THE INVESTMENT FUNDS INSTITUTE OF CANADA
L'INSTITUT DES FONDS D'INVESTISSEMENT DU CANADA
IFIC
11 KING ST. WEST, 4TH FLOOR, TORONTO, ONTARIO, M5H 4C7 TEL 416 363-2158 FAX 416 861-9937 WEBSITE www.ific.ca

June 19, 2007

Sent via Email: jstevenson@osc.gov.on.ca; consultation-en-cours@lautorite.qc.ca;

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

In care of:

John Stevenson
Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, ON M5H 3S8

Anne-Marie Beaudoin
Directrice du secrétariat
Autorité des marchés financiers
Tour de la Bourse
800, square Victoria
C.P. 246, 22e étage
Montréal, Québec H4Z 1G3

Dear Sirs/Mesdames:

Re: Proposed NI 31-103 *Registration Requirements*

We are writing to provide the comments of the Members of The Investment Funds Institute of Canada ("IFIC")[1] on the Notice and Request for Comment dated February 27, 2007 ("the

[1] Founded in 1962, IFIC is the national association of the Canadian investment funds industry, acting as a voice of the industry to government, regulators and the public. Membership includes mutual fund management companies, retail distributors and affiliates from the legal, accounting and other professions from across Canada, who work in an open, consultative process to ensure all views are considered. Assets under administration, representing approximately 95% of the industry, currently stand at $712 billion as of May 30, 2007.

Notice"), on Proposed National Instrument 31-103 *Registration Requirements,* Proposed Companion Policy 31-103CP and Proposed Amendments to Multilateral Instrument 33-109 *Registration Information* published for public comment by the Canadian Securities Administrators ("CSA") (respectively, the "Proposed Instrument" and the Proposed Companion Policy" and collectively, the "Proposal").

We support regulatory proposals that provide consistent treatment of the consumer experience, greater clarity and consistency of rules, and efficiencies in process. It is from that perspective that we have assessed the Proposal.

We fully endorse the CSA's stated aim of the Proposal - "to create a flexible and administratively efficient [registration] regime with reduced regulatory burden". We also commend the CSA for its efforts in achieving the level of uniformity and harmonization of the current myriad of registration-related rules. Given the historical differing positions taken by the various CSA members on registrant regulation, the Proposals are indeed a welcome achievement on the part of the CSA.

Our comments are limited to the aspects of the Proposal that are applicable to investment funds and their managers and distributors. Detailed comments are set out in the attached Appendix. In this letter we briefly highlight our Members' primary concerns.

A. General Issues

1) Business trigger

We generally support the move to the business trigger. However, Members are concerned that moving from a trade trigger to a business trigger has created uncertainties regarding the scope of activities requiring registration. Members are also concerned about the manner in which the "business trigger" will be applied and interpreted by the enforcement and compliance branches of the various CSA members and self-regulatory organizations ("SROs").

2) Amendments to securities legislation

IFIC Members are concerned about the lack of clarity on the status of the amendments to securities legislation required to implement the new registration categories and the business trigger. We encourage CSA members to harmonize in all jurisdictions the proclamation dates for the required amendments to facilitate implementation. We believe that a complete analysis of the Proposal is possible only when the legislative approach and the specific wording of the draft legislation in each jurisdiction are known. A specific issue is the scope of "being in the business of a 'fund manager'", and moreover the scope of "investment fund manager".

3) Complaint handling

Generally, IFIC believes that the Proposed Policy must be directional, less prescriptive, and concordant with the requirements of existing complaint handling systems to avoid client confusion.

We suggest that where a complaint handling process which meets the guiding principles of the Proposed Instrument has been established by an SRO, those SRO members will be exempt from complying with the applicable sections of the Proposed Instrument. For example, current MFDA Rules address what is proposed in sections 5.30, 5.31 and 5.32. We recommend that complaint handling be added to section 3.3 of the Proposed Instrument as another exemption for SRO members.

In addition, once a client complaint proceeds to litigation, the Proposed Instrument should impose no time limits on its resolution. Premature or forced resolution of a complaint simply to comply with the Proposed Instrument could be prejudicial to those involved in civil (or criminal) proceedings.

4) Inter-registrant information sharing

We are concerned that the proposed regime for sharing information between registrants does not fit with current legal realities such as privacy, employment and defamation laws and will create legal uncertainties for IFIC Members.

B. Fund Manager Issues

1) Fund Manager Registration

On the concept of Fund Manager Registration, we support regulatory direction for harmonization of these new rules with all other registration requirements to which an individual firm is subject. As the CSA considers the structure of the proposed registration requirements, we recommend that the approach adopted should avoid "layering", in other words, to avoid registrants in broader categories with more onerous requirements also having to qualify, register and meet duplicative requirements in more narrowly-focused categories.

