Securities Regulation That Works

The BC Model

Dealers and Advisers Guide

April 15, 2003

For Dealers and Advisers —

Your Guide to Securities Regulation in British Columbia

Welcome to a new way to regulate

This Guide is to help you understand what is expected of dealers and advisers under British Columbia securities laws and to give you guidance on how to comply with those laws. We have built a system of securities regulation that is designed to protect investors and clients while minimizing the regulatory burden on industry. We have done this by:

- establishing principles of regulation to focus dealers and advisers on their responsibilities to their clients and the market,
- imposing requirements only to the extent they are necessary for the protection of investors and markets, and
- designing regulatory requirements with the flexibility to suit a wide range of business models and client relationships.

We think it is important that people like you, who have to comply with the requirements, are able to do so using your own judgment and experience. There is no avoiding the fact that securities regulation is a complex area, so there will always be times when you need to get professional advice. However, we believe that this should not be necessary for routine compliance matters, and that the system should be simple enough to understand so that you are able to make better judgments about when to get professional advice, and are able to better instruct your professional advisers when you do so. To create this sort of regulatory environment, we have:

- kept the rules as simple as possible,
- written them in plain language, and
- established guidance programs for dealers and advisers and other market participants.

We have adopted this approach because we believe it creates a system of regulation that works. Clients get the information and protection they need, and dealers and advisers do a better job of compliance because they understand what is expected of them.

How to use this Guide

The Guide is intended to be read along with the Securities Act and the Securities Rules.

The Act and Rules define and interpret certain words. Many of these words are used in this Guide. In some cases, where we wish to draw your attention to a defined term, we have italicized it. However, we have not italicized every term that is defined in the Act or the Rules, nor have we italicized a word each time it is used.

How to navigate the Act and Rules

The content of the Act and Rules is organized by subject matter into numbered Parts. The Parts are further divided by subject matter into divisions — A, B, C, etc. The sections within a division are numbered consecutively and include both the Part and the division. For example, section 3A1 is Part 3, Division A, section 1. The numbering in the Rules works the same way.

Generally, the Act contains the broad principle or prohibition, while the Rules contain more detailed requirements. Because of this, a Part in the Rules will often contain more sections than the corresponding Part of the Act. For instance, Part 3B of the Act has only four sections while Part 3B of the Rules has eleven sections.

How to get more help

This Guide is only part of our system of guidance for dealers and advisers. If you have specific questions that are not answered in this Guide, you can get answers by contacting us by phone or e-mail in the manner described on our website, www.bcsc.bc.ca. The website also has the text of the Act, Rules, forms and other regulatory instruments.

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I. Overview Of The Registration Regime

ACT 1A1 3A1 Unless exempted under the Rules, anyone who *trades* in securities or acts as an *adviser* must register with the Commission. Trading covers a broad range of activities including:

- buying or selling securities
- acting as an intermediary for buyers and sellers
- any ''act, advertisement, solicitation, conduct, or negotiation directly or indirectly in furtherance'' of the buying or selling of securities

As a result, the registration requirement applies to anyone who buys or sells securities. However, not everyone needs to be registered — there are a number of exemptions to deal with routine commercial practice. For example, no one has to be registered if they trade through a registered dealer (otherwise, all your clients would have to be registered). And no one has to be registered to buy a security because the protections offered by the registration requirement are intended to regulate the conduct of sellers, not buyers.

Advising means engaging in, or holding out as engaging in, the business of

- managing investment portfolios on behalf of clients
- advising on investments in or trading in particular securities

Other exemptions that relate specifically to dealers and advisers are explained in more detail in Part I, Section B of this Guide.

A. Registration Requirements

1. Categories

RULES 3B1 There are four registration categories in British Columbia: investment dealer, mutual fund dealer, restricted dealer, and adviser.

RULES 3B2 3F25 4B6(2)
- Investment dealer — An investment dealer must be a member of the Investment Dealers Association of Canada (IDA) and can trade in all securities, advise clients in connection with those trades, act as a *due diligence provider*, and manage investment portfolios on behalf of clients in the circumstances permitted under the rules of the IDA.

RULES 3B2
- Mutual fund dealer — A mutual fund dealer must be a member of the Mutual Fund Dealers Association (MFDA) and can trade in mutual fund securities, trade in securities for which registration is not required, and advise clients in connection with those trades.

- Restricted dealer — A restricted dealer can trade and advise on trades in the securities specified in the conditions attached to its registration.

- Adviser — A registered adviser can manage investment portfolios on behalf of clients, advise clients on investing to trading in particular securities, and act as a due diligence provider.

For Restricted Dealers

RULES 3B1(4) Firms granted registration under the restricted dealers category will have individual conditions of registration established by our Capital Markets Regulation Division (CMR).

Restricted dealers include:

- independent owner-operator (see Part III Section B of this Guide)
- exchange contracts dealer (unless a member of the IDA)
- real estate securities dealer
- scholarship plan dealer
- security issuer

2. Firm-only Registration

ACT 1A1 **RULES** 3F5 Individuals who are *representatives* of a registered firm do not have to be registered to trade in securities or act as advisers on behalf of that firm.

ACT 15A1 16C2 As a registered firm, you are responsible for ensuring that your representatives have the character and qualifications necessary to trade or act as advisers, and that they comply with all regulatory requirements, including the Code of Conduct (see Part III Section A of this Guide). Your firm and its directors and officers are responsible to regulators, and subject to civil liability, for the actions of your representatives. All of this has implications for your hiring and supervision practices.

It is permissible for representatives of your firm to be ''employed'' with you through a corporation or some other entity such as a partnership. Since you are responsible for the conduct of those who are your representatives, regardless of the business structure, you will likely want to consider what safeguards are appropriate in these circumstances for the protection of your firm and its clients.

ACT 3C1 To make sure that you can get the information you need when making a hiring decision, you can ask any registered firm with whom the representative was previously employed, to give you all the relevant information it has about the representative's engagement with that firm.

When you provide information about a current or former representative to another firm, you have a qualified privilege defence if the representative sues you for defamation. That means you will not be held liable even if the personal information you shared was untrue or otherwise defamatory, as long as you acted without malice.

ACT 3C1 (4)-(5) The information that you get under this system you can use only for the purposes of making a hiring decision. You cannot disclose it to anyone, other than the Commission, another securities or financial services regulator, your self regulatory organization (SRO), or to anyone to whom you are required to disclose it by law.

3. Permanent Registration

ACT 3B4 12D1 Once registered, you do not have to renew your registration, although there is a prescribed annual fee. Your registration continues in force until you choose to surrender it, or it is suspended or revoked by the Commission.

4. Passport

British Columbia participates in a national system of registration passport under which regulators in the participating jurisdictions grant registration automatically to those who are registered in another participating jurisdiction. The system is administered by the regulator in the registrant's home jurisdiction. This means that if you are based in another jurisdiction, all you need do to become registered in British Columbia is to say to your home jurisdiction that you wish to do so and pay it the appropriate British Columbia registration fee.

Similarly, all a British Columbia registrant need do to become registered in another jurisdiction is to say so on its British Columbia application and pay the appropriate fees.

At present, British Columbia is the only jurisdiction with a firm-only registration system. If you are an individual registrant in another jurisdiction, you need not register to carry on business in British Columbia if your firm is registered here. If you are an individual who trades or advises in British Columbia as a representative of a registered firm, and wish to become registered in another Canadian jurisdiction, you will have to apply for individual registration in that jurisdiction, and then use that jurisdiction as your home jurisdiction for the purposes of getting registered elsewhere under the passport system.

NOTE TO READER: The previous discussion describes the passport system as proposed in our February 2002 paper, *New Concepts for Securities Regulation.* We are now working with our regulatory colleagues in other jurisdictions to implement a system along these lines. If that system does not come into being, or is not available at the time our new British Columbia legislation comes into force, we will implement a similar system on a ''one-way'' basis into British Columbia through an exemption (see Part II Section B of this Guide). In that case, the text above would be replaced by the following:

A registration ''passport'' system allows a person registered in only one province to become registered to do business in any Canadian jurisdiction by dealing only with the person's home regulator. Canada's securities regulators recently adopted some interim measures to facilitate this, and are working on a more comprehensive and permanent system. The permanent system would create a streamlined national system, under which a registrant would be required only to notify the regulator in its home jurisdiction that it wished to do business in other jurisdictions and pay the appropriate fees.

RULES 3B4(2)

British Columbia is a participant in that project. In the meantime, British Columbia has a ''one-way'' registration passport concept in place. It allows an applicant for registration to submit, instead of a registration application form, evidence of registration from another Canadian jurisdiction. Those registered elsewhere in Canada to act as dealers or advisers will be permitted to do business in British Columbia once they file evidence of their registration here and pay the appropriate fees.

