NOTICE OF PROPOSED NATIONAL INSTRUMENT 33-102
REGISTRANT DEALINGS WITH CLIENTS
AND
PROPOSED COMPANION POLICY 33-102CP

A. Introduction

In November 1997, the Canadian Securities Administrators (the "CSA") published for comment:

Proposed National Instrument 33-102	Distribution of Securities at Financial Institutions ("1997 Draft National Instrument 33-102")
Companion Policy 33-102CP	Distribution of Securities at Financial Institutions ("1997 Draft Policy 33-102CP")
Proposed National Instrument 33-103	Distribution Networks ("1997 Draft National Instrument 33-103")
Proposed National Policy 33-201	Networking and Selling Arrangement Notices ("1997 Draft National Policy 33-201")
Proposed National Instrument 33-104	Selling Arrangements ("1997 Draft National Instrument 33-104")
Companion Policy 33-104CP	Selling Arrangements ("1997 Draft Policy 33-104CP")

(collectively, "1997 Draft Instruments and Policies") along with notices that relate to each National Instrument.[1]

The 1997 Draft Instruments and Policies were based on the *Principles of Regulation Re: Full Service and Discount Brokerage Activities of Securities Dealers in Branches of Related Financial Institutions, Principles of Regulation Re: Distribution of Mutual Funds by Financial Institutions, Principles of Regulation Re: Activities of Registrants Related to Financial Institutions* (the "Principles of Regulation") For further background, please see the Notices that accompanied each of the 1997 Draft Instruments and Policies.

During the comment period on the 1997 Draft Instruments and Policies, which expired on February 27, 1998, the CSA received submissions from seven commentators. The CSA thank all commentators for providing their comments on the 1997 Draft Instruments and Policies.

The CSA have considered at length the comments received on the 1997 Draft Instruments and Policies. In response to these comments, the CSA have substantially revised the 1997 Draft Instruments and Policies. The revision has resulted in the Proposed National Instrument 33-102 Registrant Dealings with Clients (the "Proposed National Instrument") and Proposed Companion Policy 33-102CP Registrant Dealings with Clients (the "Proposed Policy"), which are being published for 60 day comment period. Once the Proposed National Instrument and Proposed Policy are enacted, the Principles of Regulation will cease to exist.

B. Purpose of the Proposed National Instrument and Proposed Policy

The purpose of the Proposed National Instrument and Proposed Policy is to ensure that clients dealing with registrants are fully informed about the products they are purchasing and the risks that they face.

C. Summary of the Changes to the 1997 Draft Instruments and Policies

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[1] In British Columbia - [1997] 47 BCSC Weekly Summary 25, in Ontario - (1997), 20 OSCB 6274, (1997), 20 OSCB 6285, (1997) 20 OSCB 6283, (1997) 20 OSCB 6289, (1997) 20 OSCB 6294, (1997) 20 OSCB 6293.

A chart containing the provisions of the 1997 Draft Instruments and Policies, a summary of the comments received and the CSA response is attached as Appendix A. This Notice discusses the changes made to the 1997 Draft Instruments and Policies.

General Comments

Two comments appeared frequently in the letters received. First, commentators indicated that there ought to be harmonization of the requirements contained in the Principles of Regulation through out the CSA jurisdictions, unless there are compelling reasons for regional differences. Second, commentators submitted that if the rules are required, they ought to apply to all registrants and not just those that operate out of the branches of a financial institution. These two general comments motivated many of the changes that have been proposed.

The following review deals with each of the 1997 Draft Instruments and Policies in turn and highlights the major changes.

1997 Draft National Instrument 33-102 - Distribution of Securities at Financial Institutions

The two most significant changes are (1) that the requirements contained in section 2.1 for identifiably separate premises have been dropped; and (2) that the requirement for networking notices have been dropped.

Section 2.1, as it was proposed, was premised on the belief that client confusion over the entity with which the client is dealing would be reduced by the use of identifiably separate premises. While separate premises do serve to reinforce the message that the client is dealing with a different entity, they may impose substantial costs and inconvenience to registrants. Submissions have been made, and the CSA agree, that concerns regarding client confusion may be dealt with through other means, such as disclosure. As such, the requirement for identifiably separate premises has been eliminated.

The second substantial change follows from the experience that regulators have gained over the years that the Principles of Regulation have been in place. In that time, regulators have gained the experience necessary to state what is and is not acceptable in networking arrangements. Accordingly, all provisions relating to networking notices in this and the other instruments have been deleted. All general rules relating to potential issues raised by networking notices (margin, easy access to loans, tied selling, compensation, transfer of client information, client confusion, etc.) are appropriately dealt with by requirements already in place in CSA jurisdictions or will be addressed by the Proposed National Instrument and the Proposed Policy.

