

APPENDIX B:
SUMMARY OF COMMENTS AND RESPONSES

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USL PROPOSAL

SUMMARY OF COMMENTS AND RESPONSES

#	Theme	Comments	Responses
GENERAL COMMENTS			
1.	<p>The USL Project</p> <p>General support</p> <p>(AIMR; Alberta Minister of Economic Development; Association of Canadian Pension Management; Barclays Global Investors; BD&P; Bennett Jones; Bourse de Montréal; Canadian Bankers Association; Canadian Capital Markets Association; Canadian Council of Chief Executives; Canadian Institute of Chartered Accountants; Canadian Investor Relations Institute; Certified General Accountants Association of Canada; Certified General Accountants Association of Manitoba; Certified Management Accountants of Alberta; Clark, Wilson; CSI Global Education Inc.; Davies; EnCana; Fasken Martineau; Fidelity; IDA; IFIC; Imperial Oil; Institute of Chartered Accountants of Alberta; Institute of Chartered Accountants of Manitoba; Investment Counsel Association of Canada; KPMG; MFDA; Odium Brown; Ogilvy Renault; Ontario Teachers' Pension Plan; Oslers; PDAC; Phillips, Hager & North; Romano and Nicholls; Royal Bank of Canada; RS Inc.; Talisman; Torys; TSX Group)</p>	<p>The CSA have received over 80 comment letters on the Concept Proposal. The vast majority of commenters are very supportive of the USL.¹ Many commenters applaud the CSA for taking the initiative to advance the USL and are impressed with the progress that the CSA have made since the USL Project's commencement. Many commenters also express support for what they see as positive spin-off benefits of the USL such as increased cooperation and coordination among securities regulatory authorities.</p> <p>One commenter supports the structure of the USL which can be implemented within Canada's existing constitutional framework in a manner which is respectful of the unique nature of the Canadian confederation while at the same time achieving a high degree of uniformity.</p> <p>Some commenters qualify their support of the USL. The two most frequently occurring qualifications are:</p> <ul style="list-style-type: none"> • That the USL's scope does not put enough emphasis on the simplification and streamlining of regulatory requirements (see comment 4 below); and • The objective of the USL should be both achieving and maintaining uniform securities laws. These commenters are concerned that the USL contemplates differences at the outset and does not give particulars of how the CSA will maintain uniformity once it is achieved (see comment 7 below). 	<p>The CSA thank the commenters for their support which will be invaluable in advancing the USL Project. The CSA believe that this is an extremely important and achievable initiative that will fundamentally improve Canada's system of securities regulation. The CSA also agree that there are numerous spin-off benefits to the USL that will also improve our system of securities regulation.</p> <p>Please see comments 4 and 7 below for the responses to these comments.</p>

¹ Please note that in this summary, "USL" refers to the entire body of legislation (both statutory and subordinate) that is being developed under the CSA's USL Project.

#	Theme	Comments	Responses
2.	<p>The USL Project</p> <p>General concerns</p> <p>(Romano and Nicholls; Torys)</p>	<p>Two commenters are concerned that the cost and amount of work to achieve uniformity of securities laws may be underestimated and that the goal may be too ambitious under the current timetable. One commenter suggests focusing on a limited number of reforms, for example the adoption of a passport system.</p>	<p>The CSA believe that uniform laws are important to meaningful regulatory reform. Therefore, the resource expenditure on the USL is appropriate.</p>
3.	<p>Changes to the Infrastructure of Securities Regulation</p> <p>Creation of a national securities regulatory authority</p> <p>(Barclays Global Investors; Canaccord; Canadian Bankers Association; Fasken Martineau; Fidelity; Groia & Company; Imperial Oil; Investment Counsel Association of Canada; Ogilvy Renault; Ontario Teachers' Pension Plan; Oslers; Romano and Nicholls; Royal Bank of Canada; TSX Group)</p>	<p>A number of commenters support the creation of a national securities regulatory authority in Canada.</p>	<p>The objective under the USL is the harmonization of existing laws as well as streamlining and simplifying the current regulatory regime where the appropriate policy debate and public consultation have occurred. The creation of a national securities regulatory authority goes beyond the scope of the USL.</p> <p>A number of initiatives are currently under way which are looking into major reforms to the current regulatory regime. Such initiatives include the work of the provincial Ministers responsible for securities regulation (who have proposed the creation of a passport system) and the work of the Wise Persons' Committee established by the federal Department of Finance to review the structure of Canadian securities regulation.</p>

#	Theme	Comments	Responses
4.	<p>Scope of the USL</p> <p>Objectives of the USL</p> <p>(Canaccord; Canadian Listed Company Association; Fidelity; Members of the Canadian Listed Company Association; Romano and Nicholls)</p>	<p>Several commenters express the view that while the harmonization of securities laws is important, it is equally important that securities laws be streamlined and simplified.</p>	<p>The CSA agree that simplification and streamlining are also important objectives. These are complementary objectives to the USL’s overall objective of uniformity. The USL does contemplate significant streamlining and simplification. For example, the CSA are proposing to consolidate the many overlapping and slightly different registration and prospectus exemptions that exist in jurisdictions into a uniform exemptions rule.</p> <p>The CSA believe, however, that achieving uniform laws is an important threshold step to comprehensive, Canada-wide streamlining and simplification of the securities regulatory system. The Concept Proposal contains many examples of immediate simplifications that can be achieved through the combined result of harmonized laws and legal delegation. For example, a streamlined national registration system, whereby a registrant in one jurisdiction could become registered in another jurisdiction by notifying its home jurisdiction regulator, will be easier to implement with uniform registration requirements across Canada.</p>
5.	<p>Regulatory Approach</p> <p>Principles versus rules-based regulation</p> <p>(Canaccord; Canadian Listed Company Association; Fidelity; Members of the Canadian Listed Company Association; Odlum Brown)</p>	<p>Several commenters express the view that the current securities regulatory system is too “rules-based” and that the CSA should use the USL as an opportunity to adopt a principles-based approach to regulation.</p>	<p>The CSA are also concerned about regulatory complexity. In this regard, the USL attempts to harmonize and streamline securities legislation. Our securities legislation is based on both principles and prescriptive rules. The adoption of a solely principles-based approach to all aspects of securities regulation would represent a fundamental policy change that has not been studied or debated by the CSA.</p>
6.	<p>Political considerations impacting the USL Project</p> <p>Political buy-in</p> <p>(KPMG; Torys; TSX Group)</p>	<p>Several commenters point to a number of political considerations that may affect the ability of jurisdictions to adopt uniform legislation in the short term and maintain uniformity in the long term. For example, one commenter notes that provincial legislatures have the authority to approve or reject securities legislation and at all times must respond to the constituents they represent. The commenter also notes that existing legislatures cannot bind future legislatures who may have entirely different views of what is in the best interest of their constituents.</p>	<p>The CSA agree that there are political considerations that, although out of the CSA’s control, must be kept in mind. The CSA believe that it is an opportune time to introduce legislation that represents significant improvement to the current securities regulatory regime.</p>

#	Theme	Comments	Responses
7.	<p>Achieving and maintaining uniformity</p> <p>General</p> <p>(AIMR; IDA; KPMG; Ogilvy Renault; Ontario Bar Association; Romano and Nicholls; Torys; TSX Group)</p>	<p>A number of commenters express concern over the number of differences between the laws of each jurisdiction that are contemplated by the Concept Proposal. They urge the CSA to maximize uniformity rather than enshrine regional differences. One commenter identifies over 20 incidents where harmony is not sought and submits that this demonstrates a lack of commitment necessary to ensure the success of the USL.</p> <p>In addition, a number of commenters express concern over the possibility of differences between the laws of jurisdictions developing over time. One commenter notes that the USL, as it now stands, does not obligate provincial and territorial governments or their securities regulatory authorities to coordinate amendments to any uniform securities legislation so as to maintain uniformity over time.</p>	<p>The CSA acknowledge that the Concept Proposal does not contemplate absolute uniformity in all areas. However, the CSA continue to work towards common positions in these areas and have achieved consensus on a number of them. The CSA are committed to achieving uniformity in all but very limited, justifiable circumstances.</p> <p>The CSA plan to enter into protocols to ensure that securities regulatory authorities coordinate changes to securities laws. In addition, the CSA may suggest to provincial and territorial governments a protocol for coordinating amendments to securities legislation.</p>
8.	<p>Proportionate regulation</p> <p>General</p> <p>(TSX Group)</p>	<p>One commenter suggests that the Concept Proposal seems deficient in addressing the needs of emerging issuers. The commenter suggests that a two-tier regime may be desirable to effectively address the needs of emerging companies as well as more senior issuers.</p>	<p>The CSA are currently studying this issue in the context of our Proportionate Regulation Project.</p>
9.	<p>Canadian securities laws and the global community</p> <p>Uniformity with the U.S.</p> <p>(Romano and Nicholls)</p>	<p>One commenter recommends harmonizing Canadian securities laws where practicable with U.S. securities laws.</p>	<p>The CSA believe that Canadian securities laws should be tailored to Canadian circumstances but should not create barriers to cross-border activity.</p>
10.	<p>Proliferation of rules</p> <p>(Romano and Nicholls)</p>	<p>One commenter suggests that the rule making process, while perhaps conceptually sound, has in practice begun swiftly to lead to over-regulation. The commenter also suggests that although the comment process is an improvement over past means of regulation, it is now too easy to regulate and practitioners are drowning in new (and often highly technical) rules. The commenter submits that the costs of keeping up are clearly outweighing the benefits in most cases.</p>	<p>Securities regulatory authorities are currently required to follow rule making processes which require them to justify the need for any new rules. These processes will continue to exist under the USL.</p>

#	Theme	Comments	Responses
11.	Transitional rules (Romano and Nicholls)	One commenter submits that securities regulatory authorities should provide realistic transitional provisions in rules because their sudden introduction can cause problems in pending transactions.	The CSA agree that rules should contain realistic transitional provisions. The CSA recognize that appropriate transitional provisions are critical for effective implementation of the USL.
LOCAL RULES			
12.	Local Rules General (AIMR; Association of Canadian Pension Management; Barclays Global Investors; Bennett Jones; Canadian Capital Markets Association; Canadian Council of Chief Executives; Fasken Martineau; IDA; IFIC; MFDA; Ogilvy Renault; Ontario Bar Association; Oslers; PDAC; Phillips Hager & North; Romano and Nicholls; Royal Bank of Canada; Torys; TSX Group)	A number of commenters are of the view that allowing securities regulatory authorities to implement local rules under the USL may reinforce the current fragmentation of securities laws and, ultimately, undermine the USL’s goal of harmonized legislation. Most of these commenters encourage the CSA to severely limit the scope of the variances from uniformity that are allowed under the USL. Many of these commenters make particular recommendations in this regard, such as: <ul style="list-style-type: none"> • Requiring legislatures to approve any regulatory initiative that is not adopted nationally; • Requiring that every amendment to the USL be agreed to unanimously (although the commenter recognizes that such an approach may be overly restrictive); • Requiring that there be a compelling local need for a different rule together with a required waiting period and mandatory “mediation process” before a non-uniform rule can take effect; • Ensuring that any variations are supplementary and do not enable a single jurisdiction to undermine harmonized rules or effectively veto efforts to update a harmonized platform; 	The CSA agree that structural disincentives must be built into the USL to ensure that uniformity of securities laws is maintained over the long term. The CSA believe that the implementation of protocols for amending the USL among jurisdictions both at the government and securities regulatory authority levels and a protocol among securities regulatory authorities for the introduction of local rules under the USL will build in the appropriate structures to ensure uniformity over the long-term. The protocol among the securities regulatory authorities will require each jurisdiction to come to the CSA table prior to acting unilaterally in a specific area. This will ensure that issues that have multi-jurisdictional importance will be developed on a pan-Canadian basis and that only truly local issues will be dealt with by a jurisdiction on an individual basis.

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		<ul style="list-style-type: none"> • Ensuring that the principles of the USL expressly state that a local rule should only be implemented in exceptional circumstances and that each local rule should be examined every two years to see whether those exceptional circumstances continue to exist such that maintenance of the local rule can be justified; • Requiring that a securities regulatory authority obtain the approval of a majority of the other jurisdictions before it adopts a local rule that would apply to issuers or registrants with a head office outside the local jurisdiction; • Having explicit parameters guiding what would be considered a legitimate reason to permit a jurisdiction to formulate local rules; • Specifying how disagreements between jurisdictions as to whether a local rule should be adopted would be managed; • Requiring a securities regulatory authority that is proposing a local rule that would lessen harmonization or cooperation to establish to the satisfaction of the CSA members and publicly disclose that it is in the public interest to adopt the local rule, notwithstanding non-uniform effect. The securities regulatory authority should also be required to explain why the benefits of the new rule outweigh the costs associated with the additional regulatory fragmentation it will cause; and 	

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		<ul style="list-style-type: none"> Imposing an obligation on a securities regulatory authority to provide to other CSA members and to publish for public comment the reasons for a decision to opt-out of a particular element of the USL and to provide an empirical cost/benefit analysis in support of the position. 	
13.	<p>Local Rules</p> <p>Local rules to meet regional and local concerns</p> <p>(BD&P; Institute of Chartered Accountants of Alberta; TSX Group)</p>	<p>Two commenters support the proposal to permit in the USL certain local rules to be adopted in limited circumstances to meet regional and local concerns.</p> <p>One commenter notes that Alberta has benefited from a vibrant and accessible capital market and it is important to balance the need for rules to foster investor confidence and the need to avoid undue barriers in companies accessing venture capital. The commenter adds that the western provinces have been successful in maintaining this balance and this should not be lost in the USL.</p> <p>Another commenter notes that a number of initiatives have been now adopted in multiple jurisdictions that originated from local initiatives such as the JCP Program, the SHAIIF system and MI 45-103. However, the commenter notes that the use of the power to make local rules should be limited to ensure that it does not result in “de-harmonization” of the USL.</p>	<p>The CSA agree that, although the ability of securities regulatory authorities to make local rules should be limited to ensure long-term uniformity of securities laws, it is nonetheless important to ensure that a jurisdiction is able to address truly local matters and therefore regulate its capital market appropriately.</p> <p>In addition, it is critical to ensure that novel, innovative approaches to regulation that may arise in one jurisdiction at first, but which may become appropriate on a multi-jurisdictional or national basis are not stifled. The CSA believe that the JCP Program, the SHAIIF system, the “accredited investor” exemption and MI 45-103 are all excellent examples of ideas that originated in one or two jurisdictions but which were subsequently implemented on a wider scale and have provided benefits to industry participants in many jurisdictions. These examples highlight the fact that local rules often provide substantial relief from securities law requirements rather than imposing additional requirements.</p>
14.	<p>Local Rules</p> <p>Local rules to maintain some aspects of current registration regimes</p> <p>(Barclays Global Investors; Davies; Groia & Company; IFIC; Ogilvy Renault; Ontario Bar Association; Oslers; Phillips, Hager & North; Royal Bank of Canada)</p>	<p>A number of commenters are concerned with allowing jurisdictions to continue some aspects of their current registration regimes under the USL through the use of local rules since this will lead to non-uniformity.</p>	<p>The CSA believe that it is necessary to allow individual jurisdictions to enact local rules to deal with particular aspects of their local markets. However, the CSA recognize that individual jurisdictions should be discouraged from implementing rules that in effect maintain their current registration regimes at the expense of uniformity.</p>

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15.	Local Rules Legal delegation (PDAC)	<p>One commenter supports the simplified approval process and reduced processing costs the legal delegation model offers but expresses concern that the existence of local rules will not permit the process to be as efficient as it could be since local rules will require each securities regulatory authority to either be intimately familiar with the local rules of other jurisdictions or continue to be involved in each matter to ensure that local rules are being adhered to and enforced in the correct manner.</p>	<p>The CSA agree that the proposed legal delegation model will result in substantial efficiencies for both regulators and industry participants. The CSA acknowledge the concerns raised by the commenter in relation to local rules. These concerns will be addressed as the delegation model is developed.</p>
INTERPRETATION AND APPLICATION			
16.	Interpretation and Application Securities regulatory authorities and their staff (IFIC; Oslers; PDAC; Torys)	<p>A number of commenters note that securities regulatory authorities' staff in all jurisdictions must interpret and enforce the USL uniformly to achieve true uniformity of securities laws. These commenters emphasize the need for mechanisms to ensure uniform application.</p> <p>Two commenters also note that uniform rules would be undermined if securities regulatory authorities continue to apply unwritten rules or administrative practices.</p> <p>One of these commenters recommends that securities regulatory authorities commit to applying the USL and local rules but cease applying unwritten policies. The commenter recommends that the USL contain a statement of principles that provides that the USL should be interpreted, applied and enforced in a harmonized and consistent manner.</p>	<p>The CSA agree that, in order to achieve true uniformity, laws must not only be uniform in their wording, but must be interpreted uniformly across jurisdictions. The CSA are aware that currently, similar provisions are interpreted differently by the staff and members of different securities regulatory authorities. The CSA believe that, under the USL, there will be no principled reason for the staff of different securities regulatory authorities to interpret and therefore apply word-for-word uniform provisions differently. However, the CSA agree that this is an issue that must be addressed. The CSA believe that education of securities regulatory authority staff (e.g. providing them with the appropriate policy background of a particular provision) will be key as will information flow between staff of different securities regulatory authorities (e.g. canvassing the input of the staff of other securities regulatory authorities when interpreting a new provision). In addition, it will be important for securities regulatory authorities, collectively, to ensure (perhaps through "internal audits") that staff are interpreting and applying the uniform laws in a consistent manner across jurisdictions.</p>

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17.	Interpretation and Application Courts (TSX Group)	One commenter suggests that maintaining uniformity over the long term may lie in the differences in the way the courts in each jurisdiction interpret uniform law and rules, a matter outside the control of securities regulatory authorities and governments alike.	The CSA agree that, in some instances, judicial interpretation of securities laws by courts in different jurisdictions may result in inconsistent interpretation of the uniform law. However, the CSA believe that, given the overarching principles underlying the USL and its stated objectives, there should be no principled reason for differing interpretations of the uniform law by courts in different jurisdictions. In addition, although a court ruling in another jurisdiction is only of persuasive value, the CSA believe that it will be given considerable weight given the background and nature of the legislation. This will hopefully result in consistent interpretation across jurisdictions over time.
COST-BENEFIT ANALYSIS			
18.	Cost-Benefit Analysis (Canadian Listed Company Association; IFIC)	Two commenters submit that the CSA should conduct a cost-benefit analysis of the USL. One of these commenters believes that a cost-benefit analysis similar to that found in most proposed rules of the SEC is appropriate for the USL given the sweeping nature of its proposed reforms.	The CSA will take this comment into consideration.
FORUM SHOPPING			
19.	Forum Shopping Regulatory arbitrage (IFIC; TSX Group)	<p>One commenter believes that under the USL, it will be possible for market participants to structure their affairs so that they are subject to a seemingly “better” jurisdiction. The commenter recommends putting safeguards in place to prevent individuals and issuers from engaging in regulatory arbitrage.</p> <p>One commenter recommends clearly defining criteria for the selection of a principal jurisdiction to reduce the risk that an issuer may favour one jurisdiction over others when choosing where to incorporate, locate its head office or complete an offering.</p>	<p>The goal of the USL is to eliminate differences and reduce opportunities for regulatory arbitrage.</p> <p>The CSA intend to provide objective criteria for determining an industry participant’s principal jurisdiction.</p>

#	Theme	Comments	Responses
20.	Forum Shopping Proceedings (Bennett Jones)	One commenter is concerned that the delegation of authority contemplated by the USL could exacerbate the problem of forum shopping if provisions are not built into the new legislation to address the issue. The commenter suggests that protections be introduced to ensure that proceedings are heard in the jurisdiction that has the closest connection to the subject matter of the proceeding to prevent issuers or others from being dragged into an inconvenient forum for tactical reasons. The commenter notes that such an approach would be similar to the procedure used to determine the principal jurisdiction for MRRS applications and short form prospectus reviews.	The inclusion of provisions relating to the problem of forum shopping in the USL may be possible in the future once harmonized securities laws exist and the delegation model has been further developed. However, one securities regulatory authority cannot prevent another securities regulatory authority from asserting jurisdiction over a matter.
SUNSET CLAUSES			
21.	Removal of obsolete or unnecessary rules (Romano and Nicholls)	One commenter submits that the USL should require securities regulatory authorities to review their rules periodically, with a view to removing obsolete or unnecessary ones, by providing generally for sunset clauses in rules.	As the CSA develop protocols for rule making, we will consider this comment.
LEGAL DELEGATION			
22.	Legal Delegation General support (BD&P; Bourse de Montréal; Canadian Council of Chief Executives; IDA; Investment Counsel Association of Canada; Ogilvy Renault; Ontario Bar Association; PDAC; Royal Bank of Canada; Torys; TSX Group)	A number of commenters support the proposed legal delegation model as a means to achieve harmonization and eliminate duplicative review by securities regulatory authorities. Many of these commenters suggest that delegation is critical to the achievement of harmonization.	The CSA acknowledge the comments.
23.	Legal Delegation General concerns (IDA; Ogilvy Renault; Ontario Bar Association; PDAC; TSX Group)	A number of commenters express specific concerns about aspects of the proposed legal delegation model including: <ul style="list-style-type: none"> • Whether optional and revocable delegation will be an impediment to a truly coordinated regulatory environment; • How the lack of a mechanism to ensure legislation remains uniform may lead to the 	The CSA are aware that delegation raises a number of operational issues and is developing an inter-jurisdictional memorandum of understanding (MOU) which will specify the parameters of any delegation as well as how any delegation may be revoked. The MOU may be based, in part, on the existing MOU for MRRS. The CSA contemplate that delegation will not involve a case-by-case review by a delegating jurisdiction of a delegate jurisdiction's decision.

