APPENDIX B

SUMMARY OF COMMENTS AND RESPONSES ON THE JUNE 2010 PROPOSAL

This appendix summarizes the written public comments we received on the proposed amendments to National Instrument 31-103 *Registration Requirements and Exemptions* (NI 31-103 or the Rule), Companion Policy 31-103CP *Registration Requirements and Exemptions* (31-103CP or the Companion Policy), the forms under NI 31-103 and National Instrument 33-109 *Registration Information* (NI 33-109), Companion Policy 33-109CP *Registration Information* (33-109CP) as well as the forms under NI 33-109 (the Forms) (collectively, the Instrument) as published on June 25, 2010 (the June 2010 Proposal). It also sets out our responses to those comments.

This appendix contains the following sections:

1. Introduction
2. Responses to comments received on the Rule and the Companion Policy
3. Responses to comments received on NI 33-109 and related Forms

Please refer to Appendix A *Summary of changes to the Instrument* for the details of the changes we made in response to comments.

1. Introduction

(a) Drafting suggestions

We received a number of drafting comments on the Instrument. While we incorporated many of these suggestions, this document does not include a summary of the drafting changes we made.

(b) Categories of comments and single response

In this document, we consolidated and summarized the comments and our responses by the general theme of the comments.

(c) Comments beyond the scope of the June 2010 Proposal

We do not provide a response to comments received beyond the scope of the June 2010 Proposal. We provided responses to certain of these comments in the context of prior consultations. In other cases, we are continuing our work and may publish notices or proposed amendments for comment in the future.

2. Responses to comments received on the Rule and the Companion Policy

(a) IFRS fair value for the valuation of securities

We received several comments on proposed section 1.4, which would have required that registrants determine the *fair value* of securities in accordance with IFRS. The commenters indicated that there would be a significant operational impact on registrants in respect of this requirement. We did not make the proposed amendments.

We however added a definition of fair value in Form 31-103F1 *Calculation of Excess Working Capital* (Form 31-103F1) for valuing securities. The use of fair value in the Form 31-103F1 is in line with a registrant's requirement to value securities in financial statements in accordance with Canadian GAAP applicable to publicly accountable enterprises under the new National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (NI 52-107). This alignment is necessary as a registrant's financial statements form the basis of the information reported on Form 31-103F1.

In response to comments indicating that National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106) already provides an appropriate method for calculating the net asset value of certain mutual fund securities, the valuation of these securities in the Form 31-103F1 is based on the net asset value (NAV) as determined in accordance with NI 81-106.

(b) Proficiency requirements

i. Time limits on examination requirements

One commenter expressed the view that section 3.3 should be included in Part 9 of NI 31-103 as a provision from which IIROC members would be excepted, since the commenter is of the view that section 3.3 conflicts with IIROC Rule 2900. We disagree. Part 3 of NI 31-103 does not apply to IIROC approved persons, and therefore there is no need to exempt IIROC approved persons from the time limits on examination requirements. This is stated in the Companion Policy.

We received a comment agreeing with the proposed amendments to exclude holders of the CFA Charter and the CIM designation from the requirement of retaking their courses, however, the commenter suggested that this should be conditional upon their designation continuing to be "current" with either the CFA Institute (for the CFA designation) or CSI Global Education Inc. (for the CIM designation), and that the individual be in good standing with the organization that has granted the designation.

In response to this comment, we

- amended 31-103CP to clarify that we may consider the revocation, or other limitation on, the use of the CFA Charter or the CIM designation in the assessment of continued suitability for registration; and

- amended Item 8.1 *Course or examination/designation information and other education* in Schedule E – *Proficiency* of Form 33-109F4 *Application for registration of individuals and review of permitted individuals* by adding questions on the CFA Charter and the CIM designation to verify that these designations are in good standing.