2) Fund Manager Compliance Rules

We support the current regulatory direction towards harmonized, principles-based compliance rules for fund managers which would accommodate the diversity of permitted structures. Nevertheless, more clarity would be helpful on the roles and status of the Ultimate Designated Person ("UDP") and the Chief Compliance Officer ("CCO"). We believe the scope of the compliance regime must be focused on securities regulatory activities and the roles of the UDP and the CCO must be more accurately described. Regarding the CCO proficiency requirements, we believe those proposed unduly restrict who can perform the role. We provide an alternative approach in this document which we believe, will result in highly qualified and effective compliance professionals.

C. Dealer and Advisor Issues

We support the objective of the Proposed Instrument to harmonize, streamline and modernize the registration regime for dealers and advisors across the CSA jurisdictions. In addition, we

would note the importance of achieving greater harmony in the rules, and application of rules, of the SROs, whose role will be critical to the shaping of a consistent investor experience.

1) Mutual Fund Dealer registration

IFIC supports the retention of the Mutual Fund Dealer category. We further support the proposals to ensure adequate transition periods, and the permission of grandfathering of proficiency requirements where appropriate.

The Proposed Instrument appears to confine the business of a Mutual Fund Dealer, a position that does not properly reflect the realities of the distribution business, which has broadened significantly in scope in recent years. We are concerned by the language in the Proposal restricting mutual fund dealers and their advisors "solely" to the distribution of mutual funds. Professional financial advisors are engaged in the analysis of the financial situations of their clients, and in recommending solutions for their investment needs from a wide array of products including GICs, Principal-Protected Notes, Mutual Funds, and Segregated Funds. The Proposal's language should be modified to reflect these realities.

As noted above in our general issues, we desire more discussion with you on the business trigger and how it will be defined and interpreted.

2) Exempt Market Dealer

The Proposal introduces a new category of registration: the Exempt Market Dealer. We require more discussion about the regulatory oversight structure that would be faced by mutual fund dealers that also distribute exempt market products. It is our view that the registration regime should recognize the higher level of oversight that membership in a SRO brings, and accordingly MFDA Members should be permitted to sell exempt market products without the additional requirement to register as Exempt Market Dealers. As a first step, however, we urge the CSA to commit to providing a nationally-harmonized definition of "Exempt Market Product".

3) Proficiency Requirements

We would also support a modular, product-specific approach to proficiency requirements for dealers and advisors who wish to distribute exempt market products. We believe that a modular approach to proficiency will provide more targeted courses and result in more informed advisors enabled to better serve their clients. In addition, we believe that the market would benefit from the entry of new competitive providers for the delivery of the Canadian Securities Exam. Although we have provided a brief outline in the Appendix, we will be providing the CSA with more detailed proposals along these lines in the coming weeks.

4) Compliance

With respect to the compliance areas, IFIC supports regulatory direction to look at suitability from the level of the portfolio rather than the product. We would like to further discuss the requirements for ongoing suitability obligations which will be implemented at the SRO level. It is imperative that all dealers be subject to the same rules to ensure that there is consistency in investor protection.

5) Supervision

We also require clarification of the term "Branch" as this registration category has been removed from the Proposed Instrument and replaced by the term "Regional Supervisor". We believe that taking a principles-based approach will better accommodate the different distribution models and their associated risks.

6) Complaint Handling

It is important that the Proposed Companion Policy be directional, less prescriptive, and concordant with the requirements of existing complaint handling systems, through SROs and other regulatory bodies, to avoid client confusion. We look forward to having further discussions with you regarding the structure of an appropriate complaint resolution process.

7) Incorporated Salespersons

Although the Proposal does not provide specific rules with respect to incorporated salespersons, IFIC supports definitive regulatory direction for the MFDA proposal to continue to permit the principal-agent model with directed commissions, which maintains the benefits of incorporation to salespersons without compromising investor protection and would be pleased to work with regulators in developing a solution for inclusion in NI 31-103.

We desire more discussion with regulators on the possible interpretations of this relationship by other stakeholders (including Canada Revenue Agency).

To further the goal of harmonization, regulators need to ensure a consistent approach is applied by the SROs so that a consistent client experience is provided.

8) Client Relationship Model

With respect to the Client Relationship Model, it is important that we, both regulators and industry, do a better job in creating an environment of greater clarity and transparency in the client-advisor relationship. The industry has evolved to the point where many financial advisors have voluntarily incorporated into their financial planning practice the concepts of investment policy statements, client service commitment guarantees, written financial plans, and separate point of sale disclosure documents on how they are compensated. The Proposal

introduces a new concept called the Relationship Disclosure Document ("RDD") which will make these practices the norm.