#	Theme	Comments	Responses
		<p>system breaking down;</p> <ul style="list-style-type: none"> • The need for a memorandum of understanding between each of the provinces and territories and their respective securities regulatory authorities, setting out, at a minimum, the parameters of any delegation, any opting-out privileges and a dispute resolution mechanism; and • The nature of a dispute resolution mechanism. One commenter submits that a delegating jurisdiction should only exercise its power to overrule the delegate jurisdiction in circumstances where the decision of the delegate jurisdiction is judged to be patently contrary to the public interest and that such a determination should only occur with the approval of the Minister responsible for securities regulation in that province. 	<p>Therefore, no opt-outs are contemplated. In addition, there will be no ability for a delegating jurisdiction to refuse to give effect to a decision made by a delegate jurisdiction.</p>
24.	<p>Legal Delegation</p> <p>Legal delegation – nature of delegation (IDA)</p>	<p>One commenter states that real delegation means a commitment by securities regulatory authorities to rely on decisions in the interests of the investing public in their jurisdiction by other securities regulatory authorities even if those decisions are not the decisions the securities regulatory authority would have made.</p> <p>The commenter is of the view that comprehensive delegation on all regulatory decision-making is essential.</p>	<p>The CSA contemplate that delegation will not involve a case-by-case review by a delegating jurisdiction of a delegate jurisdiction’s decision. Therefore, no opt-outs are contemplated. In addition, there will be no ability for a delegating jurisdiction to refuse to give effect to a decision made by a delegate jurisdiction.</p>
25.	<p>Legal Delegation</p> <p>Legal delegation – applicability to SROs (RS Inc.)</p>	<p>One commenter suggests that the USL should specifically recognize that one of the regulatory functions that may be delegated between securities regulatory authorities is the oversight of SROs. There may be as many benefits to SROs to the “one stop shopping” approach recommended in the Concept Proposal as there are for other industry participants.</p>	<p>The legal delegation powers in the USL will allow the CSA to consider delegation of a variety of regulatory functions.</p>

#	Theme	Comments	Responses
ALTERNATIVE APPROACHES TO REGULATORY REFORM			
26.	Alternative Approaches Modified MRRS system (Romano and Nicholls)	One commenter submits that the CSA should work towards more modest and achievable goals such as establishing a better MRRS system for exemption applications and for the handling of registration related matters, one that in fact truly embodies actual mutual reliance.	The CSA believe that the legal delegation model proposed under the USL will be a vast improvement over the current MRRS system and will allow an industry participant to deal with one securities regulatory authority only on a specific issue without the concern that there may be opt-outs.
27.	Alternative Approaches Passport system (Ontario Bar Association; Romano and Nicholls; Torys; TSX Group)	<p>Several commenters submit that the CSA should adopt a passport system whereby the approval of any one regulator is sufficient on a national basis.</p> <p>One commenter notes that the passport system could be restricted such that a Canadian jurisdiction could only accept compliance with the rules of one of the major Canadian securities jurisdictions, such as Alberta, B.C., Ontario and Québec, as compliance with its own rules. This would still allow industry participants to deal with one Canadian regulator only.</p> <p>One commenter suggests that consideration be given to implementing a “passport system” for reporting issuer status. Such a system would be similar to that proposed under the delegation provisions in that it would allow an issuer to comply with only the continuous disclosure requirements of its principal jurisdiction, the effect of which would be to enable it to maintain a current continuous disclosure record in each jurisdiction. If a passport system is adopted, the commenter recommends, based on cost considerations, that issuers be able to use such a “passport” only in those jurisdictions in which they choose to offer their securities.</p>	<p>The CSA believe that uniform laws will make effective delegation between jurisdictions easier to achieve.</p> <p>The CSA believe the USL will achieve the suggested result through uniform continuous disclosure requirements.</p>
28.	Alternative Approaches Functional division of regulatory responsibility (Ogilvy Renault; Royal Bank of Canada)	Two commenters suggest that regulatory responsibility should be divided among securities regulatory authorities on the basis of function. This approach would encourage the development of expertise in certain areas, ensure consistency and allow securities regulatory authorities to effectively allocate resources.	Under the proposed delegation model, what the commenter suggests would be possible.

#	Theme	Comments	Responses
INFORMATION SHARING			
29.	<p>Information Sharing</p> <p>(Barclays Global Investors; Bourse de Montréal; Fasken Martineau; IFIC; PDAC; Phillips, Hager & North; RS Inc.)</p>	<p>The following issues were raised by a number of commenters regarding the information sharing provisions to be included in the USL:</p> <ul style="list-style-type: none"> • The importance of making the provincial authorities responsible for freedom of information and protection of privacy legislation aware of the importance of an open information sharing regime among all provinces; • Whether the information sharing provision contained in the USL should be paramount to applicable freedom of information legislation or whether privacy rights enshrined in freedom of information legislation should be preserved; • The need for securities regulatory authorities to determine what information is or is not necessary to share; • The importance of ensuring that the release of investigative information extends to SROs along with regulatory agencies; • The introduction of privacy legislation in various jurisdictions in the near future should ensure that each SRO operating in a jurisdiction is on the same footing as the applicable securities regulatory authority; and • The importance of sharing of information in the investigation process. 	<p>The CSA believe that the ability of securities regulatory authorities to share information is essential given that capital market activities often cross provincial or national borders and therefore are recommending that the USL contain an information sharing provision which is paramount to freedom of information and protection of privacy legislation. However, the CSA are cognizant of the balance between the public interest and the rights of individuals. The CSA note that several CSA jurisdictions already have a provision in their securities legislation which overrides freedom of information legislation.</p> <p>The CSA will ensure the release of investigative information under the USL extends to SROs along with regulatory agencies.</p> <p>The CSA agree that the potential benefits of broad information sharing powers to SROs are significant and therefore it is important to ensure that SROs have the same powers as securities regulatory authorities. The CSA note that with the introduction of private sector privacy legislation in various jurisdictions across Canada, it is important to ensure that SROs are placed on the same footing as securities regulatory authorities which will likely require that they be subject to freedom of information legislation as opposed to private sector privacy legislation.</p>

#	Theme	Comments	Responses
POWERS OF INVESTIGATION, CONFIDENTIALITY AND PENALTIES AVAILABLE TO A PROVINCIAL COURT			
30.	<p>Powers of Investigation, Confidentiality and Penalties Available to a Provincial Court</p> <p>(Fasken Martineau; Groia & Company; IDA; SHARE)</p>	<p>One commenter notes that one reason given in the Concept Proposal for putting the powers of investigation and penalties a court may impose in the respective Administration Acts is that they are of more concern to securities regulatory authorities themselves than the regulated community. The commenter states that methods of investigation and penalties that can be imposed are of paramount concern to the persons who will be subject to them.</p> <p>One commenter states that there is no reason in principle why investigative powers and procedures, confidentiality, and penalties should not be the same across Canada. Two other commenters also agree that penalties should be made uniform.</p>	<p>The objective under the USL is to make uniform, to the greatest extent possible, investigative procedures and penalties. However, the CSA's first priority is the harmonization of those laws applicable to issuers, investors and intermediaries that will achieve greater efficiency of regulation without unduly burdening the market.</p>
31.	<p>Powers of Investigation, Confidentiality and Penalties Available to a Provincial Court</p> <p>Quantum of penalties</p> <p>(SHARE)</p>	<p>One commenter is of the view that stronger financial deterrents are required to maintain compliance and enhance investor protection and confidence. The commenter supports the proposed increase to the quantum of penalties available on conviction of an offence tried in a provincial court.</p>	<p>The CSA acknowledge the comment.</p>
ADMINISTRATION ACTS			
32.	<p>Administration Acts</p> <p>Inclusion of administrative and procedural provisions into an Administration Act</p> <p>(Barclays Global Investors; IFIC; TSX Group)</p>	<p>Two commenters accept that differences among provincial and territorial Administration Acts may be necessary to fit within the procedural framework that applies to regulatory agencies in each province and territory.</p> <p>One commenter recommends harmonizing, to the greatest extent possible, the procedural frameworks that apply to securities regulatory authorities in each province and territory.</p>	<p>The CSA acknowledges the comments.</p>
33.	<p>Administrative Provisions</p> <p>Inclusion of administrative and procedural provisions into an Administration Act</p>	<p>One commenter submits that securities regulatory authorities and provincial legislatures should attempt to be consistent in the delegation of investigative powers from securities regulatory authorities to staff. The commenter notes that, given the multi-jurisdictional nature of</p>	<p>The CSA acknowledge that there are differences across jurisdictions.</p>

#	Theme	Comments	Responses
	(PDAC)	securities trading, it is important for investigations to be commenced in multiple provinces at the same time. The commenter suggests that, in jurisdictions where investigations may only be commenced upon an order of the securities regulatory authority rather than at a staff level there is an unnecessary delay.	
SELF-REGULATION AND MARKETPLACES			
34.	Self-regulation Self-regulation generally (AIMR; IDA)	<p>One commenter offers general support for self-regulation that embodies a clear and principled approach to regulation, with a primary focus on promoting efficient capital markets while placing the interests of clients and investors first.</p> <p>One commenter is encouraged that under the USL, the basic framework for regulation of SROs will remain substantially similar to the current system. The commenter believes that the current relationship has worked appropriately. The commenter agrees that a flexible approach to regulation is necessary. The capital markets' efficiency is inextricably related to its sophisticated regulatory environment, including its SROs. Self-regulation is integral to developed, efficient capital markets. Innovative and rapidly changing products require proactive decision-making and timely responses, a challenge which SRO staff, working with knowledgeable and experienced professionals within the industry, can meet.</p>	The CSA acknowledge the comments.
35.	Self-regulation Regulation of registrants (IDA)	One commenter supports the USL provisions regarding the incorporation of the SRO model for regulating registrants who are members of an SRO.	The CSA acknowledge the comment.

#	Theme	Comments	Responses
36.	<p>Self-regulation</p> <p>Marketplaces</p> <p>(Barclays Global Investors; Bourse de Montréal; Canadian Capital Markets Association; IDA; IFIC; RS Inc.; TSX Group)</p>	<p>A number of commenters support revising the term “stock exchange” by deleting the term “stock” to better reflect the products currently traded, especially with respect to asset classes that have never traded on stock exchanges, such as bonds.</p> <p>Several commenters support including the concept of a “marketplace” in the USL that is broader than the current category of “exchange.” One commenter notes that not all “marketplaces” are empowered to regulate the conduct of the persons who access them. The commenter recommends that only those marketplaces that directly undertake member and/or market regulation should be afforded the powers contemplated to be granted to recognized entities.</p>	<p>The CSA have deleted the reference to “stock” with respect to an exchange.</p> <p>The CSA acknowledge the comments. To clarify the discussion in the Concept Proposal, the USL will include the concept of a "marketplace" but does not propose recognition of "marketplaces". The current regulatory structure for marketplaces is provided in NI 21-101 and will be maintained under the USL.</p>
37.	<p>Self-regulation</p> <p>Market participants</p> <p>(Canadian Capital Markets Association)</p>	<p>One commenter supports a focus on “market participants” which, in the commenter’s opinion, better reflects the realities of today’s and tomorrow’s capital markets both in Canada and abroad.</p>	<p>The CSA acknowledge the comment.</p>
38.	<p>Self-regulation</p> <p>Definition of “participant”</p> <p>(RS Inc.)</p>	<p>One commenter recommends interpreting or defining the term “participant” broadly enough to include a wider range of persons and entities.</p>	<p>No definition of participant is contemplated. The CSA note that “participant” is intended to capture members, participating organizations or any other persons or entities that are subject to the regulation of an organization with self-regulatory functions. In addition, the definition of SRO includes the situation where an entity performs regulatory functions for another regulated entity.</p>
39.	<p>Self-regulation</p> <p>Lead regulator approach</p> <p>(Bourse de Montréal; MFDA; Ogilvy Renault)</p>	<p>One commenter is of the view that all marketplaces should be regulated but that multiple regulation by several jurisdictions should be prevented. The commenter recommends a lead regulator type oversight of marketplaces in Canada to prevent duplication and encourage competition with international markets.</p>	<p>Currently, securities regulatory authorities regulate exchanges under a “lead regulator” model. This model entails recognition of the exchange by a “lead regulator.” The non-lead jurisdictions rely on the lead regulator to regulate the exchange. This model significantly decreases the potential for duplication. Under the USL, a delegation model is contemplated, whereby a jurisdiction will be able to avoid duplication by delegating, among other things, its oversight responsibility to another jurisdiction. The discretion to exercise this delegation power is with each securities regulatory authority.</p>

#	Theme	Comments	Responses
		<p>One commenter wants all CSA jurisdictions to have the ability to receive applications from organizations seeking recognition as an SRO in that jurisdiction to facilitate organizations being formally recognized as an SRO across Canada. Alternatively, one commenter submits that SROs should be recognized nationally through one securities regulatory authority.</p>	<p>Currently, SROs are subject to a “principal regulator” model whereby all securities regulatory authorities recognize an SRO but the principal regulator coordinates the review and oversight of the SRO. The USL will provide each securities regulatory authority with the power to recognize an SRO operating in its jurisdiction. However, the discretion to exercise that power or to delegate it to another securities regulatory authority will lie with each securities regulatory authority.</p>
40.	<p>Self-regulation</p> <p>Power of securities regulatory authorities – ability to enforce the rules and policies of recognized entities</p> <p>(Bourse de Montréal; IDA; RS Inc.)</p>	<p>One commenter supports the continued ability of securities regulatory authorities to enforce the rules and policies of recognized entities while one commenter opposes giving securities regulatory authorities the ability to enforce the rules and policies of recognized entities.</p> <p>One commenter suggests that any provision respecting the enforcement of rules of recognized entities by a securities regulatory authority make it clear that any disciplinary or enforcement action at that level is without prejudice to any past, existing or future disciplinary or enforcement action undertaken by the recognized entity.</p>	<p>The CSA believe that the power to enforce SRO rules and policies is essential to the fulfillment of securities regulatory authorities’ oversight mandate and will assist in eliminating duplicative investigations and enforcement proceedings in situations where a party has breached requirements of both the SRO and the securities regulatory authority. This power currently exists in B.C. and Alberta.</p> <p>The CSA will include this provision in the USL.</p>
41.	<p>Self-regulation</p> <p>Jurisdiction of SROs</p> <p>(RS Inc.)</p>	<p>One commenter is of the view that the problem of SRO jurisdiction should be viewed in a broader context than just the power to deal with former members. The commenter proposes that any provisions dealing with SROs include a statutory framework for the jurisdiction of SROs. The commenter is of the view that a statutory basis of jurisdiction for each SRO will ensure that the ambit of its jurisdiction is the same with respect to participants in each marketplace that it regulates and in each jurisdiction in which it regulates.</p>	<p>The USL will provide an SRO with the power to regulate a participant or the participants of another recognized entity. Each SRO has been recognized for a particular purpose (e.g. IDA – member regulation, RS Inc.– market regulation). Any proposed broadening of jurisdiction of a particular SRO should be dealt with in the context of its recognition order and structure.</p>

#	Theme	Comments	Responses
42.	<p>Self-regulation</p> <p>Powers of recognized entities – regulation of former members</p> <p>(Bourse de Montréal; IDA; Institute of Chartered Accountants of Manitoba; MFDA; RS Inc.)</p>	<p>A number of commenters agree with the proposal to grant recognized entities the power to regulate former members. They submit that this power, along with the power to compel witnesses to attend and produce documents at disciplinary hearings, will enhance the ability of recognized entities to regulate their members</p> <p>One commenter recommends the power to regulate former members be limited to those individuals or companies that have been members within a three year period.</p> <p>One commenter questions how the power of a securities regulatory authority over former members of a recognized entity will be enforced. The commenter suggests that without the ultimate penalty of termination of membership, enforcement might not have the necessary “teeth” to be effective. The commenter suggests that perhaps the sanctions available to securities regulatory authorities are such that this power is effective.</p>	<p>The CSA will include the power to regulate former members in the USL and will consider whether it is appropriate to include a limitation period.</p> <p>SROs have sanctioning powers that extend beyond termination e.g. fines. For this reason, jurisdiction over former members is a valuable power and is one that SROs unanimously support.</p>
43.	<p>Self-regulation</p> <p>Powers recognized entities – other powers</p> <p>(Bourse de Montréal; IDA; MFDA; RS Inc.)</p>	<p>A number of commenters submit that SROs should be provided with the following powers and immunities:</p> <ul style="list-style-type: none"> • The power to compel witnesses to attend and produce documents at the investigative stage; • The power to file their decisions with the appropriate court so that they are enforceable as orders of that court or that the applicable securities regulatory authority be allowed to file SRO decisions with the court on behalf of SROs; • The power to seek a court-ordered monitor of a firm in difficulty; • Statutory immunity for SROs and their staff. In essence, the commenter would like a provision similar to the one under current legislation that protects a securities regulatory authority and its staff; and 	<p>Outside the USL, the CSA are reviewing requests by SROs to obtain the power to compel witnesses to attend and produce documents at the investigative stage, the power to file their decisions with a court of competent jurisdiction and the power to seek a court-appointed monitor. CSA staff will work with SROs to determine if these powers are appropriate and how broad they should be.</p> <p>The CSA agree that SROs and their staff should have the same statutory immunity that securities regulatory authorities enjoy when they exercise powers delegated to them by securities regulatory authorities. Such an immunity would be provided for under the USL.</p> <p>The CSA are reviewing the request by SROs to extend statutory immunity for negligence for regulatory decisions made in good faith to SROs. CSA staff will work with SROs to determine if this power is appropriate and how broad it should be.</p>

#	Theme	Comments	Responses
		<ul style="list-style-type: none"> Statutory immunity for negligence for regulatory decisions made in good faith by SROs. The commenter submits that the consequences of losing a lawsuit for “negligent regulation” would be catastrophic to the ability of the SRO to regulate. In addition, the SRO must deal with the attendant costs of this and similar lawsuits. 	
44.	<p>Self-regulation</p> <p>Effective oversight</p> <p>(Barclays Global Investors; IFIC)</p>	<p>One commenter emphasizes the need for SROs to work towards achieving appropriate oversight of their members and enforcement of their rules to firmly establish SROs as valuable assets to the Canadian marketplace.</p> <p>Another commenter emphasizes the need for securities regulatory authorities to provide active oversight of SROs to ensure that markets remain open to innovation and new products.</p>	<p>The CSA acknowledge the comment.</p> <p>Securities regulatory authorities have developed an extensive oversight program for SROs. The oversight program includes the review of all rules of an SRO, examinations of its operations and filing requirements.</p>
45.	<p>Self-regulation</p> <p>Elimination of duplicative requirements</p> <p>(Barclays Global Investors; IDA; IFIC)</p>	<p>Several commenters recommend that securities regulatory authorities work with SROs to create a system that eliminates potential overlap and gives market participants a single and clear set of requirements they must follow.</p> <p>One of these commenters supports the CSA’s recognition of the importance of the USL’s objective to eliminate overlap between securities regulatory authority and SRO rules. The commenter supports the proposal to continue the SRO model of regulation of registrants in those jurisdictions where it currently exists.</p>	<p>In the context of their oversight program, securities regulatory authorities work with the SROs to minimize duplication and ensure requirements are clear.</p> <p>The CSA acknowledge the comment.</p>
46.	<p>Self-regulation</p> <p>Voluntary surrender of recognition</p> <p>(Oslers)</p>	<p>One commenter is unclear as to what will happen in a situation where a securities regulatory authority is not satisfied that the conditions set out in the USL for a voluntary surrender of recognized status are met. The commenter does not believe that a securities regulatory authority can compel a recognized entity to continue to carry on business as a recognized entity if the entity does not want to do so. The commenter submits that if a recognized entity notifies a securities regulatory authority that it is voluntarily surrendering its recognition, the securities regulatory authority must accept the voluntary surrender whether it agrees with the terms or conditions or not and, if the latter, must step into the breach left by the</p>	<p>The voluntary surrender requirements are meant to permit an orderly wind-up of the SRO and ensure that the winding up of an SRO’s regulatory functions is done in the public interest. For example, a securities regulatory authority must ensure that there is a proper transfer of SRO functions to another SRO or securities regulatory authority or a return of delegated power back to the securities regulatory authority. In addition, with respect to an exchange, it is important to ensure that the trades or outstanding positions are properly cleared and settled. The intention is not to compel a recognized entity to carry on business.</p>

#	Theme	Comments	Responses
		recognized entity when it surrenders its recognition and regulate in the place of the recognized entity.	
47.	Self-regulation Legal delegation – further delegation to SROs (RS Inc.)	<p>One commenter recommends permitting the delegation of powers from securities regulatory authorities to SROs.</p> <p>The commenter notes that the Concept Proposal does not address the question of whether securities regulatory authorities should be empowered to delegate enforcement actions to SROs where the subject matter falls within the jurisdiction of both the securities regulatory authority and one or more SROs. While SROs and securities regulatory authorities have coordinated investigations and proceedings, consideration should be given to providing a mechanism for a “consolidated” proceeding that would permit all issues to be resolved in a timely and consistent manner in a single forum without duplication of effort on the part of securities regulatory authorities and defendants.</p>	The CSA will consider how broadly delegation will be applied. It will be up to each individual securities regulatory authority to determine which areas it will delegate.
48.	Self-regulation Conflicts (Bourse de Montréal)	One commenter recommends clearly establishing that the role of an SRO is to regulate its members and marketplaces exclusively and explicitly providing that SROs should not carry on lobbying activities for their members.	The issue of whether SROs should carry on other functions is beyond the scope of the USL Project.
49.	Self-regulation Conflicts (SHARE)	One commenter raises concerns about the ability of SROs to exist as a publicly traded entity and simultaneously fulfil their role as quasi-regulators. The commenter views the dual nature of publicly traded SROs to be problematic and a breeding ground for potential conflicts. The commenter is opposed to allowing SROs to be publicly traded and urges the CSA to provide the strongest protections to ensure that potential conflicts in the operation of publicly traded SROs do not compromise investor protections.	The CSA acknowledge the comment.
REGISTRATION			
50.	Registration General support	One commenter supports having one set of regulations, or an act, that covers all trading activities and one securities regulatory authority regulating these activities since under this scenario, issues arising from inconsistencies between different acts are eliminated. The commenter further	The CSA acknowledge the comment.

