may have a greater degree of flexibility when building a portfolio, whereas a shorter investment time horizon may mean that conservative investments may be the only suitable option.

### **Client's confirmation**

Under section 13.2(3.1), the registrant must obtain the client's confirmation of the accuracy of the information collected under subsection 13.2(2), including any significant changes to the client's information. This confirmation may be evidenced by handwritten, electronic or digital signature or by maintaining notes in the client file detailing the client's instructions to change the information. It should also be verified by providing written confirmation to the client with details of the instructions for change and providing an opportunity for the client to correct any changes that have been made. A registrant should consider implementing additional controls to evidence any change in client name, address or banking information since these changes may bring about an increased potential for fraud. Controls could include obtaining the client's handwritten, electronic or digital signature.

We expect registrants to record the date on which information is collected under subsection 13.2(2) and updated under subsections 13.2(4) or 13.2(4.1). The books and records required to be maintained under section 11.5 [general requirements for records] should include maintaining evidence of a client's confirmation of the accuracy of their KYC information.

### **Significant change to client information**

A significant change to a client's information includes changes to the risk profile, investment time horizon or investments needs and objectives of the client, and changes that would reasonably be expected to have a significant impact on the net worth or income of the client. A significant change to the client's information collected under subsection 13.2(2) or updated under subsection 13.2(4) or 13.2(4.1) may result in the client's KYC information no longer accurately reflecting the client's current situation.

### **Keeping KYC information current**

Under subsection 13.2(4), registrants are required to make reasonable efforts to keep their clients' KYC information current. We consider information to be current if it is sufficiently up-to-date to support a suitability determination. ~~For example, a portfolio manager with discretionary authority should update its clients' KYC information frequently. A dealer that only occasionally recommends trades to a client should ensure that the client's KYC information is up-to-date at the time a proposed trade or recommendation is made.~~ Without adequate and timely KYC information, registrants cannot meet their suitability determination obligations. We expect registrants to determine a proper time period for reviewing and updating clients' information that is in

accordance with the client's circumstances, the registrant's category of registration, business model and the type of relationship they have with a client.

Subsection 13.2(4.1) sets out the minimum frequency for reviewing and updating a client's KYC information. Some registrants may need to review and update a client's information more frequently in response to significant changes in the client's circumstances. If an exempt market dealer is also registered in another dealer registration category, we expect that KYC information is updated within 12 months prior to making a [trade or recommendation of an exempt security](#).

Updating the KYC information means that the registrant should review and refresh the information on record after having a meaningful and documented interaction with the client in order to keep the information current. It does not mean, however, that the registrant has to re-collect all of the information. The extent of the update will depend on how long it has been since the last update of the client's information. We expect registrants to be proactive in determining that KYC information is current and, at a minimum, to periodically confirm with clients that the information they have on file remains current.

When there is a change in a client's circumstances, or when a significant change occurs in the client's information collected under subsection 13.2(2) with respect to a client's specific account, a registrant should consider whether the change should prompt an update of KYC information specific to other accounts of the client held by the registrant.

### **13.2.1 Know Your Product**

#### **General obligations of registrants**

Section 13.2.1 sets out know your product (or **KYP**) requirements for both firms and individuals. In order to make the suitability determination that is required by section 13.3 [*suitability determination*], registrants must have a thorough knowledge and understanding of all securities that are purchased and sold for, or recommended to, their clients.

Subsection 13.2.1(1) prohibits a registered firm from making a security available to clients unless the firm has first taken reasonable steps to understand the security, including the structure, features, returns and risks, as well as the initial and ongoing costs of the security and the impact of those costs. We take the view that a registered firm makes a security available to clients by:

- [purchasing or selling it for a client,](#)
- [recommending it to a client,](#)
- [placing the security on the firm's "shelf", product or watch list, or](#)
- [advertising or promoting the security in any medium, including distributing marketing material about the security to a client.](#)

Subsection 13.2.1(3) prohibits registered individuals from purchasing or selling a security for, or recommending a security to, a client unless the registered individuals have complied with certain conditions. Under paragraph 13.2.1(3)(a), registered individuals must first have taken reasonable steps to understand, at a general level, each security available for them to purchase and sell for, or recommend to, clients, as well as how those securities compare to one another. Registered individuals must have a high level understanding of the structure, features, returns, risks and costs of each such security in order to be able to compare them, and to be able to select a smaller universe to focus on should they choose to do so.

Under paragraph 13.2.1(3)(b), registered individuals must also have taken reasonable steps to thoroughly understand all securities they purchase and sell for, or recommend to, clients before purchasing or selling those securities for clients or making recommendations to clients in respect of those securities. This thorough understanding includes understanding the structure, features, returns and risks of the securities, as well as the initial and ongoing costs of the securities and the impact of those costs.

#### **Firm KYP process**

Subsection 13.2.1(1) requires registered firms to analyse and understand, approve (or reject) and monitor securities that they intend to make available to clients. Firms must establish and maintain written policies and procedures setting out their KYP process, including their procedures for documenting the process, and must apply these policies and procedures consistently.

The extent of the KYP process required for a security will depend on the structure and features of that security, and a firm's policies and procedures should set out the different levels of review for different types of securities, as appropriate. For example, complex investment products, including those that are novel, not transparent in structure, or involve leverage, options or other derivatives, may require a more extensive review than more straightforward securities. Securities sold under a prospectus

exemption may require a more extensive review because of the limited disclosure available about them and the less liquid nature of the securities.

We expect that a firm's KYP process will include: a process for analysing and understanding the securities that a firm is considering making available to clients; a process for approving those securities; and a process for ongoing monitoring and reassessment of the securities that a firm makes available to clients.

### **Securities of related or connected issuers**

Registrants are not relieved of their KYP obligations in respect of securities of related and connected issuers. Where a firm offers securities of related and connected issuers as well as other securities, we expect that the securities of related and connected issuers will be subject to the same KYP process as those of other issuers. Securities of related and connected issuers must be analysed and understood, approved and monitored in an objective manner and must be subject to the same scrutiny as securities of other issuers. We remind registrants of the requirements in Part 13, Division 2 [conflicts of interest] and their obligation to address conflicts in the best interests of their clients, including those that arise as a result of recommending securities of related and connected issuers to clients, or trading in securities of related and connected issuers for clients.

Where firms offer securities of related or connected issuers as well as other securities, we expect that the performance of related and connected issuers will be subject to the same scrutiny as the performance of other issuers. For example, we expect that the criteria used to remove a product offered by an unrelated or unconnected issuer should also result in the removal of products sharing the same attributes from related or connected issuers.

### **Understanding the securities made available to clients**

A firm's KYP process must include an analysis of a security's structure, features, returns and risks, as well as initial and ongoing costs and the impact of those costs, so that firms can meet the requirement to take reasonable steps to understand each security made available to clients. We expect this would include an analysis of:

- the general structure and features of the security, including:
  - the overall complexity, transparency and uniqueness of the security's structure and features
  - the basis of the security's return, for example capital growth, dividends and interest rate, and the likelihood of achieving its investment objectives and any expected returns
  - the time horizon, including liquidity limitations and any features that lock in the principal and/or returns
  - the use of leverage by the issuer
- the conflicts of interest, if any, inherent in the security, arising for example from the compensation structure, related party issues or other factors, including an assessment of how any conflicts of interest are being addressed by the issuer
- the parties involved, including the issuer's financial position, history and viability, as well as the qualification, reputation and track record of the parties involved in key aspects of the security or the issuer's operations (for example, management of the issuer, portfolio manager, product manufacturer or sponsor, guarantors or significant counterparties)
- the risks of the security, including:
  - risks related to the security itself, such as liquidity risk, price volatility, default risk and exposure to counterparty risk,
  - risks related to assets underlying the security, and
  - the risk of loss of some or all of the amount invested;
- the initial and ongoing costs of acquiring, owning and disposing of a security, as well as the impact of those costs on performance, client returns or otherwise, including:
  - fees paid to registrants or other parties, such as commissions, sales charges, trailer fees, management fees, incentive fees, referral fees and redemption fees
  - embedded costs in the security, such as expenses or bid-ask spreads

- how the security can be used as part of an investment strategy by representatives, including how it could fit with other securities in client portfolios
- the legal and regulatory framework applicable to the issuer or the offering, including:
  - any laws or rules of self-regulatory organizations that apply to the issuer or any registrant involved
  - if distributed under an exemption, whether the security meets the requirements of the exemption
  - jurisdiction and legal characteristics, and
  - frequency, completeness and quality of the disclosure relating to the issuer or the offering.

As part of its KYP process to understand a security, a firm must also understand how that security generally compares with similar securities available in the market, and must take this into account when determining whether or not to approve the security to be made available to clients. Our expectation is that firms consider the overall competitiveness of the security, as compared to a reasonable range of similar investment opportunities, as a factor to be considered when approving the security. As noted above, this requirement applies equally to securities of related and connected issuers, and firms must understand generally how securities of their related and connected issuers compare with similar securities available in the market, regardless of whether or not the firm makes securities of unrelated or unconnected issuers available to clients.

Firms are expected to have the appropriate skills and experience to perform the necessary analysis of all securities to be made available to clients. We expect that firms will include representation from all relevant parts of the firm, such as compliance and risk management, when completing their analysis. Some firms may wish to establish a product review committee, which would include appropriate representation from within the firm, to conduct this analysis.

### **Due diligence process**

In addition to firms reviewing and assessing information and documentation provided by issuers, we expect firms to conduct and document their own due diligence to demonstrate that they understand the securities under consideration. Firms must document their independent analysis of the security's structure, features, returns, risks and initial and ongoing costs of the security, as well as the impact of those costs. We expect firms to undertake an in-depth analysis of the security where any issues are identified during their review process.

A security cannot be approved by a firm based solely on:

- representations, information, documentation, analyses or reports received from issuers or other third parties, including related parties and "independent" third parties, about the security, its structure, features and risks, its suitability for clients or its expected returns
- its similarities to other securities, or
- recommendations made by other market participants to their clients or by unregistered persons providing general advice.

### **Guidelines or client profiles**

We expect that, as part of their KYP process, firms will consider guidelines or client profiles identifying the type of client for whom a particular security might be appropriate, as well as any restrictions or controls on the use of the security in client portfolios, such as concentration limits or guidelines or limits on the types of investment strategies that may be used with the security. Any guidelines or client profiles should consider the necessary risk profile, investment time horizon, liquidity needs, income and net worth that clients for whom the security might be appropriate should have. Firms should also identify the types of circumstances when the security would not be appropriate or where it would not be possible to meet the obligations under section 13.3 [suitability determination] in respect of that security. Where appropriate, firms should assign concentration limits to individual securities or general classes of securities. Registered individuals must still comply with their obligations under section 13.3 [suitability determination] in respect of each recommendation to or purchase or sale for a client.

### **Training and compliance system requirements**

As part of the KYP process, firms are expected to assess whether any additional training or proficiency requirements are necessary in order for their registered individuals to understand the securities and make appropriate suitability determinations.

We remind firms of the requirements in section 3.4.1 [firm's obligation to provide training]. Firms must also assess any modifications that may need to be made to their compliance or other systems in order to support the offering of the security.

### **Approval of a security**

After completing the necessary analysis, where a firm concludes that a particular security should be made available to clients, a firm must document its approval of the security. This approval must take place before the firm makes the security available to clients. As part of its approval of the security, we expect the firm to also approve any client guidelines and any necessary controls on the sale or recommendation of the security. We expect, at a minimum, that individuals from a firm's senior management, compliance and risk management areas will be involved in the approval process. Any necessary controls or restrictions on the sale, recommendation, or use of the security, and any necessary training programs, must be put in place before the security is made available.

We expect that part of a firm's approval of a security will be making a determination that the security has a reasonable prospect of being a suitable investment for at least some clients, and that firms will document their rationale for this determination.

### **Monitoring**

A firm's KYP process must include a process for monitoring and reassessing securities that have been approved by the firm and continue to be made available to clients, to confirm that they remain appropriate over time. In addition, firms are expected to maintain reasonably up to date analyses of securities held in their client accounts even if they no longer continue to make those securities available to clients.

A firm's process for monitoring and reassessing securities that it has made available to clients includes monitoring for significant changes to those securities, as well as for changes to the business environment or market conditions that would affect the risks or other aspects of the securities. Firms should revisit their approval, guidelines or client profiles for securities as appropriate. We expect that, in cases where a change to a security is significant, firms and their registered individuals will consider whether or not the change would require new suitability determinations for clients holding that security.

A firm is also expected to monitor compliance with client profiles, as well as any controls or restrictions placed on the sale, recommendation, or use of the security, including the use of the security by representatives in connection with any investment strategies. Firms must revisit their approval, guidelines or client profiles, as well as their controls or restrictions, in response to any issues discovered through this monitoring process.

In addition, a firm is expected to monitor and reassess training needs.

Firms are also expected to monitor the performance of the securities made available to clients, as well as client outcomes and any complaints related to the securities, as part of their overall obligation to monitor and reassess securities that have been approved by the firm, to confirm that they remain appropriate over time. We expect that this monitoring and reassessment will include an assessment of the continued competitiveness of the securities that a firm makes available to clients, as compared to similar securities available in the market (whether or not the firm has made such similar securities available to clients).

### **Overall offering of firm**

Under subsection 13.2.1(2), firms must ensure that, overall, their security and service offerings, including the associated costs, are consistent with how those firms hold themselves out. A firm's offerings should meet the reasonable expectations of its clients that result from how the firm holds itself out. This is part of a registrant's general duty to deal fairly, honestly and in good faith with its clients.

### **Requirements applicable to registered individuals**

Before purchasing or selling a security for, or recommending a security to, a client, registered individuals must have complied with the conditions set out in subsection 13.2.1(3). Under paragraph 13.2.1(3)(a), registered individuals must first have taken reasonable steps to understand, at a general level

- the securities that are available for them to purchase and sell for, or recommend to, clients, and
- how the securities that a firm makes available to clients, and that the registered individual is able to purchase and sell for or recommend to clients, compare to one another.

This involves a high level understanding of the structure, features, returns, risks and costs of each security that a firm makes available to clients that the registered individual is able to purchase and sell for, or recommend to, a client. Registered



individuals must have a high level understanding of each such security in order to be able to compare them, and to be able to select a smaller universe to focus on should they choose to do so.

Under paragraph 13.2.1(3)(b), registered individuals must also have taken reasonable steps to thoroughly understand all securities that they purchase and sell for or recommend to clients, and must have this thorough understanding prior to any such purchase or sale for a client or recommendation to a client. This obligation requires a thorough understanding of the specific structure, features, returns and risks of each security purchased and sold for or recommended to clients. Registered individuals must also have a thorough understanding of the initial and ongoing costs associated with the purchase and holding of a security, as well as a thorough understanding of the impact of these costs. A registrant must take this information into account when making a suitability determination.

The fact that a security is “approved” by the firm is not enough to discharge a registered individual's obligation to take reasonable steps to thoroughly understand the security being purchased or sold for, or recommended to, a client by the registered individual.

Securities that registered individuals purchase and sell for, or recommend to, clients must have gone through the KYP process described above. If, under the registered firm's business model, registered individuals are able to propose a new security (that the registered individuals could recommend under their registration category) for the firm to make available to clients, we expect the firm to consider the security. However, the firm must approve the security prior to its registered individuals purchasing that security for a client or making any recommendations to a client in respect of that security.

### **Firm obligation to ensure representatives have the information to meet their KYP obligations**

Subsection 13.2.1(5) requires that firms ensure their registered individuals have the information necessary to enable them to comply with their KYP obligations. We expect that firms will provide their registered individuals with access to the information gathered and analysis completed on securities that the firms have approved to be made available to clients. We also expect that firms will provide their registered individuals with any necessary training and tools, for example, as well as take any other steps necessary to enable their registered individuals to comply with their KYP obligations. We remind firms of their obligations under section 3.4.1 [firm's obligation to provide training].

Where securities to be sold pursuant to exemptions from the prospectus requirements under securities legislation are made available to clients, we expect that firms will train their registered individuals on the characteristics and concerns related to exempt securities to ensure that their registered individuals understand those securities and recommend them only in appropriate circumstances. This includes training on:

- risks, such as heightened liquidity and valuation risk
- conflicts of interest, for example, where the securities are issued by a related party, and
- eligibility requirements.

## **13.3 Suitability determination**

### **Scope of the suitability determination**

#### **General principles**

The obligation to make a suitability determination is a fundamental obligation owed by registered firms and registered individuals to their clients and is critical to ensuring investor protection. It is a cornerstone of the registration regime and an extension of the duty to deal fairly, honestly and in good faith which registered firms and their registered individuals owe to their clients.

#### **Suitability obligation**

~~Subsection 13.3(1) requires registrants to take reasonable steps to ensure that a proposed trade is suitable for a client before~~cannot be determined, in any circumstances, without complying with the KYC and KYP obligations. The information and knowledge resulting from these processes are prerequisites to a registrant's ability to determine suitability. We expect registrants to gather sufficient information through the KYC process to support a suitability determination. Registrants must also have a thorough knowledge and understanding of all securities that are purchased and sold for, or recommended to, their clients. Refer to guidance in section 13.2 and section 13.2.1.

The client's risk profile is also an essential element of the suitability determination. Using the risk rating of a specific security as the only input in analysing the overall risk of the client's portfolio is not in our view an acceptable practice.

Under subsection 13.3(1), the obligation to make a suitability determination applies to actions taken by a registrant for a client including opening an account for a client, purchasing, selling, depositing, exchanging or transferring securities for a client's account, and taking any other investment action for a client, or making a recommendation or ~~accepting instructions from the client. To meet this suitability obligation, registrants should have in-depth knowledge of all securities that they buy and sell for, or recommend to, their clients. This is often referred to as the "know your product" or KYP obligation.~~

~~Registrants should know each security well enough to understand and explain to their clients the security's risks, key features, and initial and ongoing costs and fees. Having the registered firm's approval for representatives to sell a product does not mean that the product will be suitable for all clients. Individual registrants must still determine the suitability of each transaction for every client.~~  
decision to take any such action. An investment action for a client also includes a recommendation or decision for the continued holding of securities. The obligation to make a suitability determination also extends to the type of account recommended to the client and therefore may evolve for as long as the client maintains an account with a registered firm.

In this Companion Policy, "suitability determination" refers to a determination made by a registrant that satisfies the criteria in paragraphs 13.3(1)(a) and (b).

### **Interests of the client are paramount**

The client's interests, as distinguished from those of the registrant, are at the core of the obligations under section 13.3. The fact that a recommendation or decision is determined by the registrant, on a reasonable basis, to be suitable for a client pursuant to paragraph 13.3(1)(a) will therefore not be considered to be enough to meet this obligation; the registrant must also determine that the action puts the client's interests first pursuant to paragraph 13.3(1)(b).

A suitability determination comprises both the suitability and the client interest components, in all cases, including:

~~Registrants should also be aware of, and act in compliance with, the terms of any exemption being relied on for the trade or distribution of the security.~~

~~In all cases, we expect registrants to be able to demonstrate a process for making suitability determinations that are appropriate in the circumstances.~~

- upon the occurrence of certain events in accordance with subsection 13.3(2), and
- upon receiving a client instruction.

We expect registrants to act with integrity towards their clients, and pay particular attention to any residual self-interest which may affect client outcomes. They must put the client's interests first, whether in terms of remuneration, financial gains or other incentives, and exercise their professional judgement in a client-centric manner when opting for one decision or recommendation among other suitable possibilities, if any. For example, maintaining inappropriate amounts of cash in the client's account, or leaving cash in the account uninvested for unduly long periods of time would not meet the requirement of putting the client's interest first.

If the registrant cannot recommend a suitable type of account or security to the client because these are not available at the firm, we expect the registrant to decline to provide the securities or the services to the client.

### **Portfolio approach to suitability**

Suitability must not be determined only on a trade by trade basis, but rather on the basis of the client's overall situation. Registrants must consider suitability in the context of the client's accounts at the firm, including the impact of the recommendation or decision on the account and the overall concentration and liquidity in all of the client's accounts as further explained below.

#### **(a) Multiple accounts held by the client at the registrant**

A portfolio approach to suitability should be taken where the client has multiple investment accounts with the firm. The client's investment needs and objectives, investment time horizon or risk profile may not be identical for all of the accounts, for example when the client holds a registered education savings plan (RESP) account, a cash account (such as a tax-free savings account) and a margin account at the firm. We nevertheless expect the registrant to make a suitability determination by taking into consideration whether a recommendation or decision for one account materially affects the concentration and liquidity of client's investments across all accounts held with the firm.

#### **(b) Investments held by the client outside the registrant**

Depending on the circumstances, a registrant should inquire about the client's other investments or holdings held elsewhere in order to inform its suitability determination. These circumstances include the type of relationship with the client, the type of securities and the amount of the client's investment in proportion to their other investments or holdings.