We remind registered individuals in 31-103CP that they are required to notify us of any change in the status of the CFA Charter or the CIM designation within 10 days of the change, by submitting Form 33-109F5 *Change of Registration Information* in accordance with National Instrument 31-102 *National Registration Database*.

ii. Proficiency principle

We received several comments on the inclusion in section 3.4 of the requirement to understand the structure, features and risks of each security that is recommended by the individual registrant. The commenters expressed the view that the proposed addition to section 3.4, which is a principle-based provision

- is redundant since the requirement to understand the structure, features and risks of each security (also known as the "know-your-product" requirement) already forms part of the requirement to perform registrable activities competently;

- would be more appropriately characterized as a suitability requirement; and

- appears to be already incorporated as a suitability requirement in section 13.3 of NI 31-103.

We amended section 3.4 to provide that the proficiency principle *includes* the requirement to understand the structure, features and risks of each security that is recommended by the individual. We do not believe this proficiency principle is redundant with the know-your-product requirement that forms part of the suitability obligations.

We added guidance in 31-103CP to indicate that the proficiency principle, including knowledge and understanding of the securities that are recommended by the individual, applies notwithstanding the suitability exemption in respect of permitted clients in section 13.3(4).

iii. Chief Compliance Officers Qualifying Exam

We received a comment to the effect that the Chief Compliance Officers Qualifying Exam is an adequate proficiency requirement which should be available for chief compliance officers of exempt market dealers and investment fund managers. The Chief Compliance Officers Qualifying Exam is an IIROC approved exam. We amended sections of Part 3 of the Rule so that this alternative proficiency requirement applies to the chief compliance officers of exempt market dealers and investment fund managers, as well as the chief compliance officers of mutual fund dealers, scholarship plan dealers and portfolio managers.

iv. Experience requirements for advising representatives

One commenter expressed the view that, as currently stated, the requirements in section 3.11 appear to be different for individuals holding the CFA Charter as compared to individuals having the CIM designation, while the intent of the CSA, according to the commenter, was that they be essentially similar. We disagree and did not make the proposed change to section 3.11. Unlike the CIM designation, there are experience requirements, in addition to examination requirements, that need to be fulfilled in order to obtain the CFA Charter.

v. Proficiency requirements for chief compliance officers of portfolio managers

One commenter stated that the addition of the word *also* in section 3.13(b)(ii) has the effect of making cumulative the requirement of 5 years experience at a Canadian financial institution and the requirement of having worked at an investment dealer or adviser for 12 months. In response, we confirm that both of these requirements need to be satisfied and the amendment to section 3.11 is for clarification only. A registrant may meet this proficiency requirement *concurrently* if, within a 5 year period, the registrant was able to meet both requirements outlined above.

One commenter stated that section 3.14(b)(i) of NI 31-103 should include the Exempt Market Products Exam as one of the alternate proficiency requirements, which would allow the chief compliance officer of an exempt market dealer to qualify as the chief compliance officer of an investment fund manager without gaining additional industry-specific proficiency. We disagree. These are very different categories, and while there is a correlation between investment fund manager registration and mutual funds, the same cannot be said of exempt market dealer registration and mutual funds.

vi. Proficiency requirements for dealing representatives of mutual fund dealers and exempt market dealers

We clarified our intention to allow dealing representatives of mutual fund dealers and exempt market dealers to meet the proficiency requirements in sections 3.5 and 3.9 by the individual having earned a CFA Charter and 12 months of relevant securities industry experience in the 36-month period before applying for registration.

(c) Restrictions on acting for another registered firm

We received numerous comments on our proposal to prohibit individuals from acting as a dealing or advising representative of more than one registered firm. The proposed amendment has been viewed by commenters as

- causing an unnecessary restriction in a situation where a registrant is owned by two shareholders, each holding 50% of the registrant (as the registrant is not technically an affiliate of either 50% shareholder);
- ignoring the fact that valid business reasons exist for dual registration as long as individuals have sufficient time to carry out their duties and are not in a conflict of interest which cannot be managed; and
- ignoring the fact that in circumstances where a firm's operational structure necessitates multiple legal entities, it is often appropriate and necessary for firms to register individuals with different firms.

We were therefore requested to remove this restriction or, in the alternative, add an exception for affiliated firms.

The conflicts of interest that are potentially generated by dual registration are considered significant by the CSA. As part of the review of each individual's fitness for registration, we consider all of the individual's activities. The fact that the individual may be acting for affiliated registered firms is not determinative in our view.