#	Theme	Comments	Responses
	(AIMR)	<p>submits that a registrant, whether trading futures and options or other securities, is much the same and therefore, the requirements for capital, proficiency, bonding and reporting should be the same.</p> <p>The commenter also offers support for most of the proposals made in the area of registration requirements.</p>	
51.	<p>Registration</p> <p>Registration trigger</p> <p>(AIMR; Davies; IDA; IFIC; Ogilvy Renault; Ontario Bar Association)</p>	<p>A number of commenters recommend adopting a business trigger for registration since the trade trigger is overly broad and requires numerous exemptions and discretionary relief applications. One commenter notes that the development of an appropriate definition of “carrying on business” will result in Canada being brought into line internationally with the standards of other respected securities regulators.</p> <p>One commenter agrees with adopting the trade trigger at this time to achieve uniformity and, if appropriate, replacing it with a business trigger once additional policy work has been completed and industry consultations have occurred.</p> <p>One commenter believes that only one trigger should be used by all securities regulatory authorities.</p>	<p>The CSA recognize that an in-the-business trigger would have advantages but would have to be carefully implemented to avoid unintended effects. The CSA are considering this issue.</p>
52.	<p>Registration</p> <p>Firm-only registration</p> <p>(Ogilvy Renault; Phillips, Hager & North; Romano and Nicholls)</p>	<p>A number of commenters suggest implementing a “firm-only” registration regime for dealers and advisers which allows for the imposition of penalties against individuals.</p>	<p>The CSA believe that the move to a registration system which requires only firms to register represents a significant policy shift from the current registration regimes in most jurisdictions. Given that the appropriate policy work and industry consultations have not occurred at the CSA level, the CSA are not prepared to move to firm-only registration at this time.</p>
53.	<p>Registration</p> <p>Permanent registration</p> <p>(Bourse de Montréal; Phillips, Hager & North)</p>	<p>Two commenters believe that a permanent registration system which requires the annual filing of specified information would be more efficient and less burdensome than an annual registration system.</p>	<p>The CSA believe that the move to a permanent registration system represents a policy shift from the current registration regimes in most jurisdictions. Given that the appropriate policy work and industry consultations have not occurred at the CSA level, the CSA are not prepared to move to permanent registration at this time.</p>

#	Theme	Comments	Responses
54.	<p>Registration</p> <p>Simplification of registration categories</p> <p>(AIMR; CSI Global Education Inc.; Davies; Fasken Martineau; IDA)</p>	<p>Several commenters support the proposed registration categories and believe that harmonized and simplified registration categories will reduce costs, administrative burden and investor confusion.</p> <p>One commenter agrees that registration needs to be flexible and responsive enough to respond to new activities in the market.</p>	<p>The CSA acknowledge the comments.</p> <p>The CSA agree with the comment. The goal of the USL is to create platform legislation which can accommodate future changes to respond to changing markets.</p>
55.	<p>Registration</p> <p>Security issuer category</p> <p>(PDAC)</p>	<p>One commenter supports replacing the “security issuer” category of registration with a registration exemption for issuers distributing their own securities but expresses concern with any conditions that may be imposed. The commenter urges the CSA to not make this exemption overly restrictive.</p>	<p>The CSA have not determined all the conditions which would attach to the security issuer exemption but expect that they may be similar to the terms and conditions currently imposed on registrants in the security issuer category.</p>
56.	<p>Registration</p> <p>Mutual fund dealers</p> <p>(IFIC)</p>	<p>One commenter supports the proposal to:</p> <p>(a) Permit mutual fund dealers to provide advice concurrent with trading;</p> <p>(b) Not permit mutual fund dealers to exercise discretionary trading authority;</p> <p>(c) Require mutual fund dealers to be a member of an SRO where the requirement currently exists; and</p> <p>(d) Require mutual fund dealers to be subject to the capital, supervisory, proficiency, sales conduct and other requirements established by securities regulatory authorities and SROs.</p>	<p>The CSA acknowledge the comment.</p>
57.	<p>Registration</p> <p>Mutual fund dealers</p> <p>(Fasken Martineau; IFIC; Ogilvy Renault; Phillips, Hager & North; Romano and Nicholls; Royal Bank of Canada)</p>	<p>Several commenters suggest harmonizing the ability of mutual fund dealers to trade exempt securities. One commenter states that differing practices with respect to mutual fund dealers trading in exempt securities among CSA jurisdictions are not warranted by either investor protection or efficiency goals. If mutual fund dealers are permitted to trade in exempt securities, one commenter emphasizes the fact that they must have the required qualifications.</p>	<p>The CSA recognize that the rules relating to the ability of mutual fund dealers to trade in exempt products are not uniform across the CSA jurisdictions and are discussing this issue.</p>

#	Theme	Comments	Responses
58.	<p>Registration</p> <p>Restrictions on mutual fund salespersons (IFIC)</p>	<p>One commenter emphasizes the importance of distinguishing between the powers of a mutual fund dealer and those of a salesperson with regard to the sale of exempt products. The commenter submits that if a mutual fund dealer has chosen not to sell some or any exempt products, salespersons employed by that dealer should not have the right to sell those products as an individual because these salespersons will create potential liability for their dealer and confusion for clients.</p>	<p>The comment raises two distinct issues:</p> <ul style="list-style-type: none"> • The issue of whether a mutual fund salesperson may sell exempt products when his or her dealer has chosen not to goes to the private relationship between the dealer and the salesperson. The issue of potential liability should be addressed in that context; and • The issue of salespersons carrying on multiple businesses is the subject matter of the work of the CSA committee responsible for non-employment relationships. This committee is in the process of developing recommendations with respect to salespersons carrying on multiple businesses and will be preparing a paper for public comment.
59.	<p>Registration</p> <p>Obligations of registrants</p> <p>(AIMR; CSI Global Education Inc.; Fasken Martineau; IDA)</p>	<p>Several commenters support the proposal to conform securities regulatory authorities' requirements and SRO requirements. One commenter requests clarification regarding the statement "SRA and SRO rules would be conformed".</p> <p>One commenter notes that under the USL, investment dealers and mutual fund dealers will be subject to the capital requirements of their governing SRO but other solvency requirements such as bonding, insurance and margin requirements will be harmonized. The commenter queries why the USL will not permit investment dealers to remain subject to solvency requirements other than capital requirements of their governing SROs where these requirements are the subject of substantial regulation. The commenter also notes that, under the USL, those registrants' obligations with respect to issues of "integrity" such as know-your-client and suitability rules would, for SRO members, remain subject to SRO rules. The commenter supports the proposal to harmonize proficiency</p>	<p>The CSA acknowledge the comment. The CSA recognize that eliminating overlap between securities regulatory authorities' rules and SRO rules is an important objective and will continue to work with SROs to eliminate duplicative requirements. The statement "SRA and SRO rules would be conformed" means that to the greatest extent possible, differing requirements would be made uniform.</p> <p>The USL will contain registration requirements (e.g. proficiency, solvency, integrity) applicable to all registrants. However, registrants that are members of an SRO will be exempted from the USL requirements provided they comply with the requirements of an SRO that have been approved by securities regulatory authorities.</p>

#	Theme	Comments	Responses
		requirements and conform them to SRO requirements.	
60.	<p>Registration</p> <p>Proficiency requirements</p> <p>(CSI Global Education Inc.; Romano and Nicholls)</p>	<p>One commenter supports the proposal to harmonize registrant proficiency requirements.</p> <p>One commenter suggests that harmonized proficiency requirements will need to be adjusted to the needs of non-Canadian firms, mutual fund dealer/investment dealer differences and restricted dealers and submits that they should be reviewed with an eye to competitiveness (e.g. the less demanding U.S. and U.K. adviser requirements).</p>	<p>The harmonized proficiency requirements will be on a category-by-category basis. The CSA are not prepared to lower proficiency requirements for non-Canadian dealers operating in Canada at this time simply because they may be subject to lower standards in their home jurisdiction.</p>
61.	<p>Registration</p> <p>Bonding and insurance requirements</p> <p>(Phillips, Hager & North)</p>	<p>One commenter notes that, among the 13 jurisdictions, bonding and insurance requirements are quite different and therefore harmonization in this area would be most welcome.</p>	<p>The CSA agree with the comment.</p>
62.	<p>Registration</p> <p>Residency and incorporation requirements</p> <p>(Davies; IFIC; Romano and Nicholls; Royal Bank of Canada)</p>	<p>Several commenters support eliminating residency requirements. One commenter suggests eliminating residency and Canadian incorporation requirements both at the securities regulatory authority level and the SRO level. Two commenters state that they do not appear to serve any investor protection benefits. One commenter strongly urges the CSA to develop a common position on whether there should be residency requirements for registrants.</p>	<p>Currently, very few jurisdictions have residency and Canadian incorporation requirements. In Québec, mutual fund dealers fall under the jurisdiction of the Bureau des services Financiers which does not have the power to exempt a mutual fund dealer from any requirements, including residency requirements. The CVMQ has an exempting power that it uses to exempt dealers under its jurisdiction from residency requirements and the requirement to have a principal establishment in the province.</p> <p>The CVMQ recognises that residency requirements should be softened and has decided to grant, with conditions and on a discretionary basis, exemptions from residency requirements and the requirement to have a principal establishment in Québec. Amendments to Québec's Regulation Respecting Securities are currently being considered in Québec to achieve uniformity in Canada.</p>

#	Theme	Comments	Responses
63.	<p>Registration</p> <p>Process for registration, renewal of registration and de-registration</p> <p>(IDA)</p>	<p>One commenter supports the USL's goal to harmonize the registration and de-registration regime.</p>	<p>The CSA acknowledge the comment.</p>
64.	<p>Registration</p> <p>National streamlined registration system</p> <p>(AIMR; IDA; Ogilvy Renault; Oldum Brown; Phillips, Hager & North; Torys)</p>	<p>Several commenters support the concept of a streamlined national registration system. One commenter hopes that the system goes beyond mere procedure and amounts to a true delegation to the securities regulatory authority accepting the delegation.</p> <p>One commenter suggests that as an immediate solution to differing registration systems (which have been responsible for impeding innovation e.g. difficulties with implementing NRD), one of the larger provincial registration regimes should be adopted (perhaps by lottery) as the system for the entire country. One commenter states that in addition to a streamlined national registration system, all registration requirements should be uniform across CSA jurisdictions.</p>	<p>The CSA anticipate that with legal delegation and harmonized registration rules, the streamlined registration system will amount to a true delegation whereby a registrant deals only with its principal regulator regardless of the number of Canadian jurisdictions in which it operates.</p> <p>The CSA are developing uniform registration rules as part of the USL and prefer not to simply adopt one jurisdiction's registration regime.</p>
65.	<p>Registration</p> <p>Non-resident advisers</p> <p>(Oslers; Romano and Nicholls)</p>	<p>One commenter submits that in order to harmonize the adviser registration requirements that apply across the provinces and territories of Canada, the USL should clarify the circumstances in which registration as an adviser is necessary.</p> <p>One commenter questions the incorporation of OSC Rule 35-502 in the USL as an approach to the regulation of non-resident advisers. The commenter submits that OSC Rule 35-502 is inconsistent with the approach of other regulators, hampers Canadian investors' access to foreign portfolio management expertise in a cost-effective way and unnecessarily restricts privately placed funds. The commenter suggests allowing non-resident advisers who are resident and regulated in the U.S. and other appropriate jurisdictions to provide advice to mutual funds and other collective investment schemes and to accredited investors who have opened accounts on an unsolicited basis without being registered in Canada.</p>	<p>The USL will follow the general approach in OSC Rule 35-502. However, certain aspects of that rule are under consideration.</p>

#	Theme	Comments	Responses
66.	<p>Registration</p> <p>Universal registration system</p> <p>(Barclays Global Investors; Fasken Martineau; Groia & Company; IDA; IFIC; Ogilvy Renault; Ontario Bar Association; Phillips, Hager & North; Romano and Nicholls; Royal Bank of Canada)</p>	<p>Several commenters support not including the universal registration system in the USL. Some commenters are concerned however that it will re-emerge in local rules. In particular, one commenter is concerned that the concept of a limited market dealer will re-emerge within the restricted dealer category. The commenter believes that allowing securities regulatory authorities to retain aspects of the universal registration system is not consistent with uniformity.</p> <p>Some commenters believe that investor protection would be greatly increased by a consistent registration system across the country, which at the same time, would assist in reducing the costs for industry participants in complying with varying registration requirements. One commenter does not believe that the exempt securities markets in certain jurisdictions require more comprehensive regulation than the exempt securities markets in other jurisdictions.</p>	The CSA are considering these comments.
67.	<p>Registration</p> <p>Universal registration system</p> <p>(Oslers)</p>	<p>One commenter strongly supports any initiative that would harmonize the dealer registration requirements of all provinces and territories of Canada</p> <p>The commenter does not believe that registration as a dealer should be required in order to make trades to institutional or other sophisticated purchasers who would be permitted to acquire securities under prospectus exemptions.</p> <p>The commenter is concerned that if Ontario and Newfoundland & Labrador choose to enact local rules to continue some aspects of the universal registration system, the categories of registration set out in the USL may be too narrow to replace the current limited market dealer and international dealer registration categories. Presumably, entities currently registered in those categories would be required to register as a “restricted dealer”.</p> <p>The commenter urges the CSA to ensure that, if universal registration is maintained in any jurisdiction, it remains possible to register as a restricted dealer for the purpose of making trades to prospectus-exempt purchasers and that the procedure, conditions and requirements for that</p>	The CSA support the harmonization of registration categories and are considering what changes should be made.

#	Theme	Comments	Responses
		<p>registration not be made any more onerous than those which currently apply to registration as a limited market dealer.</p> <p>Further, the commenter submits that non-Canadian resident dealers should be able to register as a restricted dealer for the purpose of making prospectus-exempt trades on a basis that is no more onerous than the current process for registration as an international dealer.</p> <p>Finally, the commenter urges the CSA to encourage any jurisdiction maintaining a universal registration system to consider recognizing registration status in another Canadian province as equivalent for that purpose. In particular, if Newfoundland & Labrador maintain universal registration, the commenter proposes that an Ontario-registered international dealer should be permitted to make exempt-market trades in Newfoundland & Labrador without separately becoming registered in that province.</p>	
68.	<p>Registration</p> <p>Transitional matters</p> <p>(Oslers)</p>	<p>As a transitional matter, one commenter urges the CSA to ensure that existing registrants in all existing categories are granted deemed registration status in any new categories that are created and that care is taken to ensure that the scope of their existing business activities is not curtailed by new restrictions or limitations imposed upon the new registration categories. The commenter submits that the time and expense of requiring existing registrants to register in the new categories, and the regulatory resources that would be necessary to review and process those applications, is not justified nor would any public interest be served. Further, current registrants should not be required to reduce the scope of their current activities because of changes in the available registration categories, or be required to curtail them pending the processing of an application for registration in a less restrictive category.</p>	<p>The CSA agree with this comment and will keep it in mind during the drafting and implementation phases of the USL.</p>

#	Theme	Comments	Responses
69.	Registration Regulation of financial planners (Financial Planners Standards Council)	One commenter asks the CSA to recognize the Certified Financial Planner certification for financial planners.	This recommendation goes beyond the scope of the USL. However, the CSA note that such a change, if appropriate, could be implemented through rule changes in the future.
PROSPECTUS REQUIREMENTS			
70.	Prospectus Requirement Prospectus trigger (IFIC)	One commenter agrees that the existing prospectus trigger should be maintained as this trigger is an appropriate way of permitting the distribution of securities. However, the commenter is concerned by the statement in the Concept Proposal that the prospectus trigger will be retained in “most” jurisdictions. The commenter believes that the prospectus trigger should be adopted in all Canadian jurisdictions in order to have uniformity.	The intention under the USL is to have a uniform prospectus trigger.
71.	Prospectus Requirement Harmonization of long form prospectus rules (Davies; PDAC; TSX Group)	Three commenters support the CSA’s initiative to harmonize the rules relating to the form and content requirements for long form prospectuses.	The CSA acknowledge the comment.
72.	Prospectus Requirement Integrated disclosure system (Davies; KPMG; PDAC; Romano and Nicholls; TSX Group)	Several commenters support facilitating the development of an integrated disclosure system (IDS). One commenter cautions that if additional continuous disclosure requirements are required, there is a risk of increasing compliance costs for issuers. The commenter is unclear as to how costs and professional fees will be reduced by requiring an alternative form of offering document rather than a prospectus. The commenter wonders if the alternative offering document will be similar to an AIF.	The CSA acknowledge the comment. The CSA are sensitive to the issue of compliance costs. Under the CSA’s IDS proposal, the document that an issuer would prepare to go to market would be a prospectus focussed on the description of the offering and would generally be briefer than a short form prospectus. It would incorporate the AIF and other continuous disclosure documents by reference.
73.	Prospectus Requirement Integrated disclosure system (Barclays Global Investors)	One commenter notes that the Concept Proposal includes only limited information regarding how the USL will accommodate an IDS. The commenter points out that there are a number of different initiatives in this area and that it is essential that these initiatives and any detailed proposals adopted as a result of the USL be consistent.	The USL will provide a flexible framework to accommodate alternative offering systems in the future.