Several provisions of 1997 Draft National Instrument 33-102 have been moved to the Proposed National Instrument and broadened to apply to all registrants. For example, section 7.1 which deals with the settlement of accounts has been included in the Proposed National Instrument. Section 2.3 requiring registrants to give additional disclosure to customers relating to the subject of leverage has been extended to apply to all registrants in their dealings with retail clients.

The requirement for consent to the disclosure of confidential client information is dealt with in Part 6. The requirement now applies to all registrants that propose to share retail client information with any third party. The CSA has examined *An Act Respecting Access to Documents Held by Public Bodies and the Protection of Personal Information,* R.S.Q., c. A-2.1, which is applicable in Québec and the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. C.5 (the “Personal Information Act”) which received royal assent on April 13, 2000. The provisions of the Personal Information Act will apply within a province after three years unless the Governor in Council provides an exemption. The CSA is of the view that Part 6 is consistent with the provisions of the Personal Information Act. If, in three years, circumstances have changed and a province has introduced legislation covering the disclosure of confidential information, the CSA may reconsider Part 6.

Other provisions have been deleted from 1997 Draft National Instrument 33-102 because the CSA are of the view that securities legislation governs the activities. For example, Part 3 on registrable activities, section 4.1 on dual employment and section 4.2 on compensation are not required as all jurisdictions have other provisions in place governing these areas. Part 5 on referral fees is dealt with in *CSA Committee on Distribution Structures: Position Paper, August 1999.*

1997 Draft Policy 33-102CP

In light of the large number of amendments proposed for 1997 Draft National Instrument 33-102 and the view that many of the provisions are already covered by existing requirements in securities legislation, only sections 4.5 and 5.2 have been included in the Proposed Policy. The remaining provisions have been deleted.

1997 Draft National Instrument 33-103 - Distribution Networks

This entire instrument has been deleted.

1997 Draft National Instrument 33-104 - Selling Arrangements

The effect of the rule was to prohibit tied selling of products between the financial institution and the securities dealer operating out of its branches. The entire instrument has been deleted and replaced by a provision in the Proposed National Instrument that is based on the prohibition against tied selling contained in National Instrument 81-105 - Mutual Fund Sales Practices.

1997 Draft Policy 33-104CP

This companion policy is not necessary because of the deletion of 1997 Draft National Instrument 33-104.

1997 Draft National Policy 33-201 - Networking and Selling Arrangement Notices

The CSA intend to take the necessary actions to repeal or amend the requirement to file networking notices that appears in the regulations and policies of the CSA jurisdictions. With 10 years experience, the CSA are of the view that registrants are able to determine what is and is not an acceptable networking and selling arrangement through an examination of existing securities legislation and position papers. Accordingly, this policy, which deals with the processing of these notices, is being withdrawn and will not be reformulated.

Most provinces are making changes to their legislation, regulations, rules or policies that have the effect of removing the requirement to file networking notices. However, the British Columbia Securities Commission intends to amend section 84 of the British Columbia Securities Rules to require a registrant that intends to enter into a networking arrangement with a savings institution or insurer to file a notice if the savings institution or insurer is not a related party of the registrant.

D. Specific Comment Requested

Disclosure in the Financial Institutions Act (British Columbia)

In certain circumstances, the British Columbia *Financial Institutions Act* (the “FIA”) requires disclosure of specific information to a customer if a person arranges a transaction under which a third party provides a service or product to the customer. One circumstance that triggers application of the FIA occurs when the person, who is acting with the approval of a financial institution, might reasonably be mistaken for an employee or

representative of the financial institution.[2] In such an instance, the information that must be disclosed includes

- the relationship between the financial institution and the third party,
- the nature and extent of any business or financial interest that the financial institution and the third party have in each other,
- the nature and extent of any interest the financial institution has in the transaction, including any commission or other remuneration,
- the identity of the person paying the commission or other remuneration, and
- the prohibition against tied selling.

While securities legislation in most jurisdictions requires disclosure of the relationship between registrants and related or connected parties and other conflicts of interest disclosure, that disclosure is not the same as the disclosure required under the FIA.

Specific comment is requested on whether it would be appropriate to include disclosure provisions in National Instrument 33-102 (or other securities legislation) that are similar to the provisions set out in the FIA, given the existing disclosure required by securities legislation. Detailed reasons should accompany any comment.