### Account type suitability

The obligation to make a suitability determination extends to the type of account recommended to the client, the dealer or adviser compensation option and the nature of the service offered to the client, including the use of investment strategies such as leveraging. The suitability determination of the account type should be made prior to the opening of the account. If a client chooses a type of account that is not suitable, the registrant should inform the client of its determination and the reasons for its determination and not open the account unless the client instructs the registrant to proceed nonetheless.

Where a firm offers both fee based and commission based accounts, the firm and representative should explain the features and fees or commissions associated with both types of accounts to the client, and recommend the type of account that puts the client's interests first.

**Suitability ~~obligations~~ determination cannot be delegated**

Registrants may not:

- ~~delegate their suitability obligations to anyone else, or~~
- ~~satisfy the suitability obligation by simply disclosing the risks involved with a trade~~

~~Only permitted clients may waive their right to a suitability determination. Registrants must make a suitability determination for all other clients. If a client instructs a registrant to make a trade that is unsuitable, the registrant may not allow the trade to be completed until they warn the client as required under subsection 13.3(2).~~

### **KYC information for suitability depends on circumstances**

~~The extent of KYC information a registrant needs to determine suitability of a trade will depend on the:~~

- ~~client's circumstances~~
- ~~type of security~~
- ~~client's relationship to the registrant, and~~
- ~~registrant's business model~~

~~In some cases, the registrant will need extensive KYC information, for example, if the registrant is a portfolio manager with discretionary authority. In these cases, the registrant should have a comprehensive understanding of the client's: delegate their obligations under section 13.3 to an unregistered individual, for example, an administrative assistant or a referral agent, or to a registrant at another firm.~~

### Factors for determining suitability

#### Specific factors are indicated

• ~~investment needs and objectives, including the client's time horizon for their investments~~ Paragraph 13.3(1)(a) indicates specific factors upon which a registrant must base its suitability determination. We expect a meaningful suitability determination to be made by all registrants. It requires meaningful interaction with the client to obtain a sufficient understanding of the client, and to determine whether a proposed investment strategy is suitable for the client in light of the client's investment needs and objectives and risk profile. Subparagraph (a)(viii) requires registrants to take into account any other relevant factor under the circumstances.

#### Portfolio concentration

Over-concentration in certain securities can have a significant impact on a client's investments. For example, registrants must assess whether the client's investments are over-concentrated in:

- illiquid exempt market securities as compared to more liquid publicly traded securities.

- securities of a single issuer, or group of related issuers, as compared to a broadly based portfolio of issuers, or
- securities of an issuer, or group of related issuers, that provides exposure to a single industry or asset class, for example, real estate, as compared with a broadly based portfolio of issuers that provide exposure to diversified industries or asset classes.

When assessing concentration as referred to in subparagraph 13.3(1)(a)(v), registrants should consider the client's overall portfolio concentration and document reasonable concentration thresholds to ensure that a client's total investment in exempt market securities, or a particular security, sector, or industry does not exceed thresholds that would make the investment being unsuitable in accordance with paragraph 13.3(1)(a).

Registrants should consider a number of factors when determining the thresholds, for example the type of security, market conditions, and redemption or other liquidity restrictions. Generally, the higher the concentration in a particular type of security, sector or industry, the more steps the registrant should take, and appropriately document, to demonstrate that the investment was suitable for the client.

Registrants should establish written procedures to calculate, monitor and manage concentration risks in a client's portfolio. These procedures should be consistently applied to all client accounts and should include thresholds whereby any concentration in excess of the thresholds requires further assessment or review by compliance staff. When establishing these procedures, registrants should establish stricter or lower concentration thresholds for clients who require liquidity or have limited ability or willingness to withstand losses such as, for example, seniors, individuals with limited assets or income, and individuals with limited investment knowledge.

### **Potential and actual impact of costs**

Cost as referred to in subparagraph 13.3(1)(a)(vi) is interpreted broadly and can include all direct and indirect costs, fees, commissions and charges, including trailing commissions and any other kind of direct and indirect registrant compensation which may be associated with a client purchasing, selling, holding or exchanging a security, or a registrant making a decision for a client's managed account.

Costs can have a significant impact on a client's return over time. Registrants must assess the relative costs of various options available to clients at the firm when making a suitability determination, as well as the impact of those costs. This includes assessing the impact on the client's overall return of any compensation paid, directly or indirectly, to the registrant, whether by the client, a registered individual's sponsoring firm, or a third party.

Different options available to clients at the firm may have different costs associated with them. For example, even after registrants have addressed conflicts of interest in the client's best interest as required by Part 13, Division 2 *[conflicts of interest]*, it may be the case that certain options available at the firm compensate registered individuals better than others. For example, recommending certain securities or account types to clients may compensate registered individuals better than other securities or account types available at the firm. Such higher payouts may come at the price of higher costs to the client, directly or indirectly. Registered individuals must put their client's interest first when selecting between multiple suitable options available to the client.

Unless a registrant has a reasonable basis for determining that a higher cost security will be better for a client, we expect the registrant to trade, or recommend, the lowest cost security available to the client in the circumstances that meets the requirements of subsection 13.3(1). However, we recognize that there may be reasons why a specific higher cost security available at the firm may be better for a client than other suitable securities available at the firm. We expect registrants to include an assessment of the relative costs of, including the relative compensation associated with, various options available when documenting the reasonable basis for their suitability determinations.

### **Consideration of a reasonable range of alternatives**

Registrants have an obligation to consider a reasonable range of alternative recommendations or decisions available to the registered individual through the registered firm when making a suitability determination. What constitutes a reasonable range of alternative recommendations or decisions will depend upon the circumstances, including the firm's product range, the degree of skill and proficiency of the registrant and the client's particular circumstances.

### **Reassessing suitability**

A suitability determination is required upon the occurrence of an event in subsection 13.3(2) and may also be triggered on periodic account reviews. The extent of the requirement to make a new suitability determination may also vary according to the composition of the client's account. For example:

- ~~overall financial circumstances, including net worth, income, current investment holdings and employment status, and pre-authorised purchases or systematic withdrawals pursuant to established plans do not require a suitability determination prior to each purchase or withdrawal; however, a suitability determination must be made prior to establishing a systematic plan as well as upon the occurrence of a triggering event, and~~
- ~~risk tolerance for various types of securities and investment portfolios, taking into account the client's investment knowledge~~when a client's account consists only of illiquid securities that have no redemption features, for example exempt market securities distributed by exempt market dealers, we recognize that the extent of the reassessment of the suitability determination may be limited due to the illiquid nature of the securities. However, we expect that the registrant will take this fact into account when making future recommendations for the client, including any additional investments in the same security.

~~In other cases, the registrant may need less KYC information, for example, if the registrant only occasionally deals with a client who makes small investments relative to their overall financial position.~~

~~If the registrant recommends securities traded under the prospectus exemption for accredited investors in NI 45-106, the registrant should determine whether the client qualifies as an accredited investor.~~

~~If a client is opening more than one account, the registrant should indicate whether the client's investment objectives and risk tolerance apply to a particular account or to the client's whole portfolio of accounts.~~

### **Registered firm and financial institution clients**

~~Under subsection 13.3(3), there is no obligation to make a suitability determination for a client that is a registered firm, a Canadian financial institution or a Schedule III bank.~~

Refer to guidance in Appendix F Part 14 – Client reporting requirements and sole EMDs for a discussion of transactional and ongoing client relationships.

### **Unsuitable investments**

#### **Dealing with unsuitable client-directed trades (unsolicited orders)**

A registrant has no obligation to accept a client order or instruction which it considers to be unsuitable. In our view, marking the order as unsolicited is not sufficient. The registrant must take the measures set out in subsection 13.3(2.1) to deal with the order and advise the client in a timely manner against proceeding.

Should the client choose to keep an unsuitable investment, it may be appropriate to recommend changes to other investments held by the client at the firm in order to maintain the suitability of the overall account. Any advice given should be documented if the client declines to follow the registrant's recommendation.

### **Exceptions**

#### **Permitted clients**

~~Under subsection 13.3(4), registrants do not have~~There are exceptions to the requirement to make a suitability determination ~~for a permitted client if:~~

- ~~the permitted client has waived their right to suitability in writing, and~~
- ~~the registrant does not act as an adviser for a managed account of the permitted client~~A permitted client under subsections 13.3(3) and 13.3(4), for clients that are Canadian financial institutions, Schedule III banks or certain permitted clients. Permitted clients may waive their right to suitability for all trades under a blanket waiver.

**SRO exemptions** SRO rules may also provide conditional exemptions from the ~~suitability obligation~~obligations under section 13.3, for example, for dealers who offer order execution only services.

### **Review by the regulator of the suitability determination**

We will not review whether the suitability determination has been met based on events subsequent to the determination by the registrant, nor do we expect that there is only one best decision, recommendation or course of action: there could be several decisions or recommendations that the registrant has a reasonable basis for concluding are equally suitable and that puts the interests of the client first. Our review will be based on what a reasonable registrant would have done under the same circumstances.

## Responsibility to identify conflicts of interest

### **13.4 — Identifying and responding to conflicts**

#### What is a conflict of interest?

~~Section 13.4 covers a broad range of conflicts of interest. It requires registered firms to take reasonable steps to identify existing material conflicts of interest and material conflicts that the firm reasonably expects to arise between the firm and a client. As part of identifying these conflicts, a firm should collect information from the individuals acting on its behalf regarding the conflicts they expect to arise with their clients.~~

We consider a conflict of interest to include any circumstance where:

1. ~~We consider a conflict of interest to be any circumstance where~~ the interests of different parties, such as the interests of a client and those of a registrant, are inconsistent or divergent.

#### **Responding to conflicts of interest**

2. ~~a registrant may be influenced to put their interests ahead of their client's interests, or~~

~~A registered firm's policies and procedures for managing conflicts should allow the firm and its staff to:~~

3. ~~monetary or non-monetary benefits available to a registrant, or potential detriments to which a registrant may be subject, may compromise the trust that a reasonable client has in their registrant.~~

#### ~~• identify conflicts of interest that should be avoided~~

In determining whether a registrant has taken reasonable steps to identify existing and reasonably foreseeable conflicts of interest, we do not expect registrants to anticipate every potential conflict no matter how remote the conflict might be. However, registrants should be aware that the obligation to identify existing and reasonably foreseeable conflicts of interest extends beyond identifying only material conflicts.

#### ~~• determine the level of risk that a conflict of interest raises, and~~

Determining the materiality of a conflict will help firms determine how significant their controls should be, or whether the conflict must be avoided altogether. However, a firm cannot properly address a conflict in the best interest of their clients unless the firm has accurately identified the conflict in a timely way. NI 31-103 requires registered individuals to take reasonable steps to identify existing and reasonably foreseeable conflicts and to report such conflicts to their sponsoring firm. Firms must then assess how material the conflict is and what the appropriate response should be.

#### ~~• respond appropriately~~

In order to address conflicts in the best interest of clients, a registered firm and its registered individuals should, on an ongoing basis, take proactive steps to anticipate reasonably foreseeable conflicts, identify existing conflicts, and appropriately respond to those conflicts of interest.

#### Addressing conflicts in the best interest of the client

~~When responding to any conflict of interest, registrants should consider their standard of care for dealing with clients and apply consistent criteria to similar types of conflicts of interest.~~ addressing conflicts of interest in the best interest of clients, a registered firm and its registered individuals must put the interests of their clients first, ahead of their own interests and any other competing considerations. Registrants must address conflicts of interest by either avoiding those conflicts or by implementing controls sufficient to address the conflict in the client's best interest.

All existing and reasonably foreseeable conflicts, not just material conflicts, must be addressed in the best interest of clients. Conflicts of interest that are not material can be addressed in a manner that is proportionate to the limited risk that such conflicts pose to affected clients. For example, subject to compliance with applicable securities legislation or SRO rules, conflicts arising from the receipt by registered firms and their employees of gifts or promotional benefits from third parties may, depending on the circumstances, be adequately addressed by the registered firm adopting an appropriate code of conduct that establishes regularity.

Registered firms could consider the following examples of controls when determining how to address conflicts in the best interest of clients:

- ~~In general, three methods are used to~~ structures, policies, and procedures to identify and respond to conflicts of interest that include:

- a working description of conflicts of interest that enables the registered firm, and each individual acting on its behalf, to understand and identify conflicts of interest that may arise;
- a defined escalation procedure for handling potential conflict situations, for example, an internal requirement that when individuals acting on a registered firm's behalf become aware of an existing or reasonably foreseeable conflict of interest, the employee should promptly report the conflict of interest to the CCO of the firm;
- a clear delineation of firm and representatives' responsibilities with respect to identifying and addressing conflicts of interest;
- ~~avoidance~~
  - regular reporting of material conflicts of interest by the CCO to the firm's UDP, executive management and board of directors (or equivalent) including how the firm is addressing such conflicts in the best interest of clients; and
- ~~control, and~~
  - periodic testing of the firm's conflicts management framework;
- a system for confirming that effective conflicts disclosure is provided to clients.

~~If a registrant allows a serious conflict of interest to continue, there is a high risk of harm to clients or to the market. If the risk of harming a client or the integrity of the markets is too high, the conflict needs to be avoided. If a registered firm does not avoid a conflict of interest, it should take steps to control or disclose the conflict, or both. The firm should also consider what internal structures or policies and procedures it should use or have to reasonably respond to the conflict of interest. While controls are essential to ensuring that registrants respond to conflicts in the best interest of clients, registered firms should also demonstrably commit to addressing conflicts of interest. For example, registered firms should promote a tone from the top, set by the firm's UDP, executive management, and the firm's board of directors (or equivalent), that emphasizes the importance of integrity when dealing with clients and the handling of conflicts in the best interest of clients.~~

### ***Avoiding conflicts ~~of interest~~***

~~Registrants must avoid all conflicts of interest that are prohibited by law. If a conflict of interest is not prohibited by law, registrants should avoid the conflict if it is sufficiently contrary to the interests of a client that there can be no other reasonable response.~~ a conflict of interest if there are no controls available in the circumstances that would be sufficient to address the risks to the clients' interests. In these circumstances, we would consider that such a conflict cannot be addressed in the clients' best interest and must be avoided. Similarly, if a particular conflict is capable of being addressed in the best interest of clients by using controls, but the specific controls being used by a firm are not sufficiently mitigating the risks to clients, the firm must avoid that conflict until they have sufficient controls in place to properly address it. In such circumstances, the conflict is not being addressed in the best interest of clients and must be avoided.

~~For example, some conflicts of interest are so contrary to another person's or company's interest that a registrant cannot use controls or disclosure to respond to them. In these cases, the registrant should avoid the conflict, stop providing the service or stop dealing with the client.~~

We expect registered firms to avoid particular conflicts if that is the only response that would be reasonable in the circumstances and consistent with the obligation to address conflicts in the best interest of clients. Registered firms must avoid such conflicts even if that avoidance means foregoing an otherwise attractive business opportunity or type of compensation for the firm or its registered individuals.

### ***Controlling conflicts ~~of interest~~***

Pursuant to subsections 11.5(2) and 13.4.2(2), if a registered firm is controlling a conflict of interest then the registered firm must be able to demonstrate that the controls in place are sufficient to address the conflict in the best interest of its clients. If the controls in place at a firm are not sufficient to address the conflict in the best interest of its clients, the firm must avoid that conflict.

### ***Examples of conflicts of interest***

#### ***Conflicts arising from proprietary products***

It is a conflict of interest for a registered firm to trade in, or recommend, proprietary products. Such firms must be able to demonstrate that they are addressing this conflict in the best interest of its clients. If a registered firm is not controlling this conflict in the best interest of its clients, the firm must avoid this conflict.

Registered firms ~~should design their organizational structures, lines of reporting and physical locations to control conflicts of interest effectively. For example, the following situations would likely raise a conflict of interest: who trade in, or recommend, proprietary products in addition to non-proprietary products could consider the following examples of controls when determining how to address such conflicts in the best interest of their clients:~~

- prohibiting monetary or non-monetary benefits at the firm that could bias individual recommendations towards proprietary products over non-proprietary products
- demonstrating that proprietary products are subject to the same know your product processes and selection criteria, as well as ongoing performance and other monitoring, as non-proprietary products
- clearly documenting how proprietary products fit within the firm's business model and strategy, and how they are aligned with client interests
- monitoring the use and level of proprietary products in client portfolios to assist in evaluating whether the conflict is being addressed in the best interests of clients
- making non-proprietary products offered by the firm as easy to access for its registered individuals and its clients as proprietary products offered by the firm
- clearly disclosing to clients the nature of the firm's product and service offerings and the extent to which proprietary products may be included in client portfolios, and
- obtaining independent advice on, or an independent evaluation of, the effectiveness of the firm's policies, procedures, and controls to address this conflict.

Registered firms who only trade in, or recommend, proprietary products could consider the following examples of controls when determining how to address this conflict in the best interest of their clients:

- clearly documenting how the proprietary products fit within the firm's business model and strategy, and how they are aligned with client interests
- providing clear disclosure to clients about the nature of the firm's product and service offerings and that only proprietary products will be included in client portfolios
- developing client profiles setting out the types of investors for whom the proprietary products may be suitable, including concentration or other limits for such securities where appropriate, and turning away any potential clients who do not fit the profile for that product
- establishing a thorough oversight process for compliance with Part 13 Division 1 [*know your client, know your product and suitability determination*] in respect of proprietary products
- establishing thorough know your product processes for the proprietary products, including subsequent performance and other monitoring of the securities, and an ongoing evaluation of the suitability of the securities for client portfolios
- conducting periodic due diligence on comparable non-proprietary products available in the market and evaluating whether the proprietary products are competitive with the alternatives available in the market, and
- obtaining independent advice on, or an independent evaluation of, the effectiveness of the firm's policies, procedures, and controls to address this conflict.

### **Conflicts arising from third-party compensation**

It is a conflict of interest for a registrant to receive third-party compensation. We also consider circumstances where registrants receive greater third-party compensation for the sale or recommendation of certain securities relative to others to be a conflict of interest. If a registrant is not controlling these conflicts in the best interest of its clients, the registrant must avoid these conflicts.

Registered firms should be able to demonstrate that both product shelf development and client recommendations are based on the quality of the security without influence from any third-party compensation associated with the security. Registered firms



could consider the following examples of controls when considering how to address these conflicts in the best interest of their clients:

- confirming that securities which provide lower levels of third-party compensation or no third-party compensation are included in the evaluation process, and that such process is free from bias towards securities that provide third-party compensation or higher third-party compensation. For example, by evaluating securities before the application of third-party compensation, or by ensuring that securities providing third-party compensation or higher third-party compensation are subject to the same know your product processes and selection criteria as other similar securities providing lower levels of third-party compensation or no third-party compensation.
- as part of the firm's product shelf development, conducting periodic due diligence on securities on the firm's shelf that provide third-party compensation to determine whether such securities are competitive with comparable alternatives available in the market (including those that do not provide third-party compensation)
- clearly documenting how securities that provide third-party compensation fit within the firm's business model and strategy, and how they are aligned with client interests and the services provided to clients. Registrants should in particular take the following factors into account:
  - the range of ongoing investment and financial services provided to clients
  - the extent of such services, and
  - controls to confirm that the services are provided;
- developing client profiles setting out the types of investors for whom securities that provide third-party compensation may be suitable
- maintaining internal compensation arrangements for registered individuals that do not solely tie the registered individual's compensation, either directly or indirectly, to commission revenue that is based on securities recommended or sold
- monitoring registered individuals' recommendations to determine whether predominance is given to securities that provide third-party compensation or higher third-party compensation, and to assist in evaluating whether the conflict is being addressed in the best interests of clients, and
- imposing consequences on registered individuals for breaches of the firm's conflict of interest policies and procedures that are sufficiently severe to counteract the potential incentives that registered individuals might have to put their own interests ahead of their clients' interests.

### **Conflicts arising from internal compensation arrangements and incentive practices**

Sales and revenue targets create conflicts of interest between registered individuals and their clients. For example, setting overly aggressive sales targets may cause registered individuals to put their interests ahead of their clients' interests. Also, as the negative consequences for failing to meet a sales or revenue target become more severe, the risk increases that registered individuals will put their interests ahead of their clients' interests.

Similarly, compensation arrangements and incentive practices that are heavily weighted towards sales activity or revenue generation also create conflicts of interest between registered individuals and their clients.

It is a conflict of interest for registered firms to create incentives to sell or recommend certain products or services over others. It is also a conflict of interest for registered individuals to receive greater compensation from their sponsoring firm for the sale or recommendation of certain products or services over others.