#	Theme	Comments	Responses
74.	<p>Prospectus Requirement</p> <p>Alternative offering systems</p> <p>(Canadian Listed Company Association; IDA; Members of the Listed Company Association; Phillips, Hager & North; TSX Group)</p>	<p>Several commenters express support for the replacement of the prospectus system with a system based on continuous disclosure under a material information standard. They specifically support the BCSC's proposed continuous market access system (CMA).</p> <p>One such commenter further notes that investors would receive sufficient information on which to make a decision with an AIF and more timely continuous disclosure. The commenter believes that currently, certain prospectus information is stale by the time it reaches investors.</p> <p>Another commenter considers it vital that the CSA adopt a CMA system to improve the ability of issuers to access capital quickly, easily and on a national basis. The commenter is very concerned that the CSA may take a piecemeal approach and escalate costs with enhanced continuous disclosure and broad civil remedies without any move towards deregulation. Another commenter is of the view that the adoption of a CMA system is essential to offset the increased costs of enhanced continuous disclosure and increased liability.</p>	<p>The CSA have concluded that the USL will include a modified version of the IDS model proposed by the CSA in January 2000. The USL will be drafted in a manner that will accommodate other future offering systems.</p>
75.	<p>Prospectus Requirement</p> <p>Alternative offering systems</p> <p>(IDA)</p>	<p>One commenter notes that the USL will be drafted flexibly to incorporate an eventual move to an integrated disclosure regime. This raises the issue of eventual integration into the USL. If the intention is to incorporate the streamlined issuance model, the time lag will be considerable given the need for comprehensive amendments to provincial legislation. On the other hand, if the IDS model is included in the rules and regulations, rather than legislation, there is no certainty the streamlined issuance proposal will be uniform across jurisdictions.</p> <p>The commenter suggests that the USL, particularly as it relates to public and private financings, would be more effective if it incorporates IDS. It would facilitate the harmonization of inter-jurisdictional regulations and further, it would obviate the need for harmonizing the long form prospectus rules.</p>	<p>The CSA believe that the proposed Uniform Act should contemplate alternative offering systems, and the systems themselves should be contained in the rules. The CSA agree that any alternative offering system that is to have national reach must be uniform across jurisdictions but note that including it in the legislation is not necessary for that purpose.</p> <p>The CSA have accelerated work on IDS and it will be implemented in as timely a manner as possible. Long form prospectuses would still be necessary for initial public offerings, issuers who are not eligible to use IDS and issuers who do not wish to use IDS.</p>

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76.	<p>Prospectus Requirement</p> <p>Foreign prospectuses</p> <p>(AIMR; Barclays Global Investors; IFIC; Romano and Nicholls; SHARE)</p>	<p>Several commenters support the move towards accepting foreign prospectuses.</p> <p>One commenter states that the proposed test, that a regulator must positively determine that a “foreign prospectus contains full, true and plain disclosure”, seems inappropriate because it would be difficult for a regulator to meet that test. The commenter suggests the alternative of specifying acceptable jurisdictions and authorizing minimal review. The commenter also notes that Canadian GAAP issues, continuous disclosure and other ongoing requirements would likely need to be adapted to accept foreign standards.</p> <p>Two commenters believe that prospectuses prepared in a foreign jurisdiction, even if they contain full, true and plain disclosure, should only be recognized if certain conditions are met.</p> <p>One commenter expresses concern about the potential policy ramifications of accepting foreign prospectuses. The commenter acknowledges the potential efficiency benefits both for issuers and investors in allowing issuers to issue one prospectus, but does not believe that acceptance of prospectuses prepared in accordance with the laws of a foreign jurisdiction, where the securities regulatory authority determines that the foreign prospectus contains full, true and plain disclosure, is sufficient.</p> <p>The commenter submits that the minimum standard should be disclosure equivalent to prescribed Canadian standards. While this presumes full, true and plain disclosure, it reassures investors that prescribed standards are being complied with rather than reliance on a principles-based evaluation which is open to subjective interpretation. The commenter submits that the CSA should study the regulatory regimes in other countries to determine credibility in advance of reforms that allow the CSA to accept foreign prospectus. Lastly, the commenter opposes any policy regime that results in reducing disclosure requirements for issuers.</p>	<p>The CSA acknowledge the comments.</p> <p>The CSA agree that the test to accept a foreign prospectus should not impose an obligation on a securities regulatory authority to determine full, true and plain disclosure and intend to draft the provision accordingly. The CSA have initiatives under way, such as proposed NI 52-107 dealing with accounting and audit standards, to facilitate offerings by foreign issuers.</p> <p>The discussion in the Concept Proposal on this point was intended to advise that the prospectus requirement provisions in the USL would contemplate acceptance of foreign prospectuses. However, the conditions on which the CSA will accept a foreign prospectus are being developed. The CSA acknowledge the commenters’ suggestions.</p> <p>The CSA agree with the commenter about the need to consider carefully the ramifications of accepting foreign prospectuses. The USL would do no more than facilitate the use of foreign prospectuses if and when securities regulatory authorities or regulators consider it appropriate or when rules prescribe the terms and conditions on which they will be accepted without the need for discretionary relief. The CSA anticipate that in the near term, acceptance of foreign prospectuses would occur only case by case.</p> <p>The CSA agree that any foreign prospectus accepted in Canada should be prepared in accordance with comparable standards. Through initiatives such as proposed NI 52-107 and proposed NI 71-102, consideration has already been given to standards in other jurisdictions. The CSA are familiar with the regulatory regimes in the jurisdictions from which we are most frequently asked to accept disclosure documents. The CSA agree that acceptance of foreign documents should not result in disclosure that is inferior.</p>

#	Theme	Comments	Responses
77.	Prospectus Requirement Needs of emerging issuers (TSX Group)	One commenter suggests continuing the capital pool company (CPC) prospectus program to address the needs of emerging issuers.	The CSA agree and intend to maintain the CPC program. In addition, the CSA, through the Proportionate Regulation Project, are studying the regulatory system as a whole to determine whether it imposes an appropriate level of regulation on junior and senior issuers.
DERIVATIVES			
78.	Derivatives The “exchange contract” model of regulation of derivatives (Bennett Jones)	One commenter supports the effort to harmonize the basic concepts and approach of securities law to derivatives trading and, in particular, the effort to regulate derivatives with reference to “futures contracts” and “exchange contracts” as is currently the case in B.C. and Alberta.	The CSA acknowledge the comment.
79.	Derivatives Regulation of exchange contracts as securities (Ogilvy Renault)	One commenter sees no difficulty with regulating exchange contracts as securities provided that appropriate exemptions are in place.	Exchange contracts will not be included in the definition of “security” in Ontario and Manitoba because the equivalent products are regulated under commodity futures legislation.
80.	Derivatives Definition of “exchange contract” (Bourse de Montréal)	One commenter is of the view that a harmonized definition of “exchange contract” would be helpful. The commenter recommends the definition proposed under the USL, which provides that futures contracts and options guaranteed by a clearing agency and traded on an exchange according to standardized terms are exchange contracts.	The definition of “exchange contract” will be harmonized in all jurisdictions except Ontario and Manitoba.
81.	Derivatives Definitions of “futures contract” and “exchange contract” (Bennett Jones)	One commenter recommends updating the existing definitions of both “futures contract” and “exchange contract”. The commenter notes that the existing definitions were originally formulated some years ago with reference to the perceived characteristics of derivative instruments as they then existed. However, the commenter points out that developments in financial products have been significant in recent years, with the result that the “futures contract” and “exchange contract” definitions, as they currently exist, appear to be inadequate.	The CSA will consider this comment in developing definitions under the USL for jurisdictions other than Ontario and Manitoba.

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82.	<p>Derivatives</p> <p>Registration exemptions for exchange contracts</p> <p>(Bourse de Montréal)</p>	<p>One commenter recommends incorporating registration exemptions for exchange contracts into the USL and offers its assistance in determining whether other exemptions are needed.</p>	<p>In provinces other than Ontario and Manitoba, the USL will provide registration exemptions for trades in exchange contracts that are similar to the ones currently available in Alberta and B.C.</p>
83.	<p>Derivatives</p> <p>Prohibited representations respecting commodity exchanges</p> <p>(Bennett Jones)</p>	<p>One commenter encourages the CSA to consider whether existing prohibitions on the making of representations are, in all respects, consistent with the functions of commodities exchanges. In particular, the commenter notes that s. 92(1)(d) of the <i>Securities Act</i> (Alberta), which provides that unless otherwise permitted by the Executive Director of the ASC, no person or company shall represent that the person or company or any other person or company will assume all or any part of an obligation under an exchange contract. The commenter states that as it understands the operations of certain commodities exchanges, if one of the parties to an exchange contract does not perform its obligations, the relevant commodities exchange will, in effect, guarantee performance and will assume the obligation of the defaulting counter-party, so as to ensure the expectations of the other counter-party are respected. The commenter points out that this basic function of commodities exchanges is designed to ensure market integrity and stability, both of which are desirable objectives from the perspective of commodities regulation. Therefore, the commenter does not believe that it is appropriate that a guarantee of such nature or the prospect of assumption of an obligation under an exchange contract by a commodities exchange should constitute a prohibited representation in connection with a trade in an exchange contract.</p>	<p>The CSA will consider whether this prohibition is appropriate given the basic functions and operations of commodity exchanges.</p>
84.	<p>Derivatives</p> <p>Retention of commodity futures legislation in Ontario and Manitoba</p> <p>(AIMR; Barclays Global Investors; Bourse de Montréal Inc.; Fasken Martineau; IFIC; Phillips, Hager & North; Romano and Nicholls)</p>	<p>A number of commenters suggest eliminating the regulation of commodity futures and commodity options under separate commodity futures legislation. Several commenters submit that there should be no carve out from derivatives regulation for jurisdictions with their own commodity futures legislation. One commenter states that the Ontario approach is vague, confusing and misunderstood.</p>	<p>Ontario and Manitoba will maintain their commodity futures legislation and will be carved out from the part of the USL that regulates exchange-traded derivatives.</p>

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85.	Derivatives OTC derivatives (Canadian Bankers Association; ISDA; Oslers; Romano and Nicholls)	Several commenters discourage the regulation by securities regulatory authorities of OTC derivatives and note that the Concept Proposal reflects an approach rejected by the Ontario Minister of Finance. These commenters also submit that that national implementation of the Alberta/B.C. approach to the regulation of OTC derivatives will impede the financial markets in which derivatives operate.	The USL will be drafted to maintain the status quo in both Ontario and the other jurisdictions with respect to the regulation of OTC derivatives. However, an exemption for financial institutions and registrants trading in financial derivatives will be incorporated into the regulatory regime for OTC derivatives that would apply in jurisdictions other than Ontario.
CAPITAL RAISING EXEMPTIONS			
86.	Capital Raising Exemptions General comments (Barclays Global Investors; Canadian Listed Companies Association; Clark, Wilson; Fasken Martineau; IFIC; PDAC; Phillips, Hager & North; Royal Bank of Canada; Torys; TSX Group)	<p>A number of commenters recommend reconciling the capital raising exemptions available in various Canadian jurisdictions and express the view that the capital raising exemptions contained in MI 45-103 are more appropriate for Canadian capital markets than those in OSC Rule 45-501, especially for emerging issuers.</p> <p>Two commenters observe that MI 45-103 does not harmonize capital raising exemptions in Canada since it has not been adopted by all jurisdictions and contains varying rules for participating jurisdictions within the rule itself. The commenters submit that these inconsistencies must be eliminated if a truly uniform securities regime is to be created.</p>	The CSA are in the process of drafting a uniform exemptions rule and will be considering and discussing all of the capital raising exemptions. These comments will be considered in the context of those discussions. The CSA recognize the importance of harmonized capital raising regimes.
87.	Capital Raising Exemptions Prescribed minimum amount exemption (Clark, Wilson; Davies; Fasken Martineau; IFIC; Ogilvy Renault; Oslers; Romano and Nicholls)	<p>A number of commenters support including the prescribed minimum amount exemption in the USL. Some of these commenters note that in the absence of clear evidence it has been used in an abusive or fraudulent manner, the exemption should not be removed, although they acknowledge that it has some flaws.</p> <p>Two commenters believe that the exemption should be removed. One of these commenters submits that use of the exemption results in inadequate diversification of investments in some cases since it requires investors to invest a minimum amount of money in one transaction.</p>	This exemption has been considered in the context of the capital raising exemptions in MI 45-103. The jurisdictions that have adopted MI 45-103 are monitoring the continued usefulness of this exemption. The OSC recently considered the merits of a prescribed minimum amount exemption as part of the extensive public consultation and review process that preceded the November 2001 amendments (which introduced the accredited investor model) to the Ontario exempt distributions rule, OSC Rule 45-501. As a result of this consultation and review process, the OSC concluded that the accredited investor exemption was an appropriate replacement for the former prescribed minimum amount exemption, and that it would not be appropriate to retain the prescribed minimum amount exemption in addition to the accredited investor exemption. The CSA will consider the comments raised by the commenters, the

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			experience of jurisdictions that have adopted MI 45-103 and the experience of Ontario following the implementation of OSC Rule 45-501 in the context of developing a proposed uniform exemptions rule.
88.	<p>Capital Raising Exemptions</p> <p>Closely-held issuer exemption</p> <p>(Clark, Wilson; Davies; Ogilvy Renault; Oslers; Ontario Bar Association; Romano and Nicholls; Torys)</p>	<p>One commenter recommends adopting the closely-held issuer exemption contained in OSC Rule 45-501 once certain clarifying changes are introduced.</p> <p>Two commenters specifically recommend that Ontario eliminate the closely-held issuer exemption while several commenters identify problems with the exemption including the \$3,000,000 cap being arbitrary and restrictive, the difficulty of determining beneficial ownership for the purposes of the 35 shareholder test, the difficulty of determining if an issuer is still closely-held for resale purposes and the application of statutory rights of action and other offering memorandum requirements in respect of offering memoranda delivered in connection with a trade.</p>	In the process of drafting a uniform exemptions rule, the CSA will be considering and discussing all of the capital raising exemptions. These comments will be helpful in the context of those discussions.
89.	<p>Capital Raising Exemptions</p> <p>Private issuer exemption</p> <p>(Davies; Ontario Bar Association; Oslers; Romano and Nicholls; Torys)</p>	<p>Several commenters support including the private issuer exemption in the USL. Two of these commenters recommend including the private issuer exemption contained in MI 45-103 in the USL.</p> <p>One commenter submits that the number of security holders should be based on registered as opposed to beneficial ownership. The commenter notes that the private issuer exemption in MI 45-103 achieves the objective of identifying, in a non-exhaustive manner, persons who are not members of the public to which a private issuer could issue securities. It provides certainty and utility for small and medium-sized business financings and can be used in the context of private merger and acquisition transactions and internal reorganizations.</p> <p>Another commenter submits that the requirement under the private issuer exemption that an issuer have restrictions on the transfer of designated securities in its constating documents is not necessary because the exemption is only available to “non-public holders”.</p>	<p>In the process of drafting a uniform exemptions rule, the CSA will be considering and discussing all of the capital raising exemptions. These comments will be helpful in the context of those discussions.</p> <p>The CSA would expect issuers to take reasonable steps to ascertain the beneficial holders of their securities as is currently the case for other purposes such as an application by a reporting issuer to cease to be a reporting issuer. The CSA will consider clarifying what taking “reasonable steps” may involve.</p>

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90.	<p>Capital Raising Exemptions</p> <p>Accredited investor exemption</p> <p>(Clark, Wilson; Davies; IFIC; Ogilvy Renault; PDAC)</p>	<p>Several commenters support including a uniform accredited investor exemption in the USL.</p> <p>One commenter criticizes the accredited investor net worth test contained in OSC Rule 45-501 and MI 45-103 (“financial assets” having a net realizable aggregate value of over \$1,000,000) for being far too restrictive and suggests that it be expanded to include all assets (instead of only cash and securities), perhaps other than the family home.</p>	<p>In the process of drafting a uniform exemptions rule, the CSA will be considering and discussing all of the capital raising exemptions. These comments will be helpful in the context of those discussions.</p>
91.	<p>Capital Raising Exemptions</p> <p>Offering memorandum exemption</p> <p>(Clark, Wilson; Davies; IFIC; Ogilvy Renault; PDAC)</p>	<p>Several commenters recommend adopting the offering memorandum exemption on a national basis. One commenter notes that the offering memorandum exemption is very important for junior issuers as it provides an opportunity to raise funds in the exempt market quickly. Another commenter submits that an offering memorandum delivered to an investor prior to investing should be sufficient to allow investment without further requirements. Another commenter submits that all mutual funds in all jurisdictions should be allowed to use the offering memorandum exemption.</p> <p>One commenter submits that the offering memorandum exemption, as it is currently set out in MI 45-103, should not be included in the USL since the extensive disclosure mandated for the offering memorandum creates a simplified prospectus regime that will exist alongside the current prospectus regime.</p>	<p>In the process of drafting a uniform exemptions rule, the CSA will be considering and discussing all of the capital raising exemptions. These comments will be helpful in the context of those discussions.</p>
92.	<p>Capital Raising Exemptions</p> <p>Family, close friends and business associates exemption</p> <p>(Clark, Wilson; Davies; Ontario Bar Association; PDAC; Torys)</p>	<p>Several commenters support including the family, close friends and business associates exemption. One commenter submits that this exemption should be available to both private issuers and reporting issuers.</p>	<p>In the process of drafting a uniform exemptions rule, the CSA will be considering and discussing all of the capital raising exemptions. These comments will be helpful in the context of those discussions.</p>

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OTHER EXEMPTIONS			
93.	Other Exemptions DRIP exemption (Romano and Nicholls)	One commenter recommends that the dividend reinvestment plan (DRIP) exemption be extended to income trusts and similar issuers.	In the process of drafting a uniform exemptions rule, the CSA will be considering and discussing all of the exemptions. This comment will be helpful in the context of those discussions.
94.	Other Exemptions Securities issued under the <i>Bankruptcy and Insolvency Act</i> (Canada) (Romano and Nicholls)	One commenter submits that the exemption that applies to trades made in connection with an amalgamation, merger, reorganization or arrangement should be extended to trades made in connection with a proposal under the <i>Bankruptcy and Insolvency Act</i> (Canada). The commenter notes that a proposal under that act is court supervised and therefore similar to an arrangement, but is used by smaller issuers for cost reasons.	Trades in connection with a proposal under the <i>Bankruptcy and Insolvency Act</i> (Canada) would fall under the proposed exemption since the securities would be traded in connection with a statutory procedure. Please see the description of this exemption at Appendix C, Item 16, at page 73 of the Concept Proposal.
95.	Other Exemptions Internal reorganization exemption (Torys)	One commenter notes that Appendix C of the Concept Proposal does not contain an exemption for “internal reorganizations”. The commenter submits that an exemption for these types of transactions should be added.	The CSA believe that the proposed exemption contained in Appendix C, Item 16, at page 73 of the Concept Proposal covers such a transaction but if the commenter has examples of internal reorganizations that would not fall within this exemption, the commenter should provide details.
96.	Other Exemptions Mining claims exemption (PDAC)	One commenter supports including an exemption for trades in securities as consideration for mining claims or oil and gas rights without the need for the vendor to enter into an escrow agreement. However, the wording of the exemption needs to be broad enough to deal not only with mining claims but any mineral properties or mineral interests including options to acquire such properties or interests as well as royalties. The commenter favours the B.C. approach.	The USL contemplates an exemption for mining claims. Please see Appendix C, Item 8, at page 73 of the Concept Proposal.
97.	Other Exemptions Securities for debt (PDAC)	One commenter supports the inclusion of an exemption for trades by an issuer of securities of its own issue to satisfy a bona fide debt, regardless of the amount.	The CSA acknowledge the comment but advise that the exemption will have conditions that may include a limit on the amount of debt that can be satisfied.
98.	Other Exemptions	One commenter questions the protection afforded by an approved rating given that the credit worthiness of a particular issuer often deteriorates well in advance of the	The CSA do not propose to change the proposal for this exemption. The CSA are proposing to impose the approved rating requirement because it shows that the

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	Commercial paper exemption (Romano and Nicholls)	issuer losing its approved rating. The commenter submits that the suggested change may lead to issuers offering dealers high commissions to sell their commercial paper to the public as their credit worthiness deteriorates, but before the rating agency downgrades the issuer. In addition, the commenter notes that it is unclear as to how the condition of the exemption that requires that the “debt is not convertible or exchangeable into or accompanied by a right to purchase another security other than the short-term debt in question” works. The commenter wonders if the words “short-term debt in question” refers to a right to renew or roll-over existing commercial debt?	issuer is substantial enough to get a rating. The CSA believe that this, together with the requirement that the debt not be convertible into another type of security of the issuer, provides better protection for investors than the \$50,000 minimum amount. The CSA will consider clarifying issues such as these in a uniform exemptions rule.
99.	Other Exemptions Security issuer exemption (Torys)	One commenter agrees in principle that issuers should be allowed to distribute their securities on an exempt basis without the need for registration as a “security issuer”. The commenter would like to know, however, what the “appropriate conditions” will be.	The CSA are considering the appropriate conditions and will look to the terms and conditions currently imposed on registrants in the security issuer category.
100.	Other Exemptions Integrated disclosure system (IDA)	One commenter notes that IDS as proposed by the CSA two years ago would enable a reporting issuer to offer securities by issuing an abbreviated short form prospectus. The commenter is of the view that a streamlined issuance system would eliminate the need for exempt market offerings and the need to harmonize the capital raising exemptions.	Implementation of IDS as currently contemplated by the CSA would not eliminate the need for exempt market offerings. IDS would facilitate quicker access to capital for companies that are reporting issuers with a history of continuous disclosure. The system would not facilitate capital raising for non-reporting issuers. It is essential that companies that have not filed a prospectus to become reporting issuers have a means to access capital and grow. If an effective IDS is eventually adopted and integrated into the USL, it may be that the prospectus and registration exemptions will be rendered unnecessary for reporting issuers. However, as stated above, there will still be a need for prospectus and registration exemptions to allow non-reporting issuers to access capital.
101.	Other Exemptions Manitoba exemption for trades in exempt securities of a non-reporting issuer (Ogilvy Renault; Oslers)	Two commenters submit that in the interest of consistency, Manitoba should remove its exemption regarding trades in exempt securities of a non-reporting issuer.	The exemption which will only apply in Manitoba fits a perceived need within its local exempt market. This exemption will only be available for trades between Manitoba residents.

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102.	Other Exemptions Exemption for direct purchase plans (STAC)	One commenter asks the CSA to consider including an exemption for direct purchase plans (DPPs) in the USL exemptions instrument. The commenter indicates that three jurisdictions have either implemented or are considering the implementation of a DPP exemption. The commenter supports the conditions attached to the exemption in those jurisdictions.	The CSA will consider including an exemption for DPPs in the process of drafting a uniform exemptions rule.
RESALE RESTRICTIONS			
103.	Resale Restrictions Recognition of markets (Clark, Wilson)	One commenter recommends recognizing all securities markets. The commenter submits that an issuer should not be prevented from complying with and benefiting from securities rules simply because it is trading in a market over which Canadian regulators have no control provided that the market offers appropriate regulatory oversight in its home jurisdiction. The commenter suggests that, for instance, if a public company trading in the U.S. complies with its reporting obligations in the U.S. as well as applicable Canadian legislation, it should have benefits accorded Canadian reporting issuers, particularly with respect to the tolling of hold periods.	The CSA acknowledge the comment.
104.	Resale Restrictions Elimination of resale restrictions (Canadian Listed Company Association)	One commenter endorses the BCSC proposal to eliminate hold periods and resale restrictions on securities of public companies in a continuous disclosure regime. The market will impose resale restrictions on private placements when appropriate.	The implementation of the IDS system, which is a continuous disclosure-based system, would facilitate the same result.
105.	Resale Restrictions Differing resale restrictions across Canada (Oslers)	One commenter submits that the USL must contemplate and address conflicts between the resale rules of various provinces. There should be a basis for determining which province or territory has the closest connection to a particular transaction and the laws of that jurisdiction should be paramount in the event of any conflict.	MI 45-102 already largely harmonizes the resale rules among jurisdictions. The CSA believe that the USL will remove any remaining differences.

