APPENDIX B

SUMMARY OF COMMENTS ON AND RESPONSES TO CONSULTATION DRAFTS OF UNIFORM SECURITIES ACT AND MODEL SECURITIES ADMINISTRATION ACT

General Comments			
#	**Themes**	**Comments**	**Responses**
1.	**The USL Project** General support (TD Bank Financial Group, CCMA, IDA, CIPF, ACPM, Torys, OBA, CBA, CIAMC, CICA, Macleod Dixon, TSX Group, MFDA, DWPV, PH&N, CAQ, RS Inc., RBC, KPMG, Advocis, Talisman, Bennett Jones, BLG)	The CSA received 27 comment letters on the Consultation Drafts. Nearly all commenters expressed support for the USL Project and its objective of increasing the efficiency of the securities regulatory system. Some commenters commended the CSA and the USL Steering Committee for publishing the Consultation Drafts within the timeframe undertaken by the CSA. One commenter stated that it views the USL Project as the most immediately achievable reform initiative. The CSA also received many favourable comments on the drafting style and structure of the Consultation Drafts. Some commenters qualify their support for the USL Project and the Consultation Drafts	The CSA thank the commenters for their support. The CSA are very pleased with the level of support for and interest in the USL Project. Please see comments 2-5 below for the responses to these comments.
2.	**Other reform proposals** Creation of a single securities regulator (TD Bank Financial Group, OBA, CBA, PH&N, RBC, Torys, BLG)	Some commenters, while supportive of the USL Project, expressed the view that the creation of a single securities regulator in Canada would provide the most significant benefit to Canada's system of securities regulation.	The CSA note that the USL Project was designed to harmonize and increase the efficiency of Canada's system of securities regulation as much as possible within the current framework of responsibility for securities regulation. Structural changes suggested by the commenters could only be dealt with through negotiations among governments.

General Comments			
#	**Themes**	**Comments**	**Responses**
3.	**Achieving and maintaining uniformity** (Torys, Macleod Dixon, CIAMC, TSX Group, DWPV, IFIC, Advocis, BLG)	Many commenters expressed the view that the USL Project should include a mechanism to maintain uniformity in the future. Some commenters suggested that such a mechanism should be binding and should be contained in the USA. Another commenter suggested that designing such a mechanism should be the focus of continued work on the USL Project.	As stated in the CSA's Response to Comments Received on the Concept Proposal *Blueprint for Uniform Securities Laws for Canada* (the Concept Proposal), the CSA intend to enter into protocols to ensure that the securities regulatory authorities coordinate changes to securities laws. We intend to suggest to provincial and territorial governments that a protocol for coordinating amendments to securities legislation would be worthwhile. The CSA also note that legislatures cannot bind their successors.
4.	**Achieving and maintaining uniformity** (Torys, Macleod Dixon, CBA, MFDA, PH&N, CIAMC, TSX Group, RBC, DWPV, IFIC, Advocis, OBA, ACPM, BLG)	Several commenters expressed concern that the Consultation Drafts will allow provinces and territories to make local rules. Commenters are concerned that this ability will introduce significant scope for variation that could undermine the harmonization objectives of the USL Project and increase legal and professional fees. Many commenters encouraged the CSA to limit local rules to truly local matters. Many of these commenters made similar comments on the Concept Proposal and specific suggestions on measures the CSA should consider to limit the scope of local variances.	As stated in the Concept Proposal, the CSA believe that we should build appropriate processes to ensure uniformity over the long-term. The CSA envision a protocol whereby each jurisdiction would commit to raising potential local initiatives with its counterparts in the CSA to determine whether a pan-Canadian response is appropriate. The CSA acknowledge that a proliferation of local rules could undermine the purpose of the USL Project. However, as indicated in the Concept Proposal, it is critical not to stifle local innovation. The CSA believe that the JCP Program, the SHAIF system, the accredited investor exemption, the capital raising exemptions and expanded enforcement powers are all excellent examples of initiatives that originated in one or two jurisdictions and were subsequently implemented on a wider scale. These examples also highlight the fact that local rules often provide substantial relief from securities law requirements rather than imposing additional requirements. The CSA also note that legislatures cannot bind their successors by imposing outright constraints on the ability to make local

General Comments			
#	**Themes**	**Comments**	**Responses**
			rules.
5.	**Achieving and maintaining uniformity** Differences in interpretation (ACPM, Macleod Dixon, DWPV, IFIC)	Several commenters noted that differences in interpretation among CSA staff can lead to different conclusions and results. They are also concerned that staff could apply unwritten rules or administrative practices.	The CSA received similar comments on the Concept Proposal. The CSA recognize the need to address the issue of interpretive differences. The CSA plan to build on the mechanisms to share information currently in place under the mutual reliance review system for prospectuses and applications for exemptive relief. The CSA envision using mechanisms like staff education programs and increased staff interaction and coordination, and CSA procedures, like internal audits, to ensure that staff in different jurisdictions are interpreting and applying the uniform laws in a consistent manner.
6.	**Achieving and maintaining uniformity** Obstacles (IDA, Torys, OBA, IFIC, RBC, Advocis, BLG)	Many commenters expressed concern about whether the legislation proposed under the USL Project could ever be truly uniform given certain obstacles to uniformity or competing regulatory agendas, such as: • British Columbia's proposed new securities regulatory system, as embodied in recently passed British Columbia Bill 38 and proposed rules published June 21, 2004 • The USL Project contemplates each province having its own *Securities Administration Act* • Québec's civil law system • Recent divergence among Canada's major jurisdictions in the approach to corporate governance disclosure • The OSC's Fair Dealing Model	The USL Project remains a top priority initiative of the CSA. The CSA acknowledge that there are ongoing initiatives in individual jurisdictions that appear to be inconsistent with the USL Project, but note that these jurisdictions are committed to developing these initiatives to avoid conflicting regulatory requirements. The CSA will continue to strive for uniformity and believe that the Consultation Drafts propose securities legislation that is as uniform across Canada as is possible within the current framework of securities regulation.

General Comments			
#	**Themes**	**Comments**	**Responses**
		• Québec's creation of an omnibus financial services authority • The occurrence of "opt-outs" by various jurisdictions from various provisions of the USA	
7.	**Platform approach** (TSX Group, Torys, BLG, RBC)	Several commenters noted that the platform nature of the draft legislation and the fact that the rules proposed under the USL Project have not been published make it difficult to comment comprehensively on the USA.	The CSA note that the Commentary accompanying the Consultation Drafts (the Commentary) provides information about the CSA's intentions regarding the rules to be developed under the USL Project. The Commentary indicates that areas most affected by the platform approach are the continuous disclosure, take-over bid, prospectus and registration (including exemptions) parts of current legislation. The CSA have already developed national rules in these areas, e.g. National Instrument 51-102 *Continuous Disclosure Obligations*, or are developing them, e.g. proposed National Instrument 45-106 *Prospectus and Registration Exemptions* (Exemptions Rule) and proposed uniform rules on registration. The Commentary also identifies the important provisions from current legislation that will be replaced by uniform rules.
8.	**Structure of USL - USA and SAA** (BLG)	One commenter disagrees with proposing two separate pieces of legislation and questions why securities administration could not be made uniform. The commenter believes this approach will compound differences. The commenter is also concerned, based on a review of Part 8 of OSC Notice 11-732, which describes at a high level the expected content of Ontario's *Securities Administration Act* as of December 2003, that the SAA will become a "catch-all" for local provisions that are not included in the USA. The commenter also notes that it is problematic to have different rule-making procedures in each province and	The CSA believe that the Consultation Drafts propose securities legislation that is as uniform across Canada as is possible within the current framework of securities regulation. The CSA noted in the Commentary that uniform procedural provisions would be desirable but cannot be easily harmonized because they must fit within the laws of the province or territory from which the SRA derives its authority. Currently, the rule-making procedures are different in each jurisdiction and reflect each government's view of the level of transparency, oversight and accountability. We do not envisage that this will change under the USL regime. Please see the

General Comments			
#	**Themes**	**Comments**	**Responses**
		encourages the CSA to adopt uniform rule-making procedures.	response to comment 141 as well.
9.	**Harmonization with corporate law** (Talisman)	The CSA should coordinate with the federal and provincial governments to harmonize securities laws with federal and provincial corporate law.	The CSA consult with federal and provincial corporate regulators to discuss issues of common concern and legislative and policy initiatives in traditional areas of overlap, like insider trading, proxy solicitations and corporate governance.
10.	**Drafting style** (Torys)	One commenter applauded the drafting style of the USA, but made the following suggestions: • Place all definitions at the front of the statute • Use legal numbering • Do not divide parts of the statute into "divisions" • Refer to the USA as something other than "USA" since this is a well-used abbreviation	The CSA appreciate these suggestions and will consider them. As the CSA noted in the Commentary, definitions of general application are located at the front of the USA. Definitions specific to a particular topic are located at the beginning of the part dealing with that topic, while definitions that relate to a particular section are found at the beginning of that section. This is done to make the legislation easier to read and understand. Under the USL regime, the numbering and placement of definitions will reflect current legislative drafting style.
11.	**Derivatives regulation** General approach to derivatives regulation and regulation of OTC derivatives (ISDA) / (ISDA, CBA, IFIC, Talisman, Bennett Jones)	One commenter disagrees with the proposed regulatory approach to derivatives on the basis that privately negotiated derivatives transactions should not be regulated as though they are securities. Such transactions are not primarily used as an independent medium of investment. The approach of treating privately negotiated financial bilateral contracts as if they were securities and then widely exempting them increases legal uncertainty and transaction costs and is based on unsupported assertions that derivatives are inherently more risky and require unique regulatory solutions. Five commenters expressed disagreement with the proposed method of regulation of OTC derivatives. Their	As noted in the Commentary, there are currently differing approaches to the regulation of trading in derivatives in various jurisdictions. The intention of the approach under USL is to maintain the status quo in all jurisdictions that currently regulate derivatives. As derivatives are increasingly becoming common and useful portfolio management tools for investors and their advisors, the CSA believe that it is appropriate to extend the regulatory ambit of the USA to derivatives in those jurisdictions that do not currently regulate derivatives because investing in derivatives involves unique risks, particularly for retail investors. The proposed approach protects the interests of non-sophisticated investors, while providing broad exemptions for sophisticated

General Comments			
#	**Themes**	**Comments**	**Responses**
		views are as follows: One commenter disagrees with both the Ontario approach and the approach proposed in other jurisdictions. The commenter acknowledges that wide exemptions to the approach outside Ontario will likely be available, but notes that there may still be situations that require compliance. The commenter questions how compliance with prospectus and registration requirements is possible for a bilateral contract under which both parties have similar ongoing payment obligations. Both parties are logically an "issuer" in such a scenario. One commenter states that OTC derivatives transactions are within the legislative jurisdiction of the federal government. Even if OTC derivatives were in provincial jurisdiction, the commenter believes that there is no evidence that they should be regulated and the cost would exceed any benefit. The commenter submits that it is inappropriate to, through the USL Project, expand the current Alberta and British Columbia approach to regulation of OTC derivatives to other provinces, particularly since Ontario has declined to adopt that approach. The commenter also notes that OTC derivatives are not regulated comparably in the United States, which could put participants in OTC derivatives transactions in Canada (other than Ontario) at a competitive disadvantage. One commenter prefers the Ontario approach to regulation of OTC derivatives. One commenter is uncertain whether the proposed approach in the USA (except Ontario) is the proper approach. The commenter encourages the CSA to review	entities. In Ontario, those derivatives that otherwise fall within the definition of "security" are subject to the provisions of the *Securities Act* (Ontario). We note that the proposed approach to regulation of OTC derivatives under the USA (outside Ontario) has been in place in some jurisdictions (British Columbia and Alberta) for up to 12 years. The CSA are not aware that this has created legal uncertainty or increased costs for derivatives in these jurisdictions. In fact, during that time, securities regulatory authorities in these jurisdictions have received very few applications for relief from the prospectus and registration requirements for OTC derivatives. As one commenter acknowledges, we envision that there will be uniform rules made under the USL regime providing broad exemptions from the prospectus and registration requirements for OTC derivatives (outside Ontario). These exemptions would include exemptions currently available in the jurisdictions mentioned above (i.e. an exemption for qualified parties entering into bilateral derivatives contracts and commodity contracts that go to physical delivery) and a new exemption for financial institutions and registrants trading in financial derivatives in jurisdictions other than Ontario. We believe that this will ensure that participants in OTC derivatives transactions outside of Ontario are not at a competitive disadvantage to participants elsewhere.

General Comments			
#	**Themes**	**Comments**	**Responses**
		the subject of OTC derivatives regulation comprehensively and specifically to consider the questions raised by the Ontario Minister of Finance in connection with rejecting a rule regulating OTC derivatives proposed by the OSC as well as the question of whether the proposed approach (except in Ontario) of regulating and then exempting OTC products should be recast as a rule or statutory provision that is specific to the types of products or transactions that will be regulated. One commenter disagrees with regulating OTC derivatives and the marketplaces on which derivative transactions take place because the investors are sophisticated parties and regulation is unlikely to improve the efficiency of OTC derivatives markets.	
12.	**Derivatives regulation** Lack of uniformity of regulation of derivatives (ISDA, IFIC, RBC, Talisman)	Three commenters disagree with the proposed carve-out from derivatives regulation for Ontario and Manitoba and state that a uniform approach should be adopted. One commenter suggests that commodity futures legislation should be written into the USA. Two commenters also specifically opposed the lack of uniform treatment of OTC derivatives.	As noted above, there are currently differing approaches to the regulation of trading in derivatives in various jurisdictions. Harmonizing derivatives regulation would have involved changes to the status quo in at least two jurisdictions. This exceeded the mandate of the USL Project. Specifically, the analysis necessary to determine whether the USL regime is appropriate for Ontario and Manitoba, and the work required to integrate the commodity futures legislation of those jurisdictions into the USA, were outside the scope of the USL Project.
13.	**Cost-benefit analysis** (IFIC)	One commenter states that the USL Steering Committee should conduct a cost-benefit analysis of the USL.	Comments received on the Consultation Drafts support the CSA's view that a uniform platform of securities laws will reduce some of the complexity that currently burdens market participants and their advisors who operate in multiple jurisdictions, and enhance the efficiency of securities regulation in Canada.