We amended section 4.1, however, to provide that the registered firm should ensure that their representatives do not act on behalf of more than one registered firm. This should facilitate the filing of exemption applications on behalf of several individuals who do act on behalf of more than one registered firm.

Please note that we grandfathered individuals who were dually registered before the coming into force of the amendments to section 4.1.

(d) Categories of registration - firms

Investment fund manager

One commenter described a structure of an affiliated group of funds that in their view would avoid the requirement to register more than one investment fund manager within the group. In response, we clarified in the Companion Policy that each investment fund manager is required to be registered, even where there is more than one investment fund manager within an affiliated group of funds. Investment funds organized as multiple entities within a fund complex are required to register, absent exemptive relief having been granted. Having a management agreement in place that delegates all or substantially all of the investment fund manager functions to an affiliate is only a factor we would consider in reviewing an application for exemptive relief, it is not determinative.

We received a submission that, in the context of fund complexes or groups, a general partner, trustee or board of directors of a corporation does not necessarily engage in "investment fund manager activities" and as such this entity is not required to be registered as an investment fund manager. The commenter also stated that only one investment fund manager per fund should be registered given the possibility of delegating to a registrant activities that require registration. The commenter views this as being consistent with the guidance for limited partnerships set out in section 7.3 of 31-103CP. The commenter also believes that the principle of delegation in section 7.3 should be equally applicable to trustees and corporations such that multiple registrations should not be necessary if the trust or corporation in question enters into a contract with a registered (or qualified) investment fund manager.

In response to the comment, we clarified the guidance on the requirement to register when the fund is part of a group or fund complex. We expect exemption applications to be made by investment fund managers that have delegated the management of the fund function to a registered affiliate, and we included guidance on the factors we will consider in respect of these exemption applications. We repealed the guidance on limited partnerships in view of this new guidance.

(e) Exemptions

i. Trades to or through a registered dealer

In response to requests for clearer guidance on the availability of this exemption in certain circumstances, we amended the Companion Policy to address additional situations that demonstrate the appropriate use of this exemption.

ii. Investment fund trades by advisers to managed accounts (formerly Adviser – non-prospectus qualified investment fund)

One commenter expressed the view that an adviser that uses funds sub-advised by either affiliated or external portfolio managers would not be able to rely on this exemption when placing trades, including rebalancing trades on behalf of its managed account clients. We note that in these circumstances exemptive relief may be requested.

iii. International dealers

We were requested to amend section 8.18 to permit foreign fund managers to rely on the international dealer exemption if they are permitted to sell the securities of their foreign funds in their home jurisdictions without registration as a dealer. We believe that it would be more appropriate to consider this issue in the context of an exemptive relief application.

We received comments on the requirement that was proposed in the June 2010 Proposal on the Canadian residency requirement for permitted clients. We included a definition of Canadian permitted client and added an express restriction in this respect.

We also received several comments expressing the view that subparagraph (e) and (f) are not redundant and should not be repealed. Given the unintended consequences of this proposed change, as indicated to us by the commenters, we agree and did not repeal these subparagraphs.

We received requests for confirmation as to whether an international dealer or adviser would be required to send existing clients a new notice with the revised wording changes to section 8.18(4)(b) and 8.26(4)(e). We confirm that the requirement has no retroactive effect and that existing clients need not receive the new notice.

We received a request to clarify whether the notice to regulators required by section 8.18(5) is prospective or retrospective. We amended the provision to clarify that the notice must be given if the person or company relied on the exemption at any time during the 12 month period preceding December 1 of a year.

iv. Dealer without discretionary authority

One commenter expressed the view that the exemption from the adviser registration requirement under section 8.23 is only available to registered dealers and that this creates a regulatory gap for firms relying on dealer registration exemptions, such as the Northwestern exemption orders or the exemption in section 8.8 for investment funds and investment fund managers. We disagree. Giving advice is not permitted under the Northwestern exemption. Accordingly, the regulatory gap referred to by the commenter is not apparent: the adviser exemption is available to registered dealers because they are registered, and not to persons or companies engaging in dealing activities under the benefit of an exemption. If when acting as a dealer the person or company triggers the adviser registration requirement, they must register as an adviser unless an exemption is available.