Registered firms must be able to demonstrate that they are addressing these conflicts in the best interest of their clients. If a registrant is not controlling these conflicts in the best interest of its clients, the registrant must avoid these conflicts. Registered firms could consider the following examples of controls when considering how to address such conflicts in the best interest of their clients:

- applying consequences for conflicts violations that are proportionate to the potential benefit that could be achieved for reaching the sales or revenue target or the compensation or incentive threshold. For example:

- prohibiting the registered individual from future participation in the compensation arrangement or incentive practice
- requiring that the registered individual be compensated in a way that does not vary depending on the amount of revenue that they generate for the firm or the product or service that they recommend
- requiring that a portion of the benefits or bonus be repaid to the registered firm, and
- demotion or termination of employment;
- tying a portion of the registered individual's variable compensation to the absence of valid client complaints against the registrant, or to the registered individual's compliance with the registered firm's policies and procedures;
- ~~advisory staff reporting to marketing staff~~ limiting the registered individual's variable compensation to a lower portion of their total compensation;
- ~~compliance or internal audit staff reporting to a business unit, and~~ deferring payment of a portion of the compensation or incentive for a reasonable amount of time; and
- ~~registered representatives and investment banking staff in the same physical location~~ maintaining internal compensation arrangements for registered individuals that demonstrate that they are neutral towards products.

In addition to controlling these conflicts in the best interest of clients, registrants must comply with the suitability determination obligation under section 13.3. If certain products or services available at a firm compensate its registered individuals better than others, in addition to determining that the recommendation is suitable, registered individuals must put their clients' interest first when deciding which product or service to recommend. As a result, the client's interests, not the registrant's interests, must guide the recommendations made by a registrant to its clients. Registrants must not recommend a product or service just because it pays them better than other alternatives. This is also consistent with a registrant's obligation to deal fairly, honestly and in good faith with its clients.

### **Conflicts of interests at supervisory level**

If compliance or supervisory staff's compensation is tied to the sales or revenue generation of the registered individuals that they supervise, this creates a conflict of interest that may cause compliance or supervisory staff to put their interests ahead of the clients' interests. Compliance and supervisory staff may not be able to properly oversee these registered individuals when compensated in this manner.

Depending on the ~~conflict of interest~~ size of the registered firm, this conflict may be practically unavoidable. In such circumstances, we expect registered firms ~~may control the conflict by:~~ to address this conflict in the best interest of clients by implementing policies and procedures sufficient to mitigate the risk to clients' interests and to closely monitor for compliance with these policies and procedures.

- ~~assigning a different representative to provide a service to the particular client~~
- ~~creating a group or committee to review, develop or approve responses~~
- ~~monitoring trading activity, or~~
- ~~using information barriers for certain internal communication~~

### **Disclosing conflicts of interest**

#### **(a) When disclosure is appropriate**

~~Registered firms should ensure that their clients are adequately informed about any conflicts of interest that may affect the services the firm provides to them. This is in addition to any other methods the registered firm may use to manage the conflict.~~

#### **(b) Timing of disclosure**

~~Under subsection 13.4(3), if a reasonable investor would expect to be informed of a conflict, a registered firm must disclose the conflict in a timely manner. Registered firms and their representatives should disclose conflicts of interest to their clients before~~

~~or at the time they recommend the transaction or provide the service that gives rise to the conflict. This is to give clients a reasonable amount of time to assess the conflict.~~

~~We note that where this disclosure is provided to a client before the transaction takes place, we expect the disclosure to be provided shortly before the transaction takes place. For example, if it was initially provided with the client's account opening documentation months or years previously we expect that a registered representative would also disclose this conflict to the client shortly before the transaction or at the time the transaction is recommended.~~

~~For example, if a registered individual recommends a security that they own, this may constitute a material conflict which should be disclosed to the client before or at the time of the recommendation.~~

### **~~(c) — When disclosure is not appropriate~~**

~~Disclosure may not be appropriate if a conflict of interest involves confidential or commercially sensitive information, or the information amounts to "inside information" under insider trading provisions in securities legislation.~~

~~In these situations, registered firms will need to assess whether there are other methods to adequately respond to the conflict of interest. If not, the firm may have to decline to provide the service to avoid the conflict of interest.~~

~~Registered firms should also have specific procedures for responding to conflicts of interest that involve inside information and for complying with insider trading provisions.~~

### **~~(d) — How to disclose a conflict of interest~~**

~~Registered firms should provide disclosure about material conflicts of interest to their clients if a reasonable investor would expect to be informed about them. When a registered firm provides this disclosure, it should:~~

- ~~• be prominent, specific, clear and meaningful to the client, and~~
- ~~• explain the conflict of interest and how it could affect the service the client is being offered~~

~~Registered firms should not:~~

- ~~• provide generic disclosure~~
- ~~• give partial disclosure that could mislead their clients, or~~
- ~~• obscure conflicts of interest in overly detailed disclosure~~

### **Examples of conflicts of interest**

~~This section describes specific situations where a registrant could be in a conflict of interest and how to manage the conflict.~~

#### **~~Relationships with related or connected issuers~~**

~~When a registered firm trades in, or recommends securities of, a related or connected issuer, it should respond to the resulting conflict of interest by disclosing it to the client.~~

~~To provide disclosure about conflicts with related issuers, a registered firm may maintain a list of the related issuers for which it acts as a dealer or advisor. It may make the list available to clients by:~~

#### **Conflicts in fee-based accounts**

- ~~• posting the list on its website and keeping it updated~~

~~If a client is in a fee-based account and that account holds securities with embedded commissions, we consider this to be a conflict of interest. Firms can address this conflict in the best interest of clients in a number of ways. For example:~~

- ~~• providing the list to the client at the time of account opening, or using a different series of the security that does not contain an embedded commission, or~~
- ~~• explaining to the client at the time of account opening how to contact the firm to request a copy of the list free of charge ensuring that the client is made whole.~~

~~The list may include examples of the types of issuers that are related or connected and the nature of the firm's relationship with those issuers. For example, a firm could generally describe the nature of its relationship with an investment fund within a family of investment funds. This would mean that the firm may not have to update the list when a new fund is added to that fund family.~~

~~However, this type of disclosure may not meet the expectations of a reasonable investor when a specific conflict with a related or connected issuer arises, for example, when a registered individual recommends a trade in the securities of a related issuer. In these circumstances, a registered firm should provide the client with disclosure about the specific conflict with that issuer. This disclosure should include a description of the nature of the firm's relationship with the issuer.~~

~~Like all disclosure, information regarding a conflict with a related or connected issuer should be made available to clients before or at the time of the advice or trade giving rise to the conflict, so that clients have a reasonable amount of time to assess it. Registrants should use their judgment for the best way and time to inform clients about these conflicts. Previous disclosure may no longer be relevant to, or remembered by, a client, while disclosure of the same conflict more than once in a short time may be unnecessary and confusing.~~

~~Firms do not have to disclose to clients their relationship with a related or connected issuer that is a mutual fund managed by an affiliate of the firm if the names of the firm and the fund are similar enough that a reasonable person would conclude they are affiliated.~~

### **~~Relationships with other issuers~~**

~~Firms should assess whether conflicts of interest may arise in relationships with issuers that do not fall within the definitions of related or connected issuers. Examples include non-corporate issuers such as a trust, partnership or special purpose entity or conduit issuing asset-backed commercial paper. This is especially important if a registered firm or its affiliates are involved in sponsoring, manufacturing, underwriting or distributing these securities.~~

~~The registered firm should disclose the relationship with these types of issuers if it may give rise to a conflict of interest that a reasonable client would expect to be informed about.~~

### **~~Competing interests of clients~~**

~~If clients of a registered firm have competing interests, the firm should make reasonable efforts to be fair to all clients. Firms should have internal systems to evaluate the balance of these interests.~~

~~For example, a conflict of interest can arise between investment banking clients, who want the highest price, lowest interest rate or best terms in general for their issuances of securities, and retail clients who will buy the product. The firm should consider whether the product meets the needs of retail clients and is competitive with alternatives available in the market.~~

~~Registrants should also evaluate on an ongoing basis whether a fee-based compensation arrangement is in the best interest of the client, given the client's circumstances, investment needs and objectives, and the account activity. Registrants offering fee-based accounts should have controls in place to confirm that clients are receiving services consistent with the terms of the account or agreement with their clients.~~

### **Addressing conflicts between clients**

We recognize that there can be competing interests among clients, and that a registrant may have difficulty trying to address these conflicts in the best interest of all their clients simultaneously. Addressing such conflicts in the best interest of clients means that the conflict must be addressed fairly and transparently between the clients. Firms should have internal systems to evaluate and document the balancing of competing client interests.

### **Conflicts related to referral arrangements**

Paid referral arrangements are conflicts of interest and must be addressed in the best interest of the client. Before a registrant refers a client, in exchange for a monetary or non-monetary benefit, to another registered firm or registered individual, the referring registrant must determine that the referral is in the client's best interest. When engaging in this analysis, we expect registrants to consider why they are referring the client to a specific registered firm or individual.

Registered firms and individuals must not put their interests ahead of the interests of their client when making a client-referral. We therefore expect that registrants not make a client referral just because it pays them better than other alternatives. This is also consistent with a registrant's obligation to deal fairly, honestly and in good faith with its clients.

See sections 11.5 and 13.7 of this Companion Policy for guidance on books and records obligations relating to referral arrangements and the specific obligations relating to these arrangements.

### **Purchasing assets from a client outside the normal course of business**

The purchase of an asset from a client outside the normal course of a registrant's business creates a conflict of interest that we expect registrants to generally avoid, unless the registrant can clearly demonstrate that the purchase is in the client's best interest.

### **Individuals who serve on a board of directors**

#### **(a) Board of directors of another registered firm**

Under section 4.1, a registered individual must not act as a director of another registered firm that is not an affiliate of the individual's sponsoring firm.

#### **(b) Board of directors of non-registered persons or companies**

Section 4.1 does not apply to registered individuals who act as directors of unregistered firms. However, significant conflicts of interest can arise when a registered individual serves on a board of directors. Examples include conflicting fiduciary duties owed to the company and to a registered firm or client, possible receipt of inside information and conflicting demands on the representative's time.

~~Registered firms should consider controlling the conflict by:~~

- ~~• requiring their representatives to seek permission from the firm to serve on the board of directors of an issuer, and~~
- ~~• having policies for board participation that identify the circumstances where the activity would not be in the best interests of the firm or its clients~~

Conflicts of interests are further exacerbated when a registered individual acts as a director, officer, shareholder, owner or partner of an issuer whose securities the registered individual also recommends to clients. In such situations the responsibility to the firm and the registered individual to address the conflicts of interest is heightened due to the severity of the risk to the client.

The regulator will take into account the potential conflicts of interest that may arise when an individual serves on a board of directors when assessing that individual's application for registration or continuing fitness for registration.

#### **(c) Board of directors of reporting issuers**

A representative of a registrant acting as a director of or adviser to a reporting issuer raises concerns with respect to conflicts of interest, particularly in relation to issues of insider information, trading and timely disclosure. All registrants should be conscious of their responsibilities in these situations and weigh the burden of dealing in an ethical manner with the conflicts of interest against the advantages of acting as a director of a reporting issuer, ~~many shareholders of which may be clients of the registrant.~~

Directors of a reporting issuer have an obligation not to reveal any confidential information about the issuer until there is full public disclosure of the information, particularly when the information might have a bearing on the market price or value of the securities of the issuer.

Any director of a reporting issuer who is a partner, director, officer, employee or agent of a registrant should recognize that the director's first responsibility with respect to confidential information is to the reporting issuer. A director should meticulously avoid any disclosure of inside information to partners, directors, officers, employees or agents of the registrant or to its clients.

If a partner, director, officer, employee or agent of a registrant is not a director but is acting in an advisory capacity to a reporting issuer and discussing confidential matters, the same care should be taken as if that person were a director. Should the matter require consultation with other personnel of the registrant, adequate measures should be taken to guard the confidential nature.

### **Individuals who have outside business activities**

Conflicts can arise when registered individuals are involved in outside business activities, for example, because of the compensation they receive for these activities or because of the nature of the relationship between the individual and the outside entity. Before approving any of these activities, registered firms should consider potential conflicts of interest. If the firm cannot properly control a potential conflict of interest, it should not permit the outside activity.

Registrants must disclose all outside business activities in Form 33-109F4 (or Form 33-109F5 for changes in outside business activities after registration). Required disclosure includes the following, whether the registrant receives compensation or not:

- any employment and business activities outside the registrant's sponsoring firm
- all officer or director positions, and

- any other equivalent positions held, as well as positions of influence.

The following are examples of outside business activities that we would expect to be disclosed:

- paid or unpaid roles with charitable, social or religious organizations where the individual is in a position of power or influence and where the activity places the registered individual in contact with clients or potential clients, including positions where the registrant handles investments or monies of the organization
- being an owner of a holding company

The regulator will take into account the ~~potential~~[existing and reasonably foreseeable](#) conflicts of interest that may arise as a result of an individual's outside business activities when assessing that individual's application for registration or continuing fitness for registration, including the following:

- whether the individual will have sufficient time to properly carry out their registerable activities, including remaining current on securities law and product knowledge
- whether the individual will be able to properly service clients
- what is the risk of client confusion and are there effective controls and supervision in place to ~~manage~~[address](#) the risk
- whether the outside business activity presents a conflict of interest for the individual, and whether that conflict of interest should be avoided or can be appropriately ~~managed~~[controlled](#)
- whether the outside business activity places the individual in a position of power or influence over clients or potential clients, in particular clients or potential clients that may be vulnerable
- whether the outside business activity provides the individual with access to privileged, confidential or insider information relevant to their registerable activities

A registered firm is responsible for monitoring and supervising the individuals whose registration it sponsors. In relation to outside business activities, this includes:

- having appropriate policies and procedures to deal with outside business activities, including ensuring outside business activities do not:
  - involve activities that are inconsistent with securities legislation, IIROC requirements or MFDA requirements; and
  - interfere with the individual's ability to remain current on securities law and product knowledge
- [requiring individual registrants to disclose to any new sponsoring firm, and requiring that new sponsoring firm to review and approve, all outside business activities prior to the registered individual joining the new sponsoring firm](#)
- ensuring the firm's chief compliance officer is able to properly supervise and monitor the outside business activities
- maintaining records documenting its supervision of outside business activities and ensuring these records are available for review by regulators
- ensuring that ~~potential~~[existing and reasonably foreseeable](#) conflicts of interest are identified and [that](#) appropriate steps are taken to ~~manage~~[address](#) such conflicts [in the best interest of clients](#)
- ensuring outside business activities do not impair the ability to provide adequate client service, including, where necessary, having an alternate representative available for the client
- ensuring the outside business activity is consistent with the registrant's duty to deal fairly, honestly and in good faith with its clients

- implementing risk management, including proper separation of the outside business activity and registerable activity
- preventing exposure of the firm to complaints and litigation
- assessing whether the firm's knowledge of the individual's lifestyle is commensurate with its knowledge of the individual's business activities and staying alert to other indicators of possible fraudulent activity. For example, if information comes to the firm's knowledge (including through a client complaint) that a registered individual's lifestyle is not commensurate with the individual's compensation by the firm, we would expect the registered firm to make further inquiries to assess the situation.

Failure to discharge these responsibilities may be relevant to the firm's continued fitness for registration.

### **Registered individual's responsibility to address conflicts of interest**

If a conflict arises between a registered individual and their client, the registered individual must promptly report that conflict to their sponsoring firm. The registered individual must not proceed with the activity in question until their sponsoring firm has given its consent to proceed. If the registered firm thinks that the conflict must be avoided, the registered individual is prohibited from proceeding with the activity in question. Prior to a firm giving its consent to an individual to proceed with an activity, the firm must put necessary controls in place.

However, the registered firm's consent does not automatically mean that the registered individual has satisfied their obligation to address the conflict in the best interest of their client. If a registered individual has received the consent of their sponsoring firm to proceed with the activity, the registered individual must also assess whether that decision is consistent with their client's best interest. This may result in the registered individual deciding to avoid the conflict notwithstanding the firm's consent. Registered individuals and their sponsoring firms each have a distinct obligation to address conflicts in the best interest of the client.

### **Conflicts disclosure**

#### **Disclosing conflicts of interest**

A registrant must provide disclosure about conflicts in all cases where prescribed by securities legislation or SRO rules applicable to the registrant. However, disclosure alone is not sufficient to address a conflict of interest in the best interest of clients. Not only does disclosure sometimes fail to mitigate the risks related to conflicts of interest, but in some instances disclosure of conflicts may aggravate the potential risks to a client's interests.

We expect that clients will use disclosure about conflicts of interest to help inform their decision when evaluating the registrant's business practices, conflicts management and overall performance on an ongoing basis. As a result, the disclosure that clients receive is critical to their ability to make an informed decision about how to manage and evaluate their relationship with the registrant. Disclosure regarding conflicts of interest must therefore be fulsome in content as set out in NI 31-103, must be prominent, specific and written in plain language, and must be disclosed at the appropriate time in order to be meaningful.

#### **(a) When disclosure is appropriate**

Registered firms should ensure that their clients are adequately informed about conflicts of interest that may affect the products and services provided to them.

#### **(b) Timing of disclosure**

If a reasonable investor would expect to be informed of a conflict, a registered firm must disclose the conflict in a timely manner. This is to give clients a reasonable amount of time to assess the conflict.

Where this disclosure is provided to a client before a transaction that gives rise to a conflict, we expect the disclosure to be provided in a timely manner before the transaction takes place. For example, if the registrant provided disclosure of the conflict of interest to the client with the client's account opening documentation months or years earlier, we expect that a registered representative would also disclose the transaction-related conflict to the client shortly before the transaction or at the time the transaction is recommended.

For example, if a registered individual recommends a security that they own, this will constitute a conflict that must be disclosed to the client before or at the time of the recommendation.

#### **(c) When disclosure is not appropriate**

Disclosure may not be appropriate if a conflict of interest involves confidential or commercially sensitive information, or the information amounts to "inside information" under insider trading provisions in securities legislation.

In these situations, registered firms will need to assess whether there are other methods to adequately address the conflict of interest. If not, the firm may have to decline to provide the service to avoid the conflict of interest.

Registered firms should also have specific procedures for responding to conflicts of interest that involve inside information and for complying with insider trading provisions.

#### **(d) How to disclose a conflict of interest**

Disclosure about a conflict of interest should not:

- be generic disclosure;
- give partial disclosure that could mislead their clients; or
- obscure the conflicts of interest in overly detailed disclosure or buried in the middle of a large disclosure document.

In order to help make conflicts disclosure more prominent, firms should consider using a stand-alone, and succinct, conflicts disclosure document.

#### **Examples of conflicts of interest**

##### **Proprietary product disclosure**

If a registrant is trading in, or recommending, proprietary products, a reasonable client would expect to be informed of that conflict. The registrant should disclose if they only offer proprietary products or whether they offer a mix of proprietary products and non-proprietary products on their shelf and recommended product list.

With respect to the potential impact of this conflict and the risk it could pose to clients' interests, if the registrant is only offering proprietary products then the registrant should consider making the following disclosure prior to opening an account for the client:

*The suitability analysis conducted by the firm and its representatives will not consider the larger market of non-proprietary products or whether those non-proprietary products would be better, worse, or equal in meeting the client's investment needs and objectives.*

The firm must also disclose how they are addressing this conflict in the best interest of their clients.

When providing disclosure about proprietary products, a registered firm may also choose to maintain a list of the related or connected issuers for which it acts as a dealer or adviser. It may make the list available to clients by

- posting the list on its website and keeping it updated
- providing the list to the client at the time of account opening, or
- explaining to the client at the time of account opening how to contact the firm to request a copy of the list free of charge

The list may include examples of the types of issuers that are related or connected and the nature of the firm's relationship with those issuers. For example, a firm could describe the nature of its relationship with an investment fund within a family of investment funds. This would mean that the firm may not have to update the list when a new fund is added to that fund family.

As noted above, information regarding proprietary product conflicts should be made available to clients before or at the time of the advice or trade giving rise to the conflict, so that clients have a reasonable amount of time to assess it. Subject to compliance with section 13.4.5, registrants should use their judgement for the best way and time to inform clients about these conflicts. Previous disclosure may no longer be relevant to, or remembered by, a client, while disclosure of the same conflict more than once in a short time may be unnecessary and confusing.

Firms do not have to disclose to clients their relationship with a related or connected issuer that is a mutual fund managed by an affiliate of the firm if the names of the firm and the fund are similar enough that a reasonable person would conclude they are affiliated.

#### **Relationships with other issuers**



Firms should assess whether conflicts of interest may arise in relationships with issuers that do not fall within the definitions of related or connected issuers. Examples include non-corporate issuers such as a trust, partnership or special purpose entity or conduit issuing asset-backed commercial paper. This is especially important if a registered firm or its affiliates are involved in sponsoring, manufacturing, underwriting or distributing these securities.

The registered firm should disclose the relationship with these types of issuers if it may give rise to a conflict of interest that a reasonable client would expect to be informed about.

### **Compensation ~~practices~~ conflicts**

Prior to entering into a transaction with a client, a registrant must disclose any commissions or other compensation that they will be receiving in respect of the transaction.

If a representative's compensation differs depending on the products or services provided, a reasonable client would expect to be informed of that conflict. With respect to the nature and extent of the conflict, the registrant should disclose a summary of the compensation conflict in plain language. For example, if particular products pay a larger percentage-commission than other products available to the client, the extent of the compensation difference should be explained.