Bill C-38 - An Act to Establish the Financial Consumer Agency Act of Canada and to Amend Certain Acts in Relation to Financial Institutions

Bill C-38, *An Act to Establish the Financial Consumer Agency Act of Canada and to Amend Certain Acts in Relation to Financial Institutions*, was recently introduced by the federal Parliament. Bill C-38 contains a provision[3] authorising the Governor-in-Council to make regulations respecting the disclosure of information by banks or any prescribed class of banks. The CSA will review with interest any regulations the federal government may introduce and may, at that time, revise the disclosure required under National Instrument 33-102.

Bill C-38 also contains a restriction on coercive tied selling and a provision that a bank shall disclose the prohibition on coercive tied selling.[4] Specific comment is requested on whether it would be appropriate for National Instrument 33-102 to require registrants to provide the same disclosure of the prohibition on tied selling that Bill C-38 requires of banks.

E. Principles of Regulation and Form 4A

Once National Instrument 33-102 is enacted, the Principles of Regulation will cease to exist. Consequently, registrants will no longer be able to use Form 4A or, in Québec, Form 3A for the registration of individuals.

F. Comments

Interested parties are invited to make written submissions with respect to the Proposed National Instrument and the Proposed Policy. Submissions received by September 19, 2000 will be considered.

Submissions should be made in duplicate to:

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2 See section 90(2) *Financial Institutions Act*, R.S.B.C. 1996, c. 141 and B.C. Reg. 333/90 *Marketing of Financial Products Regulation.*

3 See section 119.

4 See section 118.

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
Manitoba Securities Commission
Ontario Securities Commission
Office of the Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
jstevenson@osc.gov.on.ca

Submissions should also be addressed to the Commission des valeurs mobilières du Québec as follows:

Claude St Pierre, Secretary
Commission des valeurs mobilières du Québec
800 Victoria Square
Stock Exchange Tower
P.O. Box 246, 22nd Floor
Montréal, Québec H4Z 1G3
claude.stpierre@cvmq.com

A diskette containing the submissions (in DOS or Windows format) should also be submitted. As the Act requires that a summary of written comments received during the comment period be published, confidentiality of submissions cannot be maintained.

Questions may be referred to any of:

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APPENDIX A

SUMMARY OF COMMENTS RECEIVED AND THE RESPONSE OF THE CANADIAN SECURITIES ADMINISTRATORS

NOV. 1997 DRAFT	REVISED DRAFT	COMMENTS RECEIVED	CSA RESPONSE
1997 PROPOSED NATIONAL INSTRUMENT 33-102 DISTRIBUTION OF SECURITIES AT FINANCIAL INSTITUTIONS			
Section 1.1 Definitions	Deleted	A commentator requested clarification on what constitutes a branch for the purposes of this instrument. Ongoing technological advancements are already making the concept of a physical "branch" irrelevant.	The CSA are of the view that it is not necessary to include a definition of "branch office" in this national instrument. "Branch office" is defined in the securities legislation of certain CSA jurisdictions.
Section 1.2 Application	Proposed NI 33-102 Part 2, Part 3 and Part 6	Some commentators indicated their expectation that the proposed instruments would be applicable only to retail clients. In their view, a number the provisions of 1997 Proposed National Instrument 33-102 will further erode the efficiency with which corporate and institutional markets can be served at a time when Canadian financial institutions are facing increasing competition from global players not subject to similar restrictions. It was suggested that the proposed instruments be revised so as to limit their applicability to retail clients, perhaps to be defined as natural persons.	The CSA agree and require disclosure regarding the nature of the product, leverage and client confidentiality to be provided to retail clients only.
Section 2.1 Branch Office	Deleted	Commentators submitted that the need for floor to ceiling separation will impose significant costs on Canadian financial institutions and their related dealers and is not practical. It was argued that artificial separation of premises and separate telephone lines are not effective means of protecting the investor or alleviating investor confusion. In their view, there is no rationale for making a distinction between bank owned dealers and other market participants who offer a broad range of financial services to their customers all within one office.	The CSA are of the opinion that retail client confusion may be addressed in a number of ways, including disclosure. Disclosure is required by sections 2.1 and 6.2 of the Proposed National Instrument. Section 2.2 of the Companion Policy provides that it is the registrant's responsibility to ensure that clients understand with which legal entity they are dealing.