We received a comment suggesting that there should be an exception to the disclosure requirement in section 8.25(3) where "buy, sell, or hold" recommendations are incidental to the main purpose of the publication (for example, where the main purpose is investor education). The commenter believes that the disclosure requirements in subsection 8.25(3) are onerous and impractical. We remind the commenter that disclosure is required by the person providing advice under this exemption only where certain persons or companies have a financial interest or other interest in the security or securities being recommended. These are not new requirements. We do not agree with a distinction in disclosure requirements depending on the main or incidental purpose of the publication.

v. International advisers

One commenter has suggested that the intention of the international adviser exemption has been to provide qualifying clients with access to investment advice on foreign securities, which is often provided by way of global mandates. By their nature global mandates are structured to include some appropriate weighting for Canadian issuers reflecting Canada's relative economic position on a global basis.

While we did not make the change suggested by the commenter, we included guidance in the Companion Policy on permissible incidental advice on Canadian securities by international advisers relying upon the exemption under section 8.26. We provide examples of such permissible incidental advice.

We received the same comments and request for clarification on the Canadian residency requirement of permitted clients, the client notice and regulator notice, respectively, as for the international dealer exemption, and our responses are the same.

(f) Exceptions for members of self-regulatory organizations (SROs)

We received a comment recommending that we delay the application of the proposed change to section 9.3(6) in Québec until the adoption of the MFDA-harmonized rules. The commenter states that the proposed amendment to the exemptions found under subsection 9.3(6) may have a significant impact on mutual fund dealers operating in Québec. Paragraph 9.3(6) currently exempts mutual fund dealers in Québec from the same ongoing registrant obligations as those for which MFDA members are exempt, provided that the mutual fund dealer complies with applicable regulations in Québec.

The Autorité des marchés financiers has previously publicly stated that it intends to adopt rules largely harmonized to those of the MFDA by September 2011. Assuming that the proposed amendments to NI 31-103 will be enforced sometime in early 2011, the commenter is of the view that mutual fund dealers operating in Québec will need to comply with some of the ongoing registrant obligations in NI 31-103 for a few months, to then be subject to the new MFDA-harmonized rules.

We disagree with the comment. Mutual fund dealers in Québec must comply, since September 28, 2009, with certain sections NI 31-103, including section 14.2 and section 14.12. In the case of section 14.2, the Autorité des marchés financiers granted an exemptive relief order on September 1, 2010 to extend to mutual fund dealers in Québec the same transition granted to MFDA members. The amendment to the Rule in respect of the exemption now provided in section 9.4(4) is a clarification of the regime applicable to mutual fund dealers in Québec.

This section now provides that in Québec, the requirements listed in subsection (1) of section 9.4 do not apply to a mutual fund dealer to the extent equivalent requirements to those listed in subsection (1) are applicable to the mutual fund dealer under the regulations in Québec.

We refer in section 9.4(4) to *existing requirements* in Québec. The effect of section 9.4(4) is that existing requirements in Québec apply, and not the corresponding NI 31-103 requirement in respect of

- section 12.1 [capital requirements]

- section 12.2 [notifying the regulator of a subordination agreement]
- section 12.3 [insurance – dealer]
- section 12.6 [global bonding or insurance]
- section 12.7 [notifying the regulator of a change, claim or cancellation]
- section 13.3 [suitability]
- section 13.12 [restriction on lending to clients]
- section 13.13 [disclosure when recommending the use of borrowed money]
- section 13.15 [handling complaints]
- subsection 14.2(2) [relationship disclosure information]
- section 14.6 [holding client assets in trust]
- section 14.8 [securities subject to a safekeeping agreement]
- section 14.9 [securities not subject to a safekeeping agreement]

Since there is no equivalent *existing requirement* in Québec, the following sections of the Rule, which are included in section 9.4(1), do apply to mutual fund dealers in Québec:

- section 12.10 [annual financial statements]
- section 12.11 [interim financial information]
- section 12.12 [delivering financial information – dealer]
- section 14.12 [content and delivery of trade confirmation]

We received a request to exempt SRO members also registered in other categories from the requirement to file financial statements and working capital forms with regulators. We are not making this requested change at this time. We note that 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.