B. Exemptions

The legislation includes many exemptions from the registration requirement for capital raising through private placements, to facilitate issuer transactions, and for other circumstances in which it is appropriate not to impose the registration requirement. The exemptions described here are those particularly relevant to dealers and advisers.

1. Dealer Exemptions

Pre-existing relationships with residents of British Columbia

RULES 3F21 7B1

A dealer from another Canadian jurisdiction or from a foreign jurisdiction does not have to be registered in British Columbia to deal with a client who has become a resident of British Columbia (either temporarily or permanently).

Unsolicited trades with residents of British Columbia

RULES 1A1 3F21 7B1

A dealer from another jurisdiction in Canada or from a foreign jurisdiction does not have to be registered in British Columbia as long as it does not *solicit business from residents of British Columbia.*

You would be soliciting business from residents of British Columbia if you target your marketing at British Columbia residents (either specifically or as part of a Canada-wide marketing initiative), or make payments to a person in British Columbia in connection with trading or advising. For example, a web page on the registrant's website dedicated to services offered to British Columbia residents or setting up an office in British Columbia is solicitation, as are broadcast or print campaigns on a Canada-wide basis. General marketing information that is accessible to a British Columbia resident, but is not specifically directed to the British Columbia market, is not solicitation. Payments that would be considered solicitation include commissions, referral fees or any payments made to someone in British Columbia other than the client or investor in connection with trading or advising activities.

The time for testing solicitation is when the relationship with the client is formed, not on a trade-by-trade basis.

A dealer from a foreign jurisdiction also has to provide the client with prescribed disclosure. The prescribed disclosure warns clients of the risks inherent in dealing with a dealer outside Canada. The form is in Appendix C to this Guide.

2. Adviser Exemptions

IDA Members

RULES 3F25

An investment dealer does not have to be registered to act as an adviser if it follows the rules of the IDA relating to portfolio management services.

Pre-existing relationships with residents of British Columbia

RULES 3F26 7B2

An adviser from another Canadian jurisdiction or from a foreign jurisdiction does not have to be registered in British Columbia to deal with a client who has become a resident of British Columbia (either temporarily or permanently).

Unsolicited advice to residents of British Columbia

RULES 3F26 7B2

An adviser from another jurisdiction in Canada or from a foreign jurisdiction does not have to be registered in British Columbia as long as it does not solicit business from residents of British Columbia (see the discussion above of the corresponding exemption for dealers for the meaning of ''soliciting business''). Like dealers, an adviser from a foreign jurisdiction also has to provide the client with the prescribed disclosure in Appendix C to this Guide.

Advice to registered dealers and advisers

RULES 3F26(c) 7B2(c)

An adviser from another jurisdiction in Canada or from a foreign jurisdiction does not have to be registered to advise clients who are registered dealers or advisers.

C. Dealer and Adviser Conduct

1. Code of Conduct

RULES 3D1

Dealers, advisers, and their representatives, must comply with the Code of Conduct, which replaces most of the detailed and prescriptive requirements that were in the former legislation. The Code and guidance about how to apply it are in Part III Section A of this Guide.

2. Other Ongoing Requirements

In addition to the Code of Conduct, there are some specific requirements that apply to dealers and advisers dealing with the following matters:

- Records and reporting
- Capital and bonding
- Proficiency, authority for all representatives, and personal information forms for partners, directors and officers

These additional ongoing requirements are discussed in Part III Section B of this Guide.

II. Getting Registered

A. Application Forms and Fees

RULES 3B2 3B11 The IDA administers the registration of investment dealers. To apply for registration as an investment dealer, you apply to the IDA using its application form and pay the prescribed fees to them.

RULES 3B4 To apply for registration under any other category, you apply to the Commission and pay the prescribed fee to it. The registration form is in Appendix A to this Guide.

Individual registrations elsewhere in Canada are administered through the National Registration Database system (NRD), a web-based electronic registration system (see Multilateral Instrument 31-102 *National Registration Database*). You can find complete information about how to use NRD on our website.

Under British Columbia's firm-only registration system, NRD is not applicable because registration of individuals is not required.

Dealer registration remains a paper-based system.

B. Passport

The registration passport system is described above (see Part I Section A).

RULES 3B4(2) Registered firms carrying on business in British Columbia do not have to register their representatives to deal with residents of British Columbia. Firms based in British Columbia that operate in other Canadian jurisdictions will have to register, under the laws of those jurisdictions, the representatives who will be dealing with residents of those jurisdictions.

If you are an individual registrant in another jurisdiction, you need not register to carry on business in British Columbia if your firm is registered here. However, because British Columbia does not require the registration of individuals, your firm will have to provide the Commission with the information about its representatives described below (see Part III Section B).

C. Financial Statements

An applicant for registration must file:

RULES 3B6 3B7
- annual financial statements for its three most recently completed financial years (or fewer, if the applicant has not completed three financial years); the statements for the most recent financial year must be audited — if those for earlier years have not been audited, the unaudited statements may be used.

RULES 3B8
- unaudited interim financial statements for its most recent interim period ended more than 60 days, or within 60 days if available, and the comparable period in the preceding year; the interim financial statements may be omitted if the results for that period are included in the annual financial statements.

RULES 3B9 An applicant for registration that has not existed for three years must provide the financial statements of any predecessors that carried on the applicant's primary business. An applicant, whose primary business was acquired within three years before the date that it files its application, must provide the financial statements of the acquired business prior to the acquisition.

RULES 3B5 An applicant for registration as an adviser must also file a calculation of capital showing that it has the capital it thinks it needs to meet its expected business obligations.

D. Refusal of Registration

ACT 3B1 The Commission may accept or refuse to accept a firm's application for registration. Before the Commission refuses your registration, you have a right to be heard. See Part III Section C of this Guide.

III. Dealer and Adviser Conduct and Requirements

A. Code of Conduct

RULES 3D1 A registered dealer or registered adviser must comply with the following Code. Each representative of a registered dealer or registered adviser must comply with the following Code, except Principle 7.

In this section, the provisions of the Code that are found in the Rules are in bold face type. The relevant guidelines appear underneath in ordinary type.

Principle 1 — Integrity and fairness

1. Act fairly, honestly, and in good faith and in the best interests of your client.

2. Exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

You have a duty to your clients to act fairly, honestly, in good faith and in their best interests. Examples of conduct that would violate this duty are:

- Front running
- Wash trading
- High closing
- Account churning
- Pricing illiquid securities artificially
- Delaying client asset or account transfers
- Failing to provide ''best execution'' for your client's trades

3. Comply with all relevant laws and regulations that govern you.

You will need to keep informed of the laws that govern your business. Apart from securities laws, these laws could include exchange regulations and federal proceeds of crime and anti-terrorist legislation.

You may also want to establish employee policies for unsolicited communications with prospective clients to avoid violations of the communication abuse rules under federal competition law.

4. Do not engage in conduct that would bring the reputation of the securities market into disrepute. Take all reasonable steps to determine whether a client's actions threaten the integrity of the securities market.

You are a gatekeeper of the integrity of the securities market. It follows that it is your duty to act in the best interests of your client. However, to comply with this requirement, you must also act in the best interests of your firm and the securities industry as a whole. If you become aware that the intention or effect of a client's trading would be in breach of securities regulations or impugn the integrity of the marketplace, then it is incumbent on you in your capacity as gatekeeper, to draw

the matter to the attention of the management of your firm and potentially to regulators.

5. If your client refuses to comply with regulatory requirements, cease to act on behalf of that client.

You should use all reasonable efforts to ensure that your client understands the relevant regulatory requirements and their implications at all stages of a transaction. If you become aware that your client is not complying with regulatory requirements, you should inform your compliance officer and advise your client to correct the matter. If your client refuses or fails to do so, you must no longer act for that client and, as discussed above, you should consider whether to bring the client's activities to the attention of regulators.

6. Do not contract out of any duty or liability you or your firm may have under this Code.

For example, you cannot use client agreements in your business that purport to exclude the application of this Code or other regulations.

Principle 2 — Dealings with clients

1. Keep your clients informed of all facts that a reasonable person would consider important to the business relationship.

Relationships with clients are based on trust. Each client, therefore, needs to know any information, both good and bad, about you and your business that a reasonable client would want to know before entering into or continuing that relationship. You should also keep each client informed about any conditions or restrictions on your registration or trading or advising activities, as well as your relevant employment and regulatory history. For example, if you are registered as a mutual fund dealer, your representatives should inform their clients that they are only authorized to trade in mutual funds and, if offered by your firm, in securities sold under registration exemptions (known as ''exempt market products'').