General Comments			
#	**Themes**	**Comments**	**Responses**
			As a harmonization initiative, the USL Project introduces few concepts not already in place or poised for implementation in Canada. The exceptions – like the new concepts of mutual recognition and delegation between jurisdictions – are designed to increase efficiency and further reduce compliance and other burdens on market participants without diminishing investor protections. The CSA do not, therefore, propose to commission a formal cost-benefit analysis.
14.	**Regulatory arbitrage** (IFIC)	The commenter submits that there should be safeguards in place to prevent individuals and issuers from engaging in "regulatory arbitrage", an example of which would be a situation where one SRA may give an extension to an issuer on a filing deadline while another SRA may not.	The CSA do not believe that so-called "regulatory arbitrage" in the way in which legislation is administered is a plausible threat. Under the USL regime, the current high degree of communication, coordination and cooperation among CSA members would continue and the potential for different outcomes in different jurisdictions would decrease.
15.	**Issues discussed in Concept Proposal but not addressed in Consultation Drafts** (IFIC)	The commenter refers the CSA to the following comments it made on the Concept Proposal that the CSA indicated it would consider or discuss. The commenter asks the CSA about the outcome of these considerations or discussions: • The additional restrictions placed on mutual funds sold on an exempt basis in Québec. • The comment that the ability of mutual fund dealers to trade exempt securities, GICs and hedge funds should be harmonized. • The comment that it is inappropriate to allow Ontario and Newfoundland & Labrador to maintain certain aspects of the universal registration system through	The CSA respond as follows: • The securities regulatory authority in Québec has decided to withdraw sections 277 to 293 ("Rules of operation respecting the management, keeping and composition of assets of incorporated mutual funds and unincorporated mutual funds") of the Québec *Regulation respecting securities* as soon as is legally possible in order to harmonize its legislation with that of other CSA members. • The USA adopts a business trigger approach. The issue of mutual fund dealers trading exempt securities will be dealt with in the context of the uniform rules on registration.

General Comments			
#	**Themes**	**Comments**	**Responses**
		local rules. • The comment that uniform capital-raising exemptions should be created. Will MI 45-103 be uniformly incorporated into the USA proposal?	• The registration regime under the USA is based on a business trigger that will replace the universal registration system currently in place in Ontario and Newfoundland and Labrador. • The CSA are developing the Exemptions Rule based on exemptions in existing securities legislation, including the capital raising exemptions in MI 45-103. The CSA expect to publish the proposed Exemptions Rule later this year for implementation in 2005. Initially we expect that the Exemptions Rule will reflect some local market differences but, under the USL regime, the CSA would review the rule to further streamline and harmonize it.

USA Part 1: Purpose and Interpretation			
#	**Themes**	**Comments**	**Responses**
16.	**Interpretative guidance in s. 1.3** (Torys, Macleod Dixon, Bennett Jones, IFIC, BLG)	Some commenters oppose the interpretive guidance provision in section 1.3 of the USA, which states that securities laws are to be given a fair, large and liberal interpretation. Commenters felt that the provision is too broad and that interpretation should be left to the courts.	The CSA are of the view that section 1.3 does not alter the substance of current law nor constrain the courts more than is the case today. The CSA note that similar provisions are found in all provincial and territorial *Interpretation Act*s. The rationale for including this provision in the USA was to set it out in uniform wording to help users read and apply the USA and SAA in a consistent manner. As drafted, the provision is not broader than existing interpretative guidance applicable to all public statutes in all jurisdictions of Canada.
17.	**References to prescribed meaning**	Where the definition of a term says that the term "has a prescribed meaning", consider stating instead "is prescribed in the rules". This seems to be a clearer	The CSA decided to define the term "prescribed" instead of using the suggested phrase, to simplify the drafting of the USA and make it clearer and easier to read. The CSA note that in

USA Part 1: Purpose and Interpretation			
#	**Themes**	**Comments**	**Responses**
	(TSX Group)	formulation.	some jurisdictions, defined terms are found in regulations rather than rules so that the suggested phrase is not necessarily a clearer formulation.
18.	**General statement that terms may be defined elsewhere** (TSX Group)	The CSA should consider adding a general statement to Part 1 stating that terms may be defined elsewhere in the Act or rules.	The CSA will consider the suggestion but note that the placement of definitions of specific application at the front of the part or section where the topic is dealt with or where the term is used is a feature of existing securities legislation. Please see the response to comment 10 as well.
19.	**Interplay between English and French versions of USA** (Bennett Jones)	One commenter noted that the USA has been produced in English and French. The commenter notes that litigation over questions of interpretation has turned on differences in the French and English versions of a statute, and enacting the French version in one or more jurisdictions could raise the possibility of a similar result.	The CSA acknowledge the comment. We note that this is an issue in any jurisdiction where statutes are published in the two official languages and that Canadian courts are accustomed to interpreting laws in light of these linguistic requirements. The CSA will try to ensure that the English and French versions of the USA adopted across the country (except in Québec) are the same. The English and French versions in Québec will be different to accommodate the fact that Québec is a civil law jurisdiction.
20.	**Interpretation Acts** (Bennett Jones)	The commenter questions whether the CSA considered and addressed the potential for an idiosyncrasy in the *Interpretation Act* of a particular province giving rise to a local interpretation of the USA or the SAA that is at odds with the result that follows from the *Interpretation Act* in another province.	The CSA considered and compared the various *Interpretation Act*s to ensure that there were no inconsistencies between those statutes. We dealt with inconsistencies or missing provisions in some *Interpretation Acts* by adding uniform provisions to the USA. For example, we added sections 1.3 to 1.5.
21.	**Definitions** **(s. 1.2)** "affiliate" and "associate"	The commenter stated that the definitions of "affiliate" and "associate" in sections 1.9 and 1.10 should be placed in the alphabetical list of definitions rather than in separate sections after the alphabetical list.	The placement of these definitions is generally in keeping with their placement in current legislation. Please also see the response to comment 10.

USA Part 1: Purpose and Interpretation			
#	**Themes**	**Comments**	**Responses**
	(TSX Group)		
22.	**Definitions (s. 1.2)** "Canadian financial institution" (IFIC)	The phrase "under an enactment of a province or territory" or "under an enactment of a Canadian jurisdiction" should replace the phrase "under an enactment of a province" in the definition of "Canadian financial institution" so that territorial legislation is also covered.	The CSA note that the phrase "under an enactment of a province" is commonly used in legislation because most provincial *Interpretation Acts* define "province" to include both provinces and territories. To ensure consistency in all jurisdictions, the CSA will add an interpretative provision saying that province includes territory.
23.	**Definitions (s. 1.2)** "clearing agency" (TSX Group)	One commenter states that the definition of "clearing agency" should exclude "an exchange, a quotation and trade reporting system or a registered dealer".	The CSA are of the view that the suggested exclusions are not appropriate. If an exchange, quotation and trade reporting system or registered dealer chooses to operate a clearing agency, it should become subject to the regulatory oversight regime specifically tailored to clearing agencies adopted by the jurisdiction in which the clearing agency is operating.
24.	**Definitions (s. 1.2)** "derivative" (ISDA, CBA)	Two commenters state that the definition of "derivative" is too broadly-worded. One commenter is of the view that the definition could apply to loans and suggests a carve-out for loans. The other commenter takes issue with the following aspects of the definition: • It is unclear how one would take future delivery of "an interest" • It is unclear what "an interest" is • The definition appears to catch many commercial and consumer products	The CSA consolidated the features of the definition of "commodity" and "futures contract" from current securities legislation in British Columbia, Alberta and Saskatchewan into the new definition of "derivative" in the USA, so the definition does not differ significantly from current legislative concepts. The CSA will consider adopting rules under the new USL regime to exclude contracts for physical delivery from the definition as is currently the case in British Columbia and Alberta.

USA Part 1: Purpose and Interpretation			
#	**Themes**	**Comments**	**Responses**
		• The definition would be more straightforward if it simply referenced "commodities", which the commenter submits is a term that is understood by the courts • Securities legislation already regulates agreements to make or take delivery of securities as trades in the underlying securities themselves. There is, therefore, no need to regulate a right or obligation to make or take future delivery of a security separately through the definition of derivative • A right or obligation to take future delivery of cash if the amount is derived from or by reference to a variable would include any loan, line or credit and many other commercial transactions	
25.	**Definitions (s. 1.2)** "expert" (TSX Group)	One commenter questions whether a financial analyst should be included in the definition of "expert" since there is no standard professional designation or governing body that applies to financial analysts. The commenter suggests as an alternative adding the qualifier "certified" financial analyst.	The CSA believe it is appropriate to include financial analysts in the definition of expert because their qualifications and experience in financial analysis gives authority to their research reports.
26.	**Definitions (s. 1.2)** "forward-looking information" (TSX Group)	If the proposed definition does not contemplate an event to include a change, then changes should be added to the list of items that constitute forward-looking information.	The CSA believe that the suggested change is unnecessary because any relevant change would be an event, condition or result.

USA Part 1: Purpose and Interpretation			
#	**Themes**	**Comments**	**Responses**
27.	**Definitions (s. 1.2)** "insider" (Bennett Jones)	Two commenters support the function-based approach to the definition of "insider". One commenter considers it unnecessary that an issuer be considered an "insider" of itself in relation to securities purchased by it and prefers the approach to this matter taken in the Concept Proposal. The commenter states that this approach will create confusion, and that in the context of an issuer bid, an issuer that acquires its own securities typically cancels them immediately. The commenter suggests that paragraph (a) of the definition of "insider" be amended such that the issuer is an insider of itself only if it acquires its own securities and "does not forthwith cancel those securities".	The CSA acknowledge the support expressed for the function-based approach to the definition of insider. The CSA will give further consideration to this comment.
28.	**Definitions (s. 1.2)** "investment fund", "mutual fund" and "non- redeemable investment fund" (BLG)	One commenter notes that both "mutual funds" and "non-redeemable investment funds" are sub-sets of "investment funds". The commenter recommends that the substantive definition be provided for under "investment fund" and "mutual funds" be defined as "investment funds that are redeemable" and "non-redeemable investment funds" be defined as "investment funds that are not mutual funds". The commenter also refers to the extreme broadness of the definition of "mutual fund" and "non-redeemable investment fund" and recommends narrower and more precise definitions of both terms. The commenter asserts that the two definitions of non-redeemable investment fund proposed for National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106) highlights the need for a single regulator for investment funds.	The CSA will consider these comments in the context of NI 81-106. The instrument has been published for a second comment period and, among other things, is seeking comment on two definitions of non-redeemable investment fund. The comment period under the rule-making process provides the opportunity for further consideration of comments on the definitions identified by the commenter.

USA Part 1: Purpose and Interpretation			
#	**Themes**	**Comments**	**Responses**
		The commenter notes that the proposed definitions of these terms will not address the problem of investment funds falling within the definition of "mutual fund" even though they are redeemable only at certain times rather than on demand.	
29.	**Definitions (s. 1.2)** "investment fund manager" (BLG)	The commenter supports the proposed definition of "investment fund manager" as it is consistent with the definition of manager (in the context of mutual funds) in National Instrument 81-102 *Mutual Fund*s (NI 81-102) but notes that it is not consistent with the new definition of investment fund manager added to proposed NI 81-106 in response to comments received during the first comment period. The commenter objects to using the term "manager" for different definitions in proposed NI 81-106, NI 81-102 and the USA.	The CSA will consider this comment further in the context of proposed NI 81-106, which was republished for a second comment period on May 28, 2004.
30.	**Definitions (s. 1.2)** "investor relations activities" (TSX Group, Bennett Jones)	One commenter suggests that the definition should be renamed using language such as "promotional activities" since that is what the definition actually describes. In practice, investor relations activities describe the internal and sometimes external activities of an issuer to maintain relationships with, and to provide a resource to, their investors. Another commenter suggests the following revisions to the definition: • Delete the words "activities or" as used throughout the definition since the word communications should	The CSA note that this definition is consistent with the current definition of investor relations activities in National Instrument 45-105 *Trades to Employees, Senior Officers, Directors and Consultants.* The CSA will consider these comments in the context of the Exemptions Rule which the CSA expect to publish later this year.

USA Part 1: Purpose and Interpretation			
#	**Themes**	**Comments**	**Responses**
		cover all relevant activities. • Rename the term investor-relations communications. • Replace the phrases "promote or could reasonably be expected to promote" in the lead-in wording and "that cannot reasonably be considered" in paragraph (a) with wording that focuses on the intentions of the issuer before making the communication, rather than on an after-the-fact assessment of the effect of the communication. • The ordinary course of business concept in paragraph (a) is too narrow. The effect of that wording is that an issuer would not be able to rely on the exceptions in (a) if it has taken a new approach to its advertising that is inconsistent with its prior advertising strategies. • The lead-in wording in (b), "activities or communications necessary to comply with securities laws or exchange requirements", should be changed to "communications made in compliance or intended compliance with". This wording more closely parallels the standards to which securities regulators are held under the immunity provisions in section 10.7(2).	
31.	**Definitions (s. 1.2)** "issuer bid" (TSX Group)	The definition should include a purchase or other acquisition of securities of the issuer by the issuer.	The term issuer bid is defined to mean an offer by an issuer to acquire its own securities as well as a redemption. Offer to acquire as defined in the USA includes an offer to purchase but is not intended to capture acquisitions for no consideration. In the case of a purchase, it is the offer to acquire, not the purchase itself, which triggers the issuer bid requirements.