(g) Compliance systems

We received a comment to the effect that the guidance provided in the Companion Policy is unclear whether systemic monitoring responsibilities can be fulfilled through firm procedures, or whether an “off-the-shelf product” is required. We reiterate that the compliance systems requirements in the rule are principles–based and we do not mandate how registrants comply with the requirement.

(h) Solvency and financial reporting requirements

i. Capital requirements

We received comments that the current requirement that all guarantees, irrespective of their risk and/or character, be included in excess working capital, is unnecessarily onerous. The commenters submit that the interests of the public are best served by an excess working capital calculation that accounts for each of the following factors: (a) the size of the guarantee; (b) the registrant's category; (c) the likelihood the guarantee will be called; and (d) the nature of the guarantee (third-party guarantees versus related-party guarantees).

It is not possible to anticipate all situations suggested by the commenter. The excess working capital calculation has been designed to apply to all non-SRO registrants. Exemptive relief may be available if the requirement to include all guarantees is unduly burdensome.

We were also asked to reflect the non-cumulative nature of the capital requirements for a firm holding multiple registrations. We note that this is already stated in section 12.1 of the Companion Policy, under the heading *Working capital requirements are not cumulative.*

Finally, one commenter is of the view that there should be an exemption for US broker dealers provided they file the Financial Industry Regulatory Authority, Inc. (FINRA) form. We are not prepared to make this change at this time but will consider exemptive relief applications if certain conditions are met.

ii. Insurance requirements

We were asked to clarify in Form 31-103F1 that the "bonding or insurance policy" refers only to the bonding or insurance the firm must maintain pursuant to Part 12 of NI 31-103. We agree with the commenter and amended Form 31-103F1 accordingly.

One commenter has suggested that we amend Appendix A – *Bonding and Insurance Clauses.* The commenter believes that there are always exclusions and terms and conditions in commercially available bonding or insurance that limit coverage to something less than any loss arising from the listed risks. As a result, the commenter stated that strict compliance with these requirements is impossible. We disagree. The clauses in Appendix A are those currently being used in industry.

(i) KYC and suitability

We received comments to the effect that according to section 13.2(7), a registrant who is registered both as a mutual fund dealer (exempt from MFDA membership) and as an adviser would not be exempt from the requirement to establish whether a client is an insider of a reporting issuer.

The commenter believes that compliance with this requirement should depend on the capacity in which the registrant is acting in respect of a particular client and not on the number of categories of registration the firm or the individual holds. We agree and granted new blanket/omnibus relief in November 2010. We amended section 13.2(7) in the June 2010 Proposal accordingly.

(j) Restrictions on certain managed account transactions

We received several comments on the scope and application of section 13.5 for registered dealers that are members of IIROC and who conduct advising activities (IIROC advisers) to managed accounts. One of the commenters is of the view that if an IIROC adviser's proprietary inventory account is considered to be an "investment portfolio" for the purposes of section 13.5(2)(b) of NI 31-103, the amended section 13.5 of NI 31-103 (as published as part of the June 2010 Proposal) would prohibit the IIROC adviser from selling fixed income securities from its inventory account to its discretionary managed account clients. We had not fully considered the impact that the June 2010 Proposal would have on the ability of an IIROC adviser to trade securities from its inventory account.

Therefore, we did not make the change proposed in the June 2010 Proposal. However, we added additional guidance in the Companion Policy on this issue.

(k) Referral arrangements

In response to a comment that the definition of referral arrangements is too broad, we again note, as in previous comment responses throughout the consultation process on NI 31-103, that this definition is intended by the CSA to be broad, as we are concerned with the business conduct of registered individuals. We however added guidance in the Companion Policy indicating our view that the receipt of an unexpected gift of appreciation would not fall within the scope of a referral arrangement.

We received numerous comments on the fact that the provisions in NI 31-103 relating to referral arrangements and the rules made by IIROC and the MFDA in order to conform with NI 31-103 could result in the unintended consequence of regulating business arrangements of registered individuals acting in the capacity of a licensed insurance agent outside their dealer that are not related to securities-related business.