While we support the additional clarity and transparency that the RDD would bring to the account opening process, we note that it is being introduced at the same time that a parallel initiative to revamp Point of Sale ("POS") disclosure is being introduced by the Joint Forum. Clearly there is overlap between the principles of the RDD and the POS initiative. As such, we are requesting that these two initiatives be integrated and that they be conducted with a full review of all disclosure presently required and provided over the course of the client-advisor relationship, with the aim of understanding where the gaps are and where duplication can be eliminated.

We propose that all new requirements be accompanied by a thorough review of the impact on investors, both positive and negative, and a Cost Benefit Analysis ("CBA"). The review and CBA should include a clear articulation of regulatory objectives, consultations with dealers and advisors for briefings on the range of business models, relationships and disclosures that exist and areas that should be probed in a client survey, including in-field testing with clear objectives and language that will elicit responses that can inform regulatory decisions.

We provide further details on these and other issues in the attached Appendix where, for greater clarity, we identify in matrix format each issue for those proposed rules that have the greatest impact on our Members and provide both analysis and suggestions.

We look forward to discussing the issues with you in greater detail.

We thank you for providing us with the opportunity to comment on the Proposal. Don't hesitate to call me directly, Ralf Hensel, Director of Policy, Manager Issues at (416) 309-2314 or rhensel@ific.ca, or Jon Cockerline, Director of Policy, Dealer Issues at (416) 309-2327 or jcockerline@ific.ca should you have any questions or wish to discuss these comments.

Yours truly,

THE INVESTMENT FUNDS INSTITUTE OF CANADA

By: Joanne De Laurentiis
President & Chief Executive Officer

JDL/rh

Appendix to CSA Submission Letter

IFIC's Detailed Comments and Suggestions

NATIONAL INSTRUMENT 31-103

NATIONAL INSTRUMENT 31-103

General Issues		
Issue	Proposed Rule	IFIC Questions and Notes
Status of Legislation to Require Fund Manager Registration	Amendments required to provincial Securities Acts to mandate registration of fund managers and to amend registration trigger to "being in the business".	IFIC Members are concerned about the lack of clarity on the status of the required amendments to securities legislation that are necessary to implement the new registration categories and the "business trigger" for dealing in securities and acting as an investment fund manager. What will these amendments require? And will these amendments be uniform and be implemented on harmonized proclamation dates? IFIC Members believe that a complete analysis of the Proposal will really only be possible when the draft legislative approaches are outlined for each province, including the specific wording of the legislation. Specific issues for investment fund managers that will arise from reviewing the draft legislative proposals relate to the scope of "being in the business of 'fund manager'". The legislation, or enacting rule, must clarify the scope of "investment fund manager", to ensure, for example, that trustees of investment funds are not considered investment fund managers, simply because of the trustee's powers over and responsibilities towards a fund, particularly where a separate entity acts as fund manager. Similarly, for funds structured as limited partnerships, the general partner should not be required to register as an investment fund manager where it has delegated management of the limited partnership to a separate management company.
Trade Trigger vs. Business Trigger	"Business trigger" (**see NI 31-103 Notice Background**). The objective is to improve the registration process. The CSA feels the business trigger is simpler and more flexible than the trade trigger regime, specifically it will simplify the process and reduce the	We support the move to the business trigger. However, Members are concerned that moving from a trade trigger to a business trigger has created uncertainties regarding the scope of activities requiring registration. For example, will the business trigger result in unregistered sales support requiring registration and/or will this result in an increase number of registered persons required for supervision responsibilities. We require a

General Issues		
Issue	Proposed Rule	IFIC Questions and Notes
	number of statutory registration exemptions and exemptive relief applications. Also, it will bring our registration regime in line with the US, UK, Australia, Hong Kong, and Singapore. **Note**: "[The CSA] intends to monitor experience with the business trigger for a period of time (1-2 years) and then assess whether [they] should weight the criteria."	clearer definition of the business trigger and the proposed mechanism for expanding the list of activities requiring registration. We require clarity as to the definition of "dealing" in the legislation which is being tabled to give effect to the business trigger. This would provide us with clarity on the audit and enforcement functions of the SROs. We would like clarification as to the CSA's position regarding the obligation for financial planners to become registered. IFIC recommends that fee-for-service financial planners (not affiliated with a mutual fund dealer) require registration.
Complaint Resolution Process	**31-103CP – 5.12 Client complaints** A complaint is the expression of at least one of the following elements that persists after being considered and examined at the operational level capable of making a decision on the matter: a reproach against the firm, the identification of a real or potential harm that a client has experienced or may experience or a request for remedial action. The initial expression of dissatisfaction by a client, whether in writing or otherwise, will not be considered a complaint where the issue is settled in the ordinary course of business. However, if the client remains dissatisfied and such dissatisfaction is referred to the firm's compliance staff, then it will be considered a complaint. The complaint should be handled promptly by	The discussion in the CP is confusing because it tries to define what a complaint is and is not – such attempted definition should be avoided. Generally, it is important that the CP be directional, less prescriptive, and concordant with the requirements of existing complaint handling systems to avoid client confusion. Specifically, no timelines should be imposed when a complaint proceeds to litigation. Client complaints should be defined as being limited to regulatory complaints submitted to the firm. Non-regulatory complaints (such as those regarding service or fund performance) should be explicitly noted as being outside the scope of this instrument. The recommendations of the Sub-Group seek to clarify the definition and suggest a simplified process for responding to complaints.