USA Part 1: Purpose and Interpretation			
#	**Themes**	**Comments**	**Responses**
32.	**Definitions** **(s. 1.2)** "market participant" (Bennett Jones)	One commenter queries whether persons who provide proxy related advice should be added to the definition of market participants. It may be appropriate to subject them to some form of regulation, such as a requirement to file their materials with securities regulatory authorities if they propose to influence the outcome of a shareholder meeting and liability for misstatements.	The CSA note that while persons who provide proxy-related advice are not specifically listed in the definition of market participant, clause (s) of the definition provides the flexibility to designate these persons by rule or by order.
33.	**Definitions** **(s. 1.2)** **"**material fact" and "material change" (Torys, Macleod Dixon, TSX Group, DWPV, IFIC, RBC, Talisman, Bennett Jones)	The CSA received eight comments on the proposal to change the definition of material fact and material change to a reasonable investor standard of materiality. Two commenters support the proposed change to a reasonable investor standard and six commenters are opposed to the proposed change. One commenter who supports the proposed change to these definitions notes that the CSA should provide significant guidance to the market upon introducing these changes. Commenters who oppose the proposed change to these definitions gave the following reasons: • The market impact test is easier to apply because it is focused on market price or value enabling those required to apply the test to focus similarly, rather than on other aspects of investment decision-making • Issuers and their advisers have experience in applying the current market impact test. • The market impact test allows users to assess the expected response of the market as a whole, rather than having to ascertain how any single "reasonable	By way of background, the CSA first published these definitions in November 1997 as part of a proposal to implement the main recommendation of the Final Report of the Toronto Stock Exchange Committee on Corporate Disclosure. They were also included in the CSA Proposal for a Statutory Civil Liability for Investors in the Secondary Market published in May 1998. The CSA's proposal to switch to a "reasonable investor/investment decision" test is the result of serious and prolonged debate and consideration. Stated briefly, we believe that the revised approach is consistent with the purpose of the proposed legislation mentioned above: that while an effect on a security's market price is very likely to be thought material to an investor, other factors could, in particular circumstances, also be material, and it is inappropriate to focus narrowly on only the one factor. However, the CSA acknowledge the commenters' concerns and recognize that they should be given further consideration. The CSA will ensure that there is no inconsistency in the definition of material change between the USA and the uniform rules on investment funds under the USL regime.

USA Part 1: Purpose and Interpretation			
#	**Themes**	**Comments**	**Responses**
		investor" might respond. • Changes to definition of material fact and material change need to be subjected to further debate and consultation since it would appear to lower the materiality threshold, which is a significant policy change. • The proposed change to definition of material change introduces additional uncertainty. The reasonable investor approach is less precise than the traditional market impact test. Although the two standards will converge in many cases, the adoption of the reasonable investor standard will leave issuers in a position where they will not be able to rely to the same extent on objective market reactions to prior news to assist in gauging the materiality of a particular event, which is the approach that the CSA recommend in National Policy 51-201 *Disclosure Standards*. • Proposed inclusion of additional categories of changes (assets, ownership and affairs) in the definition of material change blurs the distinction between material changes and material facts. Under the proposed definition of material change, there will likely be few material facts that are not material changes. This will, in effect, elevate material facts to material changes and result in material facts attracting disclosure obligations. • The use of the words "substantial likelihood" in the definition of material change is confusing and creates uncertainty and inconsistency for mutual fund issuers given that it differs from the concept of a "significant	

USA Part 1: Purpose and Interpretation			
#	**Themes**	**Comments**	**Responses**
		change" in NI 81-102.	
34.	**Definitions** **(s. 1.2)** **"**material fact" and "material change" - specific suggestions (Torys, Macleod Dixon)	Two commenters (one who supports the proposed reasonable investor standard and one who opposes it) noted with respect to the definition of material fact that the proposed scope of facts that would be material is too broad. The proposed definition of material fact states that a fact is material if a reasonable investor would consider it important to any decision. The commenter submits that the definition of "material fact" should parallel the definition of "material change" in that a decision should only relate to a decision to purchase, hold, sell, redeem or vote a security. One commenter stated that the reference to directors of the issuer in these proposed definitions should be to the board of directors. One commenter suggested that the current name for a "material change report" deters issuers from filing them when they do not believe or do not wish to concede that the information in it is material. More neutral terminology, such as "continuous disclosure report" might address this issue.	The CSA acknowledge the comment suggesting the definitions of material change and material fact should be paralleled and will consider this comment further. The CSA acknowledge the comment relating to the use of board of directors instead of "directors of the issuer". Before the USA is finalized, the CSA will standardize this terminology and ensure that the appropriate terms are used in the context. With respect to the suggestion that material change reports be renamed, the CSA will consider this comment in the context of the rules made under the new USL regime, in particular when reviewing the new continuous disclosure regime under NI 51-102 and finalizing proposed NI 81-106.
35.	**Definitions** **(s. 1.2)** "marketplace" (TSX Group)	The definition should be set out in this Part rather than prescribed elsewhere.	The CSA are of the view that, since the regulatory regime for marketplaces is set out in National Instrument 21-101 *Marketplace Operation* (NI 21-101), the definition of marketplace should be in that instrument.

USA Part 1: Purpose and Interpretation			
#	**Themes**	**Comments**	**Responses**
36.	**Definitions (s. 1.2)** "participant" (RS Inc.)	One commenter is of the view that the definition of participant as including a member is inadequate. The commenter suggests that the term participant include any person subject to the by-laws, rules, regulations, policies or similar instruments of an SRO. Because SRO bylaws etc. are subject to SRA oversight, an SRO would not be able to overstep its jurisdiction but would have the ability to monitor and regulate the appropriate persons.	The CSA believe that it is clear that a person subject to the by-laws, rules, regulations, policies or similar instruments of an SRO is a participant of the SRO. The purpose of the definition is to clarify that a "participant" *includes* a member. This clarification is necessary because the definition of self-regulatory organization refers to participants and, as some exchanges are now public companies, they no longer have members. As well, some SROs also use this terminology while others do not. The CSA added the definition of "participant" to clarify that a reference to that term includes members of SROs and exchanges that have retained a traditional ownership structure.
37.	**Definitions (s. 1.2)** "person" (BLG)	The commenter questions whether the reference to a fund in the definition of person is intended to refer to an investment fund. The commenter is of the view that, without more, the use of this word could be confusing to a reader.	The definition of person has been drafted broadly to include non-corporate financing vehicles currently in use, like income trusts, non-redeemable investment funds, labour-sponsored funds, pooled funds and hedge funds, and innovative fund structures that might be used as financing vehicles in the future.
38.	**Definitions (s. 1.2)** "record" (Bennett Jones)	The commenter notes that the definition includes "transmission signals" and questions how an issuer is to comply with record retention and production requirements in respect of transmission signals. The commenter suggests that the USA provide that an issuer will not be considered in default of its obligations in respect of records retention or production where records are accidentally destroyed.	The CSA will consider the comments about transmission signals. The CSA note that each jurisdiction has adopted electronic transaction legislation to govern the creation, recording, transmittal and storage of records in electronic form, and their electronic retention and production. A market participant can satisfy these requirements if it can show that a reliable assurance exists as to the integrity of the records. Accidental destruction of records alone would not be sufficient in most circumstances to cause an issuer to be in default of its obligations to retain and produce records but that determination would have to be made on a case-by-case basis.

USA Part 1: Purpose and Interpretation			
#	**Themes**	**Comments**	**Responses**
39.	**Definitions** **(s. 1.2)** **"**regulator" (IFIC)	The commenter notes that section 2.6 of the SAA indicates that the SRA must authorize one or more persons to act as regulator. The commenter finds the definition of "regulator" does not indicate who a regulator might be. The commenter asks whether the regulator is meant to be anyone in addition to commission members and SRA staff, whether the term "regulator" will add a novel layer of regulation, and whether a new regulatory entity is being created by this subsection. The commenter suggests that the definition of "regulator" in NI 14-101 *Definitions* should be used.	The SAA is model legislation. As drafted, it would apply to the Alberta Securities Commission (ASC) and to market participants in Alberta. Under the USL regime, each jurisdiction will adopt a SAA and a definition of regulator that suits its structure and procedural requirements. The term "regulator" is intended to refer to those individuals that the SRA has authorized to exercise some or all of its powers, duties or functions under the USA and SAA on its behalf and is intended to address differences in the structure and staffing of the SRA between jurisdictions. In Alberta, these individuals include the executive director and any other individual authorized by the commission or the executive director to act on their behalf under current legislation. The ASC and the other SRAs will consider the definition of regulator in NI 14-101 when finalizing their SAAs. As is currently the case in some jurisdictions, the SRAs would adopt delegation or designation orders or schedules to identify the staff person or commission member who has the authority to exercise a specified power, duty or function under the USA or SAA.
40.	**Definitions** **(s. 1.2)** "reporting issuer" (Bennett Jones, TSX Group)	One commenter suggests that the provision in clause (b) permitting a jurisdiction to impose reporting issuer status on an issuer as a result of an exchange listing, whether or not the exchange carries on business in that jurisdiction, exacerbates the problems inherent in the multijurisdictional regulatory system and has the potential to impose significant costs on issuers without a commensurate regulatory benefit. Given that listed issuers will be a reporting issuer in at least one jurisdiction it is difficult to understand the rationale for imposing additional reporting issuer burdens where there is no	The CSA acknowledge the commenter's concern regarding clause (b) and recognize that it should be given further consideration. Clause (c) of the definition of reporting issuer parallels the registration and prospectus exemptions for business combinations and reorganizations found in current legislation. Some of these existing exemptions continue to be based on an exchange of securities between two or more parties. The CSA will develop a harmonized and consolidated business combination and reorganization exemption for the Exemptions

USA Part 1: Purpose and Interpretation			
#	**Themes**	**Comments**	**Responses**
		significant connection to the jurisdiction. Reporting issuer status is an example of duplication and complexity in our current regulatory system. The proposed approach in the USA does not improve the current system. Another commenter suggests expanding clause (c) of the proposed definition of "reporting issuer" which provides that an issuer whose existence continues following the exchange of securities with two or more issuers in connection with a number of types of business combination is a reporting issuer if one of the parties is a reporting issuer. The commenter suggests that the definition should contemplate circumstances that do not involve an exchange of securities, such as an arrangement under federal insolvency legislation. The commenter suggests that the CSA follow the approach in the counterpart provision of the *Securities Act* (Saskatchewan).	Rule currently being drafted for publication for comment later this year. In keeping with the platform nature of the USA, all prospectus and registration exemptions will be located in the Exemptions Rule under the USL regime. The CSA will consider this comment further and revisit this definition in light of any changes made to the business combination and reorganization exemption in the Exemptions Rule.
41.	**Definitions** **(s. 1.2)** "rules" (TSX Group)	One commenter suggests that rather than using the generic term "rules", the draft legislation should reference the three contemplated types of rules: uniform rules, local rules and SAA rules.	The CSA note that the definition of rules also includes regulations in addition to the three types of rules referred to by the commenter. Since the term is used frequently in both the USA and the SAA, the CSA believe that the use of the defined term makes the legislation clearer and easier to read.
42.	**Definitions** **(s. 1.2)** "security" (TSX Group, Bennett	The CSA received a number of comments regarding the definition of "security": • One commenter notes that two branches of the current definition are missing: (i) "any certificate of interest in oil, natural gas or mining leases, claim or royalty	The CSA have the following responses: • The USA deliberately omits these two branches of the definition of "security" because they are covered by other elements of the definition.

USA Part 1: Purpose and Interpretation			
#	**Themes**	**Comments**	**Responses**
	Jones, BLG)	voting trust certificate" and (ii) "any oil or natural gas royalties or leases or fractional or other interest therein". • One commenter notes that paragraph (d) of the definition of security retains the status quo respecting debt instruments. The commenter feels that this approach is too broad and encourages the CSA to review its approach to debt instruments in light of the narrower approach taken in American case law which recognizes that it is not necessary to regulate every note under securities legislation. • One commenter notes that paragraph (e) of the definition of security appears to include segregated funds. The commenter also notes that the reference to specific insurance contracts in the current definition of "security" is missing. The commenter asks what the CSA's intention is. • One commenter notes that paragraph (l) of the definition of security includes interests in a self-directed RESP, even though this approach proved to be overly-inclusive recently in Ontario and necessitated an exempting rule.	• As the commenter points out, the CSA have maintained the status quo regarding debt instruments in harmonizing this definition. The suggestion to review the current approach to debt instruments in light of the narrower US approach is beyond the scope of the USL Project. • A contract of insurance issued by an insurance corporation is excluded from bonds, debentures and other evidences of indebtedness under the definition of security, but group contracts like segregated funds will be exempt from the prospectus and registration requirements in the Exemptions Rule being developed for publication later this year. As a result, the CSA believe that there is no need to exclude segregated funds from the definition of security. • The CSA believe that RESPs should remain as part of the definition of security in order to retain existing jurisdiction over scholarship plans. We expect that exemptions for self-directed RESPs similar to those found in local rules or blankets orders in Alberta, British Columbia and Ontario, will be located in the Exemptions Rule under the USL regime.
43.	**Definitions** **(s. 1.2)** "securities regulatory authority" (IFIC)	The proposed name of Québec's merged financial services regulatory authority has changed since the consultation drafts were published. This change should be reflected in the USA when it is enacted.	When the SAA is enacted in Québec, the legislation will identify the *Agence nationale d'encadrement du secteur financier (*or *Autorité des marchés* financiers once the name change is official) as the SRA in Québec.