NOV. 1997 DRAFT	REVISED DRAFT	COMMENTS RECEIVED	CSA RESPONSE
Section 2.2 Disclosure	Proposed NI 33-102 Section 6.2	Commentators agreed that the terms of the disclosure set out in this section (i.e. securities are not insured by a government deposit insurer, are not insured by the bank and may fluctuate in value) are appropriate. However, given the proliferation of disclosure and other documents that clients receive when opening accounts, and thereafter, they suggested that a separate document not be required. Commentators were also not convinced that this disclosure is significantly more important than other disclosure such as to require that additional steps be required in connection with this disclosure, such as obtaining the client's acknowledgment of the disclosure or making inquiries to determine that the client understands the disclosure.	It is the view of the CSA that it is imperative for retail clients to know and understand the distinction between bank and other products of financial institutions and securities. It is the responsibility of the registrant to ensure that the client knows and understands the distinction. Consequently, the provision requiring disclosure has been maintained. In addition, the registrant must obtain an acknowledgement from the retail client that the client has read the disclosure.
Section 2.3 Additional Disclosure Section 2.3 Continued	Proposed NI 33-102 Sections 2.1 and 2.2	Commentators questioned whether clients are confused about the necessity of repaying a loan borrowed to purchase securities. It was suggested that common risk disclosure statement be required. Commentators opposed the requirement to ask every client on each order if the purchase is being funded by a loan and if it is to deliver a written statement. It was thought to be onerous and impractical. One commentator stated: "We would not object to a new requirement to deliver a risk disclosure statement regarding leveraging upon the opening of a new account to ensure clients are aware about the risks associated with leveraging provided that this requirement applies to all dealers..." Commentators requested that dealers be reminded that leveraging is an important factor to consider in determining suitability and that investment advisors have a responsibility in this regard.	The CSA are of the opinion that excessive leveraging is a concern and clients need to be informed of the risks of purchasing securities using leverage. The CSA propose to require all registrants to provide this disclosure to a retail client when the client is opening an account, the registrant makes a recommendation to purchase securities by leverage or if the registrant is aware of the client's intent to use leverage. Registrants are exempted from the requirement to provide this disclosure when the registrant has provided the disclosure within six months of the recommendation or the registrant is subject to leverage disclosure requirements of a recognized SRO.

NOV. 1997 DRAFT	REVISED DRAFT	COMMENTS RECEIVED	CSA RESPONSE
		Commentators requested that this disclosure not be applicable to situation involving dealer margin accounts.	In addition, margin accounts have been exempted because comparable language is included in the opening account form.
Subsections 3.1 Prohibited Activities in a Branch Office	Deleted	In the opinion of one commentator, the provision of integrated financial services is a reality for all market participants, not just dealers in financial institution branches. Commentators stated that to require a client to physically shift locations in the branch of the financial institution to obtain different types of investment products is inefficient and not conducive to client needs. Having the client move may provide a facade of client protection, but, in their view, clients are better protected by disclosure made available by the dealer.	The CSA agree that the client protection can be achieved through the use of disclosure and the general rules regarding registrable activities.
Section 3.2 Opening of Accounts in a Branch Office	Deleted	One commentator submitted that the current practice that requires all forms to be reviewed and approved by registered personnel is sufficient.	The CSA are of the opinion that the general rules regarding who can conduct registrable activities are sufficient.
Section 3.3 Roving Registrants	Deleted Proposed Policy 33-102CP Section 2.3	Commentators questioned the rationale behind this provision. In their view, the restrictions are unnecessary and make it more difficult for financial institutions and related dealers to service clients in a cost effective manner relative to the needs of a particular market that may not support full-time staffing of a dealer branch premises.	The CSA have deleted this provision and has provided some guidance in section 2.3 of Proposed Policy 33-102CP regarding supervision. The restriction regarding how often someone may be in a branch to provide investment services to customers has been deleted.