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106.	<p>Resale Restrictions</p> <p>Legending of certificates</p> <p>(Bennett Jones; Canadian Capital Markets Association; Ogilvy Renault; Ontario Bar Association; Oslers; Romano and Nicholls)</p>	<p>A number of commenters note that there are several sections in the Concept Proposal that refer to placing a legend on certificates evidencing securities. These commenters do not think that legends achieve their purpose and feel that their usefulness will further diminish given that securities are increasingly issued, cleared and settled in electronic form.</p> <p>One of these commenter notes that the related requirement to certify the security holding creates significant inefficiencies and risks for all parties involved in the clearing and settlement system. The commenter advises that it is proposing alternatives that will give effect to regulatory restrictions, while avoiding the use of certificates.</p> <p>In addition, one of these commenters notes that non-Canadian depositories are often unwilling or unable to accept certificates bearing restrictive legends other than those required by the laws of their own country and submits that a preferable approach to legending is to require that disclosure of the restricted period be made to the ultimate beneficial holders of the security.</p>	<p>The CSA agree that legending is problematic in a book-based system. The CSA will consider this issue in developing the USL.</p>
107.	<p>Resale Restrictions</p> <p>Legending of certificates - Manitoba</p> <p>(Oslers)</p>	<p>One commenter notes that the proposal for legending securities of a non-reporting issuer that are privately placed in Manitoba may be problematic in the context of an international offering being extended into Canada by a non-Canadian issuer.</p>	<p>The Manitoba legending requirement only applies for trades between Manitoba residents.</p>

#	Theme	Comments	Responses
108.	<p>Resale Restrictions</p> <p>Alternatives to legending</p> <p>(Oslers)</p>	<p>One commenter suggests that purchasers could be required to covenant not to make resales into Canada (except on an exempt basis) during a restricted period. However, the commenter notes that, as there is no subscription agreement or other written documentation signed by the purchaser in such an offering, the USL should specify that this covenant could be obtained through a unilateral contract formed by appropriate disclosure in the offering document, coupled by the investor's act of purchasing the security. The commenter states that the same concerns regarding legending apply to the requirement to have debt securities represented by a temporary global certificate. The commenter notes that a temporary global certificate is only required by Regulation S under the U.S. <i>Securities Act of 1933</i> in very limited circumstances.</p>	<p>The CSA acknowledge the comment and will consider it in developing the uniform rules.</p>
DISTRIBUTIONS OUTSIDE A JURISDICTION			
109.	<p>Distributions Outside a Jurisdiction</p> <p>Regulation of distributions outside a jurisdiction</p> <p>(BD&P; Bennett Jones; Clark, Wilson; Oslers)</p>	<p>Several commenters suggest that Canadian regulators should not be concerned with the protection of investors outside Canada. One of these commenters submits that all jurisdictions should adopt B.C. Instrument 72-503 or its equivalent.</p>	<p>The CSA will consider this comment in developing the uniform rules.</p>
110.	<p>Distributions Outside a Jurisdiction</p> <p>Need for a harmonized approach</p> <p>(PDAC)</p>	<p>One commenter notes that a harmonized approach to the regulation of trades outside a jurisdiction is critical. The commenter observes that as securities legislation is essentially "consumer protection" legislation, the focus of the rules should be on the jurisdiction of the purchaser, not the vendor. The commenter recommends that the USL contain an explicit statement as to the scope of application of each provincial act.</p>	<p>The CSA will consider this comment in developing the uniform rules.</p>
111.	<p>Distributions Outside a Jurisdiction</p> <p>Prospectus offerings versus exempt offerings</p> <p>(Davies)</p>	<p>One commenter agrees with the USL approach of distinguishing between distributions by way of an exempt offering and distributions qualified by prospectus and also agrees with the criteria proposed for regulating the resale of distributions qualified by prospectus. The commenter assumes that the conditions would only have to be satisfied if there are sufficient connecting factors between the issuer and the local jurisdiction and prefers a safe</p>	<p>The CSA will consider this comment in developing the uniform rules.</p>

#	Theme	Comments	Responses
		harbour approach.	
112.	<p>Distributions Outside a Jurisdiction</p> <p>Distributions outside a jurisdiction that are qualified by prospectus</p> <p>(Oslers)</p>	<p>One commenter endorses the approach of proposed MI 72-101 for prospectus offerings outside a jurisdiction. However, the commenter sees no reason to restrict an issuer from making concurrent exempt offerings to eligible Canadian purchasers and therefore recommends the following:</p> <ul style="list-style-type: none"> • Modifying the proposed restriction that the underwriting agreement prohibit the sale of securities locally to provide that the underwriting agreement must prohibit sales to any person in the local jurisdiction, except for persons who are eligible to purchase those securities under an available exemption; and • Modifying the condition that no efforts be made to prepare the local market so that acts in furtherance of prospectus-exempt trades to persons who are eligible to purchase those securities under an available exemption are not prohibited. 	<p>The CSA do not intend to prevent a private placement of securities inside Canada at the same time as a prospectus offering outside Canada. In developing the uniform rules, the CSA will revise the applicable conditions to make it clear that they do not preclude a concurrent private placement to purchasers in Canada.</p>
113.	<p>Distributions Outside a Jurisdiction</p> <p>Private placements by Canadian issuers to purchasers outside Canada - connecting factors</p> <p>(Davies)</p>	<p>One commenter is concerned with the proposed structure of the exemption for private placements by Canadian issuers to purchasers outside Canada as it would appear that any Canadian issuer engaged in a private placement outside Canada would be required to meet the conditions of this exemption, despite a lack of connecting factors with Canada that would make it unlikely that any securities would “flowback” into Canada. The approach is therefore inconsistent with the goal of preventing flowback.</p> <p>The commenter notes that current regimes are designed primarily to prevent flowback without automatically deeming a distribution by a Canadian issuer to be a distribution in Canada based solely on the fact of status as a Canadian issuer.</p> <p>The commenter submits that connecting factors that are not related to flowback concerns should be discarded. For</p>	<p>The CSA will consider this comment in developing the uniform rules.</p>

#	Theme	Comments	Responses
		example, factors such as the location of the mind and management or location of an issuer's administration and operation are not related to flowback concerns and should not be included in the USL.	
114.	<p>Distributions Outside a Jurisdiction</p> <p>Private placements by Canadian issuers to purchasers outside Canada - exemption versus safe harbour</p> <p>(Davies)</p>	One commenter notes that the Concept Proposal proposes an exemption for exempt offerings by Canadian issuers outside Canada and would prefer a safe harbour. The commenter is concerned that, in providing an exemption, filings with their attendant expense will have to be made in situations where appropriate restrictions are already in place.	The CSA will consider this comment in developing the uniform rules.
115.	<p>Distributions Outside a Jurisdiction</p> <p>Private placements by Canadian issuers to purchasers outside Canada - general</p> <p>(Romano and Nicholls)</p>	One commenter has concerns about the proposal dealing with private placements by Canadian issuers to purchasers outside Canada. The commenter notes that the proposal is either too restrictive or overlooks relatively common situations. For example, there is no differentiation between offerings that are exclusively private placements and private placements that are an adjunct to a prospectus offering in Canada. The commenter submits that in the latter case, there appears to be no reason to impose a 4-month hold period.	The CSA agree that, if there is prospectus level disclosure for an offering in Canada, there is no need to impose a hold period on a concurrent private placement offering outside Canada. In developing the uniform rules, the CSA will make this clear.
116.	<p>Distributions Outside a Jurisdiction</p> <p>Private placements by Canadian issuers to purchasers outside Canada - resales of privately-placed securities to non-Canadian purchasers</p> <p>(Oslers)</p>	One commenter requests that specific reference be made to the ability of a Canadian private placement purchaser to resell its securities outside of Canada. The commenter submits that often, these securities will not have been issued by a Canadian reporting issuer and will therefore never become freely tradeable in Canada. In addition, the commenter suggests that if the securities were issued by a Canadian reporting issuer, it is not clear why the Canadian hold period should apply if the holder wishes to make a resale outside of Canada. The commenter submits that there is no Canadian public policy to restrict resales of privately-placed securities to other non-Canadian purchasers, at any time, and that an exemption from both the prospectus and registration requirements should be available for that purpose. The commenter suggests that if thought necessary, these exemptions could be made subject to a requirement that the seller have no reason to believe that the purchaser is Canadian or is acquiring the securities on behalf of a Canadian. The commenter states that Rule 904 of Regulation S under the <i>Securities Act of</i>	The CSA will consider this comment in developing the uniform rules.

#	Theme	Comments	Responses
		<i>1933</i> (United States) provides an example of how the conditions for such an exemption might be framed.	
117.	<p>Distributions Outside a Jurisdiction</p> <p>Private placements by Canadian issuers to purchasers outside Canada – conditions – concurrent exempt offerings</p> <p>(Bennett Jones; Ogilvy Renault; Oslers; PDAC)</p>	<p>Several commenters submit that the USL should expressly contemplate Canadian issuers concurrently making exempt offerings of their securities to non-Canadian and Canadian purchasers. Therefore, the commenters recommend that:</p> <ul style="list-style-type: none"> • The condition that purchasers of the securities must be outside Canada should be reworded to clarify that Canadian purchasers may also concurrently acquire securities in the same offering provided that they are eligible to do so; • The condition that the underwriting agreement prohibit the sale of the securities to any person in Canada should be reworded to clarify that sales to eligible exempt purchasers or purchasers acting through a registered dealer are permitted; and • The condition that there are no directed selling efforts in Canada should be reworded to clarify that it does not preclude concurrent private placement sales within Canada and the related acts in furtherance of those trades. 	<p>The CSA do not intend to prevent concurrent private placements of securities inside and outside Canada. An issuer can rely on different exemptions for sales to different persons. In developing the uniform rules, the CSA will revise the applicable conditions to make it clear that they do not preclude a concurrent private placement to purchasers in Canada.</p>
118.	<p>Distributions Outside a Jurisdiction</p> <p>Private placements by Canadian or foreign issuers to purchasers outside Canada – conditions – “directed selling efforts”</p> <p>(BD&P)</p>	<p>One commenter takes issue with the term “directed selling efforts” in the context of private placements that occur outside Canada. The commenter submits that, as the term is very unclear, a definition should be provided or the term should be removed altogether. In any event, the commenter believes the “directed selling efforts” prohibition is unnecessary to prevent indirect distributions into Canada given the imposition of restricted periods on any securities sold.</p>	<p>The CSA will consider this comment in developing the uniform rules.</p>

#	Theme	Comments	Responses
119.	<p>Distributions Outside a Jurisdiction</p> <p>Private placements by Canadian issuers to purchasers outside Canada – conditions – resale restrictions</p> <p>(Bennett Jones; Oslers)</p>	<p>Two commenters submit that the proposed condition requiring compliance with a restricted period during which the securities cannot be resold to a person in Canada should not be necessary in all cases, provided that other adequate measures are taken to ensure that the securities come to rest outside Canada. One relevant factor should be whether the securities have a principal trading market in Canada. One commenter suggests that serious consideration be given to adopting an approach similar to the tiered approach in the U.S.</p> <p>The commenters submit that if a restricted period is deemed necessary, it should be made clear that resales are permitted to a Canadian purchaser who acquires securities under an available exemption. In addition, it should be made clear that the restricted period runs from the date of the initial distribution outside Canada.</p>	<p>The CSA will consider this comment in developing the uniform rules.</p>
120.	<p>Distributions Outside a Jurisdiction</p> <p>Private placements by Canadian issuers to purchasers outside Canada – conditions – disclosure</p> <p>(Oslers)</p>	<p>One commenter does not object to the requirement that disclosure be made that the distribution is exempted from the laws of the relevant Canadian jurisdiction in principle but suggests that it is not clear what the “relevant Canadian jurisdiction” is meant to refer to. The commenter recommends that the requirement be reworded to require disclosure that sales made outside Canada are not subject to the prospectus requirements of Canadian securities laws.</p>	<p>The CSA will consider this comment in developing the uniform rules and clarify what is meant by “relevant Canadian jurisdiction”.</p>
121.	<p>Distributions Outside a Jurisdiction</p> <p>Private placements by Canadian issuers to purchasers outside Canada – conditions – compliance with foreign laws</p> <p>(BD&P; Bennett Jones; Oslers)</p>	<p>One commenter notes that, for private placements by Canadian issuers outside of Canada, one of the proposed conditions is that the offering comply with the laws of the jurisdiction in which it is made. The commenter notes that this condition was considered and rejected in developing ASC Rule 72-501 because it was deemed unnecessary, as a matter of Alberta law, to require that foreign laws be complied with. The commenter also states that it was recognized that such a condition could greatly increase costs by requiring a legal opinion from the foreign jurisdiction to confirm compliance.</p>	<p>The CSA will consider this comment in developing the uniform rules.</p>

#	Theme	Comments	Responses
122.	<p>Distributions Outside a Jurisdiction</p> <p>Private placements by foreign issuers to purchasers outside Canada</p> <p>(Oslers)</p>	<p>One commenter submits that Canadian securities regulatory authorities have no jurisdiction over an offering of securities by a non-Canadian issuer to a purchaser outside Canada. Therefore, the commenter submits that the USL should provide that Canadian securities laws do not apply to such a transaction, even if the issuer's securities trade on a Canadian exchange. The commenter also submits that an issuer should not be held responsible for any indirect distribution of its securities into Canada unless it knew that sales being made to a purchaser resident in another jurisdiction were not being made with investment intent, but rather for the purpose of making an indirect distribution into Canada.</p>	<p>A foreign issuer needs to take precautions against an indirect distribution if the issuer knows or could reasonably foresee that its securities might be resold in Canada. The CSA will make this clear in developing the uniform rules.</p>
123.	<p>Distributions Outside a Jurisdiction</p> <p>Availability of foreign issuer offerings in Canada</p> <p>(Phillips, Hager & North)</p>	<p>One commenter notes that Canadian investors are often put at a disadvantage relative to non-Canadian investors when foreign issuers do not include Canada in distributions that are exempt distributions in Canada. In some cases including Canada would require filing of a notice and payment of a fee. Therefore, the commenter recommends the adoption of an exemption for registered portfolio managers who already own the securities, with restrictions on resale to persons in Canada and solicitation in Canada for foreign-issued securities.</p>	<p>This comment raises policy issues that are outside the scope of the USL Project.</p>
124.	<p>Distributions Outside a Jurisdiction</p> <p>Private placements and prospectus offerings by foreign issuers to purchasers outside Canada - offering restrictions</p> <p>(Romano and Nicholls)</p>	<p>One commenter is concerned that the proposal relating to prospectus offerings and private placements by foreign issuers to purchasers outside Canada appears to contemplate imposing offering restriction requirements on foreign issuers that have a minimal market connection to Canada. In the case of foreign issuers that are listed on the TSX, but whose primary market is clearly elsewhere, imposing Canada-specific offering restrictions runs the risk of causing such issuers to consider delisting from an exchange in Canada.</p>	<p>A foreign issuer needs to take precautions against an indirect distribution if the issuer knows or could reasonably foresee that its securities might be resold in Canada. The CSA will make this clear in developing the uniform rules.</p>
125.	<p>Distributions Outside a Jurisdiction</p> <p>Private placements by foreign issuers to purchasers outside Canada</p> <p>(Davies)</p>	<p>One commenter agrees with the Concept Proposal for a safe harbour as opposed to an exemption for private placements by foreign issuers to purchasers outside Canada. However, the commenter notes that many foreign issuers would not consider that Canadian securities laws would apply unless there was a clear and unequivocal connection to suggest that securities might be subsequently distributed in Canada. The commenter</p>	<p>A foreign issuer needs to take precautions against an indirect distribution if the issuer knows or could reasonably foresee that its securities might be resold in Canada. The CSA will make this clear in developing the uniform rules.</p>

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		therefore suggests that either the USL not apply to these distributions at all or that a very high threshold be adopted for defining connecting factors that must exist before a foreign issuer is deemed to have made an indirect distribution in Canada.	
126.	<p>Distributions Outside a Jurisdiction</p> <p>Private placements by foreign issuers to purchasers outside Canada – conditions – concurrent offerings</p> <p>(Bennett Jones; Oslers)</p>	<p>Two commenters recommend that a foreign issuer be permitted to make concurrent exempt offerings to purchasers inside and outside Canada and suggest the following:</p> <ul style="list-style-type: none"> • No offering restrictions be imposed; • Not requiring the offering document to state that the securities are not qualified for sale in Canada; and • Allowing directed selling efforts for exempt offerings. 	<p>The CSA do not intend to prevent concurrent private placements of securities inside and outside Canada. An issuer can rely on different exemptions for sales to different persons. In developing the uniform rules, the CSA will revise the applicable conditions to make it clear that they do not preclude a concurrent private placement to purchasers in Canada.</p>
127.	<p>Distributions Outside a Jurisdiction</p> <p>Private placements by foreign issuers to purchasers outside Canada – conditions - resale restrictions</p> <p>(Oslers)</p>	<p>One commenter submits that there may be circumstances in which a restricted period should not be imposed such as when securities are not listed on a Canadian exchange or the principal trading market for the securities is outside Canada.</p>	<p>A foreign issuer needs to take precautions against an indirect distribution if the issuer knows or could reasonably foresee that its securities might be resold in Canada. The CSA will make this clear in developing the uniform rules.</p>
128.	<p>Distributions Outside a Jurisdiction</p> <p>Offerings outside Canada – conditions – resale restrictions</p> <p>(Oslers)</p>	<p>One commenter questions the rationale behind the different restricted periods for equity and debt securities (four months versus 40 days) proposed under the USL.</p>	<p>The CSA will consider this comment in developing the uniform rules.</p>
129.	<p>Distributions Outside a Jurisdiction</p> <p>Exempt distributions outside Canada - mergers and take-over bids</p> <p>(Romano and Nicholls)</p>	<p>One commenter notes that it would be highly desirable to deal with the “flowback” jurisdictional issues arising out of other exempt distributions that occur outside Canada, specifically in the context of mergers and take-over bids. Given the nature of such transactions, concerns about “indirect distributions” into Canada would seem to be largely misplaced. However, in certain cases, particularly in the context of bids, the law is very uncertain. It is not</p>	<p>The CSA will consider introducing an exemption for mergers and take-over bids involving the issuance of securities made to persons outside Canada.</p>

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		commercially reasonable to disadvantage Canadian issuers in making foreign acquisitions by seeking to impose “hold periods” on such transactions where hold periods would not be imposed by the foreign law and no such hold period would apply if the transaction occurred in Canada.	
130.	Distributions Outside a Jurisdiction Distributions outside the local jurisdiction - “flowback” prospectus (Romano and Nicholls)	One commenter notes that the necessity or ability to file a “flowback” prospectus is another area of non-uniformity as demonstrated by the different approaches adopted by B.C., Alberta and Québec versus the other provinces as set out in Part 4.2 of the Companion Policy to NI 71-101.	Changes to MJDS are outside the scope of the USL.
131.	Distributions Outside a Jurisdiction Distributions outside the local jurisdiction - securities that trade on an ATS (RS Inc.)	One commenter notes that under NI 21-101, an ATS may trade a “foreign exchange-traded security”. The commenter further notes that a “foreign exchange-traded security” is defined as a security that is not listed on a Canadian exchange or quoted on a QTRS but is listed or quoted on an exchange or QTRS that is regulated by an ordinary member of IOSCO. The commenter submits that any exemptions should recognize that many issuers may have securities that trade on an ATS which may effect the steps that must be taken to ensure that the securities do not come to rest in Canada.	The CSA will consider this comment in developing the uniform rules.
REPORTING ISSUER STATUS			
132.	Reporting Issuer Status General support (PDAC; TSX Group)	Two commenters recognize and support the need to harmonize the “trigger” for reporting issuer status in all jurisdictions.	The CSA acknowledge the comments.
133.	Reporting Issuer Status General concerns (Ogilvy Renault; Ontario Bar Association)	Two commenters criticize the USL for potentially retaining different definitions of reporting issuer in B.C. and Québec. One of the commenters submits that if the definitions are harmonized, an issuer can become a reporting issuer in every Canadian jurisdiction.	Slight differences in the definitions will not preclude an issuer from becoming a reporting issuer in any (or all) Canadian jurisdictions of its choice.