In establishing proper communication procedures, each firm should ensure that its terms of business with a client are set out in adequate detail in a contract. Depending on the degree of variability in client arrangements, you may want to develop a flexible form of client agreement to enter into with each client.

2. Provide clients with the information necessary to make informed investment decisions, unless your SRO permits you not to do so.

You should make every effort to give your clients objective and impartial information about their financial needs and advise them of their various options. If a client would be better served by purchasing products or services that, for example, a mutual fund representative cannot offer, than that representative should inform the client of this fact. You should identify and explain to the client all negative aspects of proposed investments or portfolios, including the risks and costs of your recommendations. Of particular importance are any costs that reduce the net return on the portfolio of the investor such as mutual fund management

expense ratios or the spread on bonds between the price the client is paying and the price the firm paid to acquire those securities.

In addition to clearly describing the product or service for the client and the ways that the transaction will fulfill the client's needs, you should disclose important assumptions underlying any illustrations or examples provided to the client, and the fact that actual results may differ significantly from those shown. You should avoid using examples or illustrations that you know, or ought reasonably to know, are based on unusual results or on a time period that generated much better than normally anticipated performance.

To give a client additional information about a security, you should refer the client to the relevant issuer's continuous disclosure record.

To satisfy the requirements in this section, you will need to advise your client on factors other than the features of the investment itself. For example, if your client intends to invest using borrowed money, you should discuss the risks of leveraged investing. If your client is purchasing securities from you in a branch of a related financial institution, you need to ensure your client understands that your firm is separate from the financial institution, that a government deposit insurer does not insure any securities purchased, and that the financial institution does not guarantee the securities.

3. Ensure that clients are provided on a timely basis with the records that a reasonable client would consider important respecting all transactions that you conduct on the client's behalf.

Investment dealers and mutual fund dealers should promptly send the client all relevant information relating to a trade, having regard to the type of security being traded. This includes the particulars of the trade, any consideration the client pays in connection with the trade, and any information about conflicts of interest that apply to the trade (see Principle 6). If a client receives information about the purchase and sale of mutual funds from a fund company, you do not need to send the client the same information.

You should send your clients statements that keep them informed about the status of their accounts and about the activity in those accounts since the last statement. The objective is to ensure that the client has information on a current basis that is reasonable in the circumstances. This would normally mean monthly, but less frequent reporting may be reasonable in some circumstances (for example, if the volume and frequency of trading in the account is low, or if the client requests less frequent reporting).

Advisers should send the client all relevant information relating to advising, based on the mandate with the client. This would likely take the form of regular statements that keep clients informed about the status of their portfolio and about the activity in the portfolio since the last statement. This includes details of changes to the portfolio, any consideration the client pays in connection with those changes, and any information about conflicts (see Principle 6). The objective is to ensure the client has information on a current basis that is reasonable in the

circumstances. This would normally mean at least quarterly, although you and your client may agree to more or less frequent reporting.

All firms should provide to the client anything the client will need to know to prepare and file income tax returns relating to the client's accounts with the firm.

4. **Ensure that all disclosure you provide to clients is prepared using plain language and is presented in a format that assists in readability and comprehension.**

Plain language helps investors understand your disclosure. It will ensure that they understand the securities they hold, the processes to deal with those securities, and their relationship with your firm.

Examples of ''plain language'' techniques include:

- Short sentences
- Definite, everyday language
- Using the active voice
- Organizing the document in clear, concise sections, paragraphs and sentences
- Avoiding legal or business jargon and boilerplate wording

Principle 3 — Confidentiality

Hold in strict confidence all confidential information acquired in the course of your relationship with clients, unless the client consents to the disclosure, the disclosure is legally required, or the client appears to be engaging in activity that could threaten the integrity of the securities market.

In the course of your relationship with a client, you will receive information about your client's financial circumstances, which is confidential. Receiving this information places you in a position of trust and responsibility and it is unethical to betray this trust. If information is disclosed, the damage to the client is the same whether or not the disclosure was intentional.

You may disclose your client's confidential information in three situations; you should explain these situations to the client at the beginning of your relationship.

First, you may disclose information if you get the client's consent, preferably in writing. Having the client sign a ''blanket'' consent statement allowing the general release of confidential information over an indefinite period may be acceptable. However, you should not require the client to consent to the sharing of confidential information as a prerequisite for providing service to clients or prospective clients.

Second, you must disclose if you are required to do so by law. Legal requirements include legally enforceable requests for information from the Commission, SROs, other regulators as well as provisions of applicable money laundering and anti-terrorist legislation.

Third, you must disclose your client's confidential information to the extent necessary to help regulators deal with situations where the client is engaging in activity that could threaten the integrity of the market, as contemplated in Section 4 of Principle 1.

Principle 4 — Proficiency

Maintain the proficiency, skill, and diligence necessary to properly advise and serve your clients.

The Commission or your SRO will set the minimum proficiency standards for entering the securities industry. However, in a rapidly changing financial marketplace, maintaining proficiency means that you need to keep abreast of changes in products, regulations and other factors that will affect your ability to provide high standards of client service. Education, especially continuing education, is a necessary component of business skill and the responsibility for continuing competency falls on both firms and those individuals who work for firms.

The proficiency requirement applies to all products sold by firms and representatives. Firms should consider whether the representative has been adequately trained before that representative is permitted to sell new products. For example, mutual fund dealers that allow their representatives to sell exempt market products must ensure that the persons who sell these products, their supervisors, and those who approve these products for sale by representatives of the firm, have qualifications that enable them to assess the products being sold.

Investment dealers that allow their representatives to manage client investments on a discretionary basis are expected to ensure that the proficiency of these representatives matches the increased skill demands of a discretionary relationship.

If your firm engages in underwriting activity, you should make sure that any representatives engaged in that activity have the necessary skills and training for that activity.

While the Commission will set the minimum proficiency requirements for portfolio managers of advising firms, these firms should determine their own proficiency standard for persons hired to assist in the investment management process.

The Commission will no longer mandate proficiency standards for compliance officers and branch managers. Firms will now be required to set their own standards of proficiency for these positions to ensure they are sufficient to enable these people to fulfill their essential supervisory responsibilities.

Firms should establish adequate re-qualification requirements for representatives who have been out of the securities industry long enough to affect their

proficiency. Firms may want to consider the following when making proficiency decisions:

- The length of time a representative has been out of the financial industry
- The representative's relevant experience during his or her time outside the financial industry
- The representative's educational background
- Any industry continuing education courses that the representative completed while not working in the financial industry

Firms should also consider developing policies to deal with representatives employed in other occupations both inside and outside of the securities industry.

Principle 5 — Know your client and suitability

1. **Take all reasonable steps to learn and keep current your knowledge of the essential facts about the identity, reputation and financial circumstances of each client.**
2. **Determine the general investment needs and objectives of the client, the client's risk tolerance and the appropriateness of the recommendations you make to that client. Unless your SRO permits you not to do so, determine the suitability of a proposed purchase or sale for that client or the client's portfolio.**
3. **If a purchase or sale that a client requests is not suitable, advise the client that it is unsuitable before executing the proposed transaction, unless your SRO permits you not to do so.**

Principle 5 combines what have traditionally been referred to as the ''know your client'' and ''suitability'' rules. They apply to all trades made for and advice given to clients, whether or not the securities are sold under registration exemptions.

Section 1 of Principle 5, known as the ''know your client'' rule, requires that you understand on an ongoing basis the client's identity, background, financial position and character so you can fulfill your role as a ''gatekeeper'' to the market. If your client is not an individual, knowing your client means knowing the individuals that control the client, its business and its financial circumstances.

The 'know your client' rule is one of the fundamental rules of the securities industry. It is incumbent on each representative to have the fullest knowledge possible of the personal circumstances, risk tolerance and investment objectives of all clients.

If someone other than your client wants to trade in that client's account, you must determine whether that person has a valid power of attorney or trading authority. In these circumstances, you will need to consider the scope of the person's authority and whether the person is a representative of a firm that is registered, or ought to be registered, as an adviser. You should also monitor these accounts to help identify whether the accounts are being used inappropriately as nominee accounts or to disguise abusive trading.

Sections 2 and 3 of Principle 5 refer to ''suitability'' and require that you determine what is suitable when recommending or, in most cases, selling products or services, having regard to the client's investment needs and objectives, the client's risk tolerance, and other relevant facts about the client that you know or ought reasonably to know. You should have a reasonable basis for the recommendations you make to your client. When considering the suitability of a trade or recommendation, consider the trade in the context of the client's total portfolio.

If a client requests the purchase of a security that is unsuitable, given the information on their 'know your client' form, you should consider documenting to the client your opposition to such a trade.