USA Part 1: Purpose and Interpretation			
#	**Themes**	**Comments**	**Responses**
44.	**Definitions (s. 1.2)** "trade" (Bennett Jones)	The commenter notes that the definition of trade includes acts in furtherance and states its objection to the position taken by securities regulatory authorities that an act in furtherance can occur in the absence of an actual trade.	This definition maintains the status quo in existing securities legislation. Considering whether we should be regulating acts in furtherance of a trade when there is no trade falls outside the scope of the USL Project.
45.	**Potential combined effect of definitions of "security", "trade", and "derivative" (s. 1.2)** (Advocis)	The commenter notes that the combined effect of the definitions of security, trade, and derivative could extend the reach of securities legislation to areas that have traditionally been the domain of insurance regulators. For example, security appears to include a contract of insurance issued by an insurer when it is also a derivative contract. Universal life contracts of insurance would fall within the definition of derivative contract, as would many segregated funds. The draft legislation should exclude contracts of insurance from the definition of security.	Contracts of insurance issued by insurance companies are excluded from bonds, debentures and other evidences of indebtedness under the definition of security. The CSA believe that insurance contracts that have derivatives' features should be regulated as such. Please see comment 42.
46.	**Definitions (s. 1.11)** "control of an issuer" (TSX Group)	One commenter states that the definition of control of an issuer is vague in that it does not provide a threshold for the level of ownership that constitutes control.	The CSA do not agree that the provision is vague. The provision is also consistent with existing securities legislation, in particular with recent amendments in Alberta.
47.	**Terms that should be defined in the USA** "debt security" (TSX Group)	The commenter states that the term debt security is used in the USA and should therefore be defined.	The CSA do not consider it necessary to define debt security in the USA. The term is only used once in the USA (in the definition of voting security) and it is commonly understood among market participants and investors.

USA Part 1: Purpose and Interpretation			
#	**Themes**	**Comments**	**Responses**
48.	**Terms that should be defined in the USA** "exchange" (TSX Group)	The commenter states that the term exchange is used in the USA and should therefore be defined.	The CSA do not intend to include a definition of exchange in the USA for the reasons outlined in Companion Policy 21-101CP.
49.	**Terms that should be defined in the USA** "convertible security" (TSX Group)	The commenter states that the term convertible security is used in the USA and should therefore be defined.	The CSA acknowledge the commenter's concern and recognize that it should be given further consideration.
50.	**Terms that should be defined in the USA** "generally disclosed" (TSX Group, Bennett Jones)	Two commenters state that the term generally disclosed should be defined in the USA because it is used in many places and could be widely interpreted. One of these commenters adds that the definition should make it clear that there is a temporal component to the concept of generally disclosed. This commenter also notes that the concept of generally disclosed, if defined, should replace the phrase "make available to the public" in the definition of release in Part 9 dealing with secondary market civil liability.	The CSA consider that a definition of generally disclosed is unnecessary. The term is intended to convey that the information has been broadly disseminated without imposing any requirement on how that should be done. Where the term is used, the reader should use common sense to assess whether the information has been broadly disseminated in the circumstances. The CSA have already provided guidance on the meaning of the term in the context of the insider tipping provisions in NP 51-201 (see section 3.5(2)). Issuers will find additional guidance in Appendix A to the Notice publishing the CSA's response to comments received on proposed NP 51-201 (July 2002).
51.	**Terms that should be defined in the USA** "option" (TSX Group)	The commenter states that the term option is used in the USA and should therefore be defined.	The CSA do not consider it necessary to include a definition of option in USA because this term is commonly understood among industry participants and is not defined in existing legislation.

USA Part 1: Purpose and Interpretation			
#	**Themes**	**Comments**	**Responses**
52.	**Terms that should be defined in the USA** "business day" (TSX Group)	The commenter states that the term business day is used in the USA and should therefore be defined.	The CSA note that the term business day is commonly used in legislation because most provincial *Interpretation Acts* define business day. However, we will consider adding a definition of business day to the USA if necessary to ensure its meaning is the same in all jurisdictions.
53.	**Designations (s. 1.7)** (Bennett Jones)	One commenter states that the power to designate an issuer to be a reporting issuer or a trade to be a distribution is inappropriate.	Current legislation in many jurisdictions already provides a mechanism for making an issuer a reporting issuer and a trade a distribution. Under the USA, a designation by order under section 1.7 would give rise to a right to be heard, while a designation by rule would be subject to comment under the rule-making process.
54.	**Specified forms (s. 1.8)** (Bennett Jones)	One commenter states that section 1.8 of the USA should permit market participants who are required to file specified forms to modify those forms as long as the essential information is provided.	The CSA believe it is inappropriate to adopt the principle suggested by the commenter. We agree that, in some cases, the disclosure may be appropriate even if the information is presented in a different format - for example, the information might not follow the order set out in the form or meet other technical requirements of the form. There may, however, be instances in which it is important to have a consistent presentation – for example, to facilitate rapid retrieval of information or rapid comparison of the information filed by different filers or by the same filer at different times. For that reason, we think it more appropriate to indicate in the instructions to specific forms when, and to what extent, flexible presentation is acceptable. We have begun to do this (see, for example, Form 51-101F1 *Statement of Reserves Data and Other Oil and Gas Information*).
55.	**Special relationship persons**	One commenter states that in light of the functional approach to determining who is an "insider", the reference to a director, officer or employee in clause (c) of the	The CSA believe the definition of special relationship must be broader than the definition of insider. This is consistent with existing legislation.

USA Part 1: Purpose and Interpretation			
#	Themes	Comments	Responses
	(Bennett Jones)	definition of special relationship person should be a reference to a director or senior officer.	existing legislation.

USA Part 2: Marketplaces, Self-Regulation and Market Participants			
#	Themes	Comments	Responses
56.	**Recognition required (s. 2.1)** (TSX Group)	One commenter suggests that section 2.1 should have wording added to it to clarify that the SRA must determine whether the exchange or QTRS in question is carrying on business in that SRA's jurisdiction before it is required to be recognized in that jurisdiction. This wording would clarify that an exchange or QTRS only needs to be recognized in the jurisdictions where it is carrying on business.	Legislation applies only in the jurisdiction in which it has been enacted. This means that this provision will only affect an entity if it carries on business in the jurisdiction in which the provision is being applied.
57.	**Designation of other entities requiring recognition (s. 2.2)** (RS Inc.)	One commenter suggests that the provision allowing an SRA to designate as requiring recognition a person who performs a function that is related to or consistent with the purpose of securities laws is too broad. The commenter suggests that the person should perform a function that furthers the purpose of the USA as set out in section 1.1 before the person can be designated as requiring recognition.	The CSA believe that this change would unduly restrict the circumstances under which an SRA should be able to designate an entity as requiring recognition.
58.	**Application for recognition (s. 2.3)** (TSX Group, MFDA)	Two commenters suggest providing in this section that previously granted recognitions and their terms and conditions would continue to apply subsequent to the USA coming into effect. One of the commenters adds that such a grandfathering provision should apply to entities that are in the process of	*Interpretation Acts* would normally have the effect of maintaining the status of recognized entities but the CSA will consider the need to grandfather recognition orders granted under current legislation. The USA provisions do not materially alter the recognition process in a way that makes grandfathering necessary.

USA Part 2: Marketplaces, Self-Regulation and Market Participants			
#	Themes	Comments	Responses
		obtaining recognition.	process in a way that makes grandfathering necessary.
59.	**Powers of recognized entities (s. 2.6)** Duty to regulate (TSX Group, RS Inc.)	One commenter suggests that section 2.6(1), which obligates a recognized entity to regulate its participants or participants of another recognized entity, should be amended to clarify that a recognized entity can delegate its regulatory functions to another recognized entity. The commenter submits that such clarification is necessary given the limits on a recognized entity's ability to delegate imposed by section 2.7(2).	The CSA acknowledge the commenter's concern and recognize that it should be given further consideration. However, the CSA believe that a recognized entity that retains another recognized entity to provide regulation services must continue to be responsible for the provision of these services and therefore must ensure that those services are carried out appropriately on its behalf.
60.	**Definition or interpretation of participant (s. 2.6(2))** (RS Inc.)	Another commenter suggests that the definition or interpretation of participant should include: • shareholders • market participants who have entered into a contractual arrangement with the recognized entity respecting monitoring or regulating standards of practice and business conduct • any related or affiliated entity of a member that is itself a market participant The commenter also suggests that the regulation of participants should be interpreted or defined to extend to: • market participants and their current and former directors, officers, employees and agents and other persons currently or formerly associated with them in the conduct of business, but only in respect of their business conduct while employed or associated with a market participant; and	The inclusion of shareholders in the definition of participant is inappropriate (see the response to comment 36). The CSA disagree with the commenter's other suggestion to extend the definition of participant to market participants or former market participants. The CSA note that "participant" and "market participant" are two different concepts in the USA. Market participant is intentionally broader than participant. The concept of market participant is needed to allow SRAs to review the activities of individuals and entities, including recognized entities, that play a role in our capital markets to ensure that they comply with securities laws and, in the case of recognized entities, to ensure that they enforce their own rules or those of another recognized entity. The concept of participant is needed to identify the individuals and entities that recognized entities regulate. Including in the definition of participants, market participants that have entered into contractual arrangements with a recognized entity for monitoring regulatory standards and business conduct, would have the effect of requiring recognized entities to regulate the activities of other recognized entities.

USA Part 2: Marketplaces, Self-Regulation and Market Participants			
#	**Themes**	**Comments**	**Responses**
		• persons who were formerly market participants and their current and former directors, officers, employees and agents and other persons currently or formerly associated with them in the conduct of business, but only in respect of their business conduct while a market participant or while employed or associated with a person who, at the time of the conduct, was a market participant.	This is inappropriate. It is also inappropriate to include related and affiliated entities of market participants in the definition of participant.
61.	**Powers of recognized entities** **(s. 2.6)** Power to impose fines and penalties (TSX Group)	One commenter submits that recognized entities should have the statutory power to impose fines and penalties upon their participants and participants' employees, agents and subscribers.	The CSA acknowledge the comment. Additional research and analysis is required before these and other powers requested by the SROs can be given by statute. This work is beyond the scope of the USL Project.
62.	**Powers of recognized entities** **(s. 2.6)** Power to regulate participants, former participants, etc. (IDA, TSX Group)	Two commenters express support for s 2.6 of the USA which grants recognized entities the power to regulate their former participants, former employees, agents or subscribers as well as the former employees, agents or subscribers of other recognized entities. One commenter suggests that participants of a predecessor recognized regulated entity and their employees, agents and subscribers should also be included. Such language will be useful if future recognized entities are created by the merger of one or more pre-existing recognized entities.	The CSA agree with this comment conceptually and will consider if changes to the USA are required.
63.	**Delegation from SRA to recognized entity** **(s. 2.7)**	Three commenters question why the authority of an SRA to delegate to a recognized entity is limited to registration matters only. The commenters submit that a broader delegation is necessary for a recognized entity to perform its functions effectively.	Under current legislation (except in Québec), SRAs can only delegate their registration powers to recognized entities. In Québec, the AMF may by statute delegate any of its powers and functions to recognized SROs and has delegated its registration and examination powers. Additional research and analysis is

USA Part 2: Marketplaces, Self-Regulation and Market Participants			
#	**Themes**	**Comments**	**Responses**
	(IDA, MFDA, RS Inc.)	its functions effectively. One commenter notes that it would be useful to consider a more limited form of delegation with respect to particular cases or circumstances. Two commenters note, one with disapproval, that the SRA retains concurrent jurisdiction over delegated matters.	required before delegation is authorized beyond the registration context. This analysis is beyond the scope of the USL Project. In accordance with administrative law principles, the SRA retains concurrent jurisdiction over delegated matters.
64.	**Authorizations (s. 2.8)** Powers conditional on order of SRA (IDA, MFDA)	Two commenters disagree with the fact that the USA grants recognized entities certain powers that the commenters view as essential for recognized entities to carry out their duties only upon order of an SRA. These powers include: the power to compel witnesses to attend and give evidence, the power to file disciplinary decisions and settlement agreements with the court, and the power to apply to court for appointment of a receiver. One commenter notes that the power to compel witnesses to attend and produce documents is currently provided in section 69(1) of the *Securities Act* (Alberta) without need for an order. The commenter notes that recognized entities in Alberta would have less power under the USA. The commenter also notes that making the power dependent on each commission and perhaps on a case-by-case basis will guarantee lack of uniformity and is not justified in light of SRA recognition and oversight processes.	See CSA response to comment 61.
65.	**Authorizations (s. 2.8)** Power to compel witnesses to attend and	The commenters note that the USA does not give recognized entities the power to compel witnesses to attend and produce evidence for purposes of an investigation. One of the commenters does not understand why the USA would grant recognized entities these	See CSA response to comment 61.

USA Part 2: Marketplaces, Self-Regulation and Market Participants			
#	**Themes**	**Comments**	**Responses**
	witnesses to attend and produce evidence for purposes of an investigation (IDA, MFDA)	powers in connection with hearings but not in connection with investigations. The other commenter notes without these powers, an SRO's ability to obtain factual information to substantiate allegations of misconduct is severely limited.	
66.	**Authorizations (s. 2.8)** Power to apply for appointment of a receiver (IDA, MFDA)	Two commenters submit that the power to apply to the court for the appointment of a receiver should also include the ability to apply to the court for the appointment of a court-ordered monitor on the basis that monitors are essential where a firm is ungovernable or seriously capital deficient.	See CSA response to comment 61.
67.	**Immunity for recognized entities** (IDA, TSX Group, MFDA, RS Inc.)	Four commenters commented on the immunity provisions for recognized entities contained in Part 10 of the USA.	These comments are set out and responded to in comment 136.
68.	**Collection, use and disclosure of personal information (s. 2.12)** Breadth of provision (IDA, RS Inc.)	One commenter supports provisions allowing a recognized entity to collect, use and disclose personal information in the course of its regulatory duties, but it notes that the provisions should parallel recent amendments to the *Securities Act* (Alberta) that specifically allow a recognized entity to collect personal information and use and disclose that information without the consent of the individual to whom the information relates. One commenter questions whether proposed section 2.12 is broad enough to cover all of the circumstances in which an SRO would obtain or release personal information for	The CSA will consider amending section 2.12 of the USA in light of the new privacy provisions in section 68.1 of the *Securities Act* (Alberta) and section 167 of the recently passed but not yet proclaimed *Securities Act* (British Columbia) as both of these provisions were passed after the Consultation Drafts were published.