#	Theme	Comments	Responses
134.	<p>Reporting Issuer Status</p> <p>Becoming a reporting issuer – filing of a comprehensive disclosure document</p> <p>(Clark, Wilson)</p>	<p>One commenter recommends that an issuer be able to become a reporting issuer upon the filing of a comprehensive disclosure document in a manner similar to the procedure whereby an issuer can become a registrant under the <i>Securities Exchange Act of 1934</i> (United States) by filing a registration statement. The commenter submits that any company that wants to become a reporting issuer, regardless of whether it is trading, should have that option if it files the proper information.</p>	<p>The ability to become a reporting issuer through the filing and receipting of non-offering prospectuses will continue under the USL.</p>
135.	<p>Reporting Issuer Status</p> <p>Becoming a reporting issuer – listing on a recognized or designated exchange</p> <p>(Davies; PDAC; TSX Group)</p>	<p>One commenter submits that the trigger of “being listed on an exchange that carries on business in and is recognized or designated in that jurisdiction” is restrictive and may be confusing to issuers. Although the USL is an attempt to harmonize current triggers across jurisdictions, it would be more appropriate to only require that an issuer become a reporting issuer in a jurisdiction if it is listed on an exchange that is recognized by that jurisdiction, since an exchange carrying on business in a jurisdiction must be recognized.</p> <p>One commenter requests clarification of the statement that “an exchange must be carrying on business within a jurisdiction and must be recognized or designated for reporting issuer purposes in that jurisdiction before a listing on that exchange results in reporting issuer status”. Many issuers that were reporting issuers in one jurisdiction and became reporting issuers in three jurisdictions when CDNX was formed have complained about the extra costs associated with becoming a reporting issuer in multiple jurisdictions. The commenter believes that a listed issuer should become a reporting issuer in at least one province. However, it is not appropriate to become a reporting issuer in multiple jurisdictions simply because the issuer is listed on the TSX Venture Exchange.</p> <p>One commenter submits that a standardized list of “recognized exchanges” should be adopted for the purposes of the definition of reporting issuer on a uniform basis across Canada.</p>	<p>The CSA will consider this comment during the drafting of the Uniform Act and Uniform Rules.</p> <p>The effect of becoming a reporting issuer in a jurisdiction as a result of being listed on a recognized exchange may not be a desired result for some issuers, but the decision to impose reporting issuer status as a result of trading on a particular exchange is a matter for each Canadian jurisdiction to decide. The CSA note that one of the regulatory requirements associated with becoming a reporting issuer in multiple jurisdictions will be considerably mitigated by the implementation of uniform disclosure requirements.</p> <p>The CSA intend to compile a consolidated list of the exchanges recognized in the various jurisdictions but since jurisdictions recognize different exchanges, a harmonized list cannot be adopted.</p>

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136.	<p>Reporting Issuer Status</p> <p>Becoming a reporting issuer – completion of a business combination</p> <p>(Davies)</p>	<p>One commenter notes that the USL makes reference to the provisions in certain jurisdictions that deem parties to certain business combinations to be reporting issuers. Presently there are inconsistencies with respect to the type of transactions that trigger this deeming provision among various jurisdictions. The commenter submits that efforts should be made to standardize these provisions in order to prevent uneven continuous disclosure obligations across Canada, particularly given the enhanced continuous disclosure obligations and corresponding civil liability which are being proposed by the USL.</p>	<p>Slight differences in the definitions will not preclude an issuer from becoming a reporting issuer in any (or all) Canadian jurisdictions of its choice.</p>
137.	<p>Reporting Issuer Status</p> <p>Becoming a reporting issuer – reporting issuer status in all jurisdictions</p> <p>(Oslers)</p>	<p>One commenter submits that the USL should provide that an issuer that has become a reporting issuer in any Canadian jurisdiction, in accordance with harmonized rules in the USL for becoming a reporting issuer, automatically and immediately, is deemed to have become a reporting issuer in each province and territory of Canada.</p>	<p>Harmonizing the reporting issuer trigger and continuous disclosure requirements will make it easier to become a reporting issuer in multiple jurisdictions. However, it may not be in the interest of all issuers that a reporting issuer in one jurisdiction automatically becomes a reporting issuer in all jurisdictions. This could result in a junior issuer with limited resources being required to pay fees and seek relief when required, from certain jurisdictions, despite the fact that its shareholder base does not justify this.</p>
138.	<p>Reporting Issuer Status</p> <p>Becoming a reporting issuer – foreign issuers</p> <p>(Romano and Nicholls)</p>	<p>One commenter submits that the definition of reporting issuer should be more flexible concerning foreign issuers who participate in transactions with Canadian issuers (e.g. securities exchange take-over bids of a Canadian issuer or other acquisitions of a Canadian entity in exchange for securities). The commenter submits that foreign issuers should either not become Canadian reporting issuers where their Canadian security holdings will be insubstantial or full exemptions from Canadian requirements should be provided.</p>	<p>The CSA will consider this comment when developing the <i>de minimus</i> threshold. Proposed NI 71-102 exempts a foreign reporting issuer from Canadian continuous disclosure requirements if it complies with foreign disclosure requirements and files the documents in Canada.</p>

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139.	<p>Reporting Issuer Status</p> <p>Becoming a reporting issuer - <i>de minimus</i> exemption from reporting issuer status</p> <p>(Davies; Torys)</p>	<p>One commenter submits that the <i>de minimus</i> threshold for exempting an issuer from being a reporting issuer should be reformulated in order to establish a uniform standard across Canada. The commenter suggests that the <i>de minimus</i> threshold be expressed in terms of a particular number of security holders of the issuer in the jurisdiction, rather than as a percentage of the market capitalization in the jurisdiction.</p> <p>One commenter notes that reporting issuer status in a jurisdiction would not be triggered if there is a <i>de minimus</i> number of shareholders within a jurisdiction. The commenter asks how this will work in practice given Canada's book-based securities registration system.</p>	<p>The CSA will consider these suggestions when developing the <i>de minimus</i> threshold.</p> <p>The CSA would expect issuers to take reasonable steps to ascertain the beneficial holders of their securities as is currently the case for other purposes such as an application by a reporting issuer to cease to be a reporting issuer. The CSA will consider clarifying what taking "reasonable steps" may involve.</p>
140.	<p>Reporting Issuer Status</p> <p>Ceasing to be a reporting issuer – voluntary surrender of reporting issuer status</p> <p>(Clark, Wilson; Oslers; Torys)</p>	<p>One commenter supports the proposal to provide a mechanism in the USL for the voluntary surrender of reporting issuer status similar to that provided by B.C. Instrument 11-502.</p> <p>One commenter notes that a company can voluntarily surrender its reporting issuer status if, among other things, the company has fewer than 25 security holders. The commenter asks how this will work with book-based registrations and notes that the test for exempt bids is based on registered holders.</p> <p>One commenter submits that a company should be permitted to cease being a reporting issuer in a particular Canadian jurisdiction even if its securities continue to be traded on a market in the U.S., provided that it continues to be subject to the reporting requirements of U.S. securities legislation. The commenter does not see any compelling reason why a company should continue to be required to report in Canada if it has only a few or no shareholders in Canada and its trading market is outside Canada.</p>	<p>The CSA acknowledge the comment.</p> <p>The CSA are of the opinion that beneficial ownership is the relevant factor and expect issuers to take reasonable steps to ascertain the beneficial holders of their securities when seeking to voluntarily surrender reporting issuer status. The CSA will consider clarifying what taking "reasonable steps" may involve.</p> <p>The CSA agree that being listed on a marketplace should not preclude a reporting issuer from using the voluntary surrender provisions. The condition of not being listed on any marketplace will be removed.</p>

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CONTINUOUS DISCLOSURE REQUIREMENTS			
141.	Continuous Disclosure Requirements Definition of “solicit” (SHARE)	One commenter recommends that the definition of “solicit” currently in NI 51-102 be amended to agree with the definition of that term in the <i>Canada Business Corporations Act</i> (Canada).	Under the current legislative framework, this change could not be made in NI 51-102, as it would require amendment of the various Securities Acts. The CSA agree that a uniform Securities Act should contain the rule making authority so the definition of solicit can be amended to agree with the definition in the <i>Canada Business Corporations Act</i> (Canada).
142.	Continuous Disclosure Requirements Recognizing reporting issuer history (PDAC)	One commenter recommends that a securities regulatory authority be obliged rather than enabled to recognize an issuer’s reporting issuer history in another jurisdiction unless the securities regulatory authority determines that it is against the public interest to do so.	The CSA will consider whether, and to what extent, a securities regulatory authority should be obligated to accept an issuer’s reporting issuer history in another jurisdiction.
143.	Continuous Disclosure Requirements Material change reporting (SHARE)	One commenter states that the appropriate standard for disclosure should be all material information, not just material changes. The commenter also believes that guidance should be provided to issuers on the types of information that may be considered material.	This recommendation would represent a significant change to the current laws. However, the CSA note that NP 51-201 provides guidance on the types of information that may be considered material.
144.	Continuous Disclosure Requirements Disclosure of transaction negotiations prior to agreement (Romano and Nicholls)	One commenter submits issuers must be able to shelter themselves from disclosure requirements during confidential transaction negotiations since disclosure may disrupt employee, customer, or supplier relations or cause a run-up in a target’s share price or a decline in an acquiror’s share price. The liability in Ontario’s Bill 198 for a failure to make timely disclosure is relevant in this regard given the tremendous uncertainty that exists regarding disclosure of confidential ongoing negotiations. Therefore, the commenter submits that it is important to add statutory language confirming that there is no need to disclose confidential ongoing negotiations. The commenter notes that if confidentiality is not present, disclosure would be required and states that confidential material change reports are not a satisfactory answer as they cause substantial problems (and may force disclosure) for companies that are also public in the U.S. Also, it is not clear what happens to the reports if the transaction is abandoned.	The CSA believe that the ability of an issuer to file a confidential material change report and the defence available under Bill 198 if a confidential material change report is filed is the correct approach.

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145.	Continuous Disclosure Requirements Deeming certain documents superseded (KPMG)	One commenter recommends that consideration be given to incorporating a concept from the short form prospectus distribution system into the secondary market liability regime by deeming certain continuous disclosure documents (e.g., AIF, annual and interim MD&A and annual and interim financial statements) to be superseded by the filing of the comparable succeeding year's continuous disclosure documents.	No change is required since the continuous disclosure record speaks as of its date.
146.	Continuous Disclosure Requirements Continuous disclosure reviews (Davies)	<p>One commenter submits that continuous disclosure reviews should be administered through MRRS or a similar system. This would promote a more even application of the continuous disclosure provisions across Canada through the designation of a lead regulator with primary authority over such reviews.</p> <p>Further, the commenter states that an issuer's response to requests made by a securities regulatory authority in the context of a continuous disclosure review should be afforded some protection in the event that an action is subsequently brought against the issuer for an alleged breach of the continuous disclosure requirements of securities legislation. The commenter submits that without some enhanced protection being afforded to an issuer with respect to its responses in the context of a continuous disclosure review, the continuous disclosure review regime could have the unintended result of making issuers unwilling to discuss or rectify any perceived deficiencies identified by securities regulatory authorities.</p>	<p>The CSA are developing an MRRS system for continuous disclosure reviews as a separate project.</p> <p>The CSA acknowledge the comment and believe that the risk of liability will ensure that disclosure is appropriate at the first instance.</p>
147.	Continuous Disclosure Requirements Streamlined issuance system (IDA)	One commenter is concerned that the USL will incorporate NI 51-102 which contains measures to enhance continuous disclosure with a view to relying more on continuous disclosure and less on prospectuses. However, the USL will continue to be a prospectus-based system and does not incorporate a streamlined issuance regime. Issuers will have added disclosure costs without the benefit of a streamlined issuance system.	The CSA have accelerated work on IDS and it will be implemented in as timely a manner as possible.

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148.	<p>Continuous Disclosure Requirements</p> <p>Differential requirements</p> <p>(Canadian Listed Company Association; TSX Group)</p>	<p>One commenter submits that continuous disclosure obligations should be based on a two-tier regime in order to reflect the need for proportionate regulation for senior and emerging issuers. In the case of emerging issuers, the commenter submits that the costs of complying with certain onerous continuous disclosure obligations clearly outweigh any potential benefits to investors. In those circumstances, emerging issuers should be subject to slightly different requirements from those that would apply to senior issuers.</p> <p>One commenter suggests a simple definition for determining size category for certain differential requirements, specifically the TSX and TSX Venture categories.</p>	<p>The CSA are aware that the needs of larger and smaller issuers are not always the same. The CSA, through its Proportionate Regulation Project, are investigating ways to differentiate between larger and smaller issuers. For example, proposed NI 51-102 would differentiate between larger and smaller issuers.</p>
TRADE DISCLOSURE			
149.	<p>Insider Reporting</p> <p>Function-based approach</p> <p>(AIMR; BD&P; Davies; Fasken Martineau; IFIC; Ogilvy Renault; PDAC; TSX Group)</p>	<p>A number of commenters support the proposed function-based approach to the definition of “insider”. One commenter asks the CSA to provide sufficient guidance to determining insiders. Another commenter submits that the proposal to include in the definition of “insider” an individual working for an issuer in an executive capacity with the usual responsibilities that expose the individual to non-public material information about the issuer is not clear and specific enough and notes that individuals, such as employees, would be in a “special relationship” and thus restricted from trading on undisclosed information.</p> <p>One commenter encourages the CSA to repeal NI 55-101 and similar instruments with the adoption of uniform insider reporting obligations.</p>	<p>The CSA believe that the proposal provides sufficient certainty as to who is subject to reporting requirements.</p> <p>The CSA intend to review all national instruments in the context of the USL Project.</p>
150.	<p>Insider Reporting</p> <p>Equity monetization transactions</p> <p>(AIMR; Davies; IFIC; PDAC)</p>	<p>Several commenters support requiring the reporting of equity monetization transactions by insiders under the USL. One of these commenters also expresses general support for the adoption of a broader approach to the disclosure of changes in beneficial ownership that would require an insider to report an acquisition or disposition of any right or obligation to purchase or sell securities of the reporting issuer.</p>	<p>The CSA agree with these comments and are proceeding accordingly.</p>

#	Theme	Comments	Responses
151.	<p>Insider Reporting</p> <p>Filing of insider reports</p> <p>(Fasken Martineau; TSX Group)</p>	<p>One commenter agrees that the obligation to file an insider report should not be on the registered owner of the securities but on the person who beneficially owns them. Another commenter does not support the proposed removal of the requirement that a registered owner must file an insider report where the registered owner knows that the beneficial owner did not file one.</p>	<p>The CSA acknowledge the comments.</p>
152.	<p>Insider Reporting</p> <p>Transfer reports</p> <p>(Ogilvy Renault)</p>	<p>One commenter submits that the USL should not require an insider to file a transfer report if it owns securities that are placed in the name of a nominee or agent since insider reports should reflect direct ownership by persons who hold shares through nominees or agents and the reports will not be filed through SEDI.</p>	<p>The CSA agree with this comment and propose to delete this requirement.</p>
153.	<p>Early Warning System</p> <p>Exemption for offerors acquiring securities under a formal bid</p> <p>(Davies; Oslers)</p>	<p>One commenter supports including an exemption from the early warning requirements for offerors acquiring securities under a formal bid in the USL.</p> <p>Another commenter suggests that careful consideration be given to the ambit of the proposed exemption from the early warning requirements for offerors acquiring securities under a formal bid. The commenter states that where an offeror under a formal bid is reporting purchases under ss. 94(3) or 95.13 of the <i>Securities Act</i> (Ontario), reporting under the early warning requirements is clearly duplicative and unnecessary. However, the commenter submits that a deemed acquisition of shares agreed to be deposited pursuant to a bid, which is exempt from s. 94(2) pursuant to s. 185 of the Ontario Regulations, should continue to be reported under the early warning requirements. Accordingly, the commenter submits that the exemption should not extend to the reporting of locked-up shares.</p>	<p>The CSA acknowledge the comment.</p> <p>The proposed exemption for formal bids is a reflection of the view that the primary purpose of an early warning report is to give the marketplace prompt notice of, and an explanation for, an acquisition that could indicate the intention of the acquiror to obtain a control position in the issuer. In the context of a formal bid, an early warning report by the bidder is not considered necessary for this purpose. Moreover, if the bidder is required to file an early warning report of lock-up agreements after the bid is launched, difficulties may arise in regard to the legislative restrictions on additional acquisitions or offers to acquire that apply to transactions that are subject to early warning reports.</p>

#	Theme	Comments	Responses
154.	<p>Control persons</p> <p>Definition of “control person”</p> <p>(Davies)</p>	<p>One commenter supports the adoption of a harmonized definition of “control person” based on the current Alberta, Ontario and B.C. provisions. The commenter states that while the application of the definition of “control person” sometimes presents difficulties, a harmonized definition will at least reduce costs by eliminating the need to analyze multiple, differing definitions in the event of trades by a significant shareholder of an issuer that are to be completed contemporaneously in a number of provinces. The commenter recommends a harmonized definition that provides more objective criteria for determining whether a distribution is a control block distribution; for example, a rule based on ownership of 20% of the voting securities, rather than a rebuttable presumption.</p>	<p>The CSA acknowledge the comment and note that departing from the rebuttable presumption approach would constitute a significant change that goes beyond the scope of the USL Project.</p>
155.	<p>Control persons</p> <p>Notice requirements</p> <p>(Bennett Jones; Davies; Oslers; PDAC; Romano and Nicholls; TSX Group)</p>	<p>One commenter supports the requirement on control persons to file a pre-trade notice and comply with insider reporting requirements for both public and private transactions while several commenters disagree with the proposal to extend the pre-trade notice requirement to private transactions.</p> <p>Another commenter is concerned that the filing requirements and waiting periods imposed by the USL for control block distributions are not necessary in all control block distributions. The commenter submits that the requirement to file a notice and the waiting period requirements should only apply to trades made under the exemption in section 2.8 of MI 45-102 and trades made under another exemption if they are of a size (individually or in the aggregate with similar trades made over a reasonable period of time) sufficiently large that they may affect the control of the issuer or move the price of the issuer’s securities. The commenter submits that if the notice and waiting period requirements are to extend beyond trades made under the exemption in section 2.8 of MI 45-102, trades in securities of non-reporting issuers should be excluded and consideration should be given to shortening the 7-day waiting period.</p>	<p>The CSA are considering removing the pre-trade notice requirement for control persons for public transactions. The CSA have decided not to extend the pre-trade notice requirement to private transactions since we do not believe that such a requirement is appropriate.</p>

#	Theme	Comments	Responses
156.	Control persons Disposition by a pledgee (Bennett Jones)	One commenter suggests that it is not clear that the disposition procedure for a pledgee to liquidate a bona fide debt is compatible with personal property security legislation.	The CSA understand this to be a specific comment relating to ss. 2.8 and 2.9 of MI 45-102. The CSA have forwarded the comment to the committee responsible for future amendments to MI 45-102 for their consideration.
INVESTMENT FUNDS			
157.	Investment Funds General support (Fasken Martineau)	One commenter generally supports the various investment fund initiatives currently being considered. The commenter notes that ideally, it would be beneficial if the recommendations for a new mutual fund governance regime could be incorporated into the USL as this might allow certain other self-dealing and conflicts of interest provisions to be revised or eliminated.	The CSA acknowledge the comment. The CSA are working on a mutual fund governance regime that will not be completed in time for introduction with the USL. Therefore, the harmonized self-dealing and conflicts of interest provisions will reside in the Uniform Rules.
158.	Investment Funds Definitions (Fasken Martineau)	One commenter supports the adoption of a harmonized definition of “mutual fund”, “non-redeemable investment fund” and “investment fund”.	The CSA acknowledge the comment.
159.	Investment Funds Regulation of loan and trust pools, pooled funds managed by a portfolio manager and investments clubs (Barclays Global Investors; Fasken Martineau; IFIC)	Several commenters agree with the proposal to regulate loan and trust pools in the same manner as pooled funds managed by a portfolio manager. One of these commenters agrees with the proposal to adopt an exemption for an investment club which would be uniformly applied across Canada.	The CSA acknowledge the comments.

#	Theme	Comments	Responses
160.	Investment Funds Private funds versus prospectus qualified funds (Barclays Global Investors; IFIC; Oslers)	Several commenters note that Title VII of the Québec Securities Regulation currently requires private funds to comply with many of the same concentration and control restrictions requirements with which traditional mutual funds must comply. The commenters submit that these requirements should be eliminated so that private funds are treated in the same manner in all Canadian jurisdictions and so that the distinction between mutual funds and private funds is maintained. The commenters further submit that in connection with the adoption of USL, to ensure that mutual funds benefit from uniform securities legislation in all respects, Québec should not keep Title VII as a local rule.	Québec will address this issue in the context of a global review of prospectus exemptions to be carried out for the purposes of the USL.
161.	Investment Funds Self-dealing and conflicts of interest (Oslers)	One commenter agrees with the proposal to harmonize the current securities laws related to mutual fund self-dealing and conflicts of interest until the entire regime is replaced by the CSA in connection with its work to develop a governance regime for mutual funds. The commenter suggests that harmonization of these laws on an interim basis will alleviate confusion and the administrative burden on mutual funds of complying with different provincial laws in this area or obtaining exemptive relief from such laws.	The CSA acknowledge the comment.
162.	Investment Funds Point of sale disclosure (Barclay Global Investors; IFIC)	Two commenters encourage the CSA to work with the Joint Forum of Financial Market Regulators regarding a uniform and effective point of sale disclosure regime. One commenter notes that in Consultation Paper 81-403, the Joint Forum of Financial Market Regulators proposes to review an investor's rights of rescission and withdrawal.	The CSA agree and are currently working with the Joint Forum towards the suggested end.
TAKE-OVER AND ISSUER BIDS			
163.	Take-over and Issuer Bids General comments (Davies)	One commenter supports the CSA's initiative under the USL to introduce take-over and issuer bid laws in the Canadian jurisdictions that do not currently regulate these transactions and to eliminate the differences that currently exist between Québec's provisions and those of the other jurisdictions.	The CSA acknowledge the comment.