We confirm, in response to questions raised by commenters, that:

- we do not generally view a syndication arrangement for the offering of securities as a referral arrangement;
- the referral arrangement regime in the Rule does not prescribe that payment of referral fees be made to the firm;
- the requirement to ensure that the required disclosure is provided to clients rests on the registered firm; however, it can be provided by either party provided it is clearly set out in the referral agreement;
- an arrangement to purchase a list of potential clients may be considered a referral arrangement;
- a finder's fee may be considered to be within the scope of the referral arrangement provisions; and
- we reiterate that referral arrangements within the same firm are not generally covered by the regime, however, we expect a registered firm to consider these types of referrals as part of the conflicts requirements in section 13.4.

(l) Loans and margins

We received a comment stating that section 13.12 should be amended to allow loans made by an investment fund manager to a fund where the loan is for the purposes of enabling a fund to temporarily pay for unitholder redemptions and fund expenses. We acknowledge that an investment fund manager that lends money, extends credit or provides margin in certain circumstances may be prohibited from these activities under section 13.12. Accordingly we have provided an exception in section 13.12(2) which allows an investment fund manager to make certain loans. Where any conflicts of interest arise in respect of these short-term loans, we expect registrants to manage that conflict.

One commenter has asked that we clarify whether section 13.12 is intended to prohibit a registrant from providing products to its clients that have embedded in them a leverage component. We amended the Companion Policy to provide additional guidance on this issue.

(m) Complaint handling

We received requests for clarification on the interface between the Québec regime for complaint handling, including specific questions as to how compliance with the *Securities Act* (Québec) provisions, which is deemed to be compliance with the Rule, is affected when the registrant is registered in several jurisdictions.

The Rule provisions on complaint handling are based on the Québec regime. However, Québec cannot adopt in a Rule provisions that are, in substance, already in its legislation. To the extent a registrant deals with a client in Québec, it must comply with sections 168.1.1 to 168.1.3 of the *Securities Act* (Québec) in all cases. When dealing with clients in other jurisdictions, the registrant must meet the Rule requirements. The only substantive difference is that the Autorité des marchés financiers will generally not act as mediator for complaints of clients outside Québec.

We also received comments stating that the guidance in the Companion Policy is prescriptive and as such, should be in the Rule. We remind commenters that the guidance, which was developed by the CSA together with IIROC and the MFDA, sets out our expectation on what would constitute an effective complaint handling system. The requirement to deal with client complaints provided in the Rule remains a principle-based requirement.

(n) Dispute resolution service

We received comments on the proposed list of complaints in section 13.16. We have not made this change and have maintained the language in the current law.

We have extended, in section 16.16, the transition period for the coming into force, outside Québec, of section 13.16 to September 28, 2012 to allow the CSA to further consider this regime in light of a number of questions we have received. Considering the importance of this provision in respect of investor protection, we may publish proposed amendments for comments in the future.

Commenters have suggested that the SROs amend their rules to provide the same choice of dispute resolution service. We note both IIROC and the MFDA rules mandate membership in the *Ombudsman for banking services and investments* (OBSI), which is consistent with section 13.16 of the Rule since OBSI is considered an independent dispute resolution service. We note that SRO rules may be more prescriptive than the requirements prescribed in the Rule.

(o) Relationship disclosure information

A commenter has requested that section 14.2(j) be amended in order to reflect the transition period for the coming into force of section 13.16 [*Dispute resolution service*]. We agree and amended section 14.2(j) accordingly.

(p) Notice to clients by non-resident registrants

We received comments requiring clarifications on the meaning of physical place of business. We also received a comment expressing the view that we should consider revising section 14.5 to exempt all registered firms who have a head office in Canada from the requirement to provide a section 14.5 notice to those of its clients who live in any other Canadian province or territory, regardless of whether the registered firm has a place of business in that Canadian province or territory.

We amended section 14.5 by adding an exception to the requirement to provide the risk notice to clients in a local jurisdiction if the firm has its head office in Canada and is registered in the local jurisdiction. The Rule no longer refers to a physical place of business.