USA Part 2: Marketplaces, Self-Regulation and Market Participants			
#	**Themes**	**Comments**	**Responses**
		the suppression of, or the investigation of, fraud, market manipulation or unfair trading practices. In particular, the commenter questions whether the proposed section 2.12 is broad enough to permit the proper operation of the *Co-ordination of Monitoring and Enforcement Agreement* contemplated by section 7.5 of National Instrument 23-101 *Trading Rules*. In the commenter's view the ability to share information should extend to the suppression or investigation of any breach of securities regulatory requirements including securities legislation and the by-laws, rules, policies or similar instruments of a recognized entity.	
69.	**Collection, use and disclosure of personal information (s. 2.12)** Consistency with SAA (IDA)	The commenter questions why the SAA contains a similar provision (section 3.8) and notes that the language of the SAA provision and section 2.12 should be conformed.	The CSA will reconsider the placement and language of these provisions.
70.	**Collection, use and disclosure of personal information (s. 2.12)** Whether proposed provision is broad enough to encompass existing rights	One commenter suggests that section 2.12 should be clarified to state that the rights granted to a recognized entity under this section are in addition to any rights that the recognized entity has to collect, use and/or disclose personal information that has been provided to it (e.g. under an informed consent).	The CSA do not believe that it is necessary to articulate this interpretative provision.

USA Part 2: Marketplaces, Self-Regulation and Market Participants			
#	**Themes**	**Comments**	**Responses**
	(TSX Group)		
71.	**Collection, use and disclosure of personal information (s. 2.12)** (TSX Group)	One commenter suggests that the wording in section 2.12 should be consistent with the wording of federal privacy legislation where possible.	The CSA intend to review the wording of section 2.12 in light of the federal privacy legislation and the new privacy provisions in securities legislation that were recently enacted in Alberta and passed but not yet proclaimed in British Columbia. Please see comment 68.
72.	**Supervision of recognized entities (s. 2.13)** (TSX Group)	The commenter is of the view that the SRAs' potential control over exchange functions and business decisions in section 2.13 is extremely broad and is not consistent with the realities of the current market structure nor the role of the exchanges in today's market. The content of this section merits significant further discussion between the exchanges and the CSA and the USL Steering Committee, particularly in light of the CSA committee dealing with SRO oversight. The section should be amended to reflect the appropriate roles and responsibilities of the SRAs and the exchanges.	These powers are consistent with current securities legislation. To the extent the CSA committee dealing with SRO oversight makes recommendations that could have an impact on the powers of SRAs over recognized entities before the USA is adopted, the CSA will examine the implications of the committee's recommendations on this provision.
73.	**Supervision of recognized entities (s. 2.13)** Appeal from SRA decision (TSX Group)	One commenter is of the view that this provision restrains recognized entities in a manner that is unnecessary and inconsistent with current regulatory regimes. Under current securities legislation, an exchange has the right of appeal to a court of law where it is directly affected by a decision of a Commission. The commenter is of the view that this right should not, in the future, be denied to recognized entities. Although it may be the view of SRAs that a court of law is not the appropriate venue in which to determine issues of a highly regulatory nature, notes the commenter, it is the logical place in which an appeal	The CSA believe that it is not appropriate for recognized entities to have a statutory right of appeal to the courts from decisions made by SRAs under section 2.13. If an SRA exercises its powers inappropriately under that section, the recognized entity is entitled to seek judicial review of the decision under the courts' inherent jurisdiction.

USA Part 2: Marketplaces, Self-Regulation and Market Participants			
#	**Themes**	**Comments**	**Responses**
		should be heard given that the adjudicator would be unbiased and experienced in adjudicating such matters.	
74.	**Supervision of recognized entities (s. 2.13)** SRA enforcement of recognized entity rules, policies or other similar instruments (RS Inc.)	One commenter states any provision respecting the enforcement of rules of recognized entities by an SRA should make it clear that any disciplinary or enforcement action by an SRA is without prejudice to any past, existing or future disciplinary or enforcement action undertaken by the recognized entity.	The CSA believe that this is implicit and does not need to be stated.
75.	**Filing with the court (s. 2.16)** Exhausting appeal rights (Bennett Jones)	One commenter is troubled by this provision. The commenter presumes that a decision should not be given the same effect as a judgment until appeal rights in respect of that decision have expired.	The CSA believe this concern is addressed by section 2.16(1)(c), which does not allow a decision of a recognized entity to be filed with the court until the right to appeal has expired.
76.	**Review of market participants (s. 2.18)** Breadth of provision (BLG)	One commenter notes that proposed section 2.18 gives the SRAs broader powers to conduct compliance reviews than, for example, the *Securities Act* (Ontario) gives the OSC. The commenter also notes that the definition of market participant catches a much wider array of industry participants than currently is the case. In particular, the commenter questions the addition of a power to examine a market participant's "property or things" (section 2.18(2)(c)). The commenter submits that this power is open to abuse and misinterpretation if it is intended to be broader than records necessary to properly	The powers to conduct compliance reviews are an amalgamation of existing provisions in current securities legislation. The same is true of the definition of market participant.

USA Part 2: Marketplaces, Self-Regulation and Market Participants			
#	Themes	Comments	Responses
		record the market participant's business. The commenter also notes the breadth of the power to require information to be provided about the market participant's activities, business and conduct (section 2.18(e)).	
77.	**Review of market participants (s. 2.18)** Reviewable records (BLG)	One commenter suggests that the "records" that can be examined and copied under section 2.18 should be limited to those records that securities law requires the market participant to maintain under section 2.17 otherwise the usual protections against unlawful search and seizure apply.	The CSA believe it is appropriate for SRAs to have access to all records during compliance reviews of market participants.
78.	**Review of market participants (s. 2.18)** Confidentiality (BLG)	One commenter suggests that section 2.18 should be subject to a requirement that the SRA keep confidential the information obtained during a review of a market participant.	The CSA acknowledge the comment and will consider it further. We point out that the commenter's concerns are dealt with, in part, in sections 3.10 and 3.11 of the SAA. Section 3.11 of the SAA says that materials required to be filed with SRAs under securities laws must be made public unless otherwise ordered. Materials provided to an SRA during a compliance review are not "required to be filed under securities laws" and as a result there is no requirement to make these materials available to the public. Section 3.10 contemplates that the SRA may make rules expressly designating material to be held in confidence or disclosed to the public. This last provision permits SRAs to adopt a rule to keep materials obtained during a review of market participants confidential.
79.	**Review of market participants (s. 2.18)**	One commenter states that the provision is not subject to a sufficient number of procedural safeguards. For example, a person conducting a review should not have the authority to require a market participant to produce a record that is subject to legal privilege.	The CSA believe it is not necessary to add this qualification. Legal privilege is governed by common law and the rules of the governing bodies for lawyers in each of the jurisdictions in which the USA is to be enacted.

USA Part 2: Marketplaces, Self-Regulation and Market Participants			
#	**Themes**	**Comments**	**Responses**
	Safeguarding records (Bennett Jones)	record that is subject to legal privilege.	
80.	**Review of market participants (s. 2.18)** Fees in connection with review (BLG)	One commenter asks when it would be appropriate for an SRA to charge a market participant a fee for a compliance review? The commenter questions why a similar provision does not exist regarding continuous disclosure reviews.	A provision for compliance review costs currently exists in securities legislation of some jurisdictions. The CSA have not included a similar provision for continuous disclosure reviews in the USA because we do not currently have this power in existing securities legislation.

USA Part 3: Registration			
#	**Themes**	**Comments**	**Responses**
81.	**Registration requirement (s. 3.1)** "In the business" trigger (Torys, Bennett Jones, Advocis, IDA, RBC)	One commenter is concerned that the proposed change to a "business trigger" is broader and arguably less clear than the current "trade trigger". The commenter also notes that sections 3.1(c) and 3.2(c), which require registration when providing services related to trading or advising, heighten the potential uncertainty of a "business trigger". Another commenter indicates that it will be in a better position to assess the impact of the "business trigger" change on its members when the rules setting out registration criteria are published. Three commenters support the proposed change to a business trigger but one notes that requiring registration where a person or company acquires or invests in	The CSA note that most foreign jurisdictions use a "business trigger" rather than a "trade trigger" for the registration requirement. The current trade trigger used in most Canadian jurisdictions has led to a complex set of exemptions for trades that do not raise regulatory concerns. We believe that the change from a trade trigger to a business trigger will make the system easier to understand. The rules made under the USL regime will describe the types of businesses that will need to be registered. The CSA also anticipate publishing guidance about what constitutes being in the business of trading in or acquiring securities, and advising on, trading in, acquiring, or investing in, securities. As noted above, the current trade trigger has led to a complex set of exemptions. The rules made under the USA will include

USA Part 3: Registration			
#	**Themes**	**Comments**	**Responses**
		securities (section 3.1(b) and 3.2(b)) represents an expansion of the existing registration regime and would likely cause market participants to seek exemptive relief.	some exemptions for market participants who might be considered to be "in the business" but whose activities do not raise regulatory concerns. However, the CSA recognize that this issue is complex and is worthy of further consideration.
82.	**Registration requirement (s. 3.1)** Adviser registration (Advocis)	The commenter encourages the CSA to adopt its "accreditation strategy" as part of the registration criteria for advisers. The commenter's "accreditation strategy" requires that financial advisers have a professional designation, adhere to a professional code of conduct, subscribe to practice standards, acquire appropriate continuing education credits, and maintain adequate errors and omission insurance coverage.	The CSA are working on uniform rules to harmonize the registration requirements across Canada. In the context of the uniform rules, the CSA will consider changes to the current proficiency requirements.
83.	**Registration requirement (s. 3.1)** Adviser registration (CIAMC)	The commenter urges the CSA to consider developing a national adviser registration system to avoid duplication and the costs associated with it.	Under the delegation or mutual reliance provisions of the USA, a registrant will only have to deal with one regulator. As a result, registrants will only have to file one set of documents and follow uniform registration requirements.
84.	**Registration requirement (s. 3.1)** Harmonization (RBC)	The commenter notes that the costs associated with registration are significant and are due in part to processing applications and renewals in various jurisdictions under varying requirements. The commenter urges the CSA to reject any local rules on registration matters and to take a uniform approach to registration, including categories and their requirements, registration-related definitions, and registration exemptions.	The CSA are working on uniform rules to harmonize the registration requirements across Canada. Jurisdictions will retain the ability to address unique local matters through local rules, but the CSA intend to enter into a protocol under which each jurisdiction will commit to raising potential local initiatives with its counterparts in the CSA to determine whether a pan-Canadian response is appropriate.

USA Part 3: Registration			
#	**Themes**	**Comments**	**Responses**
85.	**Registration requirement (s. 3.1)** Harmonization (IDA)	The commenter is of the view that differing registration requirements across Canada have impeded innovation in the industry. The commenter notes the CSA's commitment in the Concept Proposal to establishing a uniform regime for: categories of registration, processes for registration, renewal, and de-registration, obligations of registrants, and proficiency. The commenter notes that it cannot comment on whether these objectives will be satisfied because the uniform rule in which these topics would be covered has not been published. The commenter is particularly concerned that categories of registration, the registration and de-registration process, and solvency requirements be harmonized. The commenter reminds the CSA that the Concept Proposal stated that SRO member registrants would be exempted from statutory proficiency requirements if they comply with SRO requirements.	The CSA are working on uniform rules to harmonize the registration requirements across Canada. We intend to draft the uniform rules on registration to ensure that SRO participants that comply with SRO requirements generally do not also have to comply with the equivalent provisions of the uniform rules on registration.
86.	**Registration requirement (s. 3.1)** Harmonization (CIPF)	The commenter states that given its mandate - to protect the customers of SRO dealer members from insolvency - harmonized regulations affecting SRO dealer members and their clients would be very desirable. The commenter adds that the coverage it provides to customers of dealers is uniform. However, the commenter notes that the qualifying criteria for CIPF coverage are based on procedures having occurred in accordance with securities legislation. The commenter particularly encourages the CSA to harmonize the legislation relating to these qualifying criteria so that investors across Canada would be entitled to the same kind of coverage. The commenter raises a similar point respecting the importance of harmonizing solvency requirements and	See response to comment 85.

USA Part 3: Registration			
#	**Themes**	**Comments**	**Responses**
		ensuring that they do not conflict with the commenter's minimum standards that it prescribes for SRO dealers to apply to their members.	
87.	**Registration** Delegation of registration responsibility (IDA)	One commenter advises the CSA that it has proposed and remains open to assuming additional delegation of registration responsibility.	The CSA will be considering whether additional delegation of registration responsibility is advisable and, if so, to what extent.

USA Part 4: Prospectus Requirements			
	Themes	**Comments**	**Responses**
88.	**Exemptions from prospectus requirement** (IDA)	One commenter notes that Part 4 contemplates exemptions from the prospectus requirement. The commenter urges the CSA to achieve uniformity in these exemptions and notes that this is particularly important for small companies. The commenter notes that the CSA have made significant progress in harmonizing private placement rules but is of the view that the recent progress offers a greater benefit to larger public companies. The commenter believes that given the large number of exemptions and current differences in resale provisions, it will be difficult to achieve uniform prospectus exemptions.	The CSA recognize the importance of harmonizing existing prospectus and registration exemptions and have made the development of the Exemptions Rule a high priority. The CSA expect to publish the Exemptions Rule for comment later this year. This rule will consolidate, streamline and harmonize the existing prospectus and registration exemptions and will serve as the basis for a general exemption rule under Part 4 of the USA.