The IDA currently has rules that exempt approved discount brokerage firms from conducting a suitability review of each trade for its clients. Therefore, the suitability requirement found under this Principle does not apply to those firms and their representatives. Those firms and their representatives must still comply with the ''know your client'' obligations in this Principle.

Where, with the agreement of the client, an adviser has pooled the client's funds with those of others with a view to making common discretionary management decisions for all the clients involved, the adviser must take reasonable steps to ensure that a discretionary transaction is suitable for the portfolio as a whole, based on the stated investment objectives of the portfolio.

We remind advisers that individual suitability requirements for clients are still applicable for purchases of securities sold under registration exemptions and in a ''pooled fund'' discretionary trading environment. You should ensure that there is consistency between the client's objectives and the investment objectives of the pooled fund.

If a firm intends to sell exempt market product, the firm should understand and approve of each product being sold before they allow their salespeople to market that exempt product to clients. Unless a firm understands the investment, it won't be able to supervise its representatives to determine if the investment is suitable for its clients.

Principle 6 — Conflict of interest

1. Resolve all significant conflicts of interest in favour of the client using fair, objective, and transparent criteria. If there is a conflict of interest between clients, use fair, objective and transparent criteria to resolve those conflicts. In both cases, apply the criteria consistently.

General

This Principle makes it clear that the client's interests always come first. (This should be interpreted in the context of reasonable commercial practice — an extreme interpretation would suggest that you could not charge a client a fee.) The best way to ensure that the client's interests are put first is to have appropriate procedures in place to ensure that all conflicts of interest between the firm or its

representatives and the client are resolved in favour of the client and to have a system that effectively monitors and enforces compliance with those procedures. These procedures should cover conflicts of interest arising in the context of trading, advising and making recommendations. The onus of showing that the firm or representative has acted in the best interests of the client is on the firm and representative.

It could be difficult to show that you have acted in a client's best interest if the client is required or expected to deal with a particular financial institution in connection with the services you provide, or to purchase securities or pay for advice to obtain other financial products or services (''tied selling''). For example, if a related financial institution refused to make a loan to a client unless the client purchased securities from you, that would breach this principle if the client met the normal criteria for obtaining a loan. Similarly, if you refused to deal with a client unless the client moved a mortgage to a related financial institution, that would also breach this principle.

Sometimes the conflict of interest is not between the firm or representative and client, but between clients. For example, a firm sometimes has to decide how to allocate limited investment opportunities among clients. Again, these situations are best resolved if the firm has appropriate procedures in place to deal with them, and a system to monitor and enforce compliance with those procedures. For example, this does not mean that you must offer all clients part of a particular distribution of securities. It does mean that you must have guidelines for determining to whom to offer the securities. The guidelines for making the determinations must be transparent to all clients.

Inside information

Sometimes a firm or its representatives will receive material, non-public information (inside information). If this happens, the firm must ensure that it is handled properly.

ACT 10B4 Securities legislation prohibits anyone from acting on inside information. Firms and their representatives must not buy or sell, or participate in a decision to buy or sell, a security for any account or portfolio while possessing inside information about the security or the issuer of the security. This is a complete prohibition and applies to any account or portfolio in which the firm or its representatives play any role in making investment decisions or exercise any investment discretion, or over which the firm or its representatives have direct or indirect control, regardless of whether the firm or its representatives have a personal, economic or ownership interest.

Firms may disclose material non-public information only if it is in the necessary course of business. Otherwise, it would breach the tipping provisions in securities legislation. Firms should have specific procedures for dealing with inside information.

ACT 10B6(8) You should create information barriers within your firm to ''wall off'' those who are routinely exposed to inside information from those who are not. If you restrict

the knowledge to those who learn of it, and those who have a need to know it, those who do not know of it remain free to act with respect to the securities involved, whether for the portfolios under their management, for their clients' accounts or their own personal accounts. Without information barriers, the knowledge of one part of the organization could be imputed to the entire organization.

Corporate boards

If a representative serves on a board of directors or trustees, several conflicts could arise, including conflicting fiduciary duties owed to the company and owed to a portfolio or client, possible receipt of inside information, and conflicting demands on the representative's time. Your representatives should seek permission from your firm to serve on the board of directors of a public issuer or restricted issuer. Your firm should consider having policies for board participation which would identify the circumstances in which the activity would be in the best interests of the firm and its clients.

2. Develop conflict of interest procedures and disclose them to the client.

Conflicts of interest arise frequently in the securities industry and can be unique to each firm. Some conflicts can be avoided through adopting proper procedures while other conflicts are unavoidable in the context of normal business practice and should be managed as they occur. This section requires firms to develop conflict of interest procedures that work for their specific business. This section also requires you to communicate your conflict procedures to each client. You should consider doing this at the beginning of your business relationship in a way that the client can easily understand.

''Blanket'' disclosure about routine compensation arrangements in general is appropriate so long as you disclose changes to those arrangements promptly. However, in other cases (for example, referral fees), disclosure should be made on a case-by-case basis so that the client can consider the information in the context of any decision the client needs to make in the circumstances giving rise to the compensation.

3. Disclose promptly to the client any information that a reasonable client would consider important in determining your ability to provide objective service or advice.

Conflicts that you cannot avoid should be managed appropriately. You must fully disclose to your clients all conflicts of interest and all potential conflicts of interest that you know, or about which you reasonably ought to know. Certain conflicts are inherent in the relationship between you and your clients, such as any remuneration you receive for selling securities to a client and any remuneration tied to recommendations you make when selling proprietary products or services of your firm or an affiliated company.

You have an obligation to ensure that your clients are aware of and understand these conflicts. Even when you believe that your actions are not affected by the conflict, you must adequately address even an appearance of conflict.

One of the most important areas for full disclosure is anything to do with compensation you receive that relates to the work you do for the client or to your relationship with the client. You must disclose fees received or paid for client referrals, sharing compensation (commission splitting), contingency fees, and any compensation incentives you receive in connection with the client or the client's business (for example, trailer fees). You must disclose this information before the client has to decide about the transaction in question.

For example, sometimes several products would be suitable for a client but one product will entitle you to a significantly higher commission or a benefit such as a trip. You should disclose this to your client when you discuss the merits of the product.

''Soft dollar'' arrangements between advisers and dealers must be disclosed to the adviser's clients.

4. **When acting as an underwriter, act in the best interests of the investors and the securities market. Disclose to investors any direct or indirect relationships between you and the issuer or seller that would lead a reasonable investor to question whether you and the issuer or seller are in fact independent from each other.**

The role of the underwriter includes performing due diligence and negotiating the price and terms of the offering. In performing these functions, the underwriter is acting on behalf of public investors. Even when the underwriter is unrelated to the issuer or seller of the securities being underwritten, there are conflicts of interest involved, such as the underwriter's desire to earn the commission and underwriting fee and to be considered by the issuer for future underwriting and advising work.

To comply with this principle, it is not enough to act in the best interests of your own clients. For example, you may want to take reasonable steps to ensure that appropriate restrictions are imposed on existing securityholders so that sales of stock by this group does not disrupt the formation of an orderly market after the issuer goes public.

When the underwriter and the issuer are not independent, the potential for conflicts of interest increases. This section requires that underwriters act not only in the best interests of investors but also in the best interests of the firm, and the securities market as a whole. You are one of the 'gatekeepers' of the securities industry and therefore, it is incumbent on you to uphold the integrity of the market through your actions.

Underwriters will have to be particularly vigilant in situations where there is less than complete independence. The obvious situation is cross-ownership of the underwriter and the issuer, either directly or through a parent entity. However, there can be other relationships between an underwriter and the issuer, or parties

affiliated with them that would lead a reasonable investor to question whether the underwriter and issuer were in fact independent of each other.

The best way to ensure that these conflicts are resolved in favour of the investor is to have appropriate procedures to ensure that outcome and to have a system that effectively monitors and enforces compliance with those procedures.

This section requires you to disclose to the investor the circumstances of any relationship that could reasonably be perceived as less than completely independent. The disclosure should be sufficient so that the investor fully understands the nature of the conflict and its relevance to the underwriting transaction.

In some cases, the conflict may be so direct that you may conclude that following your ordinary procedures and making disclosure to investors would not be sufficient to remove the potential for real conflict, or at least the apprehension of conflict in the mind of the reasonable investor. An example would be your underwriting an issue of your own securities. In those cases, you may conclude that an independent underwriter should be involved in the transaction in a meaningful role to alleviate any concerns over the potential for real conflict.

5. When providing security analyst services, develop, establish, and enforce conflict of interest policies that adequately address the conflicts of interest that analysts face within your firm.

