APPENDIX A

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

NATIONAL INSTRUMENT 33-102
REGULATION OF CERTAIN REGISTRANT ACTIVITIES
AND COMPANION POLICY 33-102CP

DEFINITIONS (NI 33-102, Part 1)	
Definition of "Retail Client" (NI 33-102, section 1.1)	**IDA** - The commentator believes that a $5 million level appears unnecessarily high, considering current thresholds for sophisticated investors under securities legislation are considerably lower. The commentator would like to suggest that the threshold be lowered to the one or two million dollar level. *CSA Response: The CSA are of the view that the $5 million threshold is appropriate.*
LEVERAGE DISCLOSURE (NI 33-102, Part 2)	
Leverage disclosure too onerous (NI 33-102, section 2.1)	**Scotia McLeod** - The provision dealing with leverage disclosure as drafted will create significant practical administrative and evidentiary difficulties as it has the potential to lead to disputes and evidentiary problems in establishing what knowledge the dealer did or did not possess. In addition, the requirement would appear to necessitate establishment of extensive and costly distribution and tracking processes and systems. **IDA -** The commentator believes that the requirement to provide leverage disclosure to all clients when the registrant becomes aware that the client intends to borrow or purchase securities creates an onerous obligation on the part of the investment advisor to inquire as to how clients will fund a purchase of securities. *CSA Response: It is up to the registrant to determine how best to evidence the acknowledgement so that the registrant is satisfied that it has met the requirement. Since the registrant currently maintains files on clients and their transactions, maintaining evidence of the acknowledgement is not an administrative burden. In addition, in the opinion of the CSA, the registrant, as part of its*

	duty to its client, should ascertain if the retail client is leveraging to purchase securities.
Consistency with other requirements (NI 33-102, section 2.1)	IFIC - The leveraging disclosure requirements, as they apply to mutual fund dealers, will eventually be superseded by the MFDA requirements once it is a recognized SRO. Accordingly, the commentator believes some consideration should be given to ensuring consistency between the National Instrument requirements and any ultimately adopted by the MFDA in its proposed rules, regulations and by-laws. *CSA Response: The provision, as drafted, is consistent with the rules of the MFDA.*
One-time leverage disclosure (NI 33-102, section 2.1)	**Scotia McLeod** - The commentator believes that if the CSA continue to hold the view that specific leverage disclosure requirements are necessary, it should be a one-time disclosure made with the account opening documentation. **CBA** - The commentator believes that annual reminders are an acceptable alternative to the semi-annual requirement for leverage disclosure presently contemplated in the National Instrument. The commentator submits that an annual reminder would suffice, supplemented by additional disclosure of the risks of leveraging in marketing materials which promote leveraging. **IFIC** – The commentator proposes that leveraging disclosure be provided to clients at the time the client opens an account. This could be done as part of a routine mailing to clients or in a separate mailing. For new accounts, the commentator proposes that the National Instrument: 1. Require leveraging disclosure to be included in the account opening form with a client acknowledgement on that form; and 2. Require registrants to send an annual reminder to clients regarding leveraged transactions. The commentator feels that this would be a more consistent requirement for registrants to follow and would ensure that clients are getting this disclosure at least once a year. The current proposal to provide the disclosure within the six month period prior to making a leveraged purchase recommendation or becoming aware of the client's intention to make a leveraged investment may be difficult to monitor. A

	standardized annual mailing would ensure this information reaches the client regularly. *CSA Response: The CSA are of the view that one-time disclosure may not be sufficient given the lapse of time between opening the account and using leveraged monies to purchase securities. The CSA believe that a retail client should be reminded of the risks and obligations each time leverage is used.*
Clarification of language in leverage disclosure requirement (NI 33-102, subsection 2.1(1))	**CBA** – The commentator recommends that subsection 2.1(1) be amended to add the words "in the client's account" to clarify that transactions are those that involve leveraging by the client for the purpose of investment in the client's account with the registrant. Without this clarification, the subsection as drafted appears to capture also situations where the client is leveraging for the purposes of investment in other accounts. **IFIC –** The commentator suggests that subsection 2.1(1) be amended to add the words "in the client's account" after "¼client's intent to employ leveraged monies for the purposes of investment" to ensure that the transactions subject to Part 2 are those that involve the client using leveraging for the purpose of investment in the client's account with the registrant. Otherwise, it appears to potentially capture situations where the client could be using leveraging for the purpose of investment in another account. *CSA Response: The CSA have amended subsection 2.1(1).*
Exemption ambiguous (NI 33-102, subsection 2.1(3))	**IDA** – The commentator believes that the language in the exemption contained in subsection 2.1(3) is unclear. There is some ambiguity as to whether the registrant must obtain an acknowledgement from the client in addition to providing the client with the written disclosure statement. *CSA Response: The CSA have clarified this subsection and indicated that the acknowledgement must also be received.*
Transition period for leverage disclosure	**CBA** - The commentator proposes that the CSA provide a six month period for registrants to amend their account opening forms to comply with the delivery of disclosure requirement. For accounts opened prior to the end of the transitional period, the commentator submits that registrants be given six months to deliver the disclosure statement to clients, without requiring an acknowledgement.