Registrants must explain the potential impact of this conflict and the risk it could pose to clients' interests, including an explanation of the increased risk that the firm's representatives may be influenced to recommend a product that provides them better compensation, even though another product available at the firm may be just as good, or better, at meeting the client's investment needs and objectives. The firm must also disclose how it is addressing this conflict in the best interest of its clients. Registered firms must provide this disclosure:

- prior to opening an account for the client if the conflict may be present throughout the relationship between the registered firm and the client,
- at the time the conflict occurs or,

~~Registered firms should consider whether any particular benefits, compensation or remuneration practices are inconsistent with their obligations to clients, especially if the firm relies heavily on commission-based remuneration. For example, if there is a complex product that carries a high commission, the firm may decide that it is not appropriate to offer that product.~~

- in the case of a transaction-related conflict, prior to entering into the transaction with the client.

### **13.5 Restrictions on certain managed account transactions**

Section 13.5 prohibits a registered adviser from engaging in certain transactions in investment portfolios it manages for clients on a discretionary basis where the relationship may give rise to a conflict of interest or a perceived conflict of interest. The prohibited transactions include trades in securities in which a responsible person or an associate of a responsible person may have an interest or over which they may have influence or control.

#### **Disclosure when responsible person is partner, director or officer of issuer**

Paragraph 13.5(2)(a) prohibits a registered adviser from purchasing securities of an issuer in which a responsible person or an associate of a responsible person is a partner, officer or director for a client's managed account. The prohibition applies unless the conflict is disclosed to the client and the client's written consent is obtained prior to the purchase.

If the client is an investment fund, the disclosure should be provided to, and the consent obtained from, each security holder of the investment fund in order for it to be meaningful. This disclosure may be provided in the offering memorandum that is provided to security holders. Like all disclosure about conflicts, it should be prominent, specific, clear and meaningful to the client. Consent may be obtained in the investment management agreement signed by the clients of the adviser that are also security holders of the investment fund.

This approach may not be practical for prospectus qualified mutual funds. Investment fund managers and advisers of these funds should also consider the specific exemption from the prohibition under section 6.2 of National Instrument 81-107 *Independent Review Committee for Investment Funds* (NI 81-107) for prospectus-qualified investment funds.

#### **Restrictions on trades with certain investment portfolios**

Paragraph 13.5(2)(b) prohibits certain trades, including, for example, those between the managed account of a client and the managed account of:

- a spouse of the adviser

- a trust for which a responsible person is the trustee, or
- a corporation in which a responsible person beneficially owns 10% or more of the voting securities

It also prohibits inter-fund trades. An inter-fund trade occurs when the adviser for an investment fund knowingly directs a trade in portfolio securities to another investment fund that it acts for or instructs the dealer to execute the trade with the other investment fund. Investment fund managers and their advisers should also consider the exemption from the prohibition that exists for inter-fund trades by public investment funds under section 6.1 of NI 81-107.

Paragraph 13.5(2)(b) is not intended to prohibit a responsible person from purchasing units in the investment fund itself, nor is it intended to prohibit one investment fund from purchasing units of another fund in situations where they have the same adviser.

In instances where an IIROC dealer, who is also an adviser to a managed account, trades between its inventory account and the managed account, the dealer is expected to have policies and procedures that sufficiently mitigate the conflicts of interest inherent in such transactions. Generally, we expect these policies and procedures to ensure that:

- the trades achieve best execution as referenced in National Instrument 23-101 *Trading Rules*, while ensuring that the trades are consistent with the objectives of the managed account
- reasonable steps are taken to access information, including marketplace quotations or quotes provided by arms-length parties, to ensure that the trade is executed at a fair price
- there is appropriate oversight and a compliance mechanism to monitor this trading activity in order to ensure that it complies with applicable regulatory requirements, including the requirements referred to above.

### **13.6 Disclosure when recommending related or connected securities**

Section 13.6 restricts the ability of a registered firm to recommend a trade in a security of a related or connected issuer. The restrictions apply to recommendations made in any medium of communication. This includes recommendations in newsletters, articles in general circulation, newspapers or magazines, websites, e-mail, Internet chat rooms, bulletin boards, television and radio.

It does not apply to oral recommendations made by registered individuals to their clients. These recommendations are subject to the requirements of ~~section 13.4~~ [Part 13 Division 2 \[Conflicts of interest\]](#).

#### *Division 3 Referral arrangements*

Division 3 sets out the requirements for permitted referral arrangements. Regulators want to ensure that under any referral arrangements:

- individuals and firms that engage in registerable activities are appropriately registered
- the roles and responsibilities of the parties to the written agreement are clear, including responsibility for compliance with securities legislation, and
- clients are provided with disclosure about the referral arrangement to help them evaluate the referral arrangement and the extent of any conflicts of interest

Registered firms have a responsibility to monitor and supervise all of their referral arrangements to ensure that they comply with the requirements of NI 31-103 and other applicable securities laws and continue to comply for so long as the arrangement remains in place.

As noted above, paid referral arrangements are conflicts of interest that must be addressed in the best interest of the client.

#### **Prohibited referral arrangements**

Subsection 13.8(1) prohibits registered firms and registered individuals from providing a referral fee to a person or company who is not registered. However, pursuant to section 13.8(2), registered firms and registered individuals may accept a referral fee from both registrants and non-registrants.

Although registered firms and registered individuals are still permitted to receive client-referrals from non-registrants, registered firms and registered individuals are not permitted to provide a referral fee to non-registrants in exchange for that client referral.

### **Obligations to clients**

A client who is referred to an individual or firm becomes the client of that individual or firm for the purposes of the services provided under the referral arrangement. The registrant receiving a referral must meet all of its obligations as a registrant toward its referred clients, including know your client, [know your product](#), and suitability determinations. ~~Registrants involved in referral arrangements should manage any related conflicts of interest in accordance with the applicable provisions of Part 13 Dealing with clients — individuals and firms. For example, if the registered firm is not satisfied that the referral fee is reasonable, it should assess whether an unreasonably high fee may create a conflict that could motivate its representatives to act contrary to their duties toward their clients.~~

### 13.7 Definitions – referral arrangements

Section 13.7 defines “referral arrangement” in broad terms. Referral arrangement means an arrangement in which a registrant agrees to ~~pay~~[provide](#) or receive a referral fee. The definition is not limited to referrals for providing investment products, financial services or services requiring registration. It also includes receiving a referral fee for providing a client name and contact information to an individual or firm. ~~“Referral fee” is also broadly defined~~

[Section 13.7 also defines “referral fee” in broad terms.](#) It includes sharing or splitting any commission resulting from the purchase or sale of a security. [We will examine, on a case-by-case basis, whether a given payment is a referral fee or not. For example, a representative who is planning to retire may decide to sell their business, including their book of clients, to another registrant in exchange for an ongoing payment. Depending on the circumstances, if the regulators are satisfied that the transaction is a bona fide sale of a business then the ongoing fee provided, in exchange for the book of clients, may not be considered a referral fee.](#)

~~In situations where there is no expectation of reward or compensation, we would not consider the receipt of an unexpected gift of appreciation to fall within the scope of a referral arrangement. One of the key elements of the referral arrangement is that the registrant agrees to pay or receive a referral fee for the referral of a client. This agreement or understanding is absent in the case of unexpected gifts~~

[Depending on the circumstances, even if a given payment is not described as a ‘referral fee’ by the contracting parties, that payment may nevertheless be captured by the definition of a referral fee, and be subject to the related requirements, if the payment is in essence being provided in exchange for a client-referral.](#)

### 13.8 Permitted referral arrangements

Under section 13.8, parties to a referral arrangement are required to set out the terms of the arrangement in a written agreement. This is intended to ensure that each party’s roles and responsibilities are made clear. This includes obligations for registered firms involved in referral arrangements to keep records of referral fees. Payments do not necessarily have to go through a registered firm, but a record of all payments related to a referral arrangement must be kept. [This record should include:](#)

- [the name\(s\) of the client\(s\) referred;](#)
- [the amount of the fee;](#)
- [the person or company paying the fee; and](#)
- [who provides the disclosure to referred clients.](#)

We expect referral agreements to include:

- the roles and responsibilities of each party
- ~~limitations on any party that is not a registrant (to ensure that it is not engaging in any activities requiring registration);~~
- the disclosure to be provided to referred clients; and
- who provides the disclosure to referred clients.

~~If the individual or firm~~[Registrants](#) receiving ~~the referral is a registrant, they~~[referrals](#) are responsible for:

- carrying out all activity requiring registration that results from the referral arrangement; and
- communicating with referred clients.

Registered firms are required to be parties to referral agreements. This ensures that they are aware of these arrangements so they can adequately supervise their representatives and monitor compliance with the agreements. This does not preclude the individual registrant from also being a party to the agreement.

~~A party to a referral arrangement may need to be registered depending on the activities that the party carries out.~~ Registrants cannot use a referral arrangement to assign, contract out of or otherwise avoid their regulatory obligations.

Registrants may wish to refer their clients to other registrants for services that they are not authorized to perform under their category of registration. In making referrals, registrants should ensure that the referral does not itself constitute an activity that the registrant is not authorized to engage in under its category of registration.

We would ~~generally not~~ consider the referral of a client by a registrant ~~of a client~~ to a registered dealer to constitute trading by the referring registrant if, in the referral:

- the referring registrant ~~does not make~~makes any statement to the client about the merits of a specific security or trade;
- the referring registrant ~~does not make~~makes any recommendation or otherwise ~~represent~~represents to the client that a specific trade is suitable for that client or another person or company, ~~and or~~
- the referring registrant ~~does not accept~~accepts any instructions from the client in respect of trades to be made by the registered dealer.

### 13.8.1 Limitation on referral fees

A registrant may not provide or receive referral fees that are ongoing payments that continue for more than 36 months. Ongoing referral fees also cannot be greater than 25% of the compensation paid by the client to the registrant who is providing the services for which they were referred. For example, if a referred client is paying a registrant a 1% management fee, an ongoing referral fee paid for that client-referral cannot exceed a quarter of that management fee.

Paragraph 13.8.1(c) prohibits firms from imposing a surcharge on a referred client to offset the referral fees that a firm had to pay in exchange for the referral.

### **13.9 Verifying the qualifications of the person or company receiving the referral**

Section 13.9 requires the registrant making a referral to satisfy itself that the party receiving the referral is appropriately qualified to perform the services, and if applicable, is appropriately registered. The registrant is responsible for determining the steps that are appropriate in the particular circumstances. For example, this may include an assessment of the types of clients that the referred services would be appropriate for.

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

The disclosure of information to clients required under section 13.10 is intended to help clients make an informed decision about the referral arrangement and to assess any conflicts of interest. The disclosure should be provided to clients before or at the time the referred services are provided. A registered firm, and any registered individuals who are directly participating in the referral arrangement, should take reasonable steps to ensure that clients understand:

- which entity they are dealing with
- what they can expect that entity to provide to them
- the registrant's key responsibilities to them
- the limitations of the registrant's registration category
- any relevant terms and conditions imposed on the registrant's registration
- the extent of the referrer's financial interest in the referral arrangement, and
- the nature of any ~~potential~~existing or ~~actual~~reasonably foreseeable conflict of interest that may arise from the referral arrangement

~~Division 4 — Loans and margin~~

### ~~13.12 Restriction on lending to clients~~

~~The purpose of section 13.12 is intended to limit the financial exposure of a registered firm. To the extent that products sold to clients are structured in a way that would result in the registrant becoming a lender to the clients, including the registrant extending margin to the client, we would consider the registrant to not be in compliance with section 13.12.~~

~~Section 13.12 prohibits registrants from lending money, extending credit or providing margin to clients as we consider that this activity creates a conflict of interest which cannot be easily managed.~~

~~We note that SROs are exempt from section 13.12 as they have their own rules or prohibitions on lending, extending credit and providing margin to clients. Direct lending to clients (margin) is reserved for IIROC members. The MFDA has its own rules prohibiting margining and, except in specific limited circumstances, lending.~~

## *Division 5 Complaints*

### **13.14 Application of this Division**

Investment fund managers are only subject to Division 5 if they also operate under a dealer or adviser registration, in which case the requirements in this Division apply in respect of the activities conducted under their dealer or adviser registration.

In Québec, a registered firm is deemed to comply with this Division if it complies with sections 168.1.1 to 168.1.3 of the Québec *Securities Act*, which provides a substantially similar regime for complaint handling.

The guidance in Division 5 of this Companion Policy applies to firms registered in any jurisdiction including Québec.

However, section 168.1.3 of the Québec *Securities Act*, includes requirements with respect to dispute resolution or mediation services that are different than those set out in section 13.16 of NI 31-103. In Québec, registrants must inform each complainant, in writing and without delay, that if the complainant is dissatisfied with how the complaint is handled or with the outcome, they may request the registrant to forward a copy of the complaint file to the Autorité des marchés financiers. The registrant must forward a copy of the complaint file to the Autorité des marchés financiers, which will examine the complaint. The Autorité des marchés financiers may act as a mediator if it considers it appropriate to do so and the parties agree.

### **13.15 Handling complaints**

#### **General duty to document and respond to complaints**

Section 13.15 requires registered firms to document complaints, and to effectively and fairly respond to them. We are of the view that registered firms should document and respond to all complaints received from a client, a former client or a prospective client who has dealt with the registered firm (complainant).

Firms are reminded that they are required to maintain records which demonstrate compliance with complaint handling requirements under paragraph 11.5(2)(m).

#### **Complaint handling policies**

An effective complaint system should deal with all formal and informal complaints or disputes in a timely and fair manner. To achieve the objective of handling complaints fairly, the firm's complaint system should include standards allowing for objective factual investigation and analysis of the matters specific to the complaint.

We take the view that registered firms should take a balanced approach to the gathering of facts that objectively considers the interests of

- the complainant
- the registered representative, and
- the firm

Registered firms should not limit their consideration and handling of complaints to those relating to possible violations of securities legislation.

#### **Complaint monitoring**

The firm's complaint handling policy should provide for specific procedures for reporting the complaints to superiors, in order to allow the detection of frequent and repetitive complaints made with respect to the same matter which may, on a cumulative basis, indicate a serious problem. Firms should take appropriate measures to deal with such problems as they arise.

## Responding to complaints

### *Types of complaints*

All complaints relating to one of the following matters should be responded to by the firm by providing an initial and substantive response, both in writing and within a reasonable time:

- a trading or advising activity
- a breach of client confidentiality
- theft, fraud, misappropriation or forgery
- misrepresentation
- an undisclosed or prohibited conflict of interest, or
- personal financial dealings with a client

Firms may determine that a complaint relating to matters other than the matters listed above is nevertheless of a sufficiently serious nature to be responded to in the manner described below. This determination should be made, in all cases, by considering if an investor, acting reasonably, would expect a written response to their complaint.

### *When complaints are not made in writing*

We would not expect that complaints relating to matters other than those listed above, when made verbally and when not otherwise considered serious based on an investor's reasonable expectation, would need to be responded to in writing. However, we do expect that verbal complaints be given as much attention as written complaints. If a complaint is made verbally and is not clearly expressed, the firm may request the complainant to put the complaint in writing and we expect firms to offer reasonable assistance to do so.

Firms are entitled to expect the complainant to put unclear verbal issues into written format in order to try to resolve confusion about the nature of the issue. If the verbal complaint is clearly frivolous, we do not expect firms to offer assistance to put the complaint in writing. The firm may nonetheless ask the complainant to put the complaint in writing on his or her own.

### *Timeline for responding to complaints*

Firms should

- promptly send an initial written response to a complainant: we consider that an initial response should be provided to the complainant within five business days of receipt of the complaint
- provide a substantive response to all complaints relating to the matters listed under "Types of complaints" above, indicating the firm's decision on the complaint

A firm may also wish to use its initial response to seek clarification or additional information from the client.

Requirements for providing information about the availability of dispute resolution or mediation services paid for by the firm are discussed below.

We encourage firms to resolve complaints relating to the matters listed above within 90 days.

## **13.16 Dispute resolution service**

Section 13.15 requires a registered firm to document and respond to each complaint made to it about any product or service that is offered by the firm or one of its representatives. Section 13.16 provides for recourse to an independent dispute resolution or mediation service at a registered firm's expense for specified complaints where the firm's internal complaint handling process has not produced a timely decision that is satisfactory to the client.

Registered firms may be required to make an independent dispute resolution or mediation service paid for by the firm available to a client in respect of a complaint that

- relates to a trading or advising activity of the firm or its representatives, and
- is raised within six years of the date when the client knew or reasonably ought to have known of the act or omission that is a cause of or contributed to the complaint

As soon as possible after a client makes a complaint (for example, when sending its acknowledgment or initial response to the complaint), and again when the firm informs the client of its decision in respect of the complaint, a registered firm must provide a client with information about

- the firm's obligations under section 13.16,
- the steps the client must take for an independent dispute resolution or mediation service to be made available to the client at the firm's expense, and
- the name of the independent service that will be made available to the client (outside of Québec, this will normally be the Ombudsman for Banking Services and Investments (OBSI), as discussed below) and how to contact it

A client may escalate an eligible complaint to the independent dispute resolution or mediation service made available by the registered firm in two circumstances:

- If the firm fails to give the client notice of its decision within 90 days of receiving the complaint (telling the client that the firm plans to take more than 90 days to make its decision does not 'stop the clock'). The client is then entitled to escalate the complaint to the independent service immediately or at any later date until the firm has notified the client of its decision.
- If the firm has given the client notice of its decision about the complaint (whether it does so within 90 days or after a longer period) and the client is not satisfied with the decision, the client then has 180 days in which to escalate the complaint to the independent service.

In either instance, the client may escalate the complaint by directly contacting the independent service.

We think that it may sometimes be appropriate for the independent service, the firm and the client involved in a complaint to agree to longer notice periods than the prescribed 90 and 180 day periods as a matter of fairness. We recognize that where a client does not cooperate with reasonable requests for information relating to a complaint, a firm may have difficulty making a timely decision in respect of the complaint. We expect that this would be relevant to any subsequent determination or recommendation made by an independent service about that complaint.

The client must agree that the amount of any recommendation by the independent service for monetary compensation will not exceed \$350,000. This limit applies only to the amount that can be recommended. Until it is escalated to the independent service, a complaint made to a registered firm may include a claim for a larger amount.

Except in Québec, a registered firm must take reasonable steps to ensure that the dispute resolution and mediation service that is made available to its clients for these purposes will be OBSI. The reasonable steps we expect a firm to take include maintaining ongoing membership in OBSI as a "Participating Firm" and, with respect to each complaint, participating in the dispute resolution process in a manner consistent with the firm's obligation to deal fairly, honestly and in good faith with its client. This would include entering into consent agreements with clients contemplated under OBSI's procedures.

Since section 13.16 does not apply in respect of a complaint made by a permitted client that is not an individual, we would not expect a firm that only has clients of that kind to maintain membership in OBSI.

A registered firm should not make an alternative independent dispute resolution or mediation service available to a client at the same time as it makes OBSI available. Such a parallel offering would not be consistent with the requirement to take reasonable steps to ensure that OBSI will be the independent service that is made available to the client. Except in Québec, we expect that alternative service providers will only be used for purposes of section 13.16 in exceptional circumstances.

We would regard it as a serious compliance issue if a firm misrepresented OBSI's services or exerted pressure on a client to refuse OBSI's services.

If a client declines to make use of OBSI in respect of a complaint, or if a client abandons a complaint that is under consideration by OBSI, the registered firm is not obligated to provide another service at the firm's expense. A firm is only required to make one dispute resolution or mediation service available at its expense for each complaint.

Nothing in section 13.16 affects a client's right to choose to seek other recourse, including through the courts.

Registrants that are members of an SRO, including those that are registered in Québec, must also comply with their SRO's requirements with respect to the provision of independent dispute resolution or mediation services.

#### **Registrants who do business in other sectors**

Some registrants are also registered or licensed to do business in other sectors, such as insurance. These registrants should inform their clients of the complaint mechanisms for each sector in which they do business and how to use them.

#### *Division 6 Registered sub-advisers*

### **13.17 Exemption from certain requirements for registered sub-advisers**

Section 13.17 contains an exemption from certain client related requirements for registered sub-advisers. These requirements are not necessary because in a sub-adviser arrangement the sub-adviser's client is another registrant. We remind registrants that these exemptions do not apply if the client is not a registrant. One of the conditions of this exemption is that the other registrant has entered into an agreement with its client that it is responsible for losses that arise out of certain failures by the sub-adviser. We expect that a registrant taking on this liability will conduct appropriate initial and ongoing due diligence on the sub-adviser and before making recommendations or investment decisions based on the sub-adviser's advice, ensure the investment is suitable for the registrant's client.

We also expect that the other registrant and the sub-adviser will maintain records of their transactions and that the other registrant will maintain records of the due diligence conducted on the sub-adviser. See Part 11 of this Companion Policy for more guidance.