NOV. 1997 DRAFT	REVISED DRAFT	COMMENTS RECEIVED	CSA RESPONSE
Section 3.4 Registration not Required	Deleted	Commentators questioned the distinction between dealer branches operating in financial institutions from other dealers. While one stated that clients should only deal with someone who is registered for all business regarding securities or the opening of an account, most commentators stated that non registered personnel should be able to provide administrative and supporting services outlined in the proposal.	The CSA have deleted the list of non-registrable activities. It is up to the registrant to determine what activities should appropriately and legally be conducted by non-registered personnel.
Section 4.1 Dual Employment	Deleted	Commentators argued that the provision ignores the fact that inherent conflicts of interest exist in all salesperson/investor relationships and are not unique to dealers who have dually employed personnel. One commentator submitted that as long as a representative is a full-time employee of the financial institution group, and sells financial products full-time, she should be permitted to be dually employed. Commentators also indicated that the provision would create problems for boards of directors by precluding financial institution directors from being on the board of a related securities dealer.	All local rules regarding dual/part-time employment apply to all registrants whether or not they are operating in a financial institution branch. In addition, the CSA note that the requirement to implement prudent business guidelines to address potential conflicts of interest is present in securities legislation and the CSA do not intend to develop model guidelines at this time. Dual employment is also discussed in *CSA Notice 33-304 CSA Distribution Structures Committee: Position Paper* published at (1999), 22 OSCB 5257.
Section 4.2 Compensation	Deleted		This provision is covered in National Instrument 81-105 Mutual Fund Sales Practices

NOV. 1997 DRAFT	REVISED DRAFT	COMMENTS RECEIVED	CSA RESPONSE
Section 4.3 Restriction on Dual Employment	Deleted	Commentators indicated that the restrictions on dual employment go far beyond any need to prevent customer confusion or conflicts. Commentators stated that the lack of legislative harmony is unnecessary and burdensome and urged consistency between the requirements across the provinces.	All local rules regarding dual/part-time employment apply to all registrants whether or not they are operating in a financial institution branch.
Section 5.1 Referral Fees	Deleted		This is dealt with in *CSA Notice 33-304 CSA Distribution Structures Committee: Position Paper* published at (1999), 22 OSCB 5257, and, in some jurisdictions, by legislation.
Part 6 Confidential Client Information	Proposed NI 33-102, Part 3 Proposed Policy 33-102CP Section 4.1	Commentators acknowledged the importance the confidentiality of client information and respecting the client's right to privacy. However, they expressed concern about that the tighter rules do not reflect business realities that have come about in compliance with the Principles of Regulation. Commentators stated that the integration of financial services distribution is a reality. Common back offices and centralized administrative services, which may use common systems to hold the records of a variety of financial products, are in place throughout the financial services industry. Client information is housed on financial institution computer systems and employees handling back office processing are employees of the financial institution and not the dealer. In the view of the commentators, making changes would be costly and take a considerable amount of time. Commentators stated that the new rules would not permit a dealer to decline to serve any client who refused to consent to the information sharing necessary to conduct administrative, processing, risk management and similar activities. and therefore, dealers would be forced to	The CSA have retained the requirement that consent of the retail client must be acquired to disclose confidential information and has extended the requirement to all third parties, not just financial institutions. The requirement applies to retail clients at the time of opening of an account. The CSA acknowledge that disclosure of confidential client information is necessary for some products. Consequently, section 3.2 of the Proposed National Instrument provides that a registrant cannot make it a general condition of opening an account that the retail client consent to the dealer disclosing that client's confidential information, but the dealer may require it if disclosure of the information is reasonably necessary to provide a specific product or service requested by the client. In the opinion of the

NOV. 1997 DRAFT	REVISED DRAFT	COMMENTS RECEIVED	CSA RESPONSE
Part 6 continued		develop duplicative back offices and administrative units to accommodate these customers. Commentators also requested that implied and oral consent be sufficient to comply with the requirement in certain circumstances. One commentator expressed concern about having the rules be more restrictive with respect to sharing information with financial institutions.	CSA, this exemption addresses the concerns of commentators.
Section 7.1 Settling Securities Transactions	Proposed NI 33-102 Part 4	Commentators indicated that advances in technology have led to products relying on and priced according to the efficiency of their technology linkages. The proposed rule is a significant change from the Principles of Regulation and will make it impossible for dealers to comply with respect of certain services which rely on emerging technologies. For example, Internet trading services usually require that the dealer be able to access a financial institution account of the client for purposes of settling trades. These accounts are typically with a related financial institution.	In response to comments made, the CSA have provided an exception that indicates that the registrant may require this method of settling if it is reasonably necessary to provide the service or product requested by the client.
Section 8.1 No Notice	Deleted		The CSA have decided to delete the requirement to file networking notices from the regulations/policies of the jurisdictions.
1997 PROPOSED COMPANION POLICY 33-102CP DISTRIBUTION OF SECURITIES AT FINANCIAL INSTITUTIONS			
Part 1 Networking Notices	Deleted		The CSA intend to take the necessary actions to repeal or amend the requirement to file networking notices.
Part 2 Branch Office	Deleted		See comments under 1997 NI 33-102 section 3.1.
Part 3 Dual Employment	Deleted		See comments under 1997 NI 33-102 section 4.1