	IDA - As a result of the requirements in the National Instrument for written disclosure statements, client acknowledgements and consents, together with disclosures relating to promotional material, registrants will be required to reprint application forms and advertising material. Consequently, the commentator requests that a provision be included in the National Instrument to permit an effective date for registrant compliance that is six months to a year after the National Instrument comes into force. **IFIC** - The commentators suggest that the National Instrument include a transitional provision for accounts of clients opened prior to the effective date of the National Instrument. For those accounts, the commentator thinks it would be appropriate to require the leveraging disclosure to be made in a mailing to existing clients within six months of the enactment of the National Instrument. *CSA Response: The disclosure requirement does not prescribe the method of delivery of the disclosure. Upon the coming into force of the National Instrument, the disclosure must be given to all clients, whether included in the account opening form or provided as a separate document until such time as it can be included in the account opening form.*
DISCLOSURE OF CONFIDENTIAL RETAIL CLIENT INFORMATION (NI 33-102, Part 3)	
Personal Information Protection and Electronic Documents Act	**Scotia McLeod** - The commentator submits that the relevant provisions in the proposed National Instrument conflict with the Personal Information Protection and Electronic Documents Act. While the Personal Information Protection and Electronic Documents Act will initially apply to federally regulated financial entities, the commentator expects that at least some dealer subsidiaries of federally regulated financial institutions will also come into compliance with the Personal Information Protection and Electronic Documents Act. **IDA -** According to the commentator it would be beneficial if the National Instrument was harmonized with the Personal Information Protection and Electronic Documents Act particularly given the fact that Canadian financial institutions own many of the registrants and therefore, would have to implement two sets of potentially incompatible rules with which to work.

	CSA Response: The CSA are of the view that the provisions of the National Instrument are consistent with the Personal Information Protection and Electronic Documents Act. The CSA will monitor the implementation of the Personal Information Protection and Electronic Documents Act and the application of provincial legislation to provincially regulated organizations. The CSA, however, are of the view that by including a reference to circumstances permitted by law in section 3.2, any exception to the requirement that is provided in federal or provincial legislation would be available to registrants.
Exemption from the requirement to obtain consent (NI 33-102, part 3)	**Scotia McLeod** - The commentator is of the view that the consent requirements contained in the Principles of Regulation stating that no consent is necessary for information shared for internal audit, statistical or record keeping purposes are essential. **IDA -** The commentator is of the view that the consent requirements stating that no consent is necessary for information shared for internal audit, statistical or record keeping purposes was practical and necessary for large FI-related dealers who may integrate certain confidential information with their related financial institutions for purely audit or record-keeping purposes. The commentator recommends the addition of this exception in the National Instrument. **CBA -** The former Principles of Regulation did not require consent for these kinds of transfers of information, and the commentator submits that the same exemptions as were formerly in place need to be retained. *CSA Response: The CSA have included the exception that no consent is necessary when the information is disclosed for internal audit, statistical or record-keeping purposes and such information will not be used for any other purpose.*
Disclosure of confidential information too onerous (NI 33-102, part 3)	**Scotia McLeod** - The overall level of detail that is potentially required to be provided to clients may be so lengthy that it overwhelms clients, thereby materially detracting from attainment of the policy objectives of the consent process. **CBA -** It is the commentator's view that the provisions of Part 3 of the National Instrument regarding the disclosure of confidential retail client information are unnecessarily limiting upon the registrant.