(q) Account activity reporting

i. Trade confirmations

Further to the June 2010 Proposal, we are adding a requirement in section 14.12(5) for investment fund managers to send trade confirmations in certain circumstances. One commenter has expressed the view that section 8.6(1) exempts a portfolio manager from the requirement to register as an exempt market dealer if the portfolio manager acts as adviser and as investment fund manager to a fund, and the trades in units of the fund are with managed accounts of the portfolio manager. The commenter suggested that one unintended consequence of the addition of section 14.12(5) in the June 2010 Proposal is that it reinstates the requirement to send trade confirmations while the Rule exempts the firm relying on the section 8.6 exemption from this requirement. We agree with the commenter and have added a new subsection 14.12(6) which states that the trade confirmation requirement does not apply to trades made in reliance on section 8.6.

We received a comment expressing the view that 14.12 of the Companion Policy should be amended to confirm that the existing documentation is sufficient to satisfy a dealer's outsourcing obligations. In response to this comment, we reiterate that firms may meet their obligations in a variety of ways, and our expectation is that firms ensure they are meeting the requirements to oversee their service providers. The level of oversight and the determination as to whether existing arrangements meet those requirements is up to the firm. We confirm that the guidance on outsourcing is not retroactive.

ii. Account statements

We received informative comments on our consultation on what securities are required to be reported in account statements and on the determination of the value of the securities reported in account statements. We have not made the proposed amendments to section 14.14 of the Rule that would have required that securities be valued using fair value. Section 14.14 continues to refer to market value.

We were asked to provide further clarity for scholarship plan dealers with respect to account reporting, given that these firms are scholarship plan dealers and investment fund managers of scholarship plans. We did not make any change to the Rule or the Companion Policy, as the dealer has the responsibility to send the account statements, and dual registration does not impact this requirement. The dealer may however outsource this function to the investment fund manager, but the dealer remains responsible for the reporting it outsources. We provide guidance on outsourcing in the Companion Policy.

On the timelines for providing account statements, we received a comment to the effect that the requirement to deliver monthly statements would apply to the dealer's registration as an exempt market dealer but not to the dealer's registration as a mutual fund dealer creating a misalignment in timing of delivery of statements. Each category of registration has its own requirements, which in certain cases may not align for registrants in multiple registration categories. We expect compliance with the Rule as prescribed for each category.

We were requested to clarify that registered dealers can continue to rely on third-party pricing providers when an observable market price is unavailable. We confirm that third-party pricing providers can be used by registrants to determine valuation of securities where an observable market price is unavailable, provided that there is adequate oversight of the service providers by the registrant in accordance with the guidance on outsourcing in the Companion Policy.

We received comments suggesting that registrants should be exempt from the requirement to send account statements where another party is sending a statement. We provide guidance on outsourcing in the Companion Policy.

3. Responses to comments received on NI 33-109 and related Forms

(a) NI 33-109

We received a comment that the definition of “permitted individual” in NI 33-109 should be revised to clarify that a permitted individual may also be a registered individual. We amended the definition accordingly. We clarified the guidance in 33-109CP to confirm that a permitted individual may or may not be a registered individual.

One commenter has stated the CSA should consider extending the deadline from 7 days to 10 business days to report material changes (for example, outside business activities, criminal disclosure, etc.) since it can take time for registered firms to review the individual’s information for completeness and gather the necessary supporting documents prior to reporting the change on the National Registration Database (NRD). We agree that longer timelines for filings are appropriate and changed all 5 business day and 7-day time periods to 10 days. Please note that the revised 10 day period is not 10 business days.

(b) Form 33-109F1 *Notice of Termination of Registered Individuals and Permitted Individuals*

One commenter has asserted that section 4 of Item 5 of Form 33-109F1 (which requires disclosure of "any written complaints, civil claims and/or arbitration notices filed against the individual or against the firm about the individual's securities-related activities…" in the past 12 months) is too broad in its scope. We disagree with the commenter. Written complaints are usually serious enough to warrant disclosure in section 4 of Item 5. We require this information in order to assess continued fitness for registration of the individual.