General Issues		
Issue	Proposed Rule	IFIC Questions and Notes
	sales supervisors or compliance staff, and in most cases, a resolution should be provided within three months of the date the complaint was received.	
Mechanism contemplated for inter-registrant information-sharing	**Section 8.1(1)** – On request, a registered firm must disclose, to another registered firm that is considering whether to employ, retain as agent, or accept as a partner a person, all information in its possession or of which it is aware that is relevant to the person's conduct or to an assessment of the person's suitability as a registered individual or that is material to the hiring of the person by the registrant.	We are concerned that the proposed inter-registrant information sharing regime does not fit with current legal realities such as privacy, employment and defamation laws and will create legal uncertainties for IFIC Members.

Manager Issues		
Issue	Proposed Rule	IFIC Questions and Notes
Role of Fund Manager CCO / Compliance System	**NI 31-103 - 2.9 (1)** A registered firm must designate an individual to be responsible for discharging the registered firm's obligations under securities legislation. **(2)** An individual designated under subsection (1) must be, (a) an officer or partner of the registered firm, or (b) if the registered firm is a sole proprietorship, the sole proprietor **31-103CP -** Compliance is the responsibility of the firm as a whole, and not *only* the responsibility of the individuals who are registered to act on behalf of the firm in the capacities of UDP and CCO. **NI 31-103 - 5.26 (1)** A registered firm must establish, maintain and enforce a system of controls and supervision designed to (b) manage the risks associated with its business in conformity with prudent business practices.	We believe there is a discrepancy in the allocation of roles between a UDP and the CCO. We believe that the rule to be considered in Canada should be consistent in this respect with that adopted by the SEC, namely that the UDP is the person responsible for discharging the registered firm's obligations under the securities legislation while the CCO is the individual responsible for administering the firm's policies and procedures adopted under those obligations. Further, the language in 5.26 (1) is overbroad and should be amended to align in this regard with the SEC rule which requires the registered firm to establish, maintain and enforce written policies and procedures *reasonably designed to prevent violation of the Securities Act* [emphasis added] and the rules adopted thereunder. The current proposal purports to include aspects of the registered firm's business that are beyond securities activities, and hence are beyond the scope of the CSA. IFIC's sub-group has recommended drafting changes to sections 2.9 and 5.26 of the Rule to reflect the view that the CCO's role should be one of administering the compliance policies and procedures. The CCO should be a senior position within the firm. The recommendations reinforce this concept. The proposed language incorporates the view taken by the SEC from the Compliance Rule under the Investment Advisers Act of 1940

Manager Issues		
Issue	Proposed Rule	IFIC Questions and Notes
Fund Manager CCO Proficiency Requirements	Same as current advisor rule: CCO must: (a) have been registered as an "advising representative" of a portfolio manager; or (b) be a lawyer or CA, have passed CSC and PDO, have 3 years experience with a registrant or 3 years practice and 1 year with a registrant; or (c) have passed CSC and PDO and have 5 years' employment with a registrant (including 3 years working under a CCO) or 5 years' employment with a federally regulated financial intermediary in a capacity relating to portfolio management and employed by a registrant for 1 year.	Fund managers engage in very different activities than Portfolio Managers. Valid experience may exist in compliance leaders who are not lawyers or CAs. In any event, many functions are contracted out to third party registrants who have required proficiency. We would like to suggest alternative, appropriate proficiency requirements, or exemptions when a fund manager makes use of qualified third parties. We also have concerns regarding the proposed education requirements. Two alternatives were considered for the proficiency requirements of the CCO: (i) amendments to the current language, tailoring prescribed requirements to meet the needs of the portfolio management/fund manager business and; (ii) recommending a principles-based approach to proficiency based on the model adopted by the SEC Compliance Rule of the Investment Company Act of 1940. Specifically, we recommend grandfathering of the current "relevant experience" requirements. We suggest there be no mandated/required professional (lawyer or CA) designation and, as an alternative to the CSC and PDO courses, we suggest a "fit for purpose" proficiency certification for CCOs. More specifically, IFIC proposes to offer courses specifically designed for individuals seeking the position of Chief Compliance Officer for a mutual fund company.
Fund Manager Conflicts of Interest	**Part 6 - Conflicts**	Given the existence of National Instrument 81-107, for example, it is confusing and inappropriate for the Proposal to regulate the same areas, such as in that case, conflicts management by fund managers. Much of Part 6 should be deleted as it applies to registrants that are investment fund managers, since NI 81-107 has already mandated a regulatory scheme to address conflicts of interest experienced by investment fund managers in managing their funds.