	CSA Response: The CSA are of the view that this information is necessary for the retail client to provide informed consent.
Unknown third party	**Scotia McLeod** - The provision requires the client to be informed in advance of the name of the third party to which the information will be disclosed. In effect, any changes in the parties to which information is to be disclosed that occur subsequent to the time a consent is received would require an additional prior notice to be given to the client and a new consent obtained. That would result in significant cost and administrative burdens. The commentator believes that it should be permissible to provide a more generic description of the type of entity to which disclosures may be made. **IDA** – A question arises regarding the issue where the person is unknown at the time. **CBA** - Disclosing the name of the third party may be problematic if the list is long and particularly, if that person is unknown at the time. It will not always be possible to disclose the name in advance as when agents are replaced or new service providers are chosen. The commentator submits that it should be sufficient that at the time the client's account is set up, the registrant identify the classes of persons who might receive the client's information for necessary or administrative reasons i.e. its affiliates, agents, service providers, legal counsel, government agencies etc. At the time the account is set up, a separate broad generic disclosure about the types of affiliates to whom the dealer desires to disclose information for marketing reasons should also be made. *CSA Response: The CSA have amended the requirement to allow for including a description of a class of third party. The CSA note, however, that some provincial legislation has more onerous requirements in this regard.*
Public information	**CBA** - Not all information about retail clients is confidential. For example, public information such as telephone book information and information in public registries is not confidential. This section differs and is needlessly more restrictive than the Personal Information Protection and Electronic Documents Act which does recognize the existence of public information and does not require consent to disclose public information.

	IDA - Subsection 7(3) of the Personal Information Protection and Electronic Documents Act sets out numerous situations where organizations may disclose personal information without the knowledge or consent of the individual. It would be useful if the National Instrument specifically set out certain items that are permissible to disclose without consent. For example, under paragraph h.1 of sub-section 7(3) of the Personal Information Protection and Electronic Documents Act, publicly available information such as the retail client's telephone number would be permitted; however, under the National Instrument, the registrant would have to utilize section 3.2 and require the consent for any such disclosure. *CSA Response: The CSA recognize that the Personal Information Protection and Electronic Documents Act provides that no consent is necessary for the disclosure of information that is already publicly available and that is specified by the regulations made under that legislation. Currently, no regulations have been enacted.*
Disclosure limited to information that is "Reasonably Necessary" (NI 33-102, section 3.2)	**IDA** - This section is overly restrictive in that it permits a registrant to require a retail client to consent to the registrant disclosing confidential information where disclosure is "reasonably necessary" to provide a product that the client has requested. **IFIC** - The commentator believes the client's consent should generally cover the provision of information to the parties necessary to provide the product or service to the client, all of whom must observe the client's right to confidentiality. This approach is consistent with the federal privacy legislation. *CSA Response: The CSA are of the view that the standard is appropriate.*
"Required by Law" (NI 33-102, section 3.1)	**Scotia McLeod** - The commentator is unclear as to why consent is required for disclosure "except as required by law", and no provision is made for disclosure as permitted by law. **CBA** - Currently, common law permits disclosure without consent in a variety of instances. The *Personal Information Protection and Electronic Documents Act* also permits disclosure of client information without consent in a variety of instances. These exceptions are legal "permissions" not "requirements". There need

	to be instances set out in the National Instrument such as investigating a crime, where consent is not required. *CSA Response: The CSA have amended section 3.1 to include a reference to circumstances "expressly permitted by law".*
ACKNOWLEDGEMENT	
Electronic disclosure (CP 33-102, section 1.4)	**IFIC** - The commentator suggests that the Companion Policy also be revised to confirm that registrants may provide disclosure to clients, or obtain acknowledgements from clients, electronically. **Scotia McLeod** - References to "written" disclosure seem to imply the use of paper documentation. The commentator suggests that drafting should reflect the ability of the dealer to provide disclosure, obtain consents and otherwise interact with clients through appropriate electronic means. *CSA Response: The CSA have clarified that registrants may provide disclosure electronically.*
Need for acknowledgement (NI 33-102, subsections 2.1(2) and 6.2(2))	**Scotia McLeod** - The commentator does not believe that the disclosure contemplated is significantly more important than other disclosures provided to clients, and that it warrants the additional step of obtaining an acknowledgement from the client that the disclosure has been provided and read. *CSA Response: The CSA are of the view that it is important for clients to understand the risks associated with leverage and that they also understand from whom they are purchasing products, especially where products of multiple entities are sold. Therefore, in the view of the CSA, it is appropriate to include the requirement for an acknowledgement.*
DISTRIBUTION OF SECURITIES IN A FINANCIAL INSTITUTION (NI 33-102, Part 6)	
Disclosure in promotional material too onerous	**Scotia McLeod** - The requirement to include the specified disclosures in all in-branch promotional materials is excessive and cumbersome. The commentator questions the necessity of such a