#### [Division 7 Misleading communications](#)

### **13.18 Misleading communications**

#### **Misleading business titles and designations**

Section 13.18 prohibits registrants from, among other things, using titles or designations that could reasonably be expected to deceive or mislead existing and prospective clients. Certain titles can be confusing to the average investor or imply that a registered individual performs a particular function at a firm or has particular expertise. Similarly, titles can give rise to certain client expectations or help to create an unfounded feeling of trust, reassurance or prestige. Registered firms should keep these considerations in mind before authorizing their registered individuals to use specific titles. Particular scrutiny should be given to the use of titles that convey an expertise in seniors' issues or retirement planning to confirm that any registered individual using such a title is appropriately qualified and competent in that area.

When considering whether a designation is misleading, registered firms should consider whether the designation has:

- a rigorous curriculum and examination process (i.e. type and length of exam)
- experience requirements, and
- been issued by a reputable or accredited organization.

Registered firms should recognize that some types of clients, such as seniors, may be particularly vulnerable to misleading designations. If a registered firm permits their registered individuals to use designations of any kind, including those that suggest an expertise in retirement planning, registered firms must have procedures in place to confirm that those designations are not misleading.

#### **The nature of the relationship with clients and the products and services provided**

If a registered firm uses advertising that exaggerates the products and services available to clients, this could reasonably be expected to mislead a client as to the products and services to be provided as well as to the nature of the relationship that may exist between the registrant and the client.

If a registered firm holds itself out as independent but offers proprietary products, this could reasonably be expected to mislead a client as to the products to be provided and as to the nature of the relationship.

If a registered firm or its registered individuals hold themselves out as being in a fiduciary-like relationship with their clients but the registrants do not actually conduct themselves to the standard of a fiduciary then this could reasonably be expected to deceive or mislead a client as to the nature of the relationship between themselves and their registrant.

#### **Titles, designations, awards, or recognitions based on sales activity or revenue generation**

A registered individual's sales activity or revenue generation are distinct from their proficiency, experience, and qualifications. If a prestigious sounding title, designation, award, or recognition is tied to a registered individual's sales activity or revenue



generation, this could reasonably be expected to deceive or mislead a client as to the proficiency, experience, or qualifications of that registered individual.

For example, if membership in a registered firm's "President's Club" is based partly or entirely on a registered individual's sales activity or revenue generation, the registered individual must not use that recognition or award.

### **Corporate officer titles**

A registered individual must not use a corporate officer title, such as president or vice-president, unless their sponsoring firm has duly appointed that registered individual to that corporate office pursuant to the corporate law applicable to their sponsoring firm. The use of a corporate officer title is also still subject to the general rule set out under subsection 13.18(1) and firms must consider whether the use of a corporate officer title would be misleading prior to approving their use.

## **Part 14 Handling client accounts – firms**

If a client consents, documents required in this Part can be delivered in electronic form. For further guidance, see NP 11-201.

### *Division 1 Investment fund managers*

Section 14.1 sets out the limited application of Part 14 to investment fund managers. The sections of Part 14 that apply to investment fund managers when performing their investment fund manager activities include section 14.1.1 [*duty to provide information*], section 14.5.2 [*restriction on self-custody and qualified custodian requirement*], section 14.5.3 [*cash and securities held by a qualified custodian*], section 14.6 [*client and investment fund assets held by a registered firm in trust*], section 14.6.1 [*custodial provisions relating to certain margin or security interests*], section 14.6.2 [*custodial provisions relating to short sales*], subsection 14.12(5) [*content and delivery of trade confirmation*] and section 14.15 [*security holder statements*]. An investment fund manager that is also registered as a dealer or adviser (or both) is subject to all relevant sections of Part 14 in respect of that firm's dealer or adviser activities.

Section 14.1.1 requires investment fund managers to provide information that is known to them concerning position cost, deferred sales charges and any other charges deducted from the net asset value of the securities, and trailing commissions to dealers and advisers who have clients that own the investment fund manager's funds. This information must be provided within a reasonable period of time in order that the dealers and advisers may comply with their client reporting obligations. This is a principles-based requirement. An investment fund manager must work with the dealers and advisers who distribute fund products to determine what information they need from the investment fund manager in order to satisfy their client reporting obligations. The information and arrangements for its delivery may vary, reflecting different operating models and information systems.

### Division 1.1 Publicly available information

Section 14.1.2 requires registered firms that offer dealing or advising services to non-permitted clients to make publicly available information that will support informed decision-making by investors who are not currently their clients, but may be looking for products or services provided by them.

The requirement is expressed both as a general principle and with a list of prescribed information that must be included. This information is not specific to any one potential client. Some of the ways in which firms may meet the requirement to make the prescribed information publicly available include posting it on their open-access websites or directly delivering it by email or in paper form to anyone who asks for it. If the information is not easy to obtain, we would not consider it to be publicly available.

In developing disclosures to meet this requirement, firms should bear in mind the goal of making sure any potential clients will have ready access to the essential facts that would be useful to anyone wanting to identify which firms might have what they are looking for and what distinguishes one such firm from another. Firms should be careful to ensure the information is entirely factual, avoiding unsubstantiated claims or comparisons. Firms are free to create different packages of information for different groups of potential clients who might have different needs or expectations that the firm could satisfy with different products or services. A general description of the required information is sufficient because the firm is not, in this instance, tailoring its communication to a particular individual whose needs it has specifically considered. However, once a particular individual has entered into a client relationship with the firm, the disclosures under section 14.2 will also apply.

In keeping with the guidance about client communication in section 1.1 of this Companion Policy, we expect that this information will be set out in plain language, using a presentation format that makes it easy to understand. The information should be described in such a way that the investor can readily compare and contrast the different options of products, services and account relationships that are available from the firm, along with the associated costs.

### *Division 2 Disclosure to clients*

## **14.2 Relationship disclosure information**

Registrants should ensure that clients understand who they are dealing with. They should carry on all registerable activities in their full legal or registered trade name. Contracts, confirmation and account statements, among other documents, should contain the registrant's full legal name.

### **Content of relationship disclosure information**

Subsection 14.2(1) sets out a general principle that a registered firm must deliver to a client all information that a reasonable investor would consider important about the client's relationship with the registrant. Firms should bear in mind that although it will very often be sufficient to provide a client with the information prescribed in subsection 14.2(2), that is not an exhaustive list and the over-arching general principle will always apply to a client-registrant relationship.

There is no prescribed form for the relationship disclosure information required under section 14.2. A registered firm may provide this information in a single document, or in separate documents, which together give the client the prescribed information.

~~Relationship disclosure information~~The relationship disclosure information required to be delivered under subsection 14.2(1) is intended to shape and confirm clients' expectations of the services and products they will receive through the registrant. It is therefore of the greatest importance that it should be communicated in a manner consistent with the guidance on client communications under section 1.1 of this Companion Policy. We encourage registrants to avoid the use of technical terms and acronyms when communicating with clients. To satisfy their obligations under section 14.2, registered individuals must spend sufficient time with clients as part of an in-person or telephone meeting, or other method that is consistent with their operations, to adequately explain the information that is delivered to them. We expect a firm to have policies and procedures requiring its registered individuals to demonstrate they have done so. What is considered "sufficient" will depend on the circumstances, including a client's understanding of the delivered documents.

Evidence of compliance with client disclosure requirements at account opening, prior to trades and at other times, can include detailed notes of meetings or discussions with clients, signed client acknowledgements and tape-recorded phone conversations.

### **Promoting client participation**

Registered firms should help their clients understand the registrant-client relationship. They should encourage clients to actively participate in the relationship and provide them with clear, relevant and timely information and communications.

In particular, registered firms should help and encourage clients to:

- **Keep the firm up to date.** Clients should be encouraged to
  - provide full and accurate information to the firm and the registered individuals acting for the firm
  - promptly inform the firm of any change to their information that could result in a change to the types of investments appropriate for them, such as a change to their income, investment objectives, risk tolerance, investment time horizon or net worth
- **Be informed.** Clients should be
  - helped to understand the potential risks and returns on investments
  - encouraged to carefully review sales literature provided by the firm
  - encouraged to consult professionals, such as a lawyer or an accountant, for legal or tax advice where appropriate
- **Ask questions.** Clients should be encouraged to
  - request information from the firm to resolve concerns about their account, transactions or investments, or their relationship with the firm or a registered individual acting for the firm
- **Stay on top of their investments.** Clients should be encouraged to
  - review all account documentation provided by the firm
  - regularly review portfolio holdings and performance

### **Account type**

Paragraph 14.2(2)(a) requires a firm to provide a description of the nature or type of a client's account. In order that a client will understand their relationship with the firm, a client will need to know how their account will operate. Examples of relevant information include whether

- there is a minimum account size
- it is a fee-based account or commissions will be payable, and
- there are limits on what products or services are made available for accounts of that type.

Further requirements in this section are intended to expand on this foundation.

#### **Disclosure of where and the manner in which client's assets are held or accessed, including the relevant associated risks and benefits**

Under paragraphs 14.2(2)(a.1) and 14.2(2)(a.2), registered firms must disclose to clients the location where, and the manner in which, client assets are held or accessed, including the relevant associated risks and benefits to the client. The risks to a client will vary depending on the type of custodial arrangement that is in place. At a minimum, we would generally expect the disclosure to include the following:

- the way(s) that the registered firm holds client's assets, and the associated risks
- the way(s) that the registered firm has access to the client's assets, and the associated risks
- whether a qualified custodian holds any or all of the client's assets
- if a custodian uses any sub-custodians to hold the client's assets in cases where the registered firm directs or arranges which custodian to use to hold client cash and securities
- if the registered firm uses a custodian that is not independent of the registered firm, and whether the registered firm has access to the client's assets through this relationship
- if a foreign custodian or a foreign dealer holds the client's cash and securities in accordance with subsection 14.5.2(3) or 14.6(2) or section 14.6.1 or 14.6.2, the rationale for using the foreign custodian or dealer and a description of the risks of using that foreign custodian or dealer, including the potential difficulty associated with the client's ability to enforce their legal rights and the potential difficulty that the client may face in respect of repatriating their assets on the bankruptcy or insolvency of the foreign custodian or dealer

#### **Description of products and services**

Under paragraph 14.2(2)(b), a firm must provide a general description of the products and services it offers to the client.

We expect this disclosure to include a general description of all amounts a client might pay during the course of holding a type of investment, including management fees associated with mutual funds. If a registered firm exclusively or primarily invests its clients' money in ~~securities issued by the firm itself or a related party, that information should be disclosed~~ proprietary products, that information must be disclosed. A firm must also disclose whether there are any other restrictions or limitations on the products or services it will provide to the client. This includes, for example, restrictions that exist because of the firm's registration category or terms and conditions placed on its registration, as well as business decisions to limit what the firm offers to some of its clients based on their account type or any other consideration. Another example would be if an individual representative assigned to a client's account is restricted in the products or services that he or she can provide to the client.

#### **Disclosure of charges and other compensation**

Under paragraphs 14.2(2)(f), (g) and (h), registered firms must provide clients with information on the operating and transaction charges they might pay in making, holding and selling investments, and ~~a general description of any~~ third-party compensation paid to the firm by any other party. Examples of compensation paid by other parties would include such things as commissions paid by issuers and bonuses from affiliated companies relating to the client's investments, such as trailing commissions, that may be paid to the firm in relation to the client. These requirements have been drafted in broad terms and we expect firms to be careful not to omit or obscure any of the required information.

A registered firm's charges to a client and the compensation it may receive from third parties in respect of the client will vary depending on the type of relationship with the client and the nature of the services and investment products offered. A firm is not expected to provide information on all the types of accounts that it offers and the fees related to these accounts if it is not relevant to the client's situation.

“Operating charge” is defined broadly in section 1.1 and examples include (but are not exclusive to) service charges, administration fees, safekeeping fees, management fees, transfer fees, account closing fees, annual registered plan fees and any other charges associated with maintaining and using an account that are paid to the registrant. For registered firms that charge an all-in fee for the operation of the account, such as a percentage of assets under management, that fee is the operating charge. We do not expect firms with an all-in operating charge to provide a breakdown of the items covered by the fee.

“Transaction charges” is also defined broadly in section 1.1 and examples include (but are not exclusive to) commissions, transaction fees, switch or change fees, performance fees, short-term trading fees, and sales charges or redemption fees that are paid to the registrant. Although we do not consider “foreign exchange spreads” to be a transaction charge, we encourage firms to include a general notification in trade confirmations and reports on charges and other compensation that the firm may have incurred a gain or loss from a foreign exchange transaction as a best practice.

Operating charges and transaction charges include only charges paid to the registered firm by the client. Third-party charges, such as custodian fees that are not paid to the registered firm, are not included in operating charges or transaction charges. Operating and transaction charges include any sales taxes that are paid on the amounts charged to the client. Registrants may wish to inform clients where a charge includes sales tax, or separately disclose the components of the charge. Withholding taxes would not be considered a charge.

Registrants should advise clients with managed accounts whether the registrant will receive [third-party](#) compensation ~~from third parties, such as trailing commissions, on any securities purchased for the client~~ and, if so, whether the fee paid by the client to the registrant will be affected by this. For example, the management fee paid by a client on the portion of a managed account related to mutual fund holdings may be lower than the overall fee on the rest of the portfolio.

### **Description of content and frequency of client reporting**

Under paragraph 14.2(2)(i), a registered firm is required to provide a description of the content and frequency of reporting to the client. Reporting to clients includes, as applicable:

- trade confirmations under section 14.12
- account statements under section 14.14
- additional statements under section 14.14.1
- security position cost information under section 14.14.2
- annual report on charges and other compensation under section 14.17
- investment performance reports under section 14.18

Guidance about registered firm’s client reporting obligations is provided in Division 5 of this Part.

### **Suitability determinations and KYC information**

Paragraph 14.2(2)(k) requires registered firms to inform their clients of their obligation to make suitability determinations (subject to the exception in subsection 14.2(7)). Paragraph 14.2(2)(l) requires ~~registrants~~ firms to provide ~~their~~ clients with a copy of their KYC information. Since firms have an ongoing obligation under section 13.2(4.1) to update KYC information, this means that a firm must provide a client with the KYC information it has collected at the time of account opening. ~~We would expect registered firms to also provide a description to the client, and also whenever it has collected updated information. In order that this information will help a client to understand their relationship with the registrant, consistent with the principle in subsection 14.2(1), we expect this disclosure to include a description~~ of the various terms ~~(such as “risk profile” and “investment time horizon”)~~ which make up the KYC information, and explain ~~how this information will be used in assessing the client’s financial situation, investment objectives, investment knowledge and risk tolerance in determining investment suitability. that it will be used in making suitability determinations for the client. The obligation in subsection 14.2(1) is ongoing, so if KYC information is updated, it must also be provided to the client.~~

### **Benchmarks**

Paragraph 14.2(2)(m) requires registered firms to provide clients with a general explanation of how investment performance benchmarks might be used to assess the performance of a client’s investments and any options available to the client to obtain information about benchmarks from the registered firm. Other than this general discussion, there is no requirement for registered firms to provide benchmark information to clients. Nonetheless, we encourage firms to do so as a best practice. Guidance on the provision of benchmarks is set out in this Companion Policy at the end of the discussion of the content of investment performance reports under section 14.19.

## Scholarship plan dealers

Paragraph 14.2(2)(n) requires an explanation of the important aspects of the scholarship plan that, if not fulfilled, would cause loss to the client. To be complete, this prescribed disclosure could include any options that would allow the investor to retain notional earnings in the event that they do not maintain prescribed payments under the plan and any fees associated with those options.

### Investment impact of costs and restrictions

Paragraph 14.2(2)(o) requires an explanation of the potential impact that a registered firm's charges, applicable investment restrictions, and any costs embedded in investment products could each have on a client's investment returns. That explanation necessarily includes discussion of the reduced overall returns in the account because of any operating charges, and the reduced return on securities resulting from any transaction charges or ongoing ownership fees applicable to them. It also includes discussion of the potential for reduced overall returns if only a limited range of products is made available to the client. The registrant's duty to deal with the client fairly, honestly and in good faith, and its obligation to make suitability determinations that put the client's interests first, require the firm to tell the client if it does not have products or services that are suitable for the client. This determination may depend on the investment goals designated for the client's account. For example, it may make a difference if the account is the primary retirement savings vehicle for a retail investor, or is a secondary account is set up by an accredited investor for speculating in exempt market products.

## Order execution trading

Subsections 14.2(7) and (8) provide that only limited relationship disclosure information must be delivered by a dealer whose relationship with a client is limited to executing trades as directed by a registered adviser acting for the client. In a relationship of this kind, each registrant must explain to the client its role and responsibility to the client, and what services and reporting the client can expect of it.

### 14.2.1 Pre-trade disclosure of charges

For non-managed accounts, section 14.2.1 requires disclosure to a client of charges specific to a transaction prior to the acceptance of a client's instruction. This disclosure is not required to be in writing. Oral disclosure of charges is sufficient for the purposes of disclosing charges at the time of a transaction. In the case of a client who is a frequent trader, if the firm has good reason to believe applicable "standard" charges are well understood, a brief confirmation that the usual charges will apply would be an acceptable alternative to specifying the actual amount of the charges. Specific charges must be reported in writing on the trade confirmation as required in section 14.12.

For a purchase of a security on a deferred sales charge basis, disclosure that a deferred sales charge might be triggered upon the redemption of the security, and the schedule that would apply if it is sold within the time period that a deferred sales charge would be applicable, must be presented. The actual amount of the deferred sales charge, if any, would need to be disclosed once the security is redeemed. For the purposes of disclosing trailing commissions, the dealing representative may draw attention to the information in the prospectus or the fund facts document if that document is provided at the point of sale.

With respect to a transaction involving a debt security, pre-trade disclosure should include a discussion of any commission the registered firm will receive on the trade. This discussion should include both the number of basis points that the charge represents as well as the corresponding dollar amount, or a reasonable estimate of the amount if the actual amount of the charges is not known to the firm at the time.

If a client will be investing in a mutual fund security, the firm's representative should briefly explain each of the following and how they may affect the investment:

- the management fee
- the sales charge or deferred sales charge option available to the client and an explanation as to how such charges work. This means registered firms should advise clients that mutual funds sold on a deferred sales charge basis are subject to charges upon redemption that are applied on a declining rate scale over a specified period of years, until such time as the charges decrease to zero. Any other redemption fees or short-term trading fees that may apply should also be discussed
- any trailing commission, or other embedded fees
- any options regarding front end loads
- any fees related to the client changing or switching investments ("switch or change fees")

~~Registrants may also wish to explain to~~In order to help their clients ~~that~~to understand what trailing commissions ~~are included in the and fund~~ management fees ~~that are charged to their investment funds and are~~, we encourage registrants to explain them in the simplest terms possible. We think this should include explaining that trailing commissions are not additional charges paid by the client to the registrant. “Trailing commission” is defined for the purposes of NI 31-103 in section 1.1 in broad terms designed to ensure that payments similar to what are generally known as trailing commissions will be subject to similar reporting requirements under this instrument.

## **Switch or change transactions**

Processing a switch or change transaction without client knowledge is contrary to a registrant’s duty to act fairly, honestly and in good faith. In our view, compliance with this duty requires that clients are informed, before any switch or change transaction is processed, of charges associated with the transaction, dealers’ incentives for such a transaction (including increased trailing commissions), and any tax or other implications of such a transaction. In each case, we expect dealers to explain why a proposed switch or change transaction is appropriate for the client. We consider that providing clients with clear and complete disclosure of the charges at the time of a transaction will help clients to be aware of the implications of proposed transactions and deter registrants from transacting for the purpose of generating commissions. Registrants are also reminded that their obligations in connection with suitability and conflicts of interest apply to such transactions, as well as their obligations under any applicable SRO requirements or guidance.

We expect all changes or switches to a client’s investments to be accurately reported in trade confirmations by reporting each of the purchase and sale transactions making up the change or switch, as required in section 14.12, with a description of the associated charges.

### **14.4 When the firm has a relationship with a financial institution**

As part of their duty to clients, registrants who have a relationship with a financial institution should ensure that their clients understand which legal entity they are dealing with. In particular, clients may be confused if more than one financial services firm is carrying on business in the same location. Registrants may differentiate themselves through various methods, including signage and disclosure.

#### *Division 3 Client assets and investment fund assets*

### **14.5.2 Restriction on self-custody and qualified custodian requirement**

Section 14.5.2 specifies situations where registered firms must ensure that any custodian used to hold the cash or securities of a client or an investment fund is a Canadian custodian. If a registered firm has physical possession of the cash or securities of a client or an investment fund then we expect the registered firm to transfer those cash and securities to a Canadian custodian. If a registered firm has access to the cash or securities of a client or an investment fund then we expect the registered firm to confirm that those cash and securities are being held at a Canadian custodian. If a registered firm directs or arranges which custodian a client or an investment fund will use to hold their cash or securities then we expect the registered firm to direct that client or investment fund to, or arrange a custodial relationship with, a Canadian custodian.

For the purposes of section 14.5.2, we expect “cash and securities of an investment fund” to include the cash and securities that comprise the portfolio of an investment fund, as well as cash that may be held by an investment fund manager for investment in, or on the redemption of, securities of the investment fund.