Manager Issues		
Issue	Proposed Rule	IFIC Questions and Notes
Elimination of international advisor registration category and exemptions available for international portfolio managers	**Section 9.14 (2)**	Many Canadian mutual fund complexes engage investment advisors located in non-Canadian jurisdictions to provide investment management expertise regarding non-Canadian securities, either directly as a portfolio advisor to the funds or indirectly as sub-advisor to the portfolio advisor. Many of those investment advisors choose to register in Canada under the OSC's registration category of "international advisor". This category is a restricted category of advisor registration designed specifically to allow non-Canadian advisors to register without the full regulatory burden of domestic advisor registration on the policy basis that such advisors are already highly regulated in their home jurisdictions and would only be advising a list of sophisticated clients in Canada on non-Canadian securities. However, with the proposed elimination of the "international advisor" registration category, such non-Canadian advisors would need to become full domestic advisors (now "portfolio managers") and bear the full regulatory burden (including proficiency of individual advising representatives), notwithstanding that they are registrants with other recognized regulators globally, their Canadian clients are primarily institutional and their focus is on non-Canadian securities. IFIC is concerned that this will affect Canadians' access to such global investment management expertise by making the registration process a barrier to entry for these international participants. Moreover, although the Proposals introduce an international portfolio manager registration exemption, the proposed conditions attached to such exemption (including the prohibition on solicitation, and the very narrow list of permitted clients which does not include an investment fund) render the exemption unavailable to most non-Canadian advisors. IFIC strongly encourages the CSA to consider including a nationally harmonized category of registration for international advisors which would mirror the current Ontario international advisor registration category contained

Manager Issues		
Issue	Proposed Rule	IFIC Questions and Notes
		in Ontario Securities Commission Rule 35-502. IFIC Members are concerned, that without this accommodation, previously negotiated and long-standing relationships and Canadians access to international investment expertise will be put into jeopardy.
Fund Manager Capital Requirements	Minimum $100,000 based on working capital formula with inclusions for unsubordinated related party debt; and deductions for (1) margin on securities held; (2) FIB deductible, (3) guarantees, and (4) un-reconciled differences.	Unsubordinated debt and investment risk on securities held should be treated as per GAAP and not as the subject of specific inclusions/deductions. Although we understand the minimum capital calculations are the same as those applied to other registrants, we believe the business operations of a fund manager dictate that the treatment of the above items in accordance with GAAP is more appropriate.
Fund Manager Insurance Requirements	FIB with clauses A – E (App A to Rule) in the greater of: (a) 1% of AUM to a maximum of $25 million; (b) $200,000; or (c) the [higher] amount indicated to be necessary by a resolution of the directors of the fund manager.	Given the multiplicity of structures and varying access to insurance over time, we suggest a flexible approach that would allow the Board of a fund manager to determine the amount and type(s) of coverage to be maintained. Although we understand the insurance requirements are the same as those applied to other registrants, we believe the business operations of a fund manager dictate that a flexible approach to determining insurance coverage is more appropriate.

Manager Issues		
Issue	Proposed Rule	IFIC Questions and Notes
Filing of Financial Statements	**NI 31-103 – 4.24(1),(2)**	Proposal considered by both Fund Manager Capital Sub-Group and Fund Manager Compliance Sub-Group. No recommendations.
NAV Error Report	**NI 31-103 – 4.24(3)**	Considered by both Fund Manager Capital Sub-Group and Fund Manager Compliance Sub-Group. No recommendations. Generally, IFIC should urge CSA to not require filings for routine adjustments – there is currently no definition for "net asset value adjustment". Also, what will the CSA do with the information filed?