Analysts are exposed to pressures from internal and external sources as well as conflicts of interest. As a result, there is the danger that their reports and recommendations may not always be entirely objective, candid, or independent. In attempting to prevent this situation, you must develop conflict of interest policies that address conflicts for analysts specifically. Some policies you may want to consider would be to require the analyst to disclose specific conflicts of interest in each research report and recommendation issued on a company (for example, if the adviser holds a long or short position in the company's shares). The disclosure should be readable and displayed prominently, whether printed or disseminated electronically. You may also want to consider preventing any analyst that you employ from issuing research on a company when the analyst serves as an officer, director or employee of, or serves in any advisory capacity to, the company.

Principle 7 — Compliance systems

1. Maintain an effective system to ensure compliance with this Code, all applicable regulatory and other legal requirements, and your own internal policies and procedures. Maintain an effective system to manage the risks associated with your business.

You must develop, implement and monitor a written compliance system that satisfies the requirements of the Code. The system you develop should be effective for your particular firm and its business procedures. Advisers should consider AIMR guidelines as a guide to good practice when constructing your compliance system.

You should consider the risks of non-compliance and establish measures designed to address them. You should list key processes, systems and structures, that you will use to ensure that your firm complies with this Code and other requirements. Your records should include evidence of all compliance monitoring. Among other things, consider if your computer and other systems are secure and can meet operational requirements.

Consider whether your system is appropriate for managing the risks of your business. If your firm uses its own capital to underwrite distributions of securities, you will need to ensure that your firm's risk management systems account for the enhanced risk that this activity poses. Similarly, if your firm is a mutual fund dealer that allows its representatives to sell exempt market products, your firm will need to ensure its risk management systems account for the enhanced risk this activity poses.

If you run your business from multiple locations, you should consider whether to designate one individual who will have compliance responsibility in some or all of those locations. Perhaps the best way to achieve effective compliance is to have the compliance function in your firm independent from other functions and have the compliance reporting relationship reflect this. In small firms with few employees, the compliance function is unlikely to work effectively unless senior operating management assumes this responsibility.

Surprise audits of a firm's satellite offices can be an effective tool in evaluating compliance with rules and procedures.

2. Ensure that your compliance function possesses the technical competence, adequate resources, independence and experience necessary for the performance of its functions.

An effective system will provide for monitoring compliance with the system. This usually requires:

- a designated individual who is responsible for the compliance function,
- staff, sufficient in number, independence, competence and authority to effectively operate and enforce the system, and
- regular audits of the system's effectiveness.

You should provide sufficient training so that new and existing staff are familiar with your compliance system. You should consider authorizing your compliance personnel to report matters directly to your board of directors, when appropriate.

3. Ensure that a representative seeking to work for your firm is suitable for work in the securities industry. Once engaged, ensure that your representative is appropriately supervised.

When hiring a representative, you should consider doing reference checks with that person's previous employer, especially if the representative was previously employed in the securities industry. You should also consider doing a criminal record and credit check on prospective employees.

You are also responsible for all trading activities and advising that your representatives do. You should not only hire people with the appropriate qualifications but should also supervise them. Those acting in supervisory positions should have sufficient experience to do so and should also be fully familiar with the firm's compliance system. For example, the person responsible for overseeing a representative selling exempt market products should make sure the representative understands the product being sold, its attached risks, and the firm's policies on selling this type of product.

4. Separate underwriting functions from the firm's trading and advising functions.

You will need to ensure there is an effective system of functional barriers (known as ''Chinese walls'') to prevent the flow of information that may be confidential or price sensitive between the corporate finance group and the trading and advising groups. Lapses in this area may lead to allegations of tipping or trading on inside information.

5. Separate analyst functions from the firm's underwriting functions.

If you disseminate research reports that your analysts prepare as well as carrying out underwriting functions, you need to ensure these functions are kept separate to keep the analysts from being exposed to pressures relating to your firm's underwriting activities. You should ensure that your analysts report independently to management and not through the group responsible for underwriting activities.

6. Notify the Commission immediately of any significant change in the information relating to your organization or business.

The information you provided when you registered is important to the Commission's assessment of your fitness as a registrant and to the Commission's ability to maintain contact with you. Therefore, any change in this information is significant and you must disclose it to the Commission. For example, if a mutual fund dealer decided to start selling exempt market products, that is a change in the firm's business and must be disclosed to the Commission. In addition, a change in the people controlling your organization is a significant change in your organization. For example, you are required under the rules to provide information in the required form for all partners, directors and officers that work for your firm.

7. Safeguard any client monies you hold and ensure that they are used for their intended purpose. Ensure that client monies and assets are clearly identified and segregated, unless your SRO permits you not to do so.

To safeguard monies you receive for the purchase of securities or from the sale of securities, you should purchase securities as soon as practicable after you received the purchase order and the necessary funds. Similarly, sale proceeds should be deposited into the client's account promptly.

Client funds received for the future purchase of a security, as well as securities you hold on behalf of clients, must be segregated from the firm's money and assets.

Client funds and assets held in segregation should be properly identified and transparent to those clients.

Principle 8 — Client complaints

Create and use adequate procedures for handling client complaints effectively. Disclose complaint procedures to clients.

You must deal directly with all formal and informal complaints or disputes or refer them to the appropriate person or process, in a timely and forthright manner. You should be fully aware of all applicable processes for dealing with complaints and should disclose to all clients the channels available for pursuing different types of complaints (for example, regarding conduct, service or product performance).

Some registrants are also registered to do business in other sectors, such as insurance. In this case, you must inform clients of the differing complaint resolution mechanisms for each sector in which you do business and how the clients can use those mechanisms. For those persons who are also insurance licenced, you will be subject to applicable insurance regulations in this area. It is good business practice to document all complaints made against you for potential review by regulators and to respond in writing to any client who complains about you or your firm.

B. Other Ongoing Requirements

1. Records and Reporting

(a) For All Dealers and Advisers

RULES 3D3 10A1

You are responsible for keeping records sufficient to record your firm's business activities and clients' transactions. Records should be kept in an intelligible form, capable of being printed, and provided within a reasonable time to any person lawfully entitled to examine the information. If you are a firm that carries on business in more than one jurisdiction, you could, for example, centralize your records electronically and organize your affairs so that, although records are not physically held in British Columbia, they are readily available for inspection in the province. The legislation also sets time limits for keeping records.

RULES 10A2 Code Principle 2(4)

In addition to the Code requiring your disclosure to clients to be made in plain language, all documents you file with the Commission must also be written in plain language.

(b) For Investment Dealers and Mutual Fund Dealers

RULES 3D10

Investment dealers and mutual fund dealers are exempt from the record keeping requirements described above if they are subject to record keeping requirements of their SRO.

Investment Dealers and Mutual Fund Dealers will also have reporting obligations to their SRO, including any early warning requirements of the Canadian Investor Protection Fund (for IDA members) or the Investor Protection Corporation

(for MFDA members). If you have questions about the SRO requirements for record keeping and reporting, contact the IDA or MFDA. You can find contact information on their websites at www.ida.ca or www.mfda.ca.

(c) For Advisers

RULES 3E2 In addition to keeping records as discussed above, the legislation requires registered advisers to file annual audited financial statements.

2. Capital and Bonding

(a) For all Dealers and Advisers.

RULES 3D6 The legistlation requires a firm to have enough capital to meet its business obligations. In deciding your firm's appropriate level of capital, you will want to consider the historical affect of market downturns and other foreseeable risks on your firm and its ability to continue as a going concern. If your firm uses its own capital to underwrite distributions of securities, you will need to ensure that your firm's capital is sufficient to meet your underwriting obligations, even in adverse market conditions, without risking your firm's ability to carry on business.

RULES 3D7 If your firm borrows from related persons to meet its business oblibations, the legislation requires a subordination agreement so that claims of clients and other creditors come first.

(b) For Investment Dealers and Mutual Fund Dealers

RULES 3D10 Investment dealers and mutual fund dealers are exempt from the capital requirements described above if they are subject to capital requirements of their SRO.

(c) For Advisers

RULES 3E3 3E4 In addition to the general obligation for sufficient capital, the legislation imposes several additional obligations on registered advisers. The legislation requires advisers to file a statement annually disclosing the amount of capital sufficient to meet its business obligations. If your capital falls below the amount reported on your prior report, you must immediately notify the Commission.

RULES 3E1 As a registered adviser, your firm must also maintain bonding in the amount required by the legislation. The amount of bonding varies depending on whether you have custody of client funds or securities.

3. Proficiency, authority, identification of representatives, and personal information for directors and officers

(a) For all Dealers and Advisers

RULES 3B3 In addition to proficiency obligations under the Code, the Commission specifies the minimum proficiency standards for all registrants. The proficiency for each category is discussed below.

RULES 3D2 Under the legislation, each firm must keep a list of what each representative is authorized to do. Your firm cannot authorize a representative to perform services outside the scope of your firm's registration.