USA Part 4: Prospectus Requirements			
	Themes	**Comments**	**Responses**
89.	**Receipt for a prospectus (s. 4.6)** References to "preliminary prospectus" (Torys, Bennett Jones)	Two commenters find the provisions regarding issuance of a receipt confusing with respect to preliminary prospectuses. One commenter thinks that section 4.6 applies to both preliminary prospectuses and prospectuses and assumes the omission was unintentional. The other commenter suggests that references to a "preliminary prospectus" be added because, as drafted, Part 4 does not require the SRA to receipt a preliminary prospectus. By enabling the SRAs to refuse a receipt for a preliminary prospectus, the obligation in section 4.6 to issue a receipt for a final prospectus is ineffective.	Section 4.1 requires the issuance of receipts for both a preliminary prospectus and a prospectus. Receipts for a preliminary prospectus are virtually automatic. If the preliminary prospectus is subsequently found to be defective, section 4.3 permits the SRA to issue and maintain a cease trade order (without notice to the issuer) until an acceptable form of preliminary prospectus is filed. There is no reference to a preliminary receipt in section 4.6 because, unlike receipts for prospectuses, receipts for preliminary prospectuses are not issued on public interest grounds.
90.	**Receipt for a prospectus (s. 4.6)** (TSX Group)	One commenter suggests that the wording in section 4.6 may lead readers to assume that the issuance of a receipt is automatic. It is not clear that conditions may be prescribed in the rules as the only reference to this is in the provision's introductory wording "Except as otherwise prescribed".	The issuance of a receipt for a prospectus is not automatic. A receipt for a prospectus is issued unless there are public interest grounds not to issue the receipt. In keeping with the platform nature of the USA, the specific grounds for refusing a receipt, which are now typically set out in securities legislation, will be in the rules. This is also consistent with existing legislation in some jurisdictions.
91.	**Prospectus requirement (s. 4.1)** (TSX Group)	One commenter notes that the prospectus trigger has been recast in the USA. In current legislation, the prospectus requirement is generally triggered by a trade that constitutes a "distribution" whereas in the USA, the prospectus requirement provides that a person must not "distribute" a security. The commenter suggests that either the term "distribute" be defined or the requirement refer to a "distribution".	The CSA believe that section 1.5, which provides that defined words used in a different grammatical form take a meaning corresponding to their defined meaning, would result in the word "distribute" taking on the defined meaning of "distribution". The wording of this provision is also consistent with existing legislation in British Columbia.
92.	**Alternative prospectus requirements**	One commenter suggests that the intention behind section 4.1(c) (to accommodate a continuous market access or integrated disclosure system in the future) should be clarified by adding that the prescribed process would be	The CSA note that the USA is drafted to preserve maximum flexibility. The current wording of section 4.1(c) is in keeping with this and could accommodate future alternative offering systems based on things other than an issuer's continuous

USA Part 4: Prospectus Requirements			
	Themes	**Comments**	**Responses**
	(s. 4.1) (TSX Group)	based on an issuer's continuous disclosure record.	disclosure record.
93.	**Alternative prospectus requirements** **(s. 4.1)** (KPMG)	One commenter notes that Part 4 would accommodate future implementation of an integrated disclosure system and hopes that such a system will be adopted in future uniform rules.	The CSA appreciate the support expressed for implementation of an integrated disclosure system. In the short term, the CSA are contemplating amendments to make the current short form prospectus system available to more issuers.
94.	**References to the rules** (TSX Group)	One commenter suggests that terms such as "unless otherwise prescribed" or "prescribed contents" should refer to the rules to make it clear to readers that this is where the detailed requirements will be found.	The CSA note that the term "prescribed" is defined in section 1.2 to mean "prescribed in the rules". Using a defined term simplifies the drafting by avoiding repeated references to the various kinds of rules and regulations captured by that term. Please also see response to comment 17.
95.	**Cease trade powers re: preliminary and final prospectuses** **(s. 4.3)** (TSX Group)	One commenter questions why section 4.3 provides the SRA with the authority to cease trade a defective preliminary prospectus but does not include a similar power for a defective final prospectus. Current legislation contains both provisions.	The power in current legislation to cease trade a defective prospectus is in section 6.16(1)(c) of the SAA, but can only be exercised after a hearing. The power to cease trade a defective preliminary prospectus in section 4.3 of the USA can be exercised without a hearing and mirrors existing powers in jurisdictions like British Columbia, Alberta and Ontario. This is a power that the SRAs must be able to exercise without a hearing for the reason set out in the response to comment 89. It should therefore be retained in the prospectus provisions of the USA rather than in the general cease trade power in the SAA.
96.	**Lapse dates for mutual fund prospectuses** (BLG)	One commenter notes that the USA contains no requirements regarding lapse dates nor does the Commentary explain the CSA's intentions regarding lapse dates. The commenter notes the proposals in the February 2003 Joint Forum Consultation Paper on point of sale disclosure for segregated funds and mutual funds (Point of Sale Disclosure Project) and asks if the CSA will consider	While neither the USA nor the Commentary directly address the subject of prospectus lapse dates, the CSA envision that supporting uniform prospectus rules will deal with detailed prospectus requirements like lapse dates. Should the CSA propose changes to current prospectus requirements like lapse dates, interested parties will have the

USA Part 4: Prospectus Requirements			
	Themes	**Comments**	**Responses**
		Sale Disclosure Project) and asks if the CSA will consider allowing a mutual fund to use its prospectus for longer than a year without requiring a renewal.	opportunity to make their views and concerns known during the public comment phase of the rule-making process. As noted by the commenter, the public consultation on the Joint Forum Point of Sale Disclosure Project is well underway. In April 2004, the CSA published a summary of comments and responses together with a timeline for drafting rules to implement the proposals. Any changes to the disclosure documents required for mutual funds, including when these documents must be re-filed, will be addressed through the Point of Sale Disclosure Project and carried forward under the USL regime.

USA Part 5: Continuous Disclosure			
#	**Themes**	**Comments**	**Responses**
97.	**Continuous disclosure obligations** General (IDA, TSX Group, KPMG)	Three commenters expressed support for the continuous disclosure regime contemplated under the USL regime and the CSA's intention to "dovetail" the uniform rules with recently adopted continuous disclosure and investor confidence rules for issuers other than investment funds and the proposed continuous disclosure rule for investment funds.	The CSA acknowledge the expressions of support for the continuous disclosure regime contemplated under the USL regime.
98.	**Continuous disclosure obligations for non-reporting issuers (s. 4.1)** (Bennett Jones)	One commenter is troubled by the suggestion in section 5.1(2) that a private issuer could become subject to some level of continuous disclosure obligations. The commenter is of the view that it would be unfair to subject issuers who have chosen to remain private to anything resembling the continuous disclosure obligations applicable to reporting issuers.	The CSA believe there are circumstances under which issuers that are not reporting issuers in a Canadian jurisdiction should be subject to certain disclosure obligations. Currently, mutual funds organized in some jurisdictions are subject to disclosure obligations. Proposed NI 81-106 will continue to require mutual funds that are not reporting issuers to prepare and deliver financial statements to their security holders in some

USA Part 5: Continuous Disclosure			
#	**Themes**	**Comments**	**Responses**
		reporting issuers.	jurisdictions. Section 5.1(2) is necessary to provide sufficient flexibility to deal with these and other situations. It may, for example, be in the public interest to impose specific disclosure obligations on issuers that have reporting or disclosure obligations outside Canada. In any event, should the CSA propose to impose disclosure obligations on non-reporting issuers, issuers and other interested parties will have the opportunity to make their concerns or views known during the consultation and public comment phase of the rule-making process. Currently, the CSA do not intend to impose additional continuous disclosure obligations on issuers (other than mutual funds under NI 81-106 in some jurisdictions) that are not reporting issuers.
99.	**Review of disclosure (s. 5.2)** (Torys, Macleod Dixon, Talisman, Bennett Jones)	Four commenters are concerned about the scope of section 5.2 and suggest a number of limitations: • make this section subject to a threshold of reasonable cause before the SRA can review records • add safeguards into section 5.2 about how a review is initiated • build protections into section 5.2 for documents that may be confidential and privileged	Section 5.2 is intended to provide authority for routine compliance reviews of issuer disclosure. As a result, it would not be appropriate to make it subject to a reasonable cause threshold. The manner in which an SRA initiates a review under this provision is a matter of internal management. The commenter's concerns may be addressed in CSA Staff Notice 51-312 published July 16, 2004, which describes the harmonized continuous disclosure review program recently adopted by British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec and Nova Scotia. This staff notice provides issuers, investors and other market participants with information about the types of reviews conducted, how issuers are selected for review and how often they will be reviewed. On the issue of confidentiality, section 5.2(3) contains a provision that over-rides freedom of information legislation and is intended to protect the confidentiality of relevant information. We also point out that section 3.10 of the SAA would allow the SRA to adopt rules relating to documents held

USA Part 5: Continuous Disclosure			
#	**Themes**	**Comments**	**Responses**
			in confidence or disclosed to the public. On the issue of legal privilege, this is governed by common law and the rules of the governing bodies for lawyers in each of the jurisdictions in which the USA is to be enacted.
100.	**Information requests from market regulators** (RS Inc.)	The commenter notes that market regulators may have to impose a regulatory halt on trading to ensure dissemination of material information about a listed issuer. Currently market regulators have no jurisdiction or power to require issuers to comply with continuous or timely disclosure requirements. The commenter suggests that the CSA consider providing marketplaces and market regulators with the power to require issuers to comply with requests to disclose material information made by marketplaces or market regulators.	Additional research and analysis is required before these and other powers requested by recognized entities can be given to them by statute. This work is beyond the scope of the USL Project.

USA Part 6: Trade and Related Disclosure			
#	**Themes**	**Comments**	**Responses**
101.	**Application of insider reporting requirements to related financial instruments** (ISDA, CBA)	Two commenters suggest that the application of insider reporting laws (to related financial instruments) is justifiable so long as the definition (of security) does not include derivatives. As currently drafted, derivatives would be both a security and a related financial instrument. This overlapping of the two definitions creates uncertainty about the application of insider trading provisions and gives them an overly broad and far-reaching application. The commenters suggest that derivatives be excluded from the definition of "security" for the purpose of the insider reporting and trading laws.	The CSA do not agree that making the insider reporting requirements apply to related financial instruments is confusing or uncertain. The CSA note that the USA extends the insider reporting requirements to related financial instruments to address concerns that the current insider reporting requirements may not capture derivative-based transactions or arrangements relating to the securities of a reporting issuer, but created by third parties, including equity monetization transactions. The CSA believe that when insiders enter into these types of transactions or arrangements, they should disclose them. The CSA envision that the exemptions from insider reporting

USA Part 6: Trade and Related Disclosure			
#	**Themes**	**Comments**	**Responses**
			requirements currently contained in section 2.2 of Multilateral Instrument 55-103 *Insider Reporting for Certain Derivative Transactions (Equity Monetization)* (MI 55-103) will be carried forward in the supporting uniform rules. Because the definition of security is different in Manitoba and Ontario under the USA, insiders who engage in the type of derivative transactions or agreements contemplated under MI 55-103 would not be required to report these transactions in these jurisdictions without including related financial instruments specifically in the insider reporting provision. In the other jurisdictions, this reference is necessary because it captures a number of third party derivatives and other arrangements related to the securities of a reporting issuer. Finally, the CSA believe it is important to maintain uniform insider reporting requirements since these obligations are satisfied in all jurisdictions by a single electronic filing through SEDI.
102.	**Application of insider reporting requirements to related financial instruments** (RBC)	One commenter notes that requiring insiders to report on interests in related financial instruments would appear to broaden the scope of the current insider reporting regime by extending insider reporting obligations to "phantom shares" (units whose value is determined by reference to a share value but are settled in cash) under compensation plans. The commenter notes that compensation arrangements are exempted under MI 55-103. The commenter submits that it is inappropriate for the CSA to broaden current requirements through the USA initiative.	The CSA's intention is not to broaden current insider reporting requirements (see response to comment 101). As noted above, the CSA envision that the exemptions from the insider reporting requirements contained in section 2.2 of MI 55-103 will be carried forward in the supporting uniform rules. This will mean that "phantom shares" will generally be exempt from the insider reporting requirements of the USA, subject to certain conditions.
103.	**Control person advance notice**	One commenter supports the CSA's decision not to impose an advance notice requirement on control person	The CSA appreciates the expression of support.

USA Part 6: Trade and Related Disclosure			
#	**Themes**	**Comments**	**Responses**
	(Torys)	distributions made under a prospectus exemption.	
104.	**Deemed insider (s. 6.3)** (TSX Group)	A reference should be included to the effect that the opposite of the deeming provision in section 6.3 is also true, that directors and senior officers of the first reporting issuer will also be deemed to be insiders of the second reporting issuer.	The CSA are of the view that section 6.2 achieves the result suggested by the commenter.
105.	**Indirect beneficial ownership** (Bennett Jones)	One commenter questions whether the references to "indirect beneficial ownership" in Part 6 and in the definition of "insider" are necessary given the expanded notion of deemed beneficial ownership in section 1.12 of the USA.	The CSA believe that the references to indirect beneficial ownership in Part 6 should be retained, as section 1.12 is not exhaustive of the circumstances under which securities may be beneficially owned indirectly and the references are consistent with insider reporting requirements in existing securities legislation.
106.	**Insider reports (s. 6.4)** (Bennett Jones)	One commenter is of the view that section 6.4 of the USA should expressly state that a "nil" report is not required to be filed.	The CSA intend that an initial report be required only if the new insider has ownership, control or direction over the issuer's securities or a related financial instrument and will take this comment into consideration.
107.	**Application to investment funds** (BLG)	One commenter notes that mutual funds are excluded from Division 1 (insider reporting requirements). The commenter submits that all investment funds should be excluded.	The CSA note that the insider reporting requirements under current securities legislation generally only contain an exemption for reporting issuers that are mutual funds. Accordingly, the provision in the USA does not represent a change from the current insider reporting regime in this regard.