Dealer Issues		
Issue	Proposed Rule	IFIC Questions and Notes
Structure of proposed dealer registration requirements	**Part 2.1 Dealer categories** "A dealer, when registered, must be registered by the regulator in one or more of the following categories: a) investment dealer, being a dealer that is permitted to deal in any security; b) mutual fund dealer, being a dealer that is permitted to deal solely in a security of a mutual fund; c) scholarship plan dealer , being a dealer that is permitted to deal solely in a security of a scholarship plan, educational plan or educational trust; d) Exempt Market Dealer [see definition below]; and e) Restricted Dealer [see definition below]."	IFIC believes that the registration regime must avoid "layering", in that registrants registered in broader categories with more onerous requirements should not have to qualify, register and meet duplicative requirements in more narrowly-focused registration categories. IFIC recommends that the CSA clarify that the Proposal establishes the following as a logical hierarchy for registrants: (a) Firms that wish to deal in all types of securities and act as underwriters must be registered as investment dealers. Representatives must have full proficiency. (b) Firms that wish to deal in mutual fund securities (whether issued by a publicly offered mutual fund or a privately distributed mutual fund) must be registered as a mutual fund dealer. Proficiency for representatives should be consistent with this function and must be tailored to the particular product being distributed. Given the nature of a mutual fund and the proficiency required to distribute mutual funds, the ability to distribute exempt securities should be permitted as part of a mutual fund dealer registration, since it should be assumed that this proficiency is a sub-set of the ability to deal in mutual funds. (c) Firms that wish to deal in scholarship plans must be registered as scholarship plan dealers. Proficiency for individuals should be consistent with this function and must be tailored to the particular product being distributed. Given the nature of the product, we recommend no ability for scholarship plan dealer

Dealer Issues		
Issue	Proposed Rule	IFIC Questions and Notes
		representatives to deal in any other type of security, unless additional proficiency is achieved. (d) Firms that wish to deal only in exempt securities must be registered as exempt market dealers. Proficiency for individuals should be consistent with this function and must be tailored to the exempt market. (e) Firms wishing to deal only in selected securities must be registered as restricted dealers. Proficiency for individuals should be consistent with this function and must be tailored to the selected securities being dealt in. IFIC also recommends that NI 81-102 be reviewed for differences in treatment of MFDA and IDA members that serve no public policy purpose, such as the trust account requirements of Part 11 of NI 81-102. IFIC recommends that the CSA consider requiring all dealer registrants to become members of an SRO. IFIC Members are concerned that it will become increasingly common for mutual fund sales representatives who face enforcement proceedings through their SRO to simply discontinue their mutual fund license and choose to deal solely in exempt securities through an exempt market dealer. This behaviour may lead to product arbitrage and potential lessening of investor protection. For example, the exempt market dealer category of registration could benefit from the rigour that SRO oversight provides. The level of oversight necessary for exempt market dealers and restricted dealers should be commensurate with the inherent risk of the particular product distributed.

Dealer Issues		
Issue	Proposed Rule	IFIC Questions and Notes
Range of securities that can be sold by mutual fund dealers	**Part 2.1 Dealer categories** "A dealer, when registered, must be registered by the regulator in one or more of the following categories: … b) mutual fund dealer, being a dealer that is permitted to deal **solely** in a security of a mutual fund;	Given the level of regulation of mutual fund dealers, including the registration requirements and their membership with the MFDA, an entity registered as a mutual fund dealer should at the very least be permitted to sell any form of mutual fund (whether a reporting issuer or not) and, ideally given our views on the logical hierarchy of the registration regime, also any security that may be distributed pursuant to a prospectus exemption in the jurisdiction. The registration regime should recognize the higher level of oversight that SRO membership brings and, accordingly, MFDA members should be permitted to sell exempt securities without the additional requirement to register as exempt market dealers. Regulation requiring dealers to also register as an exempt market dealer in order to sell exempt securities will provide no benefit for a mutual fund dealer and its clients. Mutual fund dealers who choose to deal in exempt securities must be permitted to determine which of their registered sales representatives can elect to sell the exempt securities offered by their dealer, provided that the applicable sales representatives have the appropriate proficiency specifically required to sell each corresponding exempt security. This is consistent with our recommended modular approach to proficiency described below.
Proficiency Requirements: Exempt Market Products	Salespersons who wish to sell these products will have to complete additional (largely duplicative/not product specific) proficiency requirements (the CSC exam). The requirement also results in reps having same proficiency as their supervisors (Branch Manager and CCO). Proficiency must be taken within 36 months of applying for registration, and	We do not consider the Canadian Securities Exam to be the appropriate base proficiency for this category of registration. This proposed proficiency requirement does not follow the logical hierarchy of registration and proficiency which we submit is the desired outcome of the Proposal, as referred to below. Proficiency requirements must be appropriate for the exempt securities that mutual fund dealers and exempt market dealers choose to distribute and must not be based solely on which courses/exams are currently available. By mandating the same proficiency for representatives of exempt market dealers as for representatives of investment dealers, there is a danger that all mutual fund dealers wishing to deal in exempt securities will be pushed into the IDA