(NI 33-102, section 6.3)	requirement in addition to providing the disclosure at the time of account opening. In addition, the commentator is not convinced there is a policy basis for applying different leverage disclosure requirements to registrants based on where they conduct their activities. **IDA** - The commentator believes that the requirement to provide written disclosure of the information contained in sections 2.1 and 6.3 in all promotional material that is distributed or displayed in an office or branch of a financial institution is an onerous requirement. The commentator is of the view that the objective of this requirement would be adequately served by providing such disclosure in account opening documentation, where the client will acknowledge having read the disclosure. **IFIC** - Including this disclosure in all promotional material dilutes the effectiveness of the disclosure. If the CSA insist that promotional material include disclosure on leveraging, it would be preferable to require this disclosure to be made only on promotional material that specifically promotes leveraging as an investment strategy or option. The disclosure would then be directly relevant to the material and the transaction the client could be contemplating. *CSA Response: The CSA have amended the National Instrument to eliminate the requirement to disclose the information contained in section 2.1 and 6.2 in promotional materials distributed or displayed in an office or branch of a financial institution.*
Distinction between registrants in Canadian financial institution and other registrants (NI 33-102, section 6.3)	**CBA** - The commentator submits that the leverage disclosure requirement should be included in section 2.1 and not in Part 6 and thus be applicable to all registrants. The commentator submits that there is no reason to distinguish financial institution related registrants from other registrants for this purpose. **IFIC** - The commentator questions why the provision of this disclosure is limited to those who engage in securities-related activities through an office or branch of financial institution. As with the general requirements in Part 2, there should be a level playing field and these requirements should be applicable to all registrants.

	IDA - The commentator recommends that if the CSA elect to maintain the requirement to provide disclosure on promotional material, they recommend that a narrower approach be adopted with respect to the disclosure required. Promotional material specifically promoting the purchase of securities through leveraging should contain the disclosure. General product and services promotional material, which could also be used at a dealer branch, should not be caught by this requirement. *CSA Response: The CSA have amended the National Instrument to eliminate the requirement to disclose the information contained in section 2.1 and 6.2 in promotional materials distributed or displayed in an office or branch of a financial institution.*
Leverage disclosure only in promotional material (NI 33-102, section 6.3)	**Confédération des caisses populaires et d'économie Desjardins du Québec** -The commentator believes that the written statement relative to leverage should be limited to publicity material promoting only such types of operations: for example, during an RRSP campaign during which it is proposed to the client to borrow funds in order to contribute to his RRSP. **CBA** – The CBA submits that including the leverage disclosure should not be required to be included in all in-branch marketing materials as it is excessive and unnecessary. They recommend that the leveraging disclosure should only be made in marketing materials that recommend leveraging as an investment strategy. *CSA Response: The CSA have amended the National Instrument to eliminate the requirement to disclose the information contained in section 2.1 and 6.2 in promotional materials distributed or displayed in an office or branch of a financial institution.*
MISCELLANEOUS	
Disclosure in the *Financial Institutions Act* (British Columbia)	**CBA** - The commentator submits that financial institutions related registrants already provide much of the suggested disclosure and that additional disclosure provisions similar to the disclosure required under the *Financial Institutions Act* should not be imposed in the National Instrument. **IFIC** - The commentator queries what is added by requiring the following disclosure elements:

	1. the nature and extent of any interest the financial institution has in the transaction, including any commission or other remuneration; 2. the identity of the person paying the commission or other remuneration; and 3. the prohibition against tied selling. In the commentator's view, these elements of disclosure are already adequately covered in the prospectus disclosure required under National Instrument 81-105 and under the federal *Competition Act*. *CSA Response: The CSA have decided not to incorporate the disclosure provisions set out in the Financial Institutions Act of British Columbia into the National Instrument.*
Use of Form 4 Instead of Form 4A	**CBA** - The commentator does not object to CSA's comment that the use of Form 4A will be discontinued, but they would like confirmation that registrants who have obtained registration using a Form 4A will not be required to complete a new Form 4 as a result of this change. **IFIC** - The commentator anticipates that registrations under Form 4A prior to the enactment of the National Instrument would be grandfathered and those registered under the Form 4A would not have to file a Form 4 upon renewal of their registration. The commentator suggests that this could be noted in the National Instrument. *CSA Response: Currently, registration will continue based on Form 4A in those jurisdictions that currently accept the Form. However, once NRD is implemented, the registrant will be required to complete all requisite NRD forms. There will be no abbreviated forms under the NRD system. It is anticipated that Québec will adopt the replacement NRD forms.*