Subsection 14.14(7) sets out when a security is considered to be held by a registered firm for a client. We consider the terms “hold” or “held” in this Division to include the situations identified in subsection 14.14(7). Section 12.4 of this Companion Policy provides examples of when holding or having access to client assets may occur. For the purposes of this Division, we expect all registered firms to consider the examples listed in section 12.4 in determining whether they hold or have access to client assets. For the purposes of section 14.5.2, we interpret the phrase “hold or have access” as not including the handling in transit of a client’s cheque made payable to a third party.

We recognize that there may be good reasons for a foreign custodian to be used to hold client or investment fund cash or securities, including where:

- foreign securities comprise all or substantially all of the client’s or investment fund’s portfolio
- the registered firm’s client or the investment fund is resident in a foreign jurisdiction
- a foreign custodian is required to facilitate portfolio transactions in a foreign jurisdiction, or
- using a foreign custodian is more beneficial to the client or investment fund than using a Canadian custodian for tax reasons

In such circumstances, we expect registered firms to assess the risks and benefits of using a foreign custodian compared to the risks and benefits of using a Canadian custodian and determine which custodian is more beneficial for the client. Considerations may include:

- the protections offered by an investor protection fund approved or recognized by the regulator in Canada compared to the comparable investor compensation scheme available in the foreign jurisdiction
- the robustness of the custodial regime in the foreign jurisdiction
- the potential difficulty a client or an investment fund may have enforcing its legal rights in the foreign jurisdiction
- the potential difficulty a client or an investment fund may have repatriating its assets if the foreign custodian declares bankruptcy or becomes insolvent
- the nature of the regulation of the foreign custodian, and
- the sufficiency of the equity of the foreign custodian in the circumstances

A registered firm has a duty to act fairly, honestly and in good faith with its client, or in the best interests of an investment fund that it manages, as applicable. In addition, in compliance with subsection 11.1(b), registered firms are expected to manage any risks associated with the use of a foreign custodian in accordance with prudent business practices. Accordingly, we expect registered firms to consider alternatives in their assessment of the use of a foreign custodian which, among other considerations, might include whether their client, or an investment fund that they manage, may be better served by:

- using a Canadian custodian who can appoint a foreign custodian to act as a sub-custodian, or
- limiting the client's or investment fund's exposure to a particular foreign custodian, which may include using a more diverse range of foreign custodians

Where a foreign custodian is used, we will assess this practice on a case-by-case basis.

Certain investment instruments may be both securities and derivatives. Accordingly, the custodial requirements in this Division apply to these instruments, subject to:

- the definition provision under section 14.5.1, and
- the exemption provided for customer collateral subject to the custodial requirements under National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions*

### **Exemptions from restriction on self-custody and qualified custodian requirement**

Investment fund managers are deemed to have access to the portfolio assets of the investment funds managed by them, and must ensure that the portfolio cash and securities of the investment fund are held at a qualified custodian under section 14.5.2. The exemption under paragraph 14.5.2(7)(d) is not available to investment fund managers with respect to the investment funds managed by them.

Registered advisers often create and use investment funds as a way to invest their clients' money. Registered advisers who also act as the investment fund manager of an investment fund should ensure that the portfolio cash and securities of the investment fund managed by them are held at a qualified custodian. Paragraph 14.5.2(7) (c) provides an exemption for registered firms from the requirement to use a qualified custodian for securities issued by investment funds so long as the securities issued by the investment funds are recorded on the books of the investment fund, or the fund's transfer agent, only in the name of the registered advisers' clients.

### ***Mortgages***

We recognize that mortgages may have unique custodial practices which may differ from the custodial practices of other types of securities. Mortgages are exempt from the qualified custodian requirement and restriction on self-custody in all jurisdictions of Canada provided that they meet the conditions as set out under paragraph 14.5.2(7)(f).

### **Prohibition on self-custody and the use of a custodian that is not functionally independent**

Under subsection 14.5.2(1), the registered firm itself cannot be the custodian or sub-custodian for a client or investment fund, except in certain circumstances. Under subsections 14.5.2(5) and 14.5.2(6), the qualified custodian, or the Canadian financial institution with respect to cash, must be functionally independent of the registered firm, except in certain circumstances. For the



purposes of paragraphs 14.5.2(1)(b) and 14.5.2(5)(b), we would consider a system of controls and supervision to manage the risks to the client or investment fund associated with the custody of the client's or investment fund's cash or securities to include:

- segregation of duties between the custodial function and other functions
- client asset verification examination performed by a third party

Even when a registered firm is not required to use a qualified custodian under subsections 14.5.2(2) or (3) or a Canadian financial institution under subsection 14.5.2(4), we consider it prudent for the registered firm to use a custodian that is functionally independent of the registered firm. Refer to section 12.4 of this Companion Policy for examples of having access to client assets through the use of a custodian that is not functionally independent of the registered firm. The relationship between a registered firm and a non-independent custodian can give rise to serious conflicts of interest. We remind registered firms of their obligations under section 13.4 to identify and respond to conflicts of interest. If the conflicts of interest cannot be managed fairly and effectively, the registered firm should consider using an independent custodian to hold client assets instead.

### **General prudent custodial practices**

#### *Assets other than cash and securities*

Section 14.6 sets out the requirement that if a registered firm holds client assets or investment fund assets, which includes securities, cash and other types of assets, then that registered firm must hold the assets separate and apart from its own property, and in trust for the client or investment fund. In accordance with this Division, where a registered firm holds client assets or investment fund assets directly (for example, the assets held are not cash or securities, or the registered firm is relying on an exemption from the requirement to use a qualified custodian), we will assess those circumstances on a case-by-case basis.

We recognize that in limited cases, it may not be feasible to hold certain asset types at a qualified custodian. For example, bullion requires a custodian that is experienced in providing bullion storage and custodial services, and is familiar with the requirements relating to the physical handling and storage of bullion. Such a custodian may not meet the definition of a "qualified custodian". In those cases, we expect a registered firm that would otherwise be subject to subsection 14.5.2(2), (3) or (4), had the client assets or investment fund assets been cash or securities, to exercise due skill, care and diligence in the selection and appointment (where applicable) of the custodian. This can involve the registered firm reviewing the facilities, procedures, records, insurance coverage, and creditworthiness of the selected custodian. We would also expect registered firms to conduct a periodic review of custodial arrangements for client assets or investment fund assets.

#### *Delivery of custodial statements*

We expect registered firms to encourage clients or investment funds, as applicable, to confirm that they are receiving account statements from their custodian and, as applicable, to compare the custodial statements to the statements sent by the registered firms.

#### *Reconciliation with custodians*

Registered firms are expected to reconcile, on a regular basis, their internal records of client assets or investment fund assets and the records of the custodian where client or investment fund assets are held.

### **Custodial arrangements**

#### *For investment fund managers*

Investment fund managers should exercise due skill, care and diligence in the selection and appointment of the custodian for the investment funds managed by them. We expect investment fund managers to conduct a periodic review of custodial arrangements for their investment funds. We also expect investment fund managers to consider whether the custodian it appoints uses all reasonable diligence, care and skill in the selection and monitoring of its sub-custodians, whether the sub-custodians would meet the definition of a "qualified custodian" and whether the appropriate segregation arrangements are observed throughout the custody chain of the portfolio assets of the investment fund.

We expect investment fund managers to put in place a written custodial agreement with the custodian on behalf of investment funds managed by them. Written custodial agreements are expected to provide for key matters such as the location of portfolio assets, any appointment of a sub-custodian, the method of holding portfolio assets, the standard of care of the custodian and the responsibility for loss. Prospectus-qualified investment funds are subject to further custodial requirements under National Instrument 81-102 *Investment Funds* and National Instrument 41-101 *General Prospectus Requirements*.

#### *For registered firms other than investment fund managers*



Where registered firms, other than investment fund managers, have influence over a client's selection of a custodian, we consider it a prudent business practice for these registered firms to conduct similar due diligence to that of investment fund managers as outlined in the section above. Registered firms, other than investment fund managers, often direct or arrange the custodial arrangement for their clients; however, the registered firms are not typically a party to the custodial agreement between the client and the custodian used to hold client assets. Nevertheless, we expect registered firms that direct or arrange the custodial arrangement for their clients to understand the material terms of the written custodial agreement and to explain to the clients the main purpose of the agreement. If a custodial agreement allows a custodian to use a sub-custodian, the registered firm should alert the client to that fact and encourage the client to contact the custodian if they have any concerns with the custodial agreement.

#### **14.5.3 Cash and securities held by a qualified custodian**

Section 14.5.3 sets out requirements as to how cash and securities should be held by a qualified custodian or a Canadian financial institution. A registered firm can comply with the requirement under subsection 14.5.3(a) by verifying that cash and securities of a client or an investment fund are reported on the custodial account statement of that client or investment fund as issued by the qualified custodian or the Canadian financial institution.

A qualified custodian may arrange for the deposit of securities with a depository, or clearing agency, that operates a book-based system. Such depositories or clearing agencies include The Canadian Depository For Securities Limited, the Depository Trust Company or any other domestic or foreign depository or clearing agency that is incorporated or organized under the laws of a country or a political subdivision of a country and operates a book-based system in that country or political subdivision or operates a transnational book-based system.

#### **14.6 Client and investment fund assets held by a registered firm in trust**

Section 14.6 requires a registered firm to segregate client assets and investment fund assets and hold them in trust. When a registered firm is not required to use a qualified custodian, or a Canadian financial institution for cash, under subsections 14.5.2(2), (3) or (4), we consider it prudent for registered firms who are not members of an SRO to only hold client assets in client name, or portfolio assets of the investment fund in the name of the investment fund. This is because the capital requirements for non-SRO members are not designed to reflect the added risk of holding client assets in nominee name.

Investment fund managers may hold cash for investment in, or on the redemption of, securities of the investment fund. For the purposes of section 14.6, such cash-in-transit is considered to be cash and securities of an investment fund of the investment fund manager, and is subject to the requirements under section 14.6. Some investment fund managers choose to outsource certain fund administrative functions to a service provider, including the trust accounting function. Under some outsourcing arrangements, a service provider may be holding cash for investment in, or on the redemption of, securities of the investment fund. Under these arrangements, investment fund managers should ensure that, at a minimum, the cash is held in a designated trust account at a Canadian custodian, a Canadian financial institution, or a foreign custodian (if it is more beneficial to the investment fund to use the foreign custodian than a Canadian custodian or a Canadian financial institution), and ensure that the cash is held separate and apart from the property of the service provider.

Under other outsourcing arrangements, a service provider may be provided with access to cash for investment in, or on the redemption of, securities of the investment fund, or access to the portfolio assets of the investment fund. Investment fund managers are reminded that they are responsible and accountable for all functions that they outsource to a service provider. Delegating access to investors' cash-in-transit or portfolio assets of an investment fund can increase the risk of loss. Investment fund managers are expected to exercise heightened due diligence and oversight to ensure that the service provider has adequate controls in place and that investors' assets are adequately protected.

##### **14.6.1 Custodial provisions relating to certain margin or security interests**

Section 14.6.1 sets out acceptable custodial practices relating to margin posted with, and security interests held by, a foreign dealer or counterparty in respect of certain derivatives transactions. We expect that the assessment of the use of a foreign custodian in section 14.5.2 of this Companion Policy will apply equally to the foreign dealer referenced in this section.

In addition to these custodial practices relating to certain derivatives, a registered firm may also ensure that cash or securities of a client or investment fund are delivered to a person or company in satisfaction of its obligations under a securities lending, repurchase or reverse repurchase agreement if the collateral, cash proceeds or purchased securities that are delivered to the client or investment fund in connection with the transaction are held under the custodianship of a qualified custodian or a sub-custodian of the client or investment fund in compliance with Division 3 of Part 14.

##### **14.6.2 Custodial provisions relating to short sales**

Section 14.6.2 sets out acceptable custodial practices relating to cash or securities of a client or investment fund that are deposited with a foreign dealer as security in connection with a short sale of securities. We expect that the assessment of the use of a foreign custodian in section 14.5.2 of this Companion Policy will apply equally to the foreign dealer referenced in this section.

#### *Division 4 Client accounts*

##### **14.10 Allocating investment opportunities fairly**

If the adviser allocates investment opportunities among its clients, the firm's fairness policy should, at a minimum, indicate the method used to allocate the following:

- price and commission among client orders when trades are bunched or blocked
- block trades and initial public offerings among client accounts
- block trades and initial public offerings among client orders that are partially filled, such as on a pro-rata basis

The fairness policy should also address any other situation where investment opportunities must be allocated.

#### *Division 5 Reporting to clients*

Reporting to clients is on an account basis, except that

- securities that are not held in an account (i.e., securities reported under an additional statement) must be included in a report for the account through which they were traded, and
- subsection 14.18(4) permits performance reports for more than one account of a client and also securities not held in an account to be combined with the client's written consent.

Registered firms may choose how they meet their client reporting obligations within the framework set out in the Instrument. We encourage firms to combine client statements, position cost information and client reports into comprehensive documents or send them together. For example, an account statement and an additional statement for securities traded through (but not held) in an account might be combined, perhaps along with position cost information, each quarter. Once a year, an integrated statement such as this could be further combined with the report on charges and other compensation and the performance report, or delivered along with a separate document that combines the two reports.

We believe that integrating client reporting as much as possible within the limitations of firms' systems capabilities will better enable clients to make use of the information and that it is in the interests of registrants to have clients that are well informed about the services they provide. When client reporting information is combined or delivered together, we expect registered firms will give each element sufficient prominence among the others that a reasonable investor can readily locate it.

Consistent with the guidance on clear and meaningful disclosure to clients in section 1.1 of this Companion Policy, we expect registrants to present client statements and reports in an understandable manner and to explain, if applicable, what securities are included in different statements. Registered firms should encourage clients to contact their dealing or advising representative or the firm directly with questions about their statements and reports. We expect registered firms to ensure that clients know how their investments will be held (for example, by the firm or at an issuing fund company) and understand the different implications that this will have for them in such matters as client reporting, investor protection fund coverage and custody of their assets. If a registered firm trades in exempt market securities for a client, the firm should also explain the reasons why it is not always possible for the firm to determine a market value for products sold in the exempt market or whether the client still owns the security, and the implications that this may have for reporting on exempt-market securities.

It is the responsibility of the registered firm to produce these client statements and reports, not that of individual representatives. Registered firms should have policies and procedures in place to ensure that they are adequately supervising their registered representatives' communications with clients about the prescribed information.

The requirement to produce and deliver a trade confirmation under section 14.12, an account statement under section 14.14, an additional statement under section 14.14.1, position cost information under section 14.14.2, a security holder statement under section 14.15, a scholarship plan dealer statement under section 14.16 or client reports under sections 14.17 and 14.18 may be outsourced by a registered firm to a third-party service provider that acts as its agent. Third-party pricing providers may also be used to value securities for these purposes. Like all outsourcing arrangements, the registrant is ultimately responsible for the function and must supervise the service provider. See Part 11 of this Companion Policy for more guidance on outsourcing.

For the most part, the client reporting requirements in Part 14 do not differentiate between categories of registrant. Except for certain provisions which expressly apply only to a specific registration category (such as those tailored to scholarship plan dealers), differences in the application of these requirements between different registered dealers or registered advisers will be the result of their different operating models. In particular, exempt market dealers that are not also registered as advisers or in another category of dealer may find that not all of the client reporting requirements will apply to their operating model. Appendix F discusses how these requirements may apply in the case of some of these "sole EMDs".

### 14.11.1 Determining market value

Section 14.11.1 sets out the basis on which market value must be determined for client reporting purposes.

Paragraph 14.11.1(1)(a) requires the market value of a security that is issued by an investment fund not listed on an exchange to be determined by reference to the net asset value provided by the investment fund manager of the fund on the relevant date.

For other securities, a hierarchy of valuation methods that depend on the availability of relevant information is prescribed in paragraph 14.11.1(1)(b). Registrants are required to act reasonably in applying these methodologies and we understand that this process will often require a registrant to exercise professional judgment. A registered firm may not simply take valuation information from an issuer and pass it on to clients as the market value for purposes of meeting the firm's market value reporting obligations. We expect a firm to use its professional judgment as to the reliability of information provided by an issuer as an input to the firm's determination of market value in accordance with the applicable methodology prescribed in section 14.11.1.

Where possible, market value should be determined by reference to a quoted value on a marketplace. The quoted value will be the last bid or ask price on the relevant date or the last trading day prior to the relevant date. In the case of a liquid security for which a reliable price is quoted on a market place, if it can be demonstrated through use of a periodic assessment that a "last traded price" valuation approach results in security market values that are materially the same as under the "last bid and ask prices" valuation approach, it may be acceptable to use this current "last traded price" valuation approach. Registered firms should ensure that any quoted values used to determine market value do not represent stale or old prices that are not reflective of current values. If no current value for a security is quoted on a marketplace, market value should be determined by reference to published market reports or inter-dealer quotes.

We recognize that it is not always possible to obtain a market value by these methods. In such cases, we will accept a valuation policy that is consistently applied and includes procedures that assess the reliability of any valuation inputs and assumptions. If available, valuation inputs and assumptions should be based on observable market data or inputs, such as market prices or yield rates for comparable securities and quoted interest rates. If observable inputs are not available, valuation can be based on unobservable inputs and assumptions. In some cases, it may be reasonable and appropriate to value at cost, where there has been no material subsequent event affecting value (e.g. a market event or new capital raising by the issuer). "Observable" and "unobservable" inputs are concepts under International Financial Reporting Standards (IFRS), and we expect them to be applied consistent with IFRS.

If, having applied the prescribed methodology, a registered firm reasonably believes it cannot determine the market value of a security, the firm must then report its value as "not determinable" and exclude it from the calculations in client statements as prescribed in subsection 14.11.1(3).

This is not the same as determining that the market value of a security *is* zero. However, we would expect that if the market value of a security cannot be determined for a prolonged period of time, that fact may be an indication that the market value of the security should now be determined to be zero.

The following considerations can be used in determining when the market value for a security is not determinable:

- the position is illiquid
- there is little or no issuer and issuer-related financial data available, or the data is stale
- there is little or no financial data available for comparable issuers or for the issuer's business sector
- there is not enough data to use the valuation methodology prescribed in paragraph 14.11.1(1)(b) and/or the results of the various IFRS methodologies used have been determined to be unreliable because of the use of unreliable data or the results indicate a wide range in possible values
- the acquisition cost of the security is no longer a good estimate of the security's market value as the cost is outside the range of possible values for the security

Important to applying these considerations is establishing and maintaining a firm policy as to how many days beyond which the last data available is considered to be stale.

If the market value for a security subsequently becomes determinable, a registered firm must begin to report it in client statements and add that value to the opening market values or deposits included in the calculations in subsection 14.19(1). This would be expected if the firm had previously assigned the security a value of zero in the calculation of opening market values or deposits because it could not determine the security's market value, as required by subsection 14.19(7). This would reduce the risk of presenting a misleading improvement in the performance of the investment by only adding the value of the security to the

other calculations required under section 14.19. If the deposits used to purchase the security were already included in the calculation of opening market values or deposits, the registered firm would not need to adjust these figures.

We encourage firms to disclose the foreign exchange rate used in calculating the market value of non-Canadian dollar denominated securities as a best practice.

#### **14.12 Content and delivery of trade confirmation**

Section 14.12 requires registered dealers to deliver trade confirmations.

Under paragraph 14.12(1)(b.1), registered dealers must provide the yield on a purchase of a debt security in a trade confirmation. For non-callable debt securities, the yield to maturity would be appropriate. For callable securities, the yield to call may be more useful.

Under paragraph 14.12(1)(c.1), registrants may disclose the total dollar amount of compensation (which may consist of any mark-up or mark-down, commission or other service charge) or, alternatively, the total dollar amount of commission, if any, and if the registrant applied a mark-up or mark-down or any service charge other than a commission, a prescribed general notification. The notification is a minimum requirement and a firm may elect to provide more information in its trade confirmations.

Each trade should be reported in the currency in which it was executed. If a trade is executed in a foreign currency through a Canadian dollar account, the exchange rate should be reported to the client.

Under subsection 14.12(7), a registered dealer that complies with the requirements of section 14.12 in respect of a purchase or sale of a security is not subject to the corresponding written confirmation requirements contained in any of subsections 37(1), (2) or (3) of the *Securities Act* (Newfoundland and Labrador), subsection 36(1) of the *Securities Act* (Ontario) and subsection 42(1) of *The Securities Act, 1988* (Saskatchewan). For these purposes, a firm that has an exemption from section 14.12 and complies with the terms of that exemption would be considered to have complied with the requirements of that section.

#### **14.14 Account statements**

Section 14.14 requires registered dealers and advisers to deliver statements to clients at least once every three months. There is no prescribed form for these statements but they must contain the information referred to in subsections 14.14(4) and (5). The types of transactions that must be disclosed in an account statement include any purchase, sale or transfer of securities, dividend or interest payment received or reinvested, any fee or charge, and any other account activity. A firm must deliver an account statement with the information referred to in subsection (4) if any transaction was made for the client in the reporting period. A firm is only required to provide the account position information referred to in subsection (5) if it holds securities owned by a client in an account of the client.