#	Theme	Comments	Responses
164.	<p>Take-Over and Issuer Bids</p> <p>Indirect bids</p> <p>(Davies; PDAC; Romano and Nicholls)</p>	<p>One commenter suggests that the current indirect bid provisions are very broad and troublesome. The commenter submits that they should be expressly limited to situations involving clearly abusive transactions. The commenter notes that many public companies legitimately hold over 20% interests in other public companies and the application of the current provisions in such situations is extremely unclear and difficult. The same problem exists in situations involving convertible securities. The commenter further notes that CSA staff generally refuse to give relief on the theory that it is inappropriate unless the 115% exemption is not available and unnecessary where it is. The commenter submits that defining the effective price for a second tier entity is unworkable where the real target has other bona fide businesses or assets.</p> <p>Another commenter suggests that a provision similar to s. 92 of the <i>Securities Act</i> (Ontario) which deals with direct and indirect offers would be acceptable.</p> <p>Two commenters generally support (subject to reviewing proposed language) the concept that the take-over and issuer bid requirements apply to both direct and indirect offers so as to prevent an offeror from avoiding regulation by acquiring control of an entity that controls the ultimate target.</p>	<p>The change that this comment suggests goes beyond the scope of harmonization but, under the USL, this comment could be considered through rule making or a policy statement. The application of the indirect bid concept will not necessarily be confined to transactions that are clearly abusive because securities regulatory authorities may determine that the principle of equal treatment of security holders in the context of an indirect bid may need to be upheld even under circumstances that may not be characterized as abusive.</p> <p>It is likely that a provision similar to s. 92 of the <i>Securities Act</i> (Ontario) will be included the USL. Any guidance as to the application of the concept will be contained in a rule or policy statement.</p> <p>The CSA acknowledge the comment.</p>
165.	<p>Take-over and Issuer Bids</p> <p>Acting jointly or in concert</p> <p>(Davies; Ogilvy Renault)</p>	<p>Two commenters generally support the proposal to include a list of the situations in which persons or companies are deemed to be acting jointly or in concert with an offeror, subject to reviewing the proposed list of situations.</p>	<p>The CSA acknowledge the comment.</p>

#	Theme	Comments	Responses
166.	<p>Take-over and Issuer Bids</p> <p>Exempt take-over bids</p> <p>(Clark, Wilson; Davies; Ogilvy Renault; Oslers; Romano and Nicholls)</p>	<p>One commenter submits that the domestic <i>de minimus</i> exemption has too low a threshold and should be expanded to apply where there are fewer than 50 offeree security holders in a jurisdiction provided that they beneficially hold less than 5% of the securities subject to the bid.</p> <p>Another commenter submits that the <i>de minimus</i> exemption for bids made for Canadian targets should apply across the country and that Québec should not apply a separate <i>de minimus</i> exemption in respect of the translation of documentation.</p> <p>Another commenter submits that the proposed take-over bid exemption for foreign targets should be extended to foreign mergers as well as take-overs and in both cases it should be clarified that Canadian prospectus disclosure requirements do not apply and the foreign issuer does not become a reporting issuer in Canada.</p> <p>Two commenters express support for the proposed modifications to the take-over exemption for foreign offerees and the inclusion of an exemption for modified Dutch auction issuer bids.</p>	<p>The CSA are not prepared to make the recommended change to the <i>de minimus</i> exemption. Bids for domestic offeree issuers (or foreign issuers that do not qualify for the exemption based on Canadian security holdings of less than 10%) will normally have to comply with the Canadian bid requirements in at least one Canadian jurisdiction. There does not appear to be a strong public interest reason for requiring compliance with the Canadian bid requirements in some Canadian jurisdictions and not others unless the security holding in a particular jurisdiction is truly nominal.</p> <p>Québec does not propose a separate <i>de minimus</i> exemption for translation.</p> <p>Proposed NI 71-102 would provide an exemption from the securities legislation of the Canadian jurisdictions in regard to disclosure in the information circular where applicable. The take-over bid circular form in the legislation, where prospectus disclosure is prescribed for securities exchange bids, is not required to be used for an exempt bid. With respect to the reporting issuer status, it seems justified on the basis that Canadian security holders of the target should continue to hold securities of a reporting issuer. If the issuer meets the requirements of proposed NI 71-102, it can be exempt from Canadian continuous disclosure documents. If appropriate, it can apply to cease to be a reporting issuer.</p> <p>The CSA acknowledge the comment.</p>

#	Theme	Comments	Responses
		<p>Several commenters are concerned with the proposal to base the percentage threshold in the domestic <i>de minimus</i> exemption on beneficial rather than registered ownership because such information is difficult to obtain. One of these commenters suggests that the requirement to ascertain beneficial ownership be limited to the non-objecting beneficial owner list available pursuant to NI 54-101. Another commenter suggests that the exemption be based on registered ownership and that a 10% test should be applied. The commenter also states that if beneficial ownership is used as the threshold, the CSA should provide a detailed set of rules for determining beneficial ownership that gives full consideration to the information available to a hostile bidder and the need for certainty. The commenter also urges the CSA to consider rules that would cover the situation where a Canadian target is not subject to the obligation to disclose its beneficial holdings, perhaps because it is not a reporting issuer in Canada, or simply fails to comply with them.</p> <p>One commenter agrees with basing the proposed exemption for foreign offerees on registered ownership and suggests also providing that the test is satisfied if registered ownership of the foreign offeree by Canadians is less than 10% on any day within 60 days prior to the bid.</p>	<p>The CSA thank the commenters for these suggestions. They will be considered in the course of developing the rules relating to take-over bid requirements.</p> <p>The CSA acknowledge the comment.</p>
CIVIL LIABILITY			
167.	<p>Civil Liability</p> <p>General support</p> <p>(Fasken Martineau)</p>	<p>One commenter supports the proposed modifications to the rights of action for either damages or rescission that will be made available to an investor purchasing a security under a prospectus exemption.</p> <p>The commenter also supports the exclusion of an investor's rights as set out in Section 3(g) of Part XIV of the Concept Proposal and the harmonization of limitation periods as set out in Section 3(h) of Part XIV of the Concept Proposal.</p>	The CSA acknowledge the comment.

#	Theme	Comments	Responses
168.	<p>Civil Liability</p> <p>Current civil liability regime (IDA)</p>	<p>One commenter agrees with the Concept Proposal regarding maintaining the existing civil liability regime for primary market investors, the proposals regarding offering memoranda, take-over bid and issuer bid circulars, liability for failure to deliver documents and the rights of action regarding “front-running” related to investment programs.</p>	<p>The CSA acknowledge the comment.</p>
169.	<p>Civil Liability</p> <p>Secondary market liability generally (AIMR; IDA; KPMG; Ontario Bar Association; Oslers; PDAC; Torys; TSX Group)</p>	<p>A number of commenters support including a civil liability regime for continuous disclosure in the USL whereby investors that purchase securities on the secondary market may bring a civil action against issuers and other responsible parties for misrepresentations in disclosure documents. One of these commenter hopes that, for the sake of harmonization of securities laws across Canada, the USL will conform in all respects with the civil liability legislation to be introduced shortly in Ontario (Bill 198).</p> <p>Some of these commenters note the importance of the availability of reasonable defences and limitations on liability such as those set out in Ontario’s Bill 198.</p> <p>One commenter submits legislative provisions to deal with secondary market liability in the event that the USL does not proceed.</p>	<p>The CSA acknowledge the comments and note that the USL secondary market civil liability regime is modelled on Ontario’s Bill 198.</p>

#	Theme	Comments	Responses
170.	<p>Civil liability</p> <p>Timing of secondary market in USL</p> <p>(Davies)</p>	<p>One commenter is concerned that while certain elements of the Concept Proposal may aid in enhancing public confidence in the integrity of Canadian capital markets, certain proposals dealing with secondary market liability may fail to achieve this goal and may result in unintended consequences. The commenter questions whether immediate implementation of civil liability for secondary market disclosure is necessary given the need to determine the efficacy of improved disclosure rules and enforcement.</p> <p>The commenter agrees that market participants responsible for misrepresentations should be held accountable and that the investing public is entitled to full, true and plain disclosure. The commenter is not convinced that the most effective means of achieving these goals are through a class-action based private statutory right of action. The commenter is concerned that, notwithstanding the proposed safeguards, the lack of a requirement to provide proof that an investor relied on the misrepresentation or failure to disclose may lead to entrepreneurial lawsuits. The commenter suggests that well-publicized regulatory intervention based on enhanced disclosure rules and regulatory review and enforcement powers may have a more immediate corrective impact.</p>	<p>The secondary market civil liability system in the USL incorporates entirely the CSA's civil remedies proposal, which is also the basis for passed but unproclaimed legislation in Ontario. The impetus for the civil remedies proposal was a recommendation by the Allen Committee in 1997 that Canada have a secondary market civil liability regime. During the development of the civil remedies proposal, the CSA gave very careful consideration to whether the system was actually necessary and to ensuring adequate deterrents to unmeritorious litigation. The CSA are satisfied that these issues have been addressed.</p> <p>The CSA agree that enhanced disclosure rules coupled with effective enforcement will also be helpful in improving the quality of continuous disclosure. However, the CSA remain committed to seeking implementation of the secondary market civil liability regime so that investors have the tools to seek redress when they suffer damages as a result of misleading disclosure.</p>
171.	<p>Civil liability</p> <p>Merits of a suit</p> <p>(Canadian Listed Company Association)</p>	<p>One commenter is concerned that the Concept Proposal relies on the court to determine whether an allegation has sufficient merit to proceed to avoid frivolous suits. The commenter is doubtful as to whether the court has the expertise and resources to process these types of reviews in an efficient manner. The commenter notes that the investment industry has established an arbitration procedure for handling disputes and suggests that some type of administrative tribunal or procedure would be more effective in weeding out frivolous actions.</p>	<p>The screening provision contemplated as part of the USL is based on a test that was recommended by the Ontario Law Reform Commission (OLRC) in its 1982 Report on Class Actions. The OLRC was not concerned about the practicality and feasibility of asking a court to, in effect, determine the merits of a proposed action at a very preliminary stage of the proceeding. In support of its recommendation, the OLRC cited a number of different statutes in which courts are called upon to play a similar "gatekeeper" role. The CSA continue to believe that courts have sufficient expertise to deal with these issues.</p>

#	Theme	Comments	Responses
172.	<p>Civil Liability</p> <p>Displacing the role of the securities regulatory authority</p> <p>(SHARE)</p>	<p>One commenter supports the implementation of a comprehensive civil liability regime for secondary liability but cautions against allowing such a regime to displace the role of securities regulatory authorities in protecting investors. Civil liability should not replace the ability of a securities regulatory authority to pursue claims on behalf of investors or provide a rationale for governments or securities regulatory authorities to reduce their enforcement budgets.</p> <p>The commenter also endorses the proposal for a class action regime advanced by BCSC in its deregulation proposals.</p>	<p>The CSA do not intend to diminish their enforcement activities as a result of secondary market civil liability.</p> <p>The CSA do not believe that it is necessary to enact a separate class action regime under the USL for investors to exercise their statutory rights of action. Class action legislation has been passed or is already in force in a number of provinces (e.g., Alberta, B.C., Manitoba, Newfoundland & Labrador, Ontario, Québec and Saskatchewan). In those provinces that do not have comprehensive class action legislation, a plaintiff can bring a “representative action” under court rules. Finally, most Canadian jurisdictions already allow for the certification of national class actions.</p>
173.	<p>Civil Liability</p> <p>Secondary market liability – U.S. case law</p> <p>(Romano and Nicholls)</p>	<p>One commenter notes that under U.S. case law, rights of indemnity are not available for directors, officers and others facing civil liability since it is seen to be a policy of the government that they be liable. The commenter suggests that while the law in Canada is unclear, the same result may well apply and therefore, the addition of the following clause to the Uniform Act should be considered: “Nothing in this Act derogates from any right of indemnification that any person may have otherwise, under contract or at law or in equity.”</p>	<p>The CSA understand that the case law in the U.S. is not as clear, as the commenter suggests, and is more limited in its application (i.e., has been considered in the underwriter context). The CSA are not aware of any Canadian case law that suggests that this would be an issue in Canada and thus necessitate the inclusion of the suggested provision. The CSA note that the Allen Committee also considered the issue of indemnification in its Interim Report. While the Allen Committee supported allowing an issuer to indemnify its directors and officers, the Committee did not consider it necessary to include specific language to this effect in its draft legislation.</p>

#	Theme	Comments	Responses
174.	<p>Civil Liability</p> <p>Prospectus and offering memorandum withdrawal rights</p> <p>(Davies; Fasken Martineau; IFIC; Ogilvy Renault; Romano and Nicholls; Torys)</p>	<p>A number of commenters suggest repealing the two-day withdrawal right.</p> <p>One commenter questions whether it is necessary to provide a two-day withdrawal right to purchasers under an offering memorandum in addition to the right of action for damages or rescission in the event of a misrepresentation. Another commenter supports giving investors who purchase a security under an offering memorandum a two-day right of withdrawal. The commenter encourages the CSA to adopt this right of withdrawal across the country. Another commenter suggests that the two-day right of withdrawal for investors who buy securities under an offering memorandum is appropriate for purchasers under the family and friends exemption but may be unnecessary for purchases by accredited investors and possibly others.</p> <p>One commenter submits that withdrawal rights in the prospectus or private placement context should be repealed since they are outdated and not in step with U.S. practices. Another commenter agrees that withdrawal rights are outdated and not in step with U.S. practices and is of the view that a right of action for damages or rescission provides an adequate remedy for investors.</p>	<p>The USL will continue to include a right of withdrawal for prospectuses and will include a withdrawal right wherever an offering memorandum is required to be delivered.</p> <p>The CSA considered this issue carefully but concluded that the removal of the right of withdrawal under a prospectus would amount to a policy change that exceeds the harmonization mandate of the USL Project.</p>
175.	<p>Civil Liability</p> <p>Defences – “reasonable basis” requirements</p> <p>(Torys)</p>	<p>One commenter submits that there should be a clear safe harbour from liability in circumstances where a confidential material change report is filed and notes that under Ontario’s Bill 198, defendants are not liable for a failure to make timely disclosure where a confidential material change report is filed if, among other things, the responsible issuer had a reasonable basis for forming the opinion that an earlier public announcement would be unduly detrimental to the interests of the issuer. The commenter suggests that in practice, the “reasonable basis” requirement could become a lightning rod for litigation.</p>	<p>The “reasonable basis” requirement is based on the recommendations of the Allen Committee. The Allen Committee believed that issuers must be required to account for the reasonableness and validity of their judgement in making a confidential filing. If an issuer can escape liability for failing to make disclosure (that was filed confidentially) only if it can satisfy a “reasonableness test”, then the decision to withhold public disclosure will not be made capriciously or out of expedience. The CSA continue to believe that the inclusion of this test strikes a reasonable balance between competing objectives.</p>

#	Theme	Comments	Responses
176.	Civil Liability Defences and safe harbours (Members of the Canadian Listed Company Association)	A number of commenters submit that the USL should include defences and safe harbours for issuers and their management against liability for failure to make timely disclosure of material information when they have exercised business judgement and have systems in place. The commenters suggest that directors be permitted to rely on third party expert reports as part of a due diligence defence.	The USL's proposed secondary market civil liability regime is based on the civil liability amendments that were recently passed in Ontario and are awaiting proclamation. Ontario's civil liability regime is in turn based on draft legislation published by the CSA in November 2000. Ontario's civil liability regime provides ten defences, including a separate due diligence defence and a defence where reliance is placed on an expert. In determining whether a defendant has been duly diligent, the court is directed under the legislation to consider all of the relevant circumstances, including but not limited to, the existence, if any, and the nature of any system designed to ensure that the issuer meets its continuous disclosure obligations. The CSA believe that the defences available under the proposed civil liability regime are adequate.
177.	Civil Liability Defences – forward-looking (IFIC)	One commenter supports the forward-looking defence that is included in the USL which allows a person or company to use the defence if there is a misrepresentation in a prospectus provided that person or company can prove that it had a reasonable basis for believing that the information was accurate and included cautionary language in the prospectus.	The CSA acknowledge the comment.
178.	Civil Liability Defences – derivative information (Romano and Nicholls)	One commenter submits that the derivative information defence should be extended to foreign issuers and other public sources of information in the absence of knowledge of the falsity of the information.	The derivative information defence is intended to be restricted to documents filed by other persons or companies with a securities regulatory authority or exchange in Canada because to the extent such documents also contain a misrepresentation they would be caught by the civil liability regime.
179.	Civil Liability Costs (TSX Group)	One commenter is concerned that, with respect to emerging issuers, experts whose reports may be excerpted in continuous disclosure documents may increase their fees to issuers to take into account potential civil liability concerns.	The CSA (and previously the Allen Committee) heard similar concerns when we were developing the civil liability regime and therefore will not be revisiting this issue in the context of the USL.

#	Theme	Comments	Responses
180.	<p>Civil Liability</p> <p>Liability caps</p> <p>(Canadian Bankers Association; SHARE)</p>	<p>One commenter opposes the imposition of caps on defendants' exposure. The commenter submits that defendant issuers who knowingly make misrepresentations or fail to disclose material information in a timely manner resulting in harm to investors should be subject to penalties commensurate with the harm caused.</p> <p>Another commenter is concerned with the liability limit applicable to public issuers under legislation recently passed by the Ontario Government (e.g., the greater of \$1,000,000 or 5% of market capitalization). The commenter submits that an upper limit of 5% of market capitalization is excessive for large issuers, goes well beyond serving as a reasonable deterrent for improper disclosure practices and could significantly reduce shareholder value and harm investors. The commenter states that the need for such a massive financial penalty needs to be revisited in light of other events and regulatory developments that have occurred since the 1997 Allen Committee recommendations. The existence of significant new deterrents, such as regulatory sanctions, public embarrassment and certification requirements should be taken into account when determining the appropriate level of financial penalty.</p>	<p>The CSA (and previously the Allen Committee) heard similar concerns when we were developing the civil liability regime and therefore will not be revisiting this issue in the context of the USL.</p>
181.	<p>Civil Liability</p> <p>Proportionate liability</p> <p>(Canadian Institute of Chartered Accountants; SHARE)</p>	<p>One commenter strongly endorses the proposal concerning the right of action with respect to secondary market trades and proportionate liability. However, the commenter strongly believes that the proposal should apply to all claims under securities legislation for financial loss whether arising in primary or in secondary markets.</p> <p>One commenter opposes the proposal for a proportionate liability regime. The commenter submits that knowledge is not the appropriate threshold for distinguishing between joint and several liability and proportionate liability. Joint and several liability should extend beyond misrepresentations made knowingly to include misrepresentations and unacceptable disclosure practices where the defendant ought to have had knowledge.</p>	<p>The CSA believe that changing the nature of primary market liability to proportionate rather than joint and several would be a substantial policy change that falls outside the mandate of the USL.</p> <p>The proportionate liability scheme contemplated under the USL's statutory secondary market civil liability regime is based on the recommendations of the Allen Committee. The Allen Committee's draft legislation provided for proportionate liability unless the defendant knowingly made a misrepresentation or failure to disclose. The CSA are satisfied that the circumstances under which proportionate liability will be converted into joint and several liability do not need to go beyond what the Allen Committee recommended in order to meet the legislation's objective (e.g., deterring misleading disclosure) or to meet the reasonable expectations of the marketplace.</p>

#	Theme	Comments	Responses
182.	<p>Civil Liability</p> <p>Action to enforce issuer and mutual fund rights</p> <p>(IFIC)</p>	<p>One commenter seeks clarification on the “Action to Enforce Issuer and Mutual Fund Rights” section of the USL. The commenter believes that issues such as enforcing a mutual fund’s rights are better left to the CSA’s fund governance initiative as an independent board is in the best position to make enforcement decisions for the fund without subjecting the fund’s investors to the whims of one or a few investors.</p>	<p>The CSA believe that the civil liability provisions provide an important tool for mutual fund investors to seek redress when any person or company buys or sells securities on the basis of portfolio information. In this regard, the CSA do not believe that the existence of an independent governance body should have a bearing on the appropriateness of a civil remedy available directly to investors of the mutual fund.</p>
183.	<p>Civil Liability</p> <p>Liability for take-over bid circulars</p> <p>(Clark, Wilson)</p>	<p>One commenter submits that directors should be liable for damages relating to misrepresentation but should have a full defence of good faith reliance on officers or experts. The commenter also submits that experts should be liable only with respect to misrepresentations contained in their reports.</p>	<p>The same defences as are available to both directors and experts in the prospectus context would apply in the take-over bid context.</p>
184.	<p>Civil Liability</p> <p>Experts – withdrawal of an expert’s consent</p> <p>(KPMG)</p>	<p>One commenter suggests expanding the circumstances in which an expert can withdraw previously given consent on annual and interim financial statements to include:</p> <ul style="list-style-type: none"> • Changes to accounting principles; • Sale of a component of an issuer’s business that requires a retroactive change in the presentation and disclosure of its financial results; • Changes in an issuer’s internal structure that cause the composition of its reportable segments to change and therefore require restatement of prior period financial statements; • New litigation; and • Adverse interim financial results. 	<p>The circumstances noted by the commenter all appear to relate to changes that may occur after the release of annual or interim financial statements. In this context, the CSA do not believe it is necessary to expand the circumstances in which an expert can withdraw a previously given consent because under the secondary market civil liability regime, liability attaches only where an issuer releases a document that contains a misrepresentation.</p>

#	Theme	Comments	Responses
185.	Civil Liability Experts – offering memoranda (PDAC)	One commenter is concerned about the extension of liability for offering memoranda and circulars to experts and hopes that an expert’s liability will be restricted solely to the “expertised” portions of such documents and that there will be appropriate limitations on the expert’s liability.	The CSA believe that confining an expert’s liability to the expertised portion of an offering document is the appropriate limitation.
186.	Civil Liability Experts – <i>scienter</i> requirement (Clark, Wilson)	One commenter submits that the proposed right of action against auditors or other experts for damages suffered in circumstances where an issuer makes, or fails to correct, public disclosure that contains an untrue statement should be clear that experts, including auditors and lawyers, should not be liable in the absence of <i>scienter</i> .	Under the proposed secondary market civil liability regime for “expertised” portions of a document, an expert must show that they were duly diligent in the preparation of the opinion, report or statement to escape liability. The inclusion of a due diligence defence versus a <i>scienter</i> requirement was intended to provide a deterrent to poor continuous disclosure. It should be emphasized, however, that under the regime, expert liability will extend only to the “expertised” portions of the disclosure and only to the extent a consent is provided and an issuer uses the expert’s opinion or report in the manner contemplated by the consent. Finally, the secondary market civil liability regime is based on a proportionate liability scheme unless the defendant knowingly made a misrepresentation or failure to disclose.
187.	Civil Liability Director chill (Bennett Jones; Canadian Listed Company Association; Romano and Nicholls)	Several commenters express concern about the effect of the implementation of a secondary market civil liability regime on the availability of and premiums for directors’ and officers’ liability insurance and the availability of qualified directors who will be willing to act as directors.	The CSA believe that the caps on liability, defences and mechanisms to discourage unmeritorious litigation that are built into the proposed secondary market liability regime will address these concerns to some extent.