NOV. 1997 DRAFT	REVISED DRAFT	COMMENTS RECEIVED	CSA RESPONSE
Part 4 Compliance and Supervisory Activities	Proposed Policy 33-102CP Section 2.3		It is the view of the CSA that the content of the deleted provisions are covered by existing securities legislation. Only section 4.5 regarding supervision has been maintained.
Part 5 Record Keeping	Proposed Policy 33-102CP Part 3		It is the view of the CSA that the content of the deleted provision is covered by existing securities legislation. Only section 5.2 regarding safeguards against access to records by third parties has been maintained.
Part 6 Reporting by Canadian Financial Institutions	Deleted	Commentators noted that this provision conflicts with confidentiality of client information provisions.	This issue is indirectly dealt with by the *CSA Notice 33-304 CSA Distribution Structures Committee: Position Paper* published at (1999), 22 OSCB 5257.
Part 7 Registrable Activities	Deleted		See comments under 1997 NI 33-102 section 3.4
Part 8 Referral fee Arrangements	Deleted		See comments under 1997 NI 33-102 section 5.1
1997 PROPOSED NATIONAL INSTRUMENT 33-103 DISTRIBUTION NETWORKS			
Part 1 Definitions	Deleted		
Part 2 Toll-free lines	Deleted	Commentators questioned the need for multiple registration, as it would be difficult to ensure that each call is routed to correctly registered personnel. They argued that there is no policy reason to require residency requirements in addition to separate registration requirements.	The CSA are currently working on a mutual reliance/national registration database that would seek to harmonize and simplify residency and office requirements where services are provided to residents of more than one jurisdiction.

NOV. 1997 DRAFT	REVISED DRAFT	COMMENTS RECEIVED	CSA RESPONSE
Part 3 Electronic Trades of Securities	Deleted	Commentators asked for clarity regarding all aspects of electronic trading.	Trading through electronic systems is not prohibited. The CSA remind registrants that all responsibilities, including maintenance of client confidentiality, suitability, are unchanged when using an electronic system.
Part 4 No Notice	Deleted		This section is not necessary because the CSA intend to repeal or amend the requirement for filing networking notices.
1997 PROPOSED NATIONAL INSTRUMENT 33-104 SELLING ARRANGEMENTS AND 1997 PROPOSED COMPANION POLICY 33-104CP SELLING ARRANGEMENTS			
1997 NI 33-104 and 1997 CP 33-104CP	Deleted Proposed NI 33-102 Part 5 and Proposed Policy 33-102CP Part 4	Commentators requested that the proposed instrument be limited to tied-selling type arrangements where there could be seen to be some form of coercive power. In addition, they requested provincial harmony with respect to selling arrangements.	The CSA have replaced these instruments with provisions that track the language prohibiting tied selling in National Instrument 81-105 Mutual Funds Sales Practices
PROPOSED NATIONAL POLICY 33-201 NETWORKING AND SELLING ARRANGEMENT NOTICES			
1997 National Policy 33-201	Deleted	Commentators argued that because the market has evolved since the Principles of Regulation were adopted, they see little need for most networking arrangements to be filed or reviewed.	The CSA intend to take the necessary actions to repeal or amend the requirement to file networking notices.

NATIONAL INSTRUMENT 33-102
REGISTRANT DEALINGS WITH CLIENTS

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NATIONAL INSTRUMENT 33-102
REGISTRANT DEALINGS WITH CLIENTS

PART 1 DEFINITIONS

1.1 Definitions

(1) In this Instrument, "**recognized SRO**" means an SRO that is recognized as a self-regulatory organization by a Canadian securities regulatory authority.

(2) In this Instrument, **"retail client"** means

a) an individual unless the individual has a net worth exceeding $5 million, or

b) a person or company, other than an individual, unless the person or company has total assets or annual revenues exceeding $10 million

but does not include

i) a Canadian financial institution

ii) a person or company registered under Canadian securities legislation.

PART 2 DISCLOSURE

2.1 Leverage Disclosure

(1) If a registrant opens an account for a retail client or if a registrant makes a recommendation to a retail client for purchasing securities by leveraging, or otherwise becomes aware of a retail client's intent to employ leveraged monies for the purpose of investment, the registrant shall provide to the retail client, before the retail client purchases securities by leveraging, a written disclosure statement in substantially the following words:

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

(2) Before executing an order on behalf of a retail client purchasing securities by leveraging, the registrant shall obtain an acknowledgement from the retail client that specifically refers to the written disclosure statement required by subsection (1) and confirms that the retail client has read the written disclosure statement.