Dealer Issues		
Issue	Proposed Rule	IFIC Questions and Notes
	if an applicant has not been utilizing their proficiency for 36 months they will have to re-do the appropriate proficiency. This is similar to current MFDA and IDA requirements. **Note**: Section 4.1 – Definitions says that the "Canadian Securities Exam means the examination prepared and administered by the Canadian Securities Institute and so designated by that Institute"	business model. Disproportionate levels of proficiency for representatives to deal in exempt products, regardless of their risk, may deter mutual fund dealers from dealing in less risky exempt securities (such as government issued instruments), resulting in decreased public access to the wide range of securities presently available through mutual fund dealers. Our proposed model would allow dealing representatives to meet their exempt market product registration requirements by passing the Canadian Investment Funds Exam, plus an appropriate exempt securities exam. The Canadian Investment Funds Course (CIFC) will remain the standard requirement. Then, students will be offered individual exempt security modules with an associated exam. Each module will provide in-depth coverage of the particular exempt security the student plans to sell. This modular approach will enable IFIC to offer courses with greater depth in these product areas, and will allow students to tailor their education to their particular situation. Students will be able to fulfill the proficiency requirements for those products in a way that is more comprehensive and more relevant to their particular requirements. It also allows dealers to expedite the fulfillment of the licensing requirement for their distribution network, thereby minimizing the barrier to entry for those individuals in the current proficiency regime.
Exempt Market Dealer Registration	Dealer registrants (other than investment dealers) in all jurisdictions will have to register in the additional new category of "Exempt Market Dealer" to sell "exempt" products into the exempt market.[i]	IFIC Members believe that it is important that a harmonized definition of "exempt security" be adopted nationally before registration in the category of exempt market dealer is required. Accordingly, the various provincial *Securities Act* definitions will need to be amended once a clear list of "exempt products" is arrived at, developed with industry participation.

Dealer Issues		
Issue	Proposed Rule	IFIC Questions and Notes
Restricted Dealer Registration	"Restricted dealer, being a dealer that is limited by condition on its registration to dealing in a specified security or class of security."[ii]	IFIC Members recommend that the CSA clarify which firms, and which securities would be registered and dealt in under the category of restricted dealers. IFIC Members would be disappointed if this category of registration were to permit creation of provincial differences in the categories of registration or enable the avoidance of registration in one of the categories of registration with more rigorous oversight.
Exemption re providers of "generic advice"	**Section 9.12** – The advisor registration requirement does not apply to a person or company that holds himself, herself or itself out as engaging in the business of advising others either through direct advice or through publications and writings, as to the investing in or the buying or selling of specific securities, not purporting to be tailored to the needs of specific clients.	We view the exemption from registration for entities providing generic advice as not being a positive step, since it will exempt from registration entities such as fee-based financial planners. IFIC Members believe that these entities should be required to be registered. IFIC Members assert that the relationship between fee-for-service financial planners (not affiliated with a mutual fund dealer) and their clients is similar to that of the relationship between a dealer registrant and its clients, in that both offer advice for compensation. IFIC Members believe that this type of business relationship should continue to be caught by the business trigger for advisors, which would require fee-for-service financial planners to be registered, in turn providing additional investor protection that regulatory oversight affords.
Suitability	**Section 5.4(1):** "A registrant must take reasonable steps to ensure that before it makes a recommendation to, or accepts instructions from, a client or makes a discretionary purchase or sale of a security on behalf of a client, the proposed purchase or sale is suitable for the client with reference to the client's	Section 3.3 contemplates that the SROs may establish different rules for their members from what is contained in NI 31-103 in several areas. Generally, we don't disagree with approach but believe that the CSA must take a hard-line position on suitability, which is fundamental for clients of all dealers - therefore all dealers must be subject to the same rules and requirements to ensure appropriate and consistent investor protection. Unless the CSA take this position, the SROs may adopt different suitability rules which will result in investors receiving different treatment for no adequate reason. Investors have a right to expect consistent treatment and experience when working with anyone "in the business of dealing" in securities. Members feel strongly that suitability obligations beyond those stated in NI

Dealer Issues		
Issue	Proposed Rule	IFIC Questions and Notes
	(a) financial circumstances, (b) risk tolerance, (c) investment knowledge, and (d) investment needs and objectives." **5.4(2):** Despite subsection (1), if a registrant receives an instruction from a client to buy, sell or hold a security that in the registrant's opinion, acting reasonably, would not be suitable for the client, the registrant must not act on the instruction without first informing the client that in the registrant's opinion the transaction is not suitable for the client.	31-103 should not be dictated by the SROs, but should be defined by the business relationship contracted between the Dealer and the Investor as part of the expectations of that business relationship. Members support a portfolio-based application of suitability requirements by the SROs (particularly when completing assessments of trade suitability).
Transition Periods		We require more discussion around transition periods for existing registrants and industry participants, particularly in the area of proficiency. Grandfathering of representatives who are registered under today's registration regime is of particular practical significance, given that the lack of an adequate transition period may significantly affect an individual's ability to earn a living.
Branch Manager/ Supervisor	It is possible that Supervisors (former Branch Managers) will be required to fulfill an administrative/compliance function only (acting as a producing sales representative is conflict of interest).	The current situation, which is not alleviated by the Proposal, does not provide registrants with the necessary flexibility to accommodate the many unique business models and associated risks throughout the industry. IFIC recognizes that the definition of 'branch' may need clarification from the SROs.