USA Part 7: Take-over Bids and Issuer Bids			
#	**Themes**	**Comments**	**Responses**
108.	**Application to direct and indirect offers (s. 7.2)** (TSX Group)	One commenter notes that section 7.2 appears to exclude dual class share structures. The commenter states that it requires listed issuers with dual class structures to include coattails in the share provisions of the restricted share class or to enter into a voting trust agreement. The commenter suggests that the CSA consider broadening the provision to apply to dual class structures.	This provision is consistent with existing securities legislation. The CSA also note that exchange requirements regarding "coattails" have generally accomplished their underlying objectives over the 17 years in which they have been in force.
109.	**Take-over bid rules** (Bennett Jones)	One commenter states that it is very important that the take-over bid rules to be developed under USA maintain the high degree of uniformity that currently exists and expresses concern that the use of broad rule-making authority under the USA may be difficult to coordinate. The commenter also states that changes to take-over bid rules make transaction structuring more costly and encourages the CSA to bear in mind the need for stability in this area in mind before making changes.	The CSA recognize the importance of maintaining the high degree of uniformity that currently exists in this area. As noted in the Commentary, detailed bid requirements currently found in the statute will be set out in a uniform rule under the USL regime. In the event that changes are proposed to the bid requirements, these proposals would be the subject of consultation during the public comment process under the rule-making procedures. The CSA note that it is easier to coordinate uniform rules across jurisdictions than it is to coordinate uniform legislation.

USA Part 8: Civil Liability - General			
#	**Themes**	**Comments**	**Responses**
110.	**Primary market liability** (IDA)	One commenter supports the proposed primary market liability regime, which is based on the existing regime.	The CSA acknowledge the expression of support.
111.	**Misrepresentation in a prospectus**	One commenter suggests that the following revisions to section 8.1(2) would make the provision clearer.	The CSA will consider the first commenter's suggested revisions to section 8.1(2) of the USA.

USA Part 8: Civil Liability - General			
#	**Themes**	**Comments**	**Responses**
	(s. 8.1) (Torys, Macleod Dixon)	If a prospectus contains a misrepresentation, a purchaser referred to in subsection (1) has a right of action for rescission against a person or underwriter referred to in subsection (1)(a) or (b) or another underwriter of the securities, in which case the purchaser has no right of action for damages against that person or underwriter under subsection (1). Another commenter suggests that the reference in section 8.1 to "a person who purchases a securities offered by the prospectus" and the reference in section 8.1(2) to the "purchaser" should be replaced by the words "a person who purchases from an underwriter a securities subject to the prospectus". In addition, the proposed wording is intended to make it clear that these sections only apply to the specific securities offered by the prospectus and not secondary market purchases of the same class of securities. Purchasers in the secondary market have separate rights. The same comment applies to s 8.2(2).	The CSA disagree with the suggestion of the second commenter. We do not intend to restrict the rights of action for damages under section 8.1(1) and for rescission under section 8.1(2) to someone who purchases a security offered by prospectus "from an underwriter". These rights of action for misrepresentation under a prospectus are intended to exist whether or not the purchaser purchased securities offered by the prospectus from an underwriter. However, we agree with the commenter that it is important to distinguish the rights under section 8.1 and 8.2 from the right of purchasers in the secondary market and we will consider whether we need to make other changes to these provisions to make this clear.
112.	**Misrepresentation in a prospectus** **(s. 8.1(1))** (CBA)	One commenter suggests that section 8.1(1) should stipulate that the misrepresentation must have been a misrepresentation at the time of purchase to be consistent with current securities legislation.	The CSA agree with the comment and will make the suggested change.
113.	**Proportionate liability** (CICA)	One commenter reiterates the comment it made on the Concept Proposal that liability in the primary market should be proportionate rather than joint and several. The commenter asks the CSA to reconsider proportionate liability in light of pending new law in some Australian states and territories which would implement proportionate liability for claims for economic loss.	The CSA do not propose to make the change suggested by the commenter. The CSA believe that changing the nature of the primary market civil liability regime from joint and several liability to proportionate liability would be a substantial policy change that falls outside the scope of the USL Project. Our reference in the Commentary to "updating Part 8" was to indicate that we are prepared to conform the terminology and

USA Part 8: Civil Liability - General			
#	**Themes**	**Comments**	**Responses**
		The commenter also notes that the Commentary stated that the CSA "will examine the possibility of updating Part 8."	drafting in Parts 8 and 9.
114.	**Forward-looking information (s. 8.1(5), s. 8.2(5) and s. 8.4(5))** (Macleod Dixon)	One commenter is of the view that the defence for forward-looking information in 8.1(5) will serve to perpetuate the current convention of including in a prospectus a detailed advisory statement detailing possible events that could give rise to a variation in the forward-looking information. The commenter suggests that the provision should instead mandate the inclusion of a short warning that there is no assurance the predicted results will be achieved. Liability should instead be based on whether the issuer had a reasonable and honest belief in the accuracy of the forward-looking information. The same comment applies to section 8.2(5) and 8.4(5).	The CSA believe that the defence should be available if the forward-looking information is accompanied by meaningful information to help a reasonable reader understand or assess the disclosure and its limitations. While a short warning might alert the reader to the possibility that the forward-looking information might prove to be wrong, it might not be an adequate defence in all circumstances.
115.	**Forward-looking information (s. 8.1(8))** (Macleod Dixon)	One commenter notes that the defence for forward-looking information is not available with respect to an IPO prospectus and suggests that this exclusion is unduly onerous.	The CSA note that this provision is modelled on the US safe harbours contained in section 27A of the *Securities Act of 1933* and section 21E of the *Securities Exchange Act of 1934* and on section 138.4(9) of the *Securities Act* (Ontario) (yet to be proclaimed into force). The CSA acknowledge the commenter's concern and recognize that it should be given further consideration.
116.	**Forward-looking information (s. 8.1(5), s. 8.2(5), s. 8.4(5) and s. 9.4(9))** Disclosure of material factors and assumptions	One commenter notes that the forward-looking information defences in Parts 8 and 9 differ from the counterpart provisions in US law in that they require additional disclosure of "material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection as reflected in the forward-looking information". The commenter submits that it is impractical and inappropriate to require this additional disclosure for information that does not fall within the definition of "FOFI" in National Policy Statement 48 *Future-Oriented*	The purpose of the disclosure required as a basis for invoking the defence is to endeavour to provide investors with useful information that can help them understand and assess the forward-looking information, and its limitations. We expect the materiality threshold to be applied sensibly, with that objective in view. If the disclosure ends up being different from the sort of lengthy boilerplate sometimes seen in US practice and criticized by another commenter, that may be a positive outcome.

USA Part 8: Civil Liability - General			
#	**Themes**	**Comments**	**Responses**
	factors and assumptions (Talisman)	*Financial Information* for the following reasons: • It would be difficult to supply disclosure of this nature in relation to non-FOFI. Consider the example of a production forecast, which may be based on many underlying assumptions as to production levels of each of the wells contributing to the overall production level. • Non-FOFI projections are not necessarily financial in nature, so knowing the material factors or assumptions underlying it would not necessarily be helpful to an investor. • Cautionary statements would become unduly long. The commenter also suggests that the CSA use the term "forward-looking statements" rather than "forward-looking information" so as to harmonize with US terminology.	Addressing the hypothetical situation posed by the commenter in the first bullet, if the factors and uncertainties pertaining to a forecast relating to a particular well are "material", then disclosure would, in our view, be appropriate. The CSA believe that it will be helpful to investors to know the material factors or assumptions underlying non-FOFI projections, even if these projections are not of a financial nature. The CSA do not propose to conform its terminology with the US.
117.	**Misrepresentation in a directors' circular (s. 8.4(2))** (Macleod Dixon)	One commenter questions whether section 8.4(2)(a)(i) should apply to directors who signed the certificate.	The CSA acknowledge the commenter's concern and recognize that it should be given further consideration.
118.	**Right of action for failure to deliver a prospectus, take-over bid circular or issuer bid circular (s. 8.6)**	One commenter questions whether the issuer (as well as the dealer or offeror) should be a potential defendant in the right of action for damages or rescission available to a purchaser to whom a prospectus or take-over bid document was not sent or delivered.	The issue raised by the commenter was considered in the development of the USA. The CSA concluded that a person's liability for failure to deliver should match the person's obligations under the legislation. The obligation to deliver a prospectus is imposed specifically on the dealer, whereas the delivery obligation for an offering memorandum (for which there might not be a dealer) rests with the issuer. The CSA

USA Part 8: Civil Liability - General			
#	**Themes**	**Comments**	**Responses**
	(Macleod Dixon)		believe that sections 8.6 and 8.7 are appropriate as written.
119.	**Primary market liability - Québec differences** (IFIC)	One commenter notes that the differences to the primary market civil liability regime contemplated in Québec as discussed in the Concept Proposal and the Commentary do not create uniform securities laws.	The CSA acknowledge the comment. We note that while Québec may have certain additional protections, the USA reflects a largely harmonized set of requirements across the country.

USA Part 9: Civil Liability for Secondary Market Disclosure			
#	**Themes**	**Comments**	**Responses**
120.	**Secondary market civil liability** (IDA, Torys, KPMG)	Three commenters support the proposed secondary market civil liability regime.	The CSA acknowledge the expressions of support.
121.	**Application of secondary market civil liability; definition of "responsible issuer" (s. 9.1)** (Patterson Palmer)	One commenter disagrees with the proposal to extend secondary market civil liability to non-reporting issuers if they have a real and substantial connection to the local jurisdiction and their securities are publicly traded. The commenter is of the view that it is inconsistent with the policy behind current legislation, which does not impose continuous disclosure obligations on non-reporting issuers. The commenter notes that a similar provision has already been passed by the Ontario legislature.	The comment raised has been considered thoroughly in the course of earlier consultation processes: those that culminated in the final report and recommendations of the Toronto Stock Exchange Committee on Corporate Disclosure (commonly referred to as the "Allen Report") issued in March 1997; the November 1997 CSA Request for Comment on proposed changes to the definitions of material change and material fact; and the May 1998 CSA Request for Comment on proposed legislative amendments to create a limited civil liability regime for investors in the secondary market. It was considered again in the process that led to the release, in November 2000, of the CSA recommendation for legislation very similar to proposed Part 9 of the USA.

USA Part 9: Civil Liability for Secondary Market Disclosure			
#	**Themes**	**Comments**	**Responses**
			Many issuers have securities that are publicly traded in jurisdictions where they are not reporting issuers. From a public policy perspective, the secondary market civil liability regime should be aimed at protecting all investors that purchase, hold, sell or redeem publicly traded securities, whether or not the issuer of those securities is a reporting issuer in the jurisdiction.
122.	**Liability limit** (CBA, RBC)	Two commenters disagree with the proposed upper liability limit for representations in an issuer's disclosure (the greater of $1 million or 5% of market capitalization) on the basis that it is excessive for large issuers and makes them vulnerable to US style strike suits.	The CSA do not propose to modify the damage caps. The comment has been considered in the course of earlier consultation processes: those that culminated in the Allen Report and again in the process that led to the release, in November, 2000, of the CSA recommendation for legislation very similar to proposed Part 9 of the USA. The commenters in this case, and in the earlier consultations, are concerned about the abusive practice sometimes seen in the US in which plaintiffs or plaintiff lawyers launch meritless class action suits against issuers with a view either to winning a sizeable jury award or, more often, a coerced settlement payment from the innocent issuer. Such "strike suits" are, in the view of the CSA, undesirable. However, the CSA remain of the view that the scheme in Part 9 represents a reasonable balancing of the competing interests of investors and issuers. The liability caps are designed to make it worthwhile for a plaintiff to undertake an action, while reflecting the issuer's ability to pay and recognizing that the non-plaintiff shareholders ultimately bear the economic burden of providing compensation. In order to limit the possibility of strike suits, the CSA have built in a range of procedural safeguards that are not present in the US, including: judicial pre-screening of claims to ascertain whether the action is brought in good faith and there is a

USA Part 9: Civil Liability for Secondary Market Disclosure			
#	**Themes**	**Comments**	**Responses**
			reasonable prospect of success; the need for judicial approval of settlements; the apportioning of damages based on each defendant's share of responsibility and the prospect of costs being awarded against unsuccessful claimants. These safeguards will reduce the risk of abusive strike suits occurring in Canada.
123.	**Auditor's review, report or comment on unaudited interim financial information** (CICA)	One commenter recommends that the USA define the term "report, statement or opinion" so as to expressly exclude a review, report or other comment of an auditor on unaudited interim financial information. The commenter emphasizes the difference between a report on financial statements prepared by an auditor on the basis of an audit (an audit report) and a communication expressing a view on interim financial statements on the basis of very limited review and without benefit of an audit. The commenter is concerned that the latter type of communication could attract liability under Part 9, and urges that this be avoided by excluding these communications from the term "report, statement or opinion of the expert". The commenter alluded to a provision in US law that has the effect of excluding reports on unaudited interim financial information from the US equivalent of a prospectus "prepared or certified by an accountant".	The CSA do not propose to make the suggested change. While it is possible that a review of interim financial statements could attract liability under Part 9, we believe that the right balance has been struck. In this regard, we note that if a responsible issuer discloses a review report, a claimant in an action under Part 9 would bear the burden of demonstrating that the review report expressing a view on the interim financial statements contains a misrepresentation. The claimant would have to show that the auditor had consented in writing to the responsible issuer's use of the review report. Only if the claimant proves both the misrepresentation and that the auditor has given written consent could the auditor be exposed to liability for a misrepresentation in that review report under Part 9. Even then, the auditor could show the exercise of due diligence in the preparation of its review report.
124.	**Liability limit for experts who are employees of the issuer** (Talisman)	One commenter notes the proposed liability limit for experts is significantly higher than the limit proposed for directors and officers of the issuer. The commenter notes that under NI 51-101 *Standards of Disclosure for Oil and Gas Activities* (NI 51-101), issuers have internal qualified reserves evaluators who certify required disclosure under NI 51-101 but who are employees of the issuer, and that	The CSA disagree that in-house experts should have any less potential liability than experts who are independent of the issuer We also disagree that in-house experts should not have more potential liability than their superiors. Experts have a different liability limit because their business or profession lends more authority to the statements they make in their professional capacity. Accordingly, this higher degree of reliance on what