(3) A registrant is not required to comply with subsections (1) and (2) if:

(a) the registrant has provided the written disclosure statement required by subsection (1) to the retail client within the six month period prior to making the recommendation for purchasing securities by leveraging, or otherwise becoming aware of a retail client's intent to employ leveraged monies for the purpose of investment**,** or

(b) the registrant is subject to and complies with the leverage disclosure rules of a recognized SRO.

2.2 **Exemption for Margin Accounts** - Section 2.1 does not apply to purchases of securities by a retail client on margin if the client's margin account is maintained with a registrant that is a member of a recognized SRO and the margin account is operated in accordance with the rules of the recognized SRO.

PART 3 DISCLOSURE OF CONFIDENTIAL RETAIL CLIENT INFORMATION

3.1 **Consent Required -** A registrant shall hold all information about a retail client confidential and shall not disclose the information to any third party, except as required by law or the rules of a recognized SRO, unless, prior to disclosing the information,

(a) the registrant informs the retail client to whom the information pertains:

(i) of the name of the third party to which the information will be disclosed,

(ii) of the relationship between the registrant and the third party,

(iii) of the nature of the information that will be disclosed,

(iv) of the intended use of the information by the third party, including whether the third party will disclose the information to others,

(v) of the right of the retail client to revoke the consent referred to in paragraph (b), and the effect of the revocation, and

(vi) that the retail client's consent under paragraph (b) is not required as a condition of the registrant dealing with the retail client, except in circumstances described in section 3.2; and

(b) the retail client consents to the disclosure of the confidential client information.

3.2 **Prohibition to Require Consent as a Condition** - No registrant shall require a retail client to consent to the registrant disclosing confidential information regarding the retail client as a condition, or on terms that would appear to a reasonable person to be a condition, of supplying products or services, unless the disclosure of the information is reasonably necessary to provide a specific product or service that the retail client has requested.

PART 4 SETTLING SECURITIES TRANSACTIONS

4.1 **Settling Securities Transactions** - No registrant shall require a person or company to settle that person or company's account with the registrant through that person or company's account at a Canadian financial institution as a condition, or on terms that would appear to a reasonable person to be a condition, of supplying products or services, unless this method of settlement is reasonably necessary to provide a specific product or service that the person or company has requested.

PART 5 TIED SELLING

5.1 **Tied Selling** - No person or company shall require another person or company

(a) to invest in particular securities, either as a condition or on terms that would appear to a reasonable person to be a condition, of supplying or continuing to supply products or services; or

(b) to purchase or use any products or services, either as a condition or on terms that would appear to a reasonable person to be a condition, of selling particular securities.

PART 6 DISTRIBUTION OF SECURITIES IN A FINANCIAL INSTITUTION

6.1 Application of Part 6 - This Part applies only to registrants conducting securities related activities in an office or branch of a Canadian financial institution.

6.2 Disclosure

(1) If a registrant opens an account for a retail client, a registrant shall provide a written disclosure statement that the registrant is a separate entity from the Canadian financial institution and, unless otherwise advised by the registrant, securities purchased from or through the registrant

(a) are not insured by a government deposit insurer,

(b) are not guaranteed by a Canadian financial institution, and

(c) may fluctuate in value.

(2) At the time that the account is opened, the registrant shall obtain an acknowledgement from the retail client that specifically refers to the written disclosure statement required by subsection (1) and confirms that the retail client has read the written disclosure statement.

6.3 Disclosure in Promotional Material - A registrant shall include a written statement that contains the information referred to in section 2.1 and section 6.2 of this Instrument in the registrant's promotional material that is distributed by or displayed in an office or branch of a Canadian financial institution.

PART 7 EXEMPTION

7.1 Exemption

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

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

COMPANION POLICY 33-102CP
REGISTRANT DEALINGS WITH CLIENTS

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COMPANION POLICY 33-102CP
REGISTRANT DEALINGS WITH CLIENTS

PART 1 DISCLOSURE

1.1 **Leverage Disclosure** - Registrants are reminded that leveraging is an important factor to consider when determining suitability. National Instrument 33-102 (the "National Instrument") in no way implies that the one time provision of this disclosure statement fulfills the registrant's ongoing duty to its clients to ensure trades are suitable for the investment needs and objectives of its clients. There may be circumstances when a registrant, as part of the registrant's suitability responsibilities, should remind investors about the risks of leveraging.