Dealer Issues		
Issue	Proposed Rule	IFIC Questions and Notes
	In remote areas, cross-provincial border clients, and small – mid-sized dealers where the Branch Manager/Supervisor has a Book of Business may raise a perceived conflict of interest. **Note**: there is no definition of 'branch' in Quebec.	IFIC Members wish to maintain current flexibility to ensure that they have proper controls and a compliance regime in place within their existing business structure. IFIC's goal is to assist the CSA in defining appropriate supervision principles and recommend that the rules should not define or impose a specific business model. Our consultations suggest that the SROs may be veering off this course. For example, our Members feel that it is not always appropriate that SRO requirements impose a strict ratio of supervisors to registered sales representatives in a given location, irrespective of the number of accounts which those representatives service or the value of those accounts. As we note above, IFIC Members question whether the move away from the trade trigger will result in a larger number of sales support staff requiring registration, which leads to concerns about supervision of support staff. If support staff are required to become registered, flexibility regarding the ratio of registered representatives to supervisory staff becomes even more important. Any regulatory imposition of a specific business model will result in decreased investor access to mutual fund dealers (and the securities they distribute) in geographically distant areas. Any decrease in the number of viable mutual fund dealer business models will also result in decreased access for investors with smaller accounts. The regulatory burden threatens the competitive positioning of mutual fund dealers and the viability of small dealers. Specifically, our Members would be unfavourably constrained by any requirements that restrict supervisors to administrative duties only. Currently many MFDA members are able to address any perceived conflicts of interest and demonstrate appropriate two-tier supervision while maintaining producing branch managers.
Cross-Provincial Border Clients	**Sections 9.22, 9.23 and 9.24**	The proposed mobility exemption for dealers and advisors does not reflect the realities of a more mobile Canadian population and will not significantly reduce the regulatory burdens of having to become registered in multiple

Dealer Issues		
Issue	Proposed Rule	IFIC Questions and Notes
		provinces where clients reside. In addition, the CSA should provide clarity around the rules pertaining to the movement of clients from an MFDA to a non-MFDA jurisdiction.
Incorporated Salespersons	This issue was not addressed within NI 31-103. The IDA have drafted a proposal in which the incorporated sales representative becomes the registered entity. There is a past draft rule which was published for comment by the NSSC, which should be considered as a viable starting point to address the tax consequences of directing commissions to a personal service corporation.	IFIC supports definitive regulatory direction for the MFDA proposal to continue to permit the principal-agent model with directed commissions, which maintains the benefits of incorporation to salespersons without compromising investor protection. We would be pleased to work with regulators in developing a solution for inclusion in NI 31-103. We desire more discussion with regulators on the possible interpretations of this relationship by other stakeholders (including CRA). To further the goal of harmonization, regulators need to ensure a consistent approach is applied by the SROs so that a consistent client experience is provided.

ENDNOTES

---

[i] **Part 2.1(d) Dealer Categories**:

"Exempt market dealer, being a dealer that is permitted to deal solely

(i) in a security that is being distributed under an exemption from the prospectus requirement, or

(ii) with persons or companies to whom a security may be distributed under an exemption from the prospectus requirement."

Companion Policy - Part 2.2 Exempt market dealer:

"…Exempt market dealers, for example, may deal in prospectus-qualified securities with accredited investors."

Part 4.7 Exempt Market Dealer – Dealing representative [proficiency]

"No individual may be granted registration as a dealing representative of an exempt market dealer unless the individual

a) has passed
   (i) the Canadian Securities Exam, and
   (ii) one of the following:
      A. the Conduct and Practices Handbook Exam;
      B. the Partners, Directors and Senior Officers Exam,
b) has passed
   (i) the Series 7 Exam, and
   (ii) The New Entrants Exam, or
c) Has met the requirements of section 4.9 [*portfolio manager – advising representative*].

[ii] **Part 2.1 (e) Dealer Categories:**

"restricted dealer, being a dealer that is limited by conditions on its registration to dealing in a specific security or class of security."

Companion Policy - Part 2.2 Restricted dealer:

"A restricted dealer's registration is limited by conditions imposed by the local regulator. The CSA intends to use this registration category rarely, in order to avoid the proliferation of distinct registration categories across jurisdictions. This category might be used, for example, by an issuer that must register because it is in the business of dealing in securities for the purpose of distributing securities of its own issue, exclusively for its own account."