RULES 3D9 Your firm must keep an evergreen list of all current representatives active in British Columbia on your public web site. You should ensure that clients and prospective clients can easily locate your list.

RULES 3D5 Because directors and officers of a firm shape a firm's overall compliance culture, the legislation requires a firm to provide personal information about its directors and officers in the required form. The form is Appendix B to this Guide. In determining who must complete these forms, remember that partners of a firm are included in the legislation's definition of director. The definition of officer includes only those who perform an executive function. Whenever a new partner, director or officer is appointed to one of those postions, the personal information form for that person must be provided to the Commission.

(b) For Investment Dealers and Mutal Fund Dealers

RULES 3B3 The Commission relies on the SROs to set proficiency for their members. As a result, the specified proficiency for investment dealers and mutual fund dealers is that established by the SROs.

RULES 3D10 Investment dealers and mutal fund dealers are exempt from providing information on directors and officers to the Commission since it will be available through their SRO.

Investment dealers and mutual fund dealers are not exempt from the requirement to have a list of their British Columbia representatives on their website.

(c) For Advisers

RULES 3B3 Representatives of advisers must take the courses and have the experience specified by Commission staff from time to time, subject to the representative's firm determining that the representative has alternative training and experience that are equivalent to the specified proficiency. The most current proficiency and experience requirements are posted in the CMR section of the website. Typical minimum-level course requirements for representatives include:

- the Canadian Securities Course (CSI),
- the Canadian Investment Management Program (CSI), and
- the first year of the Chartered Financial Analysts Course (AIMR).

The Commission may also look for additional proficiency requirements depending on the business activity of the adviser or representative. For example, if an adviser intends to use derivatives as part of its investing strategy, the Commission would expect to see appropriate additional proficiencies.

Typical minimum-level experience requirements would be, for those with independent discretion over investment portfolios, at least five continuous years

of relevant experience in the securities industry performing research involving the financial analysis of investments in securities.

While the Commission will set the minimum proficiency standards for representatives of advisers, the proficiency required of persons hired by the firm to assist in investment research and analysis will be left to the discretion of the firm. As an example, if you hire a junior representative you should make sure that person has the necessary education or experience to complete their work and you should put in place the controls necessary to protect your clients from the mistakes that can come from inexperience.

Dealers and Advisers outside British Columbia

RULES 3D8 3D9 Dealers and advisers that are based outside British Columbia are deemed to have complied with the ongoing requirements discussed above if they are subject to corresponding requirements in another Canadian jurisdiction. The one exception is that dealers and advisers based outside British Columbia must keep a list of all current representatives active in British Columbia on their website.

Independent Owner-Operator

One category of restricted dealer is the independent owner-operator. An independent owner-operator is, at its most basic level, a one-person investment dealer or mutual fund dealer. The Commission will oversee the operation of these firms directly and each application for this kind of registration will have specific conditions attached by the Commission.

As an applicant for registration in this category, you will have to demonstrate:

RULES 3B3
- Proficiency and experience in the line of business in which you intend operate. For example, if you intend to trade in derivatives, you will have to meet the same proficiency requirements as IDA members that carry on this business.
- Proficiency managing a securities business and operating a compliance system. Independent owner/operators, in effect, supervise themselves and do not have anyone else in their offices to rely on for advice on business or compliance issues. You will therefore have to complete the Partners, Directors, and Officers course and the Branch Manager's course, or both, if you intend to do business as an investment dealer, or the equivalent Investment Funds Institute of Canada courses if you intend to do business as a mutual fund dealer.

C. Compliance

1. Examinations and Compliance Reviews

All registrants are subject to regular examinations to determine if they are in compliance with the legislation. For IDA and MFDA members, these reviews are normally conducted by those organizations.

The Commission conducts examinations on advisers and restricted dealers. In addition to a predictable review cycle, the Commission also conducts random reviews determined on a risk-assessment basis.

2. Power to Impose Conditions or Restrictions

ACT 3B2 3B3

Commission staff has the power to impose conditions or restrictions on a registrant or a representative. Before doing so, Commission staff must give the registrant an opportunity to be heard.

3. Opportunity to be Heard

ACT 3B1(2) 3B2(3) 3B3(3)

You have an opportunity to be heard if Commission staff:

- refuses to grant, reinstate or amend your registration, or
- imposes conditions or restrictions on your registration.

For details about the process relating to the opportunity to be heard, go to the CMR section of our website.

4. Hearing and Review

ACT 13B1

If, after you have exercised your right to be heard, Commission staff implements the proposed decision that gave rise to the opportunity to be heard, you may apply for a hearing and review of the decision by a hearing panel of the Commission. You must provide written notice that you want a hearing to the Secretary, British Columbia Securities Commission, within 30 days after the date on which the letter informing you of the decision was sent.

IV. Market Participant Conduct

Because the Commission's responsibilities include protecting the integrity of the capital market and the confidence of investors, the legislation imposes duties on market participants and prohibits certain conduct. It is important that dealers and advisers are aware of these provisions because, if one is contravened, the person may be subject to regulatory or criminal sanctions. Contraventions of the legislation can also give rise to actions for civil liability (see Part V of this Guide).

Misrepresentations

ACT 1A1 10B1 *Misrepresentations* are prohibited. For dealers and advisers, this means that you cannot provide untrue information or omit to provide information that a reasonable investor would consider important in making a decision to buy or sell a security, or to enter or maintain a business relationship with a firm or representative.

Manipulation and fraud

ACT 10B2 Any conduct relating to trading in a security that results in manipulation or fraud is prohibited.

Unfair practices

ACT 10B3 A person must not engage in an unfair practice. This means that high-pressure sales tactics, taking advantage of an investor's physical or mental infirmity, ignorance, illiteracy or lack of sophistication, and imposing unduly harsh terms or conditions on a sale, is not permitted.

Insider trading or tipping

ACT 1A1 10B4 A *connected person* (anyone connected with a *public issuer*) is prohibited from trading on *inside information* (material information about the issuer that has not been generally disclosed). A connected person is also prohibited from informing another person of inside information unless it is necessary in the course of the issuer's or person's business. A connected person includes anyone doing business with a public issuer and anyone who learns of inside information from someone they know, or should know, is a connected person. If you learn inside information about a public issuer while engaged in professional activities with the issuer, its management, or anyone doing a deal with the issuer, you are caught by this prohibition.

Front running

ACT 10B5 A person who has access to information concerning an investment program of a mutual fund or an investment portfolio of a client must not use that information to trade securities for the person's benefit or advantage or for the benefit or advantage of a related person.

False or misleading statements to Commission

ACT 10C1 You must not make or give false or misleading statements and information to the Commission or Commission staff. This includes any verbal or written statements or information provided in the course of dealings with Commission staff on a filing or application. It also includes documents filed, whether because they are required, or voluntarily.

Obstruction of justice

ACT 10C2 A person must not destroy, conceal or refuse to give any information or produce a document needed for a hearing, compliance review, investigation, or seizure of property and securities.

Contraventions attributable to others

ACT 16C2 If a firm contravenes the legislation or a Commission decision, any employee, officer, director, agent or significant securityholder of the firm who authorized, permitted or acquiesced in the contravention is also considered to have committed the same contravention. These individuals could be subject to commission enforcement proceedings or criminal sanctions.

V. Investor Remedies

ACT 15A1

The legislation provides a statutory right of action against anyone who commits a material contravention of the legislation and the plaintiff suffers damage as a result. If one of your representatives contravenes the legislation, your firm can be sued as can your directors. Any officer of your firm is also liable if the officer was involved in the contravention. In most circumstances involving dealers and advisers, the contravention will be material if it would be considered important by a reasonable investor. An obvious example would be a representative's recommending securities that were unsuitable for a client.

A client could also sue a representative of a dealer who recommended the purchase of shares of a company without telling the client that the representative was a major shareholder of the company.

In both cases, the client would have to show that information would have been important to a reasonable investor and would have to prove damages.

Defences

Besides any defences available at common law, there are defences in the legislation for firms and their directors and officers.

ACT 15B2-15B4

A firm and its directors have a defence if the firm had a reasonable system in place to avoid contraventions and a reasonable process for monitoring compliance with that system. There is also a due diligence defence available to the firm and its directors and officers. Defendants have to show that they conducted a reasonable investigation and had no reasonable grounds to believe the contravention would occur.

Protections for defendants

ACT 15C1 15C2 15D5

There are also protections for defendants. Three of the protections are intended to discourage strike suits. They are: court approval to commence an action; court approval of any proposed settlement; and the loser pays cost rule.

RULES 15D1

The legislation also limits the damages payable by individual defendants unless they acted knowingly or were reckless or willfully blind. The damages limits do not apply if the court finds the defendant's conduct constituted fraud, market manipulation or an unfair practice.