(c) Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals*

We received several comments on this form:

- one commenter stated that the instructions contained in this form, which advises the applicant to contact the compliance, registration or legal department of the sponsoring firm or a legal advisor if they have any questions relating to the information contained on the application, should be removed. The commenter is of the view that unless the legal adviser is familiar with securities regulations pertaining to disclosures, they

could provide the registrant with inappropriate advice. This has occurred on a number of occasions where applicants failed to provide required information based on advice received from an outside legal source. Consequently, we amended the instructions to indicate that the applicant should consult with a legal advisor with securities regulation experience;

- in response to the comment that since "branch manager" is no longer an IIROC category this field should be updated to indicate *Name of Supervisor or Branch Manager*. We agree and made this change;

- one commenter suggested the language in the third section of Item 8.4 of Schedule F be amended to only relate to relevant experience. We disagree. This schedule is meant to capture level of responsibility, how much time has been spent on these activities and the applicant's continuous education activities. These elements combine to form a description of relevant experience;

- one commenter stated that we should amend paragraph 2 of the guidance notes which advises applicants that they must disclose offences even if an absolute or conditional discharge has been granted (except as per outlined exceptions) or the charge has been dismissed, withdrawn or stayed. The commenter does not believe this is relevant information. We have not changed this paragraph because we believe that, although the charges may no longer be outstanding, they may form part of the assessment of the applicant's fitness for registration;

- we received a comment to the effect that the requirement to provide a listing of all individual creditors included in a bankruptcy or proposal which has been discharged is superfluous and that it should be sufficient to provide the total outstanding amount owing at the time of the bankruptcy or proposal. We disagree. The list of creditors is relevant in assessing the solvency of the applicant;

- we did not amend the form to indicate whether another business activity results in a shared premises situation; and

- in response to the comment that we should append a specific form for the submission to jurisdiction and appointment of agent for service for individuals, we added guidance in 33-109CP indicating that the form used by the firm is an acceptable format to the regulator.

(d) Form 33-109F5 Change of Registration Information

We agree with the comment that we should add the NRD number and the registration categories of the firm, and have made this change.

(e) Form 33-109F6 *Firm Registration*

We received several comments on the requirements to provide information on "specified affiliates"; commenters stated that they consider the list of specified affiliates to be too broad and onerous to provide this disclosure. We note that, as outlined in Part 9 *Certification*, all information must be provided to the best of the applicant's knowledge and after reasonable inquiry. We acknowledge that this disclosure will vary according to the size of the firm and the number of affiliates. We amended Parts 7 and 8 to limit the information that must be provided to the last seven years in order that this disclosure is less onerous.

We received a request to clarify the meaning of "significant conflicts of interest" in section 6.2 of Form 33-109F6. As this is a principle based requirement, we expect registrants to make this determination according to the nature of the conflict and the size and activities of the firm.

List of commenters

- Advocis
- Alternative Investment Management Association - Canada
- BMO Financial Group's Private Client Group
- Borden Ladner Gervais LLP
- Canadian Bankers Association of Canada
- Canadian Foundation for Advancement of Investor Rights
- Canadian Imperial Bank of Commerce
- Canadian Investor Protection Fund
- Chambre de la sécurité financière (*available on the AMF website only*)
- CI Investments Inc.
- CSI Global Education, Inc.
- Edward Jones
- Exempt Market Dealers Association of Canada
- Fidelity Investments Canada ULC
- Gestion Universitas (*available on the AMF website only*)
- IGM Financial Inc.
- Independent Financial Brokers of Canada
- Investment Funds Institute of Canada
- Investment Industry Association of Canada
- Irwin, White & Jennings counsel to Growth Works Capital Ltd.
- Lycos Asset Management Inc.
- Manulife Securities Incorporated and Manulife Securities Investment Services Inc.
- Mouvement d'éducation et de défense des actionnaires (MÉDAC) (*available on the AMF website only*)
- Mouvement Desjardins (*available on the AMF website only*)
- Mutual Fund Dealers Association of Canada
- Nexus Investment Management Inc.
- Osler, Hoskin & Harcourt LLP
- RBC Dominion Securities Inc.
- RESP Dealers Association of Canada
- Rogers Group Financial
- Stikeman Elliot LLP
- Stonegate Private Counsel