1.2 **Client acknowledgement -** The acknowledgements of a retail client referred to in subsections 2.1(2) and 6.2(2) of the National Instrument may be obtained by a registrant in a number of ways, including requesting the retail client's signature, requesting that the retail client initial an initial box or requesting that the retail client place a check in a check-off box. The registrant must draw the client's attention to the disclosure provided. The acknowledgement must be specific to the information disclosed to the retail client (i.e. disclosure regarding the risks of using leverage to purchase securities or the description of the nature of securities) and must confirm that the retail client has read the relevant information.

1.3 **Exemption for Margin Accounts** - Section 2.2 of the National Instrument exempts registrants from the requirement to provide additional leverage disclosure to retail clients opening a margin account. The exemption is provided because SRO rules already require that clients with margin accounts acknowledge receipt of leverage disclosure in the account opening form.

PART 2 COMPLIANCE AND SUPERVISORY ACTIVITIES

2.1 **Registrant Premises** - Securities legislation requires that a registrant designate one officer or partner, known as a compliance officer, to be responsible for ensuring compliance by the registrant and its registered personnel with securities legislation and the registrant's written procedures for dealing with its clients. Any office or branch office of the registrant may be designated by the registrant as its central location for a local jurisdiction.

2.2 **Registrant Responsibility to Prevent Client Confusion** - The registrant is responsible for ensuring that clients understand with which legal entity they are dealing, especially if more than one financial service firm is carrying on business in the same location. The client may be informed through various methods, including signage and disclosure. Registrants are reminded of the obligation to carry on all registrable activities in the name of the registrant. Contracts, confirmations and account statements, among other documents, must contain the full legal name of the registrant.

2.3 **Supervision of Sub-branches** - The Canadian securities regulatory authorities permit the operation of sub-branch offices of registrants in certain circumstances. The activities of registrants operating within a sub-branch office are generally supervised by a branch manager in a location other than the sub-branch. The Canadian securities regulatory authorities are of the view that such supervision is appropriate in most circumstances. However, the Canadian securities regulatory authorities will consider the facts on a case-by-case basis to ensure that an appropriate level of supervision is in place.

PART 3 RECORD KEEPING

3.1 **Third Party Access to Information** - All registrants have a duty to maintain proper books and records and to ensure that there are proper safeguards in place to ensure that there is no unauthorized access

to information, particularly confidential client information. If the registrant maintains books and records in a central location to which employees of a third party have access, the registrant should be particularly vigilant in ensuring these safeguards are implemented and effective.

PART 4 RETAIL CLIENT CONSENT

4.1 **Retail Client Consent** - The retail client consent referred to in paragraph 3.1(b) of the National Instrument may be obtained by a registrant in a number of ways, including requesting the retail client's signature, requesting that the retail client initial an initial box or requesting that the retail client place a check in a check-off box. The Canadian securities regulatory authorities note that in some jurisdictions, the form of consent may be prescribed by legislation.

4.2 **Timing of Retail Client Consent** - Consent to the disclosure of confidential retail client information is to be obtained by the registrant when the information is collected (i.e. upon account opening). However, in certain circumstances, consent with respect to the disclosure of the information should be sought after the collection of the information if the registrant wants to provide the information to a third party not previously identified or if the use by the third party was not initially disclosed.

PART 5 PRODUCTS AND SERVICES

5.1 **Opening an Account** - The Canadian securities regulatory authorities note that the "products or services" referred to in section 3.2, section 4.1 and section 5.1 of the National Instrument include the opening of an account.

PART 6 RELATIONSHIP PRICING

6.1 **Relationship Pricing** - The Canadian securities regulatory authorities are aware that industry participants offer financial incentives or advantages to certain clients, a practice that is commonly referred to as relationship pricing. The tied selling provision in Part 5 of the National Instrument is intended to prevent certain abusive sales practices and is not intended to prohibit relationship pricing or other beneficial selling arrangements similar to relationship pricing. By way of example, staff of the Canadian securities regulatory authorities are of the view that Part 5 of the National Instrument would not be contravened in a case where a financial institution offered to make a loan to a client on more favourable terms or conditions than the financial institution would otherwise offer to the client as a result of the client's agreement to acquire securities of mutual funds that are sponsored by the financial institution. Staff are of the view that Part 5 of the National Instrument would be contravened, however, if the financial institution refused to make the loan unless the client acquired securities of mutual funds that are sponsored by the financial institution, where the client otherwise met the financial institution's criteria for making loans