VI. Leaving the System

ACT 3B4 A registrant firm may surrender its registration if it complies with the prescribed conditions and the Commission accepts the surrender of registration. Upon receipt of the application for surrender, the Commission can suspend the registrant's registration without a hearing.

APPENDIX A

FORM 3B4
Application for Registration as a Dealer or Adviser

NOTE: If the space in this form is insufficient for your answers, attach a statement marked with a cross-reference to the item it relates to. Each attached statement should be initialed by you.

Terms that appear in italics in this form are defined in the Act or the Rules.

Freedom of Information and Protection of Privacy Act

The personal information requested on this form is collected under the authority of and used for the purpose of administering the *Securities Act*. You can direct your questions about our collection of or use of this information to the Registration Supervisor, Capital Markets Regulation Division, British Columbia Securities Commission, PO Box 10142, Pacific Centre, 701 West Georgia Street, Vancouver BC V7Y 1L2. Telephone (604) 899-6692. Toll Free within British Columbia 1-800-373-6393.

We are/I am applying for registration under the *Securities Act* in the category of:

1. Contact Information

(a) Name of applicant Name of contact:

(b) Head office business address

Telephone no.: Fax no.: E-mail:

Website address:

(c) Registered office in British Columbia

Telephone no.: Fax no.: E-mail:

2. Branch Offices

Do you have any branch offices? If so, provide this contact information for each branch office.

Name: Address:

Telephone no.: Fax no.: E-mail:

Website address:

3. Business History and Plans

Have you, or any of your *affiliates*, operated under, or carried on business under, any name other than the name shown in this application? (If so, provide details.)

4. Banking and Bonding

(a) We/I maintain accounts at the following bank or credit union branches (provide complete contact information):

1.

2.

3.

(b) If applying for adviser registration, attach proof of your bonding coverage for your current financial year to this form (*Securities Rules*, rule 3E1).

5. Financial statements (*Securities Rules*, rules 3B6 through 3B9)

(a) What is your financial year end?

(b) As attachments to this form, file annual financial statements for your 3 most recently completed financial years or, if you have not completed 3 financial years, all of your financial years. Your statement for the most recent financial year must be audited. Your statements for the other years need not be audited, unless audited statements have already been prepared.

(c) As an attachment to this form, file interim financial statements for the most recent interim period ended more than 60 days (or within 60 days if available) before the date of this application, and the comparable period in the preceding year.

6. Capital sufficiency and capital calculation (*Securities Rules*, rule 3B5)

(a) As an attachment to this form, file a detailed statement showing your calculation of the amount of capital necessary to meet your expected business obligations, together with a detailed statement showing that you have sufficient capital available to meet those expected obligations.

(b) Do you have a guarantor for your financial obligations? (If so, provide details.)

(c) Have any of your partners, *directors*, or *officers* loaned you money or other assets so that your capital is sufficient to meet your expected business obligations?

If so, have you had each of those partners, *directors*, or *officers* sign an agreement that their claims to repayment are subordinated to the claims of your general creditors and clients? (*Securities Rules*, rule 3D7).

(d) Other than the people listed as your partners, *directors*, or *officers*, is there any other person who has any interest in your firm? (If so, provide details.)

7. Securities registration history

Have you, or have any of your *affiliates*:

a) been registered in any capacity under the *Securities Act* of British Columbia? (If so, provide details.)

b) applied for registration, in any capacity, under the *Securities Act* of British Columbia? (If so, provide details.)

8. Other registration history

Have you, or have any of your *affiliates* or *associates* (*Securities Act*, s. 1A1) ever been:

a) registered or licensed in any capacity anywhere else to deal or trade in *securities*? (If so, provide details.) Note: securities include derivative contracts.

b) registered or licensed in any other capacity anywhere to deal with the public? (e.g. as an insurance agent, real estate agent, private investigator, mortgage broker, etc.) (If so, provide details.)

c) refused a registration or licence mentioned in 8(a) or (b), or have you had such a registration suspended or cancelled? (If so, provide details.)

d) denied the benefit of any exemption from registration provided by the *Securities Act*, or any similar exemption provided by the securities laws of another jurisdiction? (If so, provide details.)

9. Exchange or SRO membership history

Have you, or any of your *affiliates*, been:

a) a member of any exchange, self regulatory organization, or other similar organization, in any jurisdiction? (If so, provide details.)

b) refused membership or participation in, or been suspended from membership or participation, in any exchange, a self regulatory organization, or other similar organization, in any jurisdiction? (If so, provide details.)

10. Criminal records history

Is there currently an outstanding charge or indictment against you or against any of your *affiliates* or *associates*? (If yes, provide details)

11. Civil proceedings history

Have you or have any of your *affiliates* or *associates*:

(a) ever been a defendant or respondent in proceedings alleging fraud, theft, deceit, misrepresentation, or similar conduct in any civil court in any jurisdiction? (If so, provide details.)

(b) at any time declared bankruptcy, or made a voluntary assignment in bankruptcy? (If ''Yes'', give details and attach a certified copy of discharge)

(c) at any time had a receiver or receiver manager appointed to hold your assets? (If so, provide details.)

(d) ever been refused a fidelity or surety bond? (If so, provide details.)

12. Partners, directors, and officers

Set out the names and positions held by each of your partners, *directors*, or *officers*.

NAMES (IN ADDITION TO LAST NAME, GIVE FULL FIRST AND MIDDLE NAMES)	OFFICE HELD	(IN ADDITION TO LAST NAME, GIVE FULL FIRST AND MIDDLE NAMES)	OFFICE HELD
1		5	
2		6	
3		7	
4		8	

13. Personal information of partners, directors, and officers

For each of your *directors*, *officers,* or partners listed in question 12, file a BC Form 3B10 *Information Form for Partners, Directors, and Officers*. Submit those forms, signed by each partner, director and officer, along with this form.

14. Compliance systems

Provide detailed information about your compliance system, including:

- Your policy and procedure manual, if any.
- Supervision.
- Technical competence, resources, and experience.
- Suitability and proficiency of representatives.
- Conflicts of interest.
- How you separate analyst and underwriting functions from the rest of your business (if applicable).
- Safeguarding client funds and assets, and segregating them from your own.
- Client confidentiality.
- Client communications.
- Client complaints.

Dated at on , 200

_____

Signature of authorized signatory on behalf of the applicant

_____

Name of authorized signatory

It is an offence under the *Securities Act* to file an application containing a statement that is a misrepresentation or to provide information to the British Columbia Securities Commission that is false or misleading.

APPENDIX B

FORM 3B10
Personal Information Form for Partners, Directors and Officers

Freedom of Information and Protection of Privacy Act: The personal information requested on this form is collected under the authority of and used for the purpose of administering the *Securities Act*. Questions about the collection of or use of the information can be directed to the Registration Supervisor, Capital Markets Regulation Division, British Columbia Securities Commission, PO Box 10142, Pacific Centre, 701 West Georgia Street, Vancouver BC V7Y 1L2. Telephone (604) 899-6692. Toll Free within British Columbia 1-800-373-6393.

1. Contact Information

Last name, first, middle

Residential address

Telephone number, fax number, e-mail/internet address

Social insurance number

Address for service in British Columbia

2. Personal Description of Director, Officer, or Partner

Date of birth, place of birth, gender

Name of spouse

Nature of spouse's employment

Citizenship of Applicant

If **NOT** a Canadian Citizen, answer the following

Are You a Permanent Resident?	Number of Years of Continuous Residence in Canada	Passport Information			
		Country	Place of Issue	Date of Issue	Passport Number
YES/NO					

3. Education

A. Name of last school attended and degree or diploma obtained, and date obtained.

High School or Secondary Level

Post-Secondary, College, CEGEP or University

Professional Education

Other

4. Employment History

A. Make full disclosure of your business activities, including any periods of self-employment and unemployment, for the previous 10 years, excluding any summer employment while a full-time student, but including **all** securities or commodities industry employment during and prior to the ten-year period. Note: securities include derivative contracts.

Name and address of employer	Name and title of immediate superior	Nature of employment and duties of applicant	Reasons for leaving	From YY/MM/DD	TO YY/MM/DD
PRESENT					
PREVIOUS					

B. Have you **ever** been discharged by an employer for cause? (If yes, give particulars as an attachment).

5. Residential History — Give all home addresses for the past 10 years. Include street, city and province.

Present address, including postal code and dates

6. References — Give three names as references, excluding relatives and persons associated with your firm. References must include a bank or trust company at which you have an account (give account number).

Name

Firm name

Business address

Occupation

Telephone, fax, and e-mail:

Account No. at reference bank or trust company

NOTE: Account No. need not be given if this form is accompanied by a written reference from a bank or trust company with which the applicant has an account.