There is no provision for consolidated statements in section 14.14 (or 14.14.1), so a registered firm must provide every client with an applicable statement for each of their accounts. Firms may provide supplementary reporting that they think a client might find useful. For example, a firm might provide a consolidated year-end statement where a client has requested a consolidated performance report under subsection 14.18(4).

##### **14.14.1 Additional statements**

A firm is required to deliver additional statements if the circumstances described in subsection 14.14.1(1) apply. The additional statements must be delivered once every three months, except that an adviser must deliver the statements on a monthly basis if requested by the client as provided in subsection 14.14.1(3). The requirements set out for the frequency of delivering account statements and additional statements are minimum standards. Firms may choose to provide the statements more frequently.

Paragraph 14.14.1(2)(g) requires disclosure about applicable investor protection funds. However, subsection 14.14.1(2.1) exempts a firm from this requirement where a client's securities are held or controlled by an IIROC or MFDA member. SRO rules require members to be participants in specified investor protection funds and prescribe client disclosures about them. To avoid the potential that clients may be confused or misinformed, registrants that are not participants in an investor protection fund should refrain from discussing its terms and conditions with clients.

Firms may choose to include securities that must be reported under the additional statement requirement in a document that it refers to as an account statement, consistent with their clients' expectations that their accounts are not limited to securities held by the firm, provided it satisfies the requirements for content of statements set out in sections 14.14 and 14.14.1.

##### **14.14.2 Security position cost information**

Section 14.14.2 requires the delivery on a quarterly basis of position cost information for securities reported in account statements and additional statements. For purposes of section 14.14.2, a security position is "opened" when the registered firm

that is providing a statement to a client first acquires or holds securities for that client or when it first obtains trading authority over securities (as in the case of securities transferred into a discretionary account of a portfolio manager).

Position cost information is an investment performance measurement tool that provides investors with a comparison to the market value of each security position they have open. Position cost may be either the book cost or the original cost of the securities, determined in accordance with their respective definitions in section 1.1.

Position cost is not tax information and a registered firm may not depart from the defined meaning of “original cost” or “book cost” in order to align position cost with tax cost for a security position. Registered firms may provide clients with tax cost as supplementary information if they wish to do so, provided the difference is made clear to clients. If the tax treatment of a security is an important part of its marketing to investors, we would expect a registered firm to provide tax information as well as position cost information, consistent with the duty to deal fairly, honestly and in good faith with clients.

Registered firms must include the definition of book cost or original cost, depending on which method the firm is using, in the statement or document where the position cost information appears as contemplated under subsection 14.14.2(4). Firms can comply with this requirement in a footnote.

In determining position cost for transferred securities, a registered firm may rely on position cost information provided by the transferring firm, if

- the transferring-out firm is also subject to the requirement to provide individual position cost information to clients, and
- the transferring-in firm has no reason to believe the information is not reliable.

Where securities were transferred from another registrant firm, a registrant may also elect to use market value information as at the date of the transfer as the position cost. Firms must specify each security position where market value has been used rather than book or original cost. A footnote could be used for this purpose, with disclosure such as “because book cost information for this security position was unavailable, we have used market value information as of the transfer date as the position cost”.

If a security position was opened before July 15, 2015, a registered firm can choose to report (a) the cost of the security position, (b) the market value of the security position as at December 31, 2015, or (c) the market value of the security position as at a date earlier than December 31, 2015, if the firm reasonably believes accurate recorded historical market value information is available for the client’s account, and it would not be misleading to the client to provide that information as at the earlier date. Examples of circumstances under which we would consider it to be reasonable and not misleading for a firm to use a date earlier than December 31, 2015 for some but not all of its clients’ security positions opened before July 15, 2015 include when a firm that uses the same earlier date for:

- all client accounts or security positions that were transferred to the firm at the same time, or
- all clients that are on the same reporting system of the registered firm, if the firm has more than one reporting system.

If a security position is built up over time with successive transactions (purchases or transfers), an average can be used to determine the cost of the position. The average may include both book or original cost information used for some of the transactions and market value used for others. In such cases, the disclosure applicable where market value has been used should be modified as necessary. For example: “The cost of this security position has been determined using an average of market value as of the date on which some securities were transferred into your account when it was opened, and the book cost of securities that we subsequently purchased for your account.” It is also permissible to differentiate between positions in the same security that were opened in separate transactions by reporting positions valued at book cost or original cost separately from those where market value was used, instead of averaging them into a single number. However, this alternative approach has the potential to confuse clients, so clear explanatory notes should be provided if it is used.

Position cost information must be delivered at least quarterly. A firm may combine position cost information with an account statement or additional statement for the period, or it may send it separately. If it chooses to send position cost information separately, the firm must deliver it within 10 days after the statement(s) have been delivered and must also include the market value information from the statement(s) for the period in order that the client will be able to readily compare the information. Although a firm may deliver statements under section 14.14 or section 14.14.1 more frequently than quarterly, it is not required to provide position cost information except on a quarterly basis.

#### **14.15 Security holder statements**

Section 14.15 sets out the client reporting requirements applicable to a registered investment fund manager where there is no dealer or adviser of record for a security holder on the records of the investment fund manager.

#### **14.16 Scholarship plan dealer statements**

Section 14.16 provides that sections 14.14 [*account statements*], 14.14.1 [*additional statements*] and 14.14.2 [*security position cost information*] do not apply to a scholarship plan dealer that delivers prescribed information to a client at least once every 12 months. Subsection 14.19(4) sets out performance reporting requirements for scholarship plans.

#### **14.17 Report on charges and other compensation**

Registered firms must provide clients with an annual report on the firm's charges and other compensation received by the firm in connection with their investments. Examples of operating charges and transaction charges are provided in the discussion of the disclosure of charges and other compensation in section 14.2 of this Companion Policy. The annual report must include information about all of the firm's current operating charges that might be applicable to a client's account. A firm is only required to include the charges for those of its services that it would reasonably expect the particular client to utilize in the coming 12 months.

The discussion of debt security disclosure requirements in section 14.12 of this Companion Policy is also relevant with respect to paragraph 14.17(1)(e).

Scholarship plans often have enrolment fees payable in instalments in the first few years of a client's investment in the plan. Paragraph 14.17(1)(f) requires that scholarship plan dealers include a reminder of the unpaid amount of any such fees in their annual reports on charges and other compensation.

Payments that a registered firm or its registered representatives receive from issuers of securities or other registrants in relation to registerable services to a client must be reported under paragraph 14.17(1)(g). This disclosure requirement includes any form of payment to the firm or a representative of the firm linked to sales or other registerable services to the client receiving the report. Examples of payments that would be included in this part of the report on charges and other compensation include some referral fees, success fees on the completion of a transaction or finder's fees. This part of the report does not include trailing commissions, as they are specifically addressed in paragraph 14.17(1)(h).

Registered firms must disclose the amount of trailing commissions they received related to a client's holdings. The disclosure of trailing commissions received in respect of a client's investments must be included with a notification prescribed in paragraph 14.17(1)(h). The notification must be in substantially the form prescribed, so a registered firm may modify it to be consistent with the actual arrangements. For example, a firm that receives a payment that falls within the definition of "trailing commission" in section 1.1 in respect of securities that are not investment funds can modify the notification accordingly. The notification set out is the required minimum and firms can provide further explanation if they believe it will be helpful to their clients.

Registered firms may want to organize the annual report on charges and other compensation with separate sections showing the charges paid by the client to the firm, and the other compensation received by the firm in respect of the client's account.

Appendix D of this Companion Policy includes a sample Report on Charges and Other Compensation, which registered firms are encouraged to use as guidance.

#### **14.18 Investment performance report**

Where more than one registrant provides services pertaining to a client's account, responsibility for performance reporting rests with the registered firm with the client-facing relationship. For example, if a registered adviser has trading authority over a client's account at a registered dealer, the adviser must provide the client with an annual investment performance report; this is not an obligation of the dealer that only executes adviser-directed trades or provides custodial services in respect of the client's account.

Performance reporting to clients is required to be provided separately for each account. Securities of a client required to be reported in an additional statement under section 14.14.1, if any, must be covered in a performance report that also includes any other securities in the account through which they were transacted. However, subsection 14.18(4) provides that with client consent, a registrant may provide consolidated performance reporting for that client. A registrant may also provide a consolidated performance report for multiple clients, such as a family group, but only as a supplemental report, in addition to reports required under section 14.18.

#### **14.19 Content of investment performance report**

Subsection 14.19(5) requires the use of each of text, tables and charts in the presentation of investment performance reports. Explanatory notes and the definition of "total percentage return" must also be included. The purpose of these requirements is to make the information as understandable to investors as possible.

To help investors get the most out of their investment performance reports and encourage informed discussion with their registered dealing representative or advising representative, we encourage registered firms to consider including:

- additional definitions of the various performance measures used by the registrant
- additional disclosure that enhances the performance presentation
- a discussion with clients about what the information means to them

Registrants should not mislead a client by presenting a return of the client's capital in a manner that suggests it forms part of the client's return on an investment.

Registered representatives are also encouraged to meet with clients, as part of an in-person or telephone meeting, to help ensure they understand their investment performance reports and how the information relates to the client's investment objectives and risk tolerance.

Appendix E of this Companion Policy includes a sample Investment Performance Report which registered firms are encouraged to use as guidance.

### **Opening market value, deposits and withdrawals**

As part of paragraphs 14.19(1)(a) and (b), registered firms must disclose the market value of cash and securities in the client's account as at the beginning and the end of the 12-month period covered by the investment performance report. The market value of cash and securities at account opening is assumed to be zero.

Under paragraphs 14.19(1)(c), (d) and subsection 14.19(1.1), registered firms must also disclose the market value of all deposits and transfers of cash and securities into the account, and the market value of all withdrawals and transfers of cash and securities out of the account, for the 12-month period covered by the performance report, as well as, subject to certain exceptions discussed below, since account opening. Deposits and transfers into the account (which do not include reinvested distributions or interest income) should be shown separately from withdrawals and transfers out of the account.

If an account was opened before July 15, 2015, registered firms must present the market value of all cash and securities in the client's account as at one of the following dates:

- (a) January 1, 2016 or an earlier date, if the firm's first performance report to the client covered the 2016 calendar year (paragraph 14.19(1.1)(c)),
- (b) July 15, 2015 or an earlier date, if the firm's first performance report to the client covered some other period (paragraph 14.19(1.1)(b)).

A registered firm may choose a date earlier than July 15, 2015 or January 1, 2016, as applicable under paragraphs 14.19(1.1)(b) or (c), only if the firm reasonably believes accurate recorded historical market value information is available for the client's account, and it would not be misleading to the client to provide that information as at the earlier date. As with position cost information, examples of circumstances under which we would consider it to be reasonable and not misleading for a firm to use a date earlier than July 15, 2015 or January 1, 2016, as applicable, for some but not all of its clients' accounts include when a firm that uses the same earlier date for:

- all client accounts that were transferred to the firm at the same time, or
- all clients that are on the same reporting system of the registered firm, if the firm has more than one reporting system.

The registered firm must also present the market value of all deposits, withdrawals and transfers of cash and securities since the date chosen under paragraphs 14.19(1.1)(b) or (c).

Subsection 14.19(7) requires a registered firm that cannot determine the market value for a security position to assign the security a value of zero for the performance reporting purposes and the reason for doing so must be disclosed to the client. The explanation may be included as a note in the performance report. As described in section 14.11.1 of this Companion Policy, if a registered firm is subsequently able to value that security it may need to adjust the calculation of the market values or deposits to avoid presenting a misleading improvement in the performance of the account.

A registered firm is not required to deliver a nil report in circumstances where it reasonably believes that none of a client's securities have a determinable value. We would expect the firm to tell the client that it will not be delivering an investment performance report for the period and explain why.

### **Change in market value**

The opening market value, plus deposits and transfers in, less withdrawals and transfers out, should be compared to the market value of the account as at the end of the 12-month period for which the performance reporting is provided and also since inception in order to provide clients, in dollar terms, with the performance of their account.

The change in the market value of the account since inception is the difference between the closing market value of the account and total of opening market value plus deposits less withdrawals since inception. The change in the value of the account for the 12-month period is the difference between the closing market value of the account and total of opening market value plus deposits less withdrawals during the period. If the client's account was opened before July 15, 2015, a registered firm is required to disclose the change in value of a client's account since one of July 15, 2015, January 1, 2016 or an earlier date determined on the basis of the same criteria as described above with reference to paragraphs 14.19(1.1)(b) or (c).

The change in market value includes components such as income (dividends, interest) and distributions, including reinvested income or distributions, realized and unrealized capital gains or losses in the account, and the effect of operating charges and transaction charges if these are deducted directly from the account. Rather than show the change in value as a single amount, registered firms may opt to break this out into its components to provide more detail to clients.

### **Percentage return calculation method**

Paragraph 14.19(1)(i) requires firms to provide the annualized total percentage return using a money-weighted rate of return calculation method. No specific formula is prescribed, but the method used by a firm must be one that is generally accepted in the securities industry. A registered firm may, if it so chooses, provide percentage returns calculated using both money-weighted and time-weighted methods. In such cases, the firm should explain in plain language the difference between the two sets of performance returns.

Paragraph 14.19(1)(j) requires that performance reports include a notification with specified information about how the client's percentage return was calculated. This includes an explanation in general terms of what the calculation method takes into account. We do not expect firms to include a formula or an exhaustive list. For example, a firm could explain that under a money weighted method, decisions a client made about deposits and withdrawals to and from the client's account have affected the returns calculated in the report and that this means it represents the client's personal rate of return. We expect firms to use this notification to help clients understand the most important implications of the calculation methodology. A client's personal rate of return should be compared to the client's target rate of return, if the client has one, so that progress toward that goal can be assessed. We expect a firm that also uses a time weighted method to explain the difference between the two rates of return in plain language. For example, the firm could explain that the returns calculated under a time weighted method may not be the same as the actual returns in the client's account because they do not necessarily show the effect of deposits and withdrawals to and from the account, and that a time weighted return is useful in determining how well a money manager performed, but not necessarily how the client's account actually grew.

### **Performance reporting periods**

Subsection 14.19(2) outlines the minimum reporting periods of 1, 3, 5 and 10 years and the period since the inception of the account. For accounts opened before July 15, 2015, a registered firm may use a deemed inception date of January 1, 2016, July 15, 2015 or an earlier date determined on the basis of the same criteria as that described above.

Registered firms may opt to provide more frequent performance reporting. However performance returns for periods of less than one year can be misleading and therefore, must not be presented on an annualized basis, consistent with subsection 14.19(6).

### **Scholarship plans**

Under paragraph 14.19(4)(c), for scholarship plans, the information required to be delivered in the investment performance report includes a reasonable projection of future scholarship payments that the plan may pay to the client or the client's designated beneficiary upon the maturity of the client's investment in the plan.

A scholarship plan dealer is also required under paragraph 14.19(4)(d) to provide a summary of any terms of the plan, which if not met by the client or the client's designated beneficiary under the plan, may cause the client or the designated beneficiary to suffer a loss of contributions, earnings or government contributions in the plan. The disclosure here is not intended to be as detailed as the disclosure at account opening. It is intended to remind the client of the unique risks of the plan and the ways in which the client's scholarship plan may be seriously impaired. This disclosure must be consistent with other disclosures required to be delivered to clients under applicable securities legislation.

To the extent that a scholarship plan dealer and the plan itself are not the same legal entity but are affiliates of one another, the dealer may meet obligations to deliver annual investment performance reports by drawing attention to the plan's direct mailing of reports to a client by the plan's administrator.

### **Benchmarks and investment performance reporting**



The use of benchmarks for investment performance reporting is optional. There is no requirement to provide benchmarks to clients in any of the reports required under NI 31-103.

However, we encourage registrants to use benchmarks that are relevant to a client's investments as a useful way for a client to assess the performance of their portfolio. Benchmarks need to be explained to clients in terms they will understand, including factors that should be considered by the client when comparing their investment returns to benchmark returns. For example, a registrant could discuss the differences between the composition of a client's portfolio that reflects the investment strategy they have agreed upon and the composition of an index benchmark, so that a comparison between them is fair and not misleading. A discussion of the impact of operating charges and transaction charges as well as other expenses related to the client's investments would also be helpful to clients, since benchmarks generally do not factor in the costs of investing.

If a registered firm chooses to present benchmark information, the firm should ensure that it is not misleading. We expect registrants to use benchmarks that are

- discussed with clients to ensure they understand the purpose of comparing the performance of their portfolio to the chosen benchmarks and determine if their information needs will be met
- reasonably reflective of the composition of the client's portfolio so as to ensure that a relevant comparison of performance is presented
- relevant in terms of the ~~investing~~investment time horizon of the client
- based on widely recognized and available indices that are credible and not manufactured by the registrant or any of its affiliates using proprietary data
- broad-based securities market indices which can be linked to the major asset classes into which the client's portfolio is divided. The determination of a major asset class should be based on the firm's own policies and procedures and the client's portfolio composition. An asset class for benchmarking purposes may be based on the type of security and geographical region. We do not expect an asset class to be determined by industry sector
- presented for the same reporting periods as the client's annualized total percentage returns
- clearly named
- applied consistently from one reporting period to the next for comparability reasons, unless there has been a change to the pre-determined asset classes. In this case, the change in the benchmark(s) presented should be discussed with the client and included in the explanatory notes, along with the reasons for the change

Examples of acceptable benchmarks would include, but are not limited to, the S&P/TSX Composite index for Canadian equities, the S&P 500 index for U.S. equities, and the MSCI EAFE index as a measure of the equity markets outside of North America.

#### **14.20 Delivery of report on charges and other compensation and investment performance report**

Registered firms must deliver the annual report on charges and other compensation under section 14.17 and the investment performance report under section 14.18 for a client together. These client reports may be combined with or accompany an account statement or additional statement for a client, or must be sent within 10 days after an account statement or additional statement for the client.

## Appendix A

### Contact information

Jurisdiction	E-mail	Fax	Address
Alberta	<a href="mailto:registration@asc.ca">registration@asc.ca</a>	(403) 297-4113	Alberta Securities Commission, Suite 600, 250–5th St. SW Calgary, AB T2P 0R4 Attention: Registration
British Columbia	<a href="mailto:registration@bcsc.bc.ca">registration@bcsc.bc.ca</a>	(604) 899-6506	British Columbia Securities Commission P.O. Box 10142, Pacific Centre 701 West Georgia Street Vancouver, BC V7Y 1L2 Attention: Registration
Manitoba	<a href="mailto:registrationmsc@gov.mb.ca">registrationmsc@gov.mb.ca</a>	(204) 945-0330	The Manitoba Securities Commission 500-400 St. Mary Avenue Winnipeg, MB R3C 4K5 Attention: Registrations
New Brunswick	<a href="mailto:registration-inscription@fcnb.ca">registration-inscription@fcnb.ca</a>	(506) 658-3059	Financial and Consumer Services Commission of New Brunswick / Commission des services financiers et des services aux consommateurs du Nouveau -Brunswick Suite 300, 85 Charlotte Street Saint John, NB E2L 2J2 Attention: Registration
Newfoundland & Labrador	<a href="mailto:scon@gov.nl.ca">scon@gov.nl.ca</a>	(709) 729-6187	Superintendent of Securities, Service NL P.O. Box 8700, 2nd Floor, West Block Confederation Building St. John's, NL A1B 4J6 Attention: Manager of Registrations
Northwest Territories	<a href="mailto:SecuritiesRegistry@gov.nt.ca">SecuritiesRegistry@gov.nt.ca</a>	(867) 873-0243	Government of the Northwest Territories P.O. Box 1320 Yellowknife, NWT X1A 2L9 Attention: Deputy Superintendent of Securities
Nova Scotia	<a href="mailto:nrs@novascotia.ca">nrs@novascotia.ca</a>	(902) 424-4625	Nova Scotia Securities Commission Suite 400, 5251 Duke Street P.O. Box 458 Halifax, NS B3J 2P8 Attention: Deputy Director, Capital Markets
Nunavut	<a href="mailto:CorporateRegistrations@gov.nu.ca">CorporateRegistrations@gov.nu.ca</a>	(867) 975-6590 (Faxing to NU is unreliable. The preferred method is e-mail.)	Legal Registries Division Department of Justice Government of Nunavut P.O. Box 1000 Station 570 Iqaluit, NU X0A 0H0 Attention: Deputy Registrar
Ontario	<a href="mailto:registration@osc.gov.on.ca">registration@osc.gov.on.ca</a>	(416) 593-8283	Ontario Securities Commission 22nd Floor 20 Queen Street West Toronto, ON M5H 3S8 Attention: Compliance and Registrant Regulation

<b>Jurisdiction</b>	<b>E-mail</b>	<b>Fax</b>	<b>Address</b>
Prince Edward Island	<a href="mailto:ccis@gov.pe.ca">ccis@gov.pe.ca</a>	(902) 368-6288	Consumer and Corporate Services Division, Office of the Attorney General P.O. Box 2000, 95 Rochford Street Charlottetown, PE C1A 7N8 Attention: Superintendent of Securities
Québec	<a href="mailto:inscription@lautorite.qc.ca">inscription@lautorite.qc.ca</a>	(514) 873-3090	Autorité des marchés financiers Direction de l'encadrement des intermédiaires 800 square Victoria, 22e étage C.P 246, Tour de la Bourse Montréal (Québec) H4Z 1G3
Saskatchewan	<a href="mailto:registrationfcaa@gov.sk.ca">registrationfcaa@gov.sk.ca</a>	(306) 787-5899	Financial and Consumer Affairs Authority of Saskatchewan Suite 601 1919 Saskatchewan Drive Regina, SK S4P 4H2 Attention: Registration
Yukon	<a href="mailto:securities@gov.yk.ca">securities@gov.yk.ca</a>	(867) 393-6251	Department of Community Services Yukon Yukon Securities Office P.O. Box 2703 C-6 Whitehorse, YT Y1A 2C6 Attention: Superintendent of Securities

## **Appendix B**

### **Terms not defined in NI 31-103 or this Companion Policy**

Terms defined in National Instrument 14-101 *Definitions*:

- adviser registration requirement
- Canadian securities regulatory authority
- dealer registration requirement
- exchange contract (AB, SK, NB and NS only)
- foreign jurisdiction
- jurisdiction or jurisdiction of Canada
- local jurisdiction
- investment fund manager registration requirement
- prospectus requirement
- registration requirement
- regulator
- securities directions
- securities legislation
- securities regulatory authority
- SRO
- underwriter registration requirement

Terms defined in National Instrument 45-106 *Prospectus Exemptions*:

- accredited investor
- eligibility adviser
- financial assets

Terms defined in National Instrument 81-102 *Investment Funds*:

- money market fund

Terms defined in the *Securities Act* of most jurisdictions:

- adviser
- associate
- company
- control person
- dealer
- director

- distribution
- exchange contract (BC only)
- insider
- individual
- investment fund
- investment fund manager
- issuer
- mutual fund
- officer
- person
- promoter
- records
- registrant
- reporting issuer
- security
- trade
- underwriter

## Appendix C

### Proficiency requirements for individuals acting on behalf of a registered firm

The tables in this Appendix set out the education and experience requirements, by firm registration category, for individuals who are applying for registration under securities legislation.