#	Theme	Comments	Responses
188.	<p>Civil Liability</p> <p>Limitation on damages and applicability of regime</p> <p>(Romano and Nicholls)</p>	<p>One commenter submits that it may be appropriate to limit the application of the secondary market civil liability regime to situations involving fraud, require that the plaintiff prove fraud rather than require directors and officers to establish defences to avoid liability and limit damages to the lesser of actual losses and the 10-day calculations rather than require the defendant to establish defences and limit damages to the lesser of actual costs and the 10-day calculations as recommended by the Allen Committee.</p>	<p>The commenter appears to be advocating a liability regime similar to the U.S. Rule 10b-5 liability scheme. In the U.S., a plaintiff must prove that the defendant acted with “<i>scienter</i>”, defined by the U.S. Supreme Court as a “mental state embracing intent to deceive, manipulate or defraud” with most U.S. courts holding that recklessness constitutes <i>scienter</i> as well. Under the CSA regime for “core documents” (such as financial statements), a defendant must show that it was duly diligent in the preparation of the document to escape liability. The inclusion of a due diligence liability standard under the CSA’s regime was intended to provide a deterrent to poor continuous disclosure. By requiring a defendant to prove due diligence, there is a greater incentive to exercise due diligence in the preparation of disclosure documents which should, in turn, lead to better disclosure. Under the CSA’s liability regime, defendants will have 10 potential defences available to them. These defences coupled with the procedural safeguards described previously in the CSA’s responses to comments should impose a discipline on the use of the Canadian private right of action. The CSA believe that the proposed secondary market liability regime continues to be both necessary and appropriate in scope.</p>
189.	<p>Civil Liability</p> <p>Deemed reliance versus proof of reliance</p> <p>(Bennett Jones; Clark, Wilson)</p>	<p>Two commenters question whether it is appropriate to deem reliance on a misrepresentation in a continuous disclosure document given that these documents are not used for the express purpose of effecting sales of securities. This may encourage opportunistic lawsuits. One commenter suggests that the CSA consider requiring proof of reliance except in circumstances involving wilful misconduct or fraud by the issuer.</p>	<p>The deeming provision removes the necessity to prove reliance which has been a significant hurdle in enforcing common law claims in Canada for negligent misrepresentation. The deemed reliance provision also reflects the fact that investors may suffer damages indirectly because of the effect a misrepresentation has on the market price of a security. As noted above, the CSA believe that the proposed secondary market regime contains adequate safeguards against unmeritorious litigation.</p>

#	Theme	Comments	Responses
190.	<p>Civil Liability</p> <p>Liability for failure to file (IDA)</p>	<p>One commenter expresses concern regarding the proposed provision that would specify that potential defendants in an action for failure to file required documents might include a dealer, without some appropriate defences similar to defences being proposed for rights of action under an offering memorandum, being available.</p>	<p>These provisions would only impose liability on a dealer who is obligated under securities laws to file a document (which would only occur if the dealer and the issuer are the same person). Adding defences, however, would substantially change the nature of the liability which is a policy change beyond the mandate of the USL Project.</p>
191.	<p>Civil liability</p> <p>Liability for failure to make administrative filings (Romano and Nicholls)</p>	<p>One commenter disagrees with the proposal to provide a right of action for failure to make administrative filings since they are not disclosure documents.</p>	<p>Under the USL, the liability for failure to file would only apply to a person that failed to file a disclosure document, not an administrative document.</p>

#	Theme	Comments	Responses
ENFORCEMENT			
192.	<p>Enforcement</p> <p>General comments</p> <p>(AIMR; IDA; IFIC; PDAC; Romano and Nicholls)</p>	<p>One commenter expresses concern that securities regulatory authorities act as lawmaker, law interpreter, investigator and prosecutor. The commenter submits that it may be reasonable to conclude that securities regulatory authorities are not able to decide enforcement matters with impartiality. The commenter suggests a greater judicial role. The same commenter states that Canadian regulators' enforcement practices need to be adjusted. The commenter suggests adopting U.S. practices which allow an accused to settle a case while neither admitting nor denying liability. The commenter notes that this practice protects an accused's position when faced with subsequent civil actions, including class actions.</p> <p>One commenter expresses support for harmonizing the enforcement orders that a securities regulatory authority can issue after a hearing. Another commenter accepts that securities regulatory authorities must be granted certain powers to issue enforcement orders after hearings in the public interest, but expresses concern that the powers as iterated in the USL are very broad and should be narrowed.</p> <p>Another commenter expresses the view that Canada needs a more coordinated and aggressive approach to enforcement. The commenter suggests a coordinated approach to investigation, prosecution and mutual recognition of penalties imposed by other securities regulatory authorities.</p> <p>Another commenter expressed concern as to whether each securities regulatory authority would enforce the USL in a consistent way.</p>	<p>The CSA note that these comments are beyond the mandate of the USL.</p> <p>The public interest powers proposed in the USL are a compilation of the powers that currently exist in the various jurisdictions. The CSA do not propose to narrow these powers under the USL.</p> <p>The CSA are aware of the need to reduce or eliminate duplication of enforcement activity. Much effort is made at a staff level to do so when enforcement actions occur in multiple jurisdictions. The delegation provisions proposed under the USL will further facilitate these efforts.</p> <p>The CSA are aware of the issue and are considering ways to ensure consistent application of the law. This is an objective of the USL.</p>

#	Theme	Comments	Responses
193.	<p>Enforcement</p> <p>Prohibitions</p> <p>(IDA; PDAC; Romano and Nicholls)</p>	<p>One commenter submits that the prohibition on holding out registration causes problems for registrants and serves an unclear purpose. The commenter notes that it conflicts with the requirement to disclose CIPF membership.</p> <p>Two commenters support including prohibitions on engaging in unfair practices and fraud and market manipulation in the USL.</p> <p>One commenter suggests that it is not clear that the market manipulation/misleading statement provisions should extend to non-reporting issuers, or at least non-publicly traded issuers, as is the case under Ontario's Bill 198.</p>	<p>The CSA have considered the comment. The CSA contemplate that the USL will prohibit a person from representing that it is registered unless the representation is true and the person specifies the category of registration.</p> <p>The CSA acknowledge the comments.</p> <p>The CSA believe that these prohibitions should extend to all persons.</p>

#	Theme	Comments	Responses
194.	<p>Enforcement</p> <p>Sanctions available to be imposed by securities regulatory authorities/fines imposed by courts</p> <p>(AIMR; Davies; IDA; IFIC; Institute of Chartered Accountants of Manitoba; Fasken Martineau; Ogilvy Renault; PDAC; Romano and Nicholls)</p>	<p>One commenter suggests that administrative penalties, financial and otherwise, over a specified duration or quantum should be subject to a judicial review or review by an independent tribunal.</p> <p>One commenter asks whether the USL would provide for a maximum duration of enforcement orders.</p> <p>One commenter submits that a substantial financial administrative penalty (e.g. \$1,000,000), while <i>de minimus</i> for major companies, is not trivial for smaller corporations or individuals. The commenter states that broader punitive powers require more independent review. Furthermore, the commenter submits that administrative penalties should be limited to an aggregate cap that would apply to similar offences. Otherwise, the penalty imposed could easily be well beyond the stated limit given the number of technical provisions involved in any breach.</p> <p>Several commenters address the issue of harmonization of the amount of penalties. Two commenters recommend that the range of penalties should be uniform across jurisdictions and that the CSA should also be required to review penalties that securities regulatory authorities in all jurisdictions impose to assure that there is uniformity in enforcement. One such commenter's remarks apply to court imposed penalties as well as administrative penalties. Another commenter believes that uniform penalties are desirable but acknowledges that each case needs to be considered in the context in which it arises. Another commenter disagrees with the proposal to have varying maximum penalties and suggests that ceilings should be established.</p>	<p>Currently, all sanctions can be appealed to a court of competent jurisdiction on the application of the respondent. The imposition of automatic review is beyond the scope of the USL and would also impose a significant burden on the judicial system.</p> <p>No maximum duration is contemplated.</p> <p>The administrative penalty proposed under the USL is not punitive in nature. The administrative penalty is intended to provide additional flexibility to securities regulatory authorities and enable them to tailor sanctions to suit the particular circumstances of a case. Securities regulatory authorities would continue to be able to impose administrative penalties only if the imposition of the fine would be in the public interest. In addition, administrative penalties under USL would be capped. The overarching requirement that any administrative penalty be in the public interest requires a securities regulatory authority panel to consider the overall effect of any penalty.</p> <p>The suggestion that the CSA review a penalty imposed by a securities regulatory authority would give the CSA powers that properly belong to courts. In relation to comments concerning court-imposed penalties, such penalties may be imposed following a provincial offence prosecution and conviction of an offence and will vary in each jurisdiction.</p>
195.	<p>Cease trade orders for non compliance with filings</p> <p>(PDAC)</p>	<p>One commenter submits that cease trade orders for failure to comply with filing requirements should not be permitted without a hearing unless notice and an opportunity to cure is first provided.</p>	<p>Each jurisdiction will address hearing requirements in its Administration Act.</p>

#	Theme	Comments	Responses
196.	<p>Enforcement</p> <p>General versus specific offences</p> <p>(Davies; IDA; IFIC)</p>	<p>Two commenters support the proposal that any contravention of securities laws be considered an offence. They agree that securities regulatory authorities should have the flexibility to decide how to treat a contravention without the need to amend legislation each time they wish to add to the list of provisions that may be treated as an offence. One commenter is opposed to the proposal and submits that it is not appropriate to grant securities regulatory authorities this amount of flexibility.</p>	<p>The CSA believe that the proposal that any contravention of securities laws be treated as an offence is necessary in rapidly evolving capital markets to ensure that enforcement powers are sufficiently meaningful to inspire investor confidence.</p>
JOINT HEARINGS			
197.	<p>Joint Hearings</p> <p>Joint hearing procedures</p> <p>(AIMR; IDA; IFIC; PDAC; Royal Bank of Canada)</p>	<p>Several commenters support the concept of joint hearings. Two of these commenters submit that enforcement on the whole should be more coordinated. One commenter suggests that joint hearings should result in coordination of investigations among securities regulatory authorities and SROs across jurisdictions. Another commenter suggests that there be reciprocal imposition of sanctions.</p> <p>One commenter urges the CSA to include joint hearing procedures in the USL. The commenter suggests that these procedures be implemented in an identical manner across the country and emphasizes that the procedures must not be subject to variation or change by any province.</p>	<p>There is already substantial coordination among securities regulatory authorities and SROs of investigations and enforcement. The changes proposed in the USL would further the degree of coordination significantly. However, some of the differences in investigations and enforcement powers tie back to the fact that each securities regulatory authority derives its authority from its respective province or territory.</p> <p>A uniform joint hearing procedure, although useful, is not a high priority at this time. Under the USL, joint hearing procedures could be added at a later time either as a rule or a policy.</p>
198.	<p>Joint Hearings</p> <p>Delegation</p> <p>(Ogilvy Renault)</p>	<p>One commenter suggests that joint hearings are contrary to the principle of delegation. The commenter submits that the USL should enable a securities regulatory authority to fully delegate its power to conduct a hearing to another securities regulatory authority without independent review or concurrent participation by the delegating securities regulatory authority. The commenter suggests that this would further emphasize the need for consistency in penalties to be applied.</p>	<p>The delegation provisions contemplated under the USL would allow full delegation of the power to conduct a hearing from one securities regulatory authority to another. However, it may not be desirable in all circumstances to delegate this power. Often, enforcement activities have ties to more than one jurisdiction and a joint hearing approach will be preferable.</p>

#	Theme	Comments	Responses
GENERAL PROVISIONS			
199.	<p>General provisions</p> <p>Rule making authority</p> <p>(Ogilvy Renault; Royal Bank of Canada)</p>	<p>One commenter supports providing rule making authority to all securities regulatory authorities. Another commenter supports the harmonization of the heads of rule making authority and the continued oversight of rule making by the Lieutenant Governor-in-Council. However, the commenter notes that, in Ontario and certain other provinces, there has been a degree of politicization of the rule making process. The commenter suggests that affected capital market participants have used the period between the time a rule is published by the relevant securities regulatory authority in final form and the time it is finally approved by the Minister of Finance to lobby or “appeal” to the Minister. While this period was not originally contemplated for these purposes, the commenter suggests that consideration be given to formalizing this process with respect to the basis on which affected participants can appeal and time limits within which to do so.</p>	<p>Rule making procedures will be dealt with by each jurisdiction in its Administration Act.</p>
200.	<p>General provisions</p> <p>Rule making authority</p> <p>(Barclays Global Investors; IDA; IFIC)</p>	<p>Several commenters note that rules created by securities regulatory authorities must be subject to government oversight.</p> <p>One commenter also states that rules should be developed through a transparent process. Securities regulatory authorities must ensure that they do not overstep their regulatory mandate. While the rule making process is effective, there have been occasions when the timeliness of the process has been less than desirable. There is a need for clear and reasonable time periods associated with the processes for obtaining public comment and Ministerial approval. The commenter submits that securities regulatory authorities should be granted some degree of flexibility and discretion in determining when republication of proposed rules is required.</p>	<p>Rule making procedures will be dealt with by each jurisdiction in its Administration Act. However, the CSA agree that any rule making process should be transparent at all stages of the process.</p>

#	Theme	Comments	Responses
201.	<p>Blanket order authority</p> <p>(IDA; PDAC; Royal Bank of Canada)</p>	<p>Several commenters agree that securities regulatory authorities should have the authority to make blanket orders.</p> <p>One commenter specifically supports empowering all securities regulatory authorities to make blanket orders since the power will increase the ability of all securities regulatory authorities to respond to market developments in a timely and efficient manner.</p> <p>One commenter submits that the authority to make blanket orders should be delegated to a small numbers of securities regulatory authorities so that identical cross-country relief will be provided simultaneously.</p>	<p>The CSA agree with the comments.</p> <p>The CSA agree that the ability of securities regulatory authorities to make blanket orders is integral to their ability to respond to market changes effectively.</p> <p>The proposed delegation provision will be drafted broadly to permit, if appropriate, what the commenter contemplates.</p>
202.	<p>General provisions</p> <p>General authority to exempt by order</p> <p>(IDA)</p>	<p>One commenter supports the consolidation of variously worded exempting provisions into one generally worded authority in order to exempt persons and companies from securities law requirements.</p>	<p>The CSA acknowledge the comment.</p>
203.	<p>General provisions</p> <p>Filing of documents from a foreign jurisdiction</p> <p>(Romano and Nicholls)</p>	<p>One commenter submits that the USL should allow the filing of documents that are “similar” to documents filed under the USL instead of requiring that the foreign documents are “substantially the same”.</p>	<p>The USL will contain a provision allowing for the filing of documents that comply with the laws of a foreign jurisdiction whose laws are substantially the same as those under the USL.</p>

#	Theme	Comments	Responses
204.	<p>General provisions</p> <p>Non-disclosure provisions</p> <p>(Romano and Nicholls)</p>	<p>One commenter submits that the non-disclosure provisions either should be repealed or should permit disclosure for compliance, establishing a defence or other <i>bona fide</i> reason. These provisions purport to prevent a person from advising the senior officers or directors of his employer of an investigation. The scope, constitutionality and appropriateness of these provisions need to be reconsidered as they appear to be overly broad and are not available in the context of much more serious matters such as criminal investigations.</p>	<p>The CSA believe that the non-disclosure provisions are an important element of the investigative process and serve the objective of ensuring its integrity and protecting persons who provide information to a securities regulatory authority in the course of an examination. A securities regulatory authority may make an order for disclosure of information where it considers that it would be in the public interest to do so. This permits a securities regulatory authority to be in a position to properly weigh the relevant interests involved (e.g. the public interest in disclosure versus the interest in preserving the confidentiality of the investigative process). The CSA do not believe it would be appropriate to take away the important protections provided by the non-disclosure provisions.</p>
205.	<p>General provisions</p> <p>Recovery of costs</p> <p>(Romano and Nicholls)</p>	<p>One commenter submits that the USL should not allow cost sanctions in the absence of a breach of law and that costs should be awarded to a successful defendant.</p>	<p>The comment goes beyond the scope of the USL Project.</p>
FEES			
206.	<p>Fees</p> <p>(Barclays Global Investors; BD&P; Canadian Council of Chief Executives; IFIC; Ogilvy Renault; Royal Bank of Canada)</p>	<p>A number of commenters suggest that the efficiencies realized through the legal delegation model should result in reduced fees.</p> <p>One commenter recommends the adoption of a single fee model for all security regulatory authorities based on the new Ontario model.</p> <p>One commenter submits that securities regulatory authorities should have the ability to demand participation fees attributable to a participant's size or presence in a particular market provided that such fees properly reflect the cost of regulating such market.</p>	<p>The CSA are committed to reviewing fee schedules with a view to passing on cost savings to industry participants with the approval of relevant governments.</p>

#	Theme	Comments	Responses
COMMENTS ON EXISTING NATIONAL INSTRUMENTS AND OTHER CSA INITIATIVES			
207.	Existing National Instruments (PDAC; Romano and Nicholls)	Two commenters provide comments on existing national instruments.	The primary objective of the USL Project is to harmonize securities laws across Canada. Therefore, the CSA do not propose to amend existing national instruments (other than consequential amendments to ensure consistency with the Uniform Act) at this time. However, the Uniform Act will be a platform act which will allow for significant policy change to take place in the future.
208.	Proposed National and Multilateral Instruments and Other CSA Initiatives (Certified General Accountants Association of Canada; Davies; KPMG; Ontario Bar Association; Phillips, Hager & North; Romano and Nicholls; SHARE; Torys; Total Telcom)	A number of commenters provide comments on proposed national and multilateral instruments, such as NI 51-102 and NI 81-106, and on-going CSA initiatives, especially those relating to investor confidence, which will be included in the USL.	Comments relating specifically to proposed national and multilateral instruments and on-going CSA initiatives will be considered during the comment processes for those proposed rules.
COMMENTS ON THE INTERACTION OF SECURITIES LAWS AND CORPORATE LAWS			
209.	Differences Between Securities and Corporate Law Requirements (Bennett Jones)	One commenter notes that even if inconsistencies between provincial securities acts are eliminated, inconsistencies between securities laws and corporate laws will remain. The commenter appreciates that the CSA are working under an aggressive timetable to implement the USL but suggests that it would be beneficial for the CSA to more clearly define the boundary between corporate law and securities law and to make recommendations for the reduction of differences in areas of overlap.	The CSA thank the commenter for its observation.

#	Theme	Comments	Responses
210.	<p>Interaction between Exemptions under Securities Laws and Corporate Statutes</p> <p>(Bennett Jones)</p>	<p>One commenter is concerned with the interaction between the prospectus exemptions proposed for the USL (including the elimination of the minimum investment exemption) and the concept of “distributing corporation” under the <i>Business Corporations Act (Alberta) (ABCA)</i>. If the minimum investment exemption is eliminated, companies that have relied on it to distribute securities (to investors who do not meet the definition of accredited investor) may find that they have become “distributing corporations” for the purposes of the ABCA. Also, a company could become a distributing corporation if an investor who once satisfied the “net asset” or “net income” test under the accredited investor exemption ceases to meet those tests after investing. This is potentially a problem given that many companies structure their capital raising efforts so as to ensure that they do not become distributing corporations.</p>	<p>The CSA acknowledge the comment.</p>