7. Name Changes

INSTRUCTION: Name changes resulting from marriage, divorce, court order or any other process must be listed here giving appropriate dates.

Have you ever carried on business under any name other than the name mentioned in Question 1 of this form, or have you ever been known under any other name?

Previous Name Date

8. Prior Registration or Licensing

A. Are you now or have you **ever** been registered or licensed, or applied for registration or a licence in any capacity under any securities laws anywhere? Include registrations or licences to trade in derivative contracts.

List all authorities with whom you were registered or licensed and the dates of registration. State whether the registration is currently in effect.

Authority Date

Authority Date

B. Are you now, or have you **ever** been a partner, shareholder, *director* or *officer* of any company or of a partnership which has been registered or licensed, or is now registered or licensed (except as an issuer if you are or have been solely a shareholder) in any capacity under any securities laws anywhere?

C. Are you now or have you **ever** been registered or licensed, or applied for registration or a licence, under any legislation which requires registration or licensing to deal with the public in any capacity, **other than securities laws anywhere?**

9. Refusal, Suspension, Cancellation or Disciplinary Measure

A. Have you **ever** been refused registration or a licence, or has your registration or licence been suspended or cancelled, under any securities laws anywhere?

B. Are you now or have you **ever** been a partner, shareholder, *director* or *officer* of a company or of a partnership which has, during the time of your association with it, been refused registration or a licence, or whose registration has been suspended or cancelled under securities laws anywhere?

C. Have you **ever** been refused registration or a licence, or has your registration or licence been suspended or cancelled, under any legislation which requires registration or licensing to deal with the public in any capacity **other than securities laws anywhere?**

D. Have you been denied the benefit of any exemption from registration or licensing provided by securities laws anywhere?

E. Have you or any partnership or company of which you were at the time a partner, officer or director or *significant securityholder*, ever been the subject of disciplinary action by any regulator?

10. Self-Regulatory Organizations

Have you or has any partnership or company of which you are or were at the time of such event a partner, *director*, *officer* or *significant securityholder*:

A. **Ever** been a member of any exchange, association of investment dealers, investment bankers, brokers, broker-dealers, mutual fund dealers, exchange contracts dealer (commodity futures

dealers), investment counsel, other professional association or any similar organization anywhere?

B. **Ever** been refused registration or licensing or approval for membership or approval in any other capacity by/in any of the institutions or associations described in Question 10A?

C. **Ever** been the subject of disciplinary action undertaken by any authority as described in question 10A?

11. Offences Under the Law

INSTRUCTION: Offences under such federal statutes as the ***Income Tax Act*** **(Canada)** and the ***Immigration Act*** **(Canada)** constitute criminal offences and must be disclosed when answering this question. Where you have pleaded guilty or been found guilty of an offence, the offence must be reported even though an absolute or conditional discharge has been granted.

It should be noted that pleas or findings of guilt for impaired driving are ***Criminal Code*** **(Canada)** matters and must be disclosed.

You are not required to disclose any offence for which a pardon has been granted under the ***Criminal Records Act*** **(Canada)** and the pardon has not been revoked. Under these circumstances, the appropriate response would be ''No''.

If you are in doubt as to previous dealings you have had with law enforcement agencies and the applicability of this question with respect to these encounters, you should obtain the advice of an authorized officer of your sponsor or a legal adviser.

A. Past Offences Involving Securities, Commodities, Insurance or Real Estate

Have you **ever** pleaded guilty or been found guilty under any law anywhere of any offence relating to trading in securities, insurance, or real estate, or been a party to any proceedings taken on account of fraud arising out of any trade in or advice in respect of securities?

B. Past Offences Involving Other Criminal Offences or Contraventions

Have you **ever** pleaded guilty or been found guilty under any law anywhere for contraventions or other criminal offences not noted in A above?

C. Current Charges or Indictments

Are you currently the **subject of a charge or indictment**, under any law anywhere for contraventions, criminal offences or other conduct of the type described in A or B above?

D. Partnership or Company Offences or Current Charges or Indictments

Has any partnership or company of which you are or were at the time of such event a partner, *director*, *officer* or a *significant securityholder*, **ever** pleaded guilty or been found guilty, or is any such partnership or company currently the subject of a **charge or indictment**, under any law anywhere for contraventions, criminal offences or other conduct of the type described in A or B above?

12. Civil Proceedings

Has any claim been made successfully or, to your knowledge, is any claim pending in any civil proceedings before a court or other tribunal anywhere which was, or is, based in whole or in part on fraud, theft, deceit, misrepresentation or similar conduct:

A. Against you?

B. Against any partnership or company of which you are or were at the time of such event, or at the time such proceedings were commenced, a partner, *director*, *officer* or *significant securityholder*?

13. Bankruptcy

A. Under the law of any jurisdiction, have you **ever**:

a) been declared bankrupt or made a voluntary assignment in bankruptcy?

b) made a proposal under any legislation relating to bankruptcy or insolvency?

c) been subject to or instituted any proceedings, arrangement or compromise with creditors including, without limitation, a declaration under the Quebec Civil Code or had a receiver and/or manager appointed to hold your assets?

If yes, and if applicable, attach copy of any discharge, release or document with similar effect.

B. Has any partnership or corporation of which you are or were at the time of such event a partner, *director*, *officer* or *significant securityholder* **ever**:

a) been declared bankrupt or made a voluntary assignment in bankruptcy?

b) made a proposal under any legislation relating to bankruptcy or insolvency?

c) been subject to proceedings under any legislation relating to the winding up, dissolution or companies' creditors arrangements?

d) been subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver and/or manager appointed to hold its assets?

If yes, and if applicable, attach a copy of any discharge, release or document with similar effect.

14. Judgement or Garnishment

Has any judgement or garnishment **ever** been rendered against you or is any judgement or garnishment outstanding against you, in any civil court anywhere for damages or other relief for any reason whatsoever?

15. Surety Bond or Fidelity Bond

A. Have you ever applied for a surety bond or fidelity bond and been refused?

If yes, attach name and address of bonding company and when and why the bond was refused.

B. Are you presently bonded?

16. Business Activities

A. Will you be actively engaged in the business of the firm with which you are connected and devote the major portion of your time to that business?

B. Are you engaged in any other business or do you have any other employment for gain except your occupation with the firm with which you are now applying?

If so, attach full details including the full name and address of the business, the nature of the business, your title or position and the amount of time you devote to the business.

C. Are you a partner, *director*, *officer*, shareholder or other contributor of capital of a partnership or of a company having as its principal business that of a broker, dealer or adviser in securities other than the firm with which you are now applying? If so, **attach full details**.

17. A. State the number, value, class and percentage of shares or the amount of partnership interest you own or propose to acquire upon approval. If acquiring shares upon approval, state source (e.g., treasury shares, or if upon transfer, state name of transferor).

B. State the value of subordinated debentures or bonds of the firm to be held by you or any other subordinated loan to be made by you to the firm.

C. Are you or will you upon approval be the beneficial owner of the shares, bonds, debentures, partnership interest or other notes held by you? If **NOT**, state name, residential address and occupation of the beneficial owner.

Dated at on , 200

_____

Signature of partner, director or officer

_____

Signature of partner, director or officer (Printed)

IT IS AN OFFENCE UNDER THE *SECURITIES ACT* TO FILE AN APPLICATION CONTAINING A STATEMENT THAT IS A MISREPRESENTATION OR TO PROVIDE INFORMATION TO THE BRITISH COLUMBIA SECURITIES COMMISSION THAT IS FALSE OR MISLEADING.

APPENDIX C

FORM 7B1
Risk Warning — Foreign Dealers and Advisers

_____ is a foreign dealer or adviser that is not subject to, or
(Name of fund company)

is exempt from, British Columbia securities laws. We are regulated by _____
(Name of regulator)

in _____.
(Name of jurisdiction)

We may advise you or trade securities on your behalf, but you should be aware that:

- You will **not be protected** by British Columbia securities laws when dealing with the foreign dealer or adviser, or its representatives.
- There **may not be** a domestic investor protection fund similar to the Canadian Investor Protection Fund or, if there is one, you may not be entitled to participate.
- If there is a problem, it **may be more difficult** for you to take legal action against the foreign dealer or adviser, or its representatives, than it would be for you to take action against a Canadian dealer or adviser, or its representatives. Any disputes will be settled under the laws of _____.
(Name of jurisdiction)
- The person you are dealing with may be **under no obligation** to tell you whether an investment is suitable for you.
- You should **seek advice** about the tax consequences of investing in foreign securities.
- If you have any **complaints** about the foreign dealer or adviser or its representatives, contact the foreign dealer's or adviser's regulator.