An individual must not perform an activity that requires registration unless the individual has the education, training and experience that a reasonable person would consider necessary to perform the activity competently, including, in the case of registered representatives, understanding the structure, features, [returns](#) and risks, [and the initial and ongoing costs and the impact of those costs](#), of each security the individual recommends.

CCOs must also not perform an activity set out in section 5.2 unless they have the education, training and experience that a reasonable person would consider necessary to perform the activity competently.

#### Acronyms used in the tables

**BMP:** Branch Manager Proficiency Exam

**CIM:** Canadian Investment Manager designation

**CA:** Chartered Accountant

**CSC:** Canadian Securities Course Exam

**CCO:** Chief Compliance Officer

**EMP:** Exempt Market Products Exam

**CCOQ:** Chief Compliance Officers Qualifying Exam

**IFIC:** Investment Funds in Canada Course

**CFA:** CFA Charter

**MFDC:** Mutual Funds Dealer Compliance Exam

**CGA:** Certified General Accountant Exam/Partners, Directors

**PDO:** Officers', Partners' and Directors' and Senior Officers Course Exam

**CMA:** Certified Management Accountant

**SRP:** Sales Representative Proficiency Exam

**CIF:** Canadian Investment Funds Course Exam

Investment dealer	
Dealing representative	CCO
Proficiency requirements set by IIROC	Proficiency requirements set by IIROC
Mutual fund dealer	
Dealing representative	CCO
One of these five options: <ol style="list-style-type: none"> <li>1. CIF</li> <li>2. CSC</li> <li>3. IFIC</li> <li>4. CFA Charter and 12 months of relevant securities industry experience in the 36-month period before applying for registration</li> <li>5. Advising representative requirements – portfolio manager or exempt from these under section 16.10(1)</li> </ol>	One of these two options: <ol style="list-style-type: none"> <li>1. CIF, CSC or IFIC; and PDO, MFDC or CCOQ and 12 months of relevant securities industry experience in the 36-month period before applying for registration</li> <li>2. CCO requirements – portfolio manager or exempt from these under section 16.9(2)</li> </ol>

<b>Exempt market dealer</b>	
<b>Dealing representative</b>	<b>CCO</b>
<p>One of these four options:</p> <ol style="list-style-type: none"> <li>1. CSC</li> <li>2. EMP</li> <li>3. CFA Charter and 12 months of relevant securities industry experience in the 36-month period before applying for registration</li> <li>4. Advising representative requirements – portfolio manager or exempt from these under section 16.10(1)</li> </ol>	<p>One of these two options:</p> <ol style="list-style-type: none"> <li>1. PDO or CCOQ and EMP or CSC and 12 months of relevant securities industry experience in the 36-month period before applying for registration</li> <li>2. CCO requirements – portfolio manager or exempt from these under section 16.9(2)</li> </ol>
<b>Scholarship plan dealer</b>	
<b>Dealing representative</b>	<b>CCO</b>
	SRP, BMP, and PDO or CCOQ and 12 months of relevant security industry experience in the 36-month period before applying for registration
<b>Restricted dealer</b>	
<b>Dealing representative</b>	<b>CCO</b>
Regulator to determine on a case-by-case basis	Regulator to determine on a case-by-case basis

<b>Portfolio manager</b>		
<b>Advising representative</b>	<b>Associate advising representative</b>	<b>CCO</b>
<p>One of these two options:</p> <ol style="list-style-type: none"> <li>1. CFA and 12 months of relevant investment management experience in the 36-month period before applying for registration</li> <li>2. CIM and 48 months of relevant investment management experience (12 months gained in the 36-month period before applying for registration)</li> </ol>	<p>One of these two options:</p> <ol style="list-style-type: none"> <li>1. Level 1 of the CFA and 24 months of relevant investment management experience</li> <li>2. CIM and 24 months of relevant investment management experience</li> </ol>	<p>One of these three options:</p> <ol style="list-style-type: none"> <li>1. CSC except if the individual has the CFA or CIM designation, PDO or CCOQ, and CFA or a professional designation as a lawyer, CA, CGA, CMA, notary in Québec or the equivalent in a foreign jurisdiction, and: <ul style="list-style-type: none"> <li>• 36 months of relevant securities experience working at an investment dealer, registered adviser or investment fund manager, or</li> <li>• 36 months providing professional services to the securities industry and 12 months working at a registered dealer, registered adviser or investment fund manager, for a total of 48 months</li> </ul> </li> <li>2. CSC except if the individual has the</li> </ol>

		<p>CFA or CIM designation, PDO or CCOQ and five years working at:</p> <ul style="list-style-type: none"> <li>an investment dealer or a registered adviser (including 36 months in a compliance capacity), or</li> <li>a Canadian financial institution in a compliance capacity relating to portfolio management and 12 months at a registered dealer or registered adviser, for a total of six years</li> </ul> <p>3. PDO or CCOQ and advising representative requirements – portfolio manager</p>
<b>Restricted portfolio manager</b>		
<b>Advising representative</b>	<b>Associate advising representative</b>	<b>CCO</b>
Regulator to determine on a case-by-case basis	Regulator to determine on a case-by-case basis	Regulator to determine on a case-by-case basis
<b>Investment fund manager</b>		
<b>CCO</b>		
<p>One of these three options:</p> <ol style="list-style-type: none"> <li>CSC except if the individual has the CFA or CIM designation, PDO or CCOQ, and CFA or a professional designation as a lawyer, CA, CGA, CMA, notary in Québec or the equivalent in a foreign jurisdiction, and: <ul style="list-style-type: none"> <li>36 months of relevant securities experience working at a registered dealer, registered adviser or investment fund manager, or</li> <li>36 months providing professional services in the securities industry and 12 months working in a relevant capacity at an investment fund manager, for a total of 48 months</li> </ul> </li> <li>CIF, CSC or IFIC; PDO or CCOQ and five years of relevant securities experience working at a registered dealer, registered adviser or an investment fund manager (including 36 months in a compliance capacity)</li> <li>CCO requirements for portfolio manager or exempt from these requirements under section 16.9(2)</li> </ol>		



## Appendix D

[Name of Firm]

### Annual Charges and Compensation Report

Client name  
Address line 1  
Address line 2  
Address line 3

Your Account Number: 123456

**This report summarizes the compensation that we received directly and indirectly in 20XX. Our compensation comes from two sources:**

- 1. What we charge you directly. Some of these charges are associated with the operation of your account. Other charges are associated with purchases, sales and other transactions you make in the account.**
- 2. What we receive through third parties.**

**Charges are important because they reduce your profit or increase your loss from investing. If you need an explanation of the charges described in this report, your representative can help you.**

#### Charges you paid directly to us

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RSP administration fee	\$100	
<b>Total charges associated with the operation of your account</b>		<b>\$100</b>
Commissions on purchases of mutual funds with a sales charge	\$101	
Switch fees	\$45	
<b>Total charges associated with transactions we executed for you</b>		<b>\$146</b>
<b>Total charges you paid directly to us</b>		<b>\$246</b>

#### Compensation we received through third parties

---

Commissions from mutual fund managers on purchases of mutual funds (see note 1)	\$503
Trailing commissions from mutual fund managers (see note 2)	\$286
<b>Total compensation we received through third parties</b>	<b>\$789</b>

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<b>Total charges and compensation we received in 20XX</b>	<b>\$1,035</b>
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#### Notes:

1. When you purchased units of mutual funds on a deferred sales charge basis, we received a commission from the investment fund manager. During the year, these commissions amounted to \$503.
2. We received \$286 in trailing commissions in respect of securities you owned during the 12-month period covered by this report.

Investment funds pay investment fund managers a fee for managing their funds. The managers pay us ongoing trailing commissions for the services and advice we provide you. The amount of the trailing commission depends on the sales charge option you chose when you purchased the fund. You are not directly charged the trailing commission or the management fee. But, these fees affect you because they reduce the amount of the fund's return to you. Information about management fees and other charges to your investment funds is included in the prospectus or fund facts document for each fund.

**Our current schedule of operating charges**

*[As part of the annual report of charges and compensation, registrants are required to provide their current operating charges that may be applicable to their clients' accounts. For the purposes of this sample document, we are not providing such a list.]*

## Appendix E

### Your investment performance report

For the period ending December 31, 2030

Investment account 123456789

Client name  
Address line 1  
Address line 2  
Address line 3

This report tells you how your account has performed to December 31, 2030. It can help you assess your progress toward meeting your investment goals.

Speak to your representative if you have questions about this report. It is important that you tell your representative if your personal or financial circumstances have changed. Your representative can recommend adjustments to your investments to keep you on track to meeting your goals.

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#### Amount invested means opening market value plus deposits including:

the market value of all deposits and transfers of securities and cash into your account, not including interest or dividends reinvested.

#### Less withdrawals including:

the market value of all withdrawals and transfers out of your account.

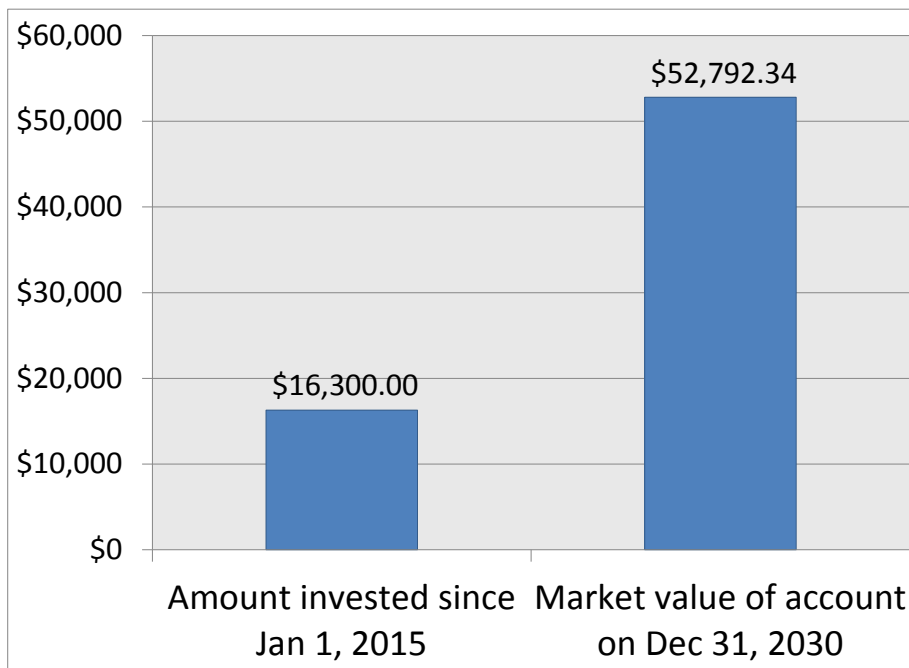
#### Total value summary

**Your investments have increased by \$36,492.34 since you opened the account**

**Your investments have increased by \$2,928.85 during the past year**

Amount invested since you opened  
your account on January 1, 2015  
Market value of your account on December 31, 2030

\$16,300.00  
**\$52,792.34**





## Change in the value of your account

This table is a summary of the activity in your account. It shows how the value of your account has changed based on the type of activity.

	Past year	Since you opened your account
Opening market value	\$51,063.49	\$0.00
Deposits	\$4,000.00	\$21,500.00
Withdrawals	\$(5,200.00)	\$(5,200.00)
Change in the market value of your account	\$2,928.85	\$36,492.34
<b>Closing market value</b>	<b>\$52,792.34</b>	<b>\$52,792.34</b>

## What is a total percentage return?

This represents gains and losses of an investment over a specified period of time, including realized and unrealized capital gains and losses plus income, expressed as a percentage.

For example, an annual total percentage return of 5% for the past three years means that the investment effectively grew by 5% a year in each of the three years.

## Your personal rates of return

The table below shows the total percentage return of your account for periods ending December 31, 2030. Returns are calculated after charges have been deducted. These include charges you pay for advice, transaction charges and account-related charges, but not income tax.

Keep in mind your returns reflect the mix of investments and risk level of your account. When assessing your returns, consider your investment goals, the amount of risk you're comfortable with, and the value of the advice and services you receive.

	Past year	Past 3 years	Past 5 years	Past 10 years	Since you opened your account
<b>Your account</b>	5.51%	10.92%	12.07%	12.90%	13.09%

## Calculation method

We use a money weighted method to calculate rates of return. Contact your representative if you want more information about this calculation.

The returns in this table are your personal rates of return. Your returns are affected by changes in the value of the securities you have invested in, dividends and interest that they paid, and also deposits and withdrawals to and from your account.

If you have a personal financial plan, it will contain a target rate of return, which is the return required to achieve your investment objectives. By comparing the rates of return you actually achieved (shown in the table) with your target rate of return, you can see whether you are on track to meet your investment objectives.

Contact your representative to discuss your rate of return and investment objectives.

## Appendix F

### Part 14 Client reporting requirements and sole EMDs

This appendix discusses how the client reporting requirements in Part 14 may apply to some exempt market dealers that are not also registered as advisers or in another category of dealer (sole EMDs) as a result of their limited operating model.

#### Overview:

##### Holding client assets and other specified criteria

The applicability of some of the client statement requirements depends on whether a registered firm holds client assets (account statements) or, if it does not, whether certain other specific criteria apply (additional statements). Other client reporting requirements may or may not apply depending on whether a registered firm has a “client” at the relevant point in time (annual report on charges and other compensation, and annual report on investment performance).

Sole EMDs do not normally hold client assets and where that is the case, they can disregard provisions that only apply where client assets are held by a registered firm. In circumstances where a sole EMD holds client assets (as may be the case with mortgage syndications), it must deliver account statements with the information required under subsections 14.14(4) and 14.14(5) along with position cost information under section 14.14.2. Furthermore, since holding client assets is a clear indication of an ongoing client relationship, a sole EMD is also subject to the requirement to deliver an annual report on charges and other compensation under section 14.17 and an annual investment performance report under section 14.18.

##### Transactional vs ongoing client relationship

Some sole EMDs have only limited, transactional relationships with their clients – as opposed to the ongoing client relationships that are typical of most other registrants’ operating models. An example of a transactional relationship would be where an EMD’s relationship with a client is limited to a specific private placement transaction and does not involve

- a security specified in paragraph 14.14.1(1)(c)
- any trailer fee or similar ongoing compensation in relation to the client’s ownership of a security
- the EMD holding client assets
- any expectation on the part of the EMD that there may be further transactions with the client or services provided to the client. For example, if an EMD regularly contacts the client regarding any securities offered by the EMD, this will be considered an ongoing relationship
- any expectation on the part of the client that the EMD will continue to provide services to the client after the completion of the transaction. The example described above applies in this case as well.

In this example, the EMD would be required to deliver one account statement with transactional information under subsection 14.14(4), but would not be required to deliver any

- further account statements under section 14.14
- additional statements under section 14.14.1
- position cost information under section 14.14.2
- annual report on charges and other compensation under section 14.17
- annual investment performance report under section 14.18

A sole EMD should consider carefully whether it is in an ongoing client relationship before concluding that any of the client statement requirements do not apply to it.

### *Section-by-section analysis:*

#### Relationship disclosure information, pre-trade disclosure of charges and trade confirmation

A sole EMD always has a client at the time of the transaction and will be subject to other requirements relating to relationship disclosure (section 14.2), pre-trade disclosure of charges (section 14.2.1) and trade confirmations (section 14.12). However, if it has no other dealings with the investor, the EMD might conclude that it is no longer in a client relationship at the point in time when it would otherwise be required to prepare further client statements and reports, as discussed below.

#### Account statements

An account statement has two principal elements: transactional information and account position information. Transactional information is specific to the securities involved and is required in almost all circumstances where there has been a transaction. Account position information is a snap-shot of the whole account and is required only where the firm holds client assets.

Subsection 14.14(1) requires an EMD to deliver transactional information prescribed under subsection 14.14(4) to clients on a quarterly basis or, if so requested, each month. This requirement applies regardless of whether the firm holds client assets. For EMDs that hold client assets, account position information under subsection 14.14(5) is also required. Note that subsection 14.14(2) requires an EMD to deliver an account statement with transactional information under subsection 14.14(4) "after the end of **any month** in which a transaction was effected in securities **held** by the dealer in the client's account" [emphasis added].

The effect of these requirements is that, if one or more transactions occurred in the reporting period, a sole EMD must provide the client with an account statement with transactional information (but not account position information if no clients assets are held) either

- at the end of the month, if requested by a client, or
- at the end of the quarter, by default.

This applies even where an EMD does not have an ongoing client relationship.

#### Additional statements

An "additional statement" (registered firms subject to the requirements in section 14.14.1 are not required to call it this in client communications – "account statement" would do for those purposes) is the way clients get the equivalent of account position information where the registered firm does not hold their assets. It only applies in certain circumstances. More specifically, subsection 14.14.1(1) requires a registered dealer or adviser that does not hold client assets to provide an additional statement with account position information under subsection 14.14.1(2) on a quarterly basis if

- it has trading authority over the client's account in which the securities are held or were transacted (not, of course, applicable to a sole EMD),
- it receives certain continuing payments in respect of securities it traded for a client (e.g., trailing commission), or
- it is the dealer of record for a client's securities issued by a mutual fund or certain labour-sponsored investment vehicles (EMDs trading securities of an investment fund should be aware of the definition of "mutual fund" under securities legislation).

In effect, a registered firm is deemed to have an ongoing client relationship in these circumstances. If none of these circumstances apply, there is no requirement for a sole EMD to provide clients with an additional statement.

#### Position cost information

Subsection 14.14.2(1) requires quarterly delivery of position cost information under criteria which effectively mean that if a sole EMD has to provide account position information to a client, either in an account statement or an additional statement, it also has to provide position cost information to the client.

#### Annual report on charges and other compensation

Subsection 14.17(1) requires delivery of a report on charges and other compensation to a client every 12 months. It will apply if the sole EMD is subject to the requirement to provide account position information to a client, either in an account statement under subsection 14.14(5) or an additional statement under subsection 14.14.(1).

However, even if the requirement in subsection 14.17(1) is triggered, the EMD would not be required to send a “nil” report if it did not receive any of the specified charges or other compensation during the 12-month period.

#### Annual investment performance report

Subsection 14.18(1) requires annual delivery of an investment performance report to a client. Note that the elements of the performance report set out in section 14.19 will depend on market values that are contained in the account position information provided in the account statements and additional statements sent under sections 14.14 and 14.14.1, respectively. The effect of subsection 14.18(6) is that no investment performance report is required if a firm reasonably believes that either (a) there are no securities of a client in respect of which it would be required to provide account position information to a client, either in an account statement or an additional statement, or (b) if there are such securities, no market value can be determined for any of them.



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