USA Part 9: Civil Liability for Secondary Market Disclosure			
#	**Themes**	**Comments**	**Responses**
		the ASC has taken the view that these people are experts for securities laws purposes. The commenter suggests that it is inappropriate that employees who qualify as "experts" and prepare reports on behalf of a responsible issuer have greater potential liability than their superiors. The commenter recommends that the draft legislation should be amended so that the liability limit for an expert who is an employee of an issuer is not greater than that of the directors and officers of the issuer.	experts report warrants a corresponding greater exposure for their misrepresentations. Also see responses to comments 122 and 123 for further details.
125.	**"Compensation" (s. 9.1)** (Bennett Jones)	One commenter thinks that the definition of "compensation" in section 9.1 should be calculated on an after-tax basis.	The CSA disagree with the comment. Compensation is used in computing the damages cap applicable to certain defendants. In effect, their potential exposure for claims relating to disclosure for which they bear responsibility is a function of how much they extracted from their association with the responsible issuer. Whether or to what extent the amounts paid by the responsible issuer were subject to other third-party claims against the expert (income taxes, claims of creditors, remuneration of employees) is not, in our view, relevant for that purpose.
126.	**Statutory rights of action vs. common law** (Bennett Jones)	One commenter notes that Part 9 removes the common law obstacles to a finding of liability against an accountant established in *Hercules Management Limited v. Ernst & Young*, [1997] 2 S.C.R. 165 (S.C.C.). The commenter is concerned that the proposed approach will give rise to actions against accountants where there has been no reliance on an alleged error and increased audit fees commensurate with the additional risk will result.	This issue was considered throughout the course of consultations on proposals for secondary civil market liability. The CSA remain of the view that Part 9 appropriately balances the interests of investors and others. See responses to comments 122 and 123 for a description of the safeguards contained in the USA.
127.	**Multiple misrepresentations (s. 9.3)**	One commenter questions whether multiple misrepresentations having a common subject matter or content will be treated as a single misrepresentation or as multiple misrepresentations.	Section 9.3(6) expressly authorizes a court to treat multiple misrepresentations as a single misrepresentation if they share common content or subject matter. This could be the case if a single lapse resulted in a misstatement being repeated several times in one document or in several documents released by a

USA Part 9: Civil Liability for Secondary Market Disclosure			
#	**Themes**	**Comments**	**Responses**
	(Bennett Jones)		responsible issuer. In these circumstances, a court would have the discretion, under section 9.3(6), to treat the multiple misrepresentations as a single misrepresentation.
128.	**Implied authority** (Bennett Jones)	One commenter queries whether it is necessary to include "implied" authority in Part 9.	The reference to "implied" authority is designed to make clear that Part 9 applies if disclosure is released with the issuer's implicit authorization. In that case, the CSA believe that the issuer should take the same care with the disclosure as if it had been released under some sort of formal express authorization.
129.	**Liability for failure to make timely disclosure (s. 9.3(4))** (Bennett Jones)	One commenter states that the imposition of liability for failure to file material change reports is difficult to reconcile with NP 51-201, which recognizes that determinations of materiality are intensely subjective and often difficult to make.	The CSA acknowledge that an assessment of materiality and the timing of a material change can involve matters of judgment, but this does not diminish the importance of timely disclosure of material changes. Investors have the right to expect, when they make an investment decision, that material change disclosure required to be made has in fact been made. The CSA do recognize, however, the need to balance the demands placed on issuers and the expectations of investors. In this regard, we note that Part 9 provides a specific defence if a material change report is filed on a confidential basis. See responses to comments 122 and 123 for a description of the safeguards contained in the USA.
130.	**Leave to proceed (s. 9.8)** (Bennett Jones)	One commenter notes that the "reasonable possibility of success" standard for leave has never been used before in Canada. The commenter queries whether it would be appropriate to use an established standard such as the "real chance of success" standard (used for opposing summary judgments).	The commenter is referring to one of the procedural safeguards designed to prevent abusive litigation under Part 9. The standard that a plaintiff must meet before proceeding with an action is meant to screen out frivolous actions or those whose merits are so limited that ultimate success is not reasonably to be expected. To allow such actions to proceed would, the CSA believe, impose an unjustified burden on defendants – the very burden that in the US sometimes leads to coerced settlements. The purpose of the test for commencing an action is different from the purpose of the test for opposing summary judgments so it is not appropriate for the tests be the same. We believe

USA Part 9: Civil Liability for Secondary Market Disclosure			
#	**Themes**	**Comments**	**Responses**
			that the test set out in section 9.8(2)(b) is the right one.
131.	**Defences** (Bennett Jones)	One commenter states that it would be appropriate to include as an additional defence that the document containing a misrepresentation was not prepared by or under the control or direction of the issuer, but was nonetheless required to be filed by or on behalf of the issuer. This defence would be useful in the context of Business Acquisition Reports required under NI 51-102, where the issuer is required to file historical financial statements prepared by the target.	The CSA do not agree with the suggestion. The CSA believe that the change suggested would be inconsistent with the objective of ensuring that disclosure made by issuers – mandatory or voluntary – is reliable. A better solution, we believe, would be for an issuer to ensure that its internal disclosure control processes allow for the prior identification (and, if possible, the correction) of apparent problems with third-party-sourced disclosure before it is released. If the issuer is still concerned, the issuer should add information about the origins of the disclosure and useful explanations or cautions that diminish the prospect of a reader being misled. We also note that section 9.4(16) provides a defence if the misrepresentation was also contained in a document filed with an SRA by or on behalf of another person and was not corrected before the release of the document by the issuer.
132.	**Security for costs (s. 9.11)** (Bennett Jones)	One commenter states that it would be appropriate to expressly authorize the court to require a plaintiff to post security for costs in section 9.11.	The CSA considered this but concluded that it is more appropriate to leave this issue to the discretion of the courts. The courts have, and use, discretion to order security for costs in appropriate cases. We believe that the courts are in the best position to make that assessment.

USA Part 10: Inter-jurisdictional Arrangements and Immunity			
#	**Themes**	**Comments**	**Responses**
133.	**Inter-jurisdictional arrangements**	One commenter supports the inclusion of the provisions allowing inter-jurisdictional arrangements including those which allow the SRA to adopt or incorporate the laws of	The CSA acknowledge the expression of support. The CSA are committed to improving the current regulatory system and believe that inter-jurisdictional arrangements are an important

USA Part 10: Inter-jurisdictional Arrangements and Immunity			
#	Themes	Comments	Responses
	(IDA)	another SRA or foreign regulator, accept compliance with another SRA's laws, and deem compliance with another SRA's laws to equal compliance with local laws. The commenter is concerned, however, that delegation is optional and that provinces may not actually take advantage of this provision. The commenter notes that it is an open question whether individual jurisdictions will relinquish jurisdiction, the criteria under which they would be prepared to do so, and how quickly a delegation system could be put in place. The commenter suggests that delegation should be done at a ministerial level, and once a delegation is made it should only be capable of revocation by the responsible minister.	mechanism to achieve that goal. The CSA agree that it will be important to ensure that the delegation model provides a stable regulatory framework. However, the CSA note that the purpose of Part 10 of the USA is to establish the statutory authority necessary to implement a delegation or mutual recognition model. The detailed workings of the inter-jurisdictional arrangements, including terms of delegation, will be developed outside of the USA.
134.	**Inter-jurisdictional Arrangements** (Torys, TSX Group, MFDA)	The commenters support the provisions in Part 10.	The CSA acknowledge the comment.
135.	**Importance of uniform laws to inter-jurisdictional arrangements** (ACPM)	One commenter is of the view that section 10.5, which allows inter-jurisdictional arrangements to be entered into respecting the administration of a decision of the SRA, could result in the creation of SRAs that act on behalf of multiple provinces or territories. These multi-provincial SRAs could then enact rules that are not as strict as those in other jurisdictions and this variance in rules could create regulatory competition, which could undermine the ultimate goal of harmonization. While the commenter acknowledges that regulatory competition could occur now between individual provincial SRAs, the ability to create multi-provincial SRAs would result in a broader market for each multi-provincial SRA that would magnify	The CSA believe that the maintenance of uniform legislation and rules is important to the success of inter-jurisdictional arrangements but recognize that there must also be scope for local rules to encourage innovation. The CSA intend to enter into protocols to ensure that the SRAs coordinate changes to securities laws. We will also address inter-jurisdictional arrangements outside of the USA.

USA Part 10: Inter-jurisdictional Arrangements and Immunity			
#	**Themes**	**Comments**	**Responses**
		the problem.	
136.	**Immunity for recognized entities** (TSX Group, IDA, MFDA, RS Inc.)	One commenter supports the granting of statutory immunity to recognized entities in respect of delegated functions. Three commenters disagree with the fact that the USA grants recognized entities immunity only in connection with delegated functions (i.e. registration powers). The commenters are of the view that immunity should be extended to all activities of recognized entities.	The CSA believe it is appropriate to grant recognized entities statutory immunity for acts they perform in good faith under delegated powers. However, additional research and analysis is required before the immunity provision can be extended to all regulatory actions of recognized entities. This work is beyond the scope of the USL Project.

USA Part 11: Decisions and Rule-Making Authority			
#	**Themes**	**Comments**	**Responses**
137.	**Blanket orders (s. 11.1)** (Torys)	One commenter agrees that the power to make blanket exemption orders in section 11.1(1)(b) is a useful power, but suggests that the power be limited to prevent it from being used as an alternative to the rule-making process. As for possible limitations, the commenter suggests requiring those who make the order to state that it does not constitute rule-making or policy-making or that the purpose of the order is to correct technical errors or achieve uniformity.	The power to make blanket orders exists in the current legislation of many jurisdictions. The USA will retain this authority, which provides a flexible mechanism for responding quickly to market needs.
138.	**General exempting authority (s. 11.2)** (IDA)	One commenter supports the consolidation of variously worded exemptions into one general authority to exempt persons or companies from securities laws requirements.	The CSA thank the commenter for the expression of support.

USA Part 11: Decisions and Rule-Making Authority			
#	**Themes**	**Comments**	**Responses**
139.	**General exempting authority (s. 11.2)** (Bennett Jones)	The commenter states that the exempting authority should permit exemption orders to be made on a retroactive basis.	The CSA acknowledge the comment and will consider the comment further.
140.	**Rule-making authority (s. 11.3)** (IDA)	One commenter is supportive of SRAs having rule-making authority but cautions that rules should be subject to government oversight and should be developed through a transparent process that adheres to established timelines.	The CSA note that the Consultation Drafts do not contemplate any changes to current rule-making procedures.
141.	**Rule-making authority (s. 11.3)** (BLG)	One commenter notes that the USA and SAA are silent on rule-making procedure but that the OSC indicated it intends to retain its rule-making procedures. The commenter supports the OSC position and submits that rule-making procedures should be made uniform with Ontario's procedure since it contemplates complete transparency in the rule-making process.	Currently, the rule-making procedures are different in each jurisdiction and reflect each government's views of the level of transparency, oversight and accountability necessary for making rules. Under the USL regime, each jurisdiction will continue to have rule-making procedures that meet the standards of its government.
142.	**Rule-making authority (s. 11.3)** (IFIC)	One commenter states that it is imperative that the SRAs' rule-making authority be subject to provincial and territorial government approval.	As noted above, each jurisdiction will continue to have rule-making procedures that reflect its government's views of the appropriate levels of transparency, oversight and accountability.
143.	**Scope of rule-making authorities (s. 11.3)** Relation to straight through processing	The commenter notes that the USA contains authority to make one set of rules respecting clearing and settlement governing all market participants and issuers. This is a significant improvement from the current situation where no single self-regulatory organization or clearing agency has clearing and settlement rules governing all market	The CSA thank the commenter for the expression of support.

USA Part 11: Decisions and Rule-Making Authority			
#	**Themes**	**Comments**	**Responses**
	(CCMA)	participants and issuers.	
144.	**Rule-making heads of authority (s. 11.3)** Clearing and settlement (CCMA)	The commenter has reviewed the rule-making heads of authority and is pleased to see that there is, in its view, adequate authority to make rules on three matters of importance to the commenter's mandate: • requiring corporate issuers to pay entitlements to a recognized clearing agency/depository in final form through the Large Value Transfer System, • clearing and settlement of trades of securities by trade date plus one day, and • timely reporting by issuers of entitlement events to a central repository.	The CSA thank the commenter for the expression of support.
145.	**Rule-making heads of authority (s. 11.3)** Civil liability, governance (IFIC, Bennett Jones)	Two commenters state that it is inappropriate for SRAs to have rule-making authority over issues such as civil liability and governance. One commenter believes that these areas should be subject to direct government oversight and public consultation. The other commenter believes that securities laws should be confined to matters of disclosure.	The CSA do not agree with the comments. We believe that it is appropriate to deal with these matters in a timely and coordinated fashion under rule-making authority, which includes a process of public consultation. The heads of rule-making authority pertinent to proposed Part 9 of the USA deal with technical matters, notably: the specification of certain types of documents as "core documents"; the computation of "market capitalization" (relevant to the determination of the liability cap of a responsible issuer or influential person); and the specification of types of transactions to which Part 9 would not apply. The heads of rule-making authority on governance are intended to harmonize and consolidate existing heads of rule-making authority.

USA Part 11: Decisions and Rule-Making Authority			
#	**Themes**	**Comments**	**Responses**
146.	**Rule-making heads of authority** **(s. 11.3)** Take-over bids and issuer bids (Bennett Jones)	The commenter notes that rule-making authority with respect to take-over bids and issuer bids includes the right to make rules respecting the rights and responsibilities of the directors and officers of an offeree issuer. To the extent that these rights and responsibilities extend to corporate law fiduciary duties, the commenter believes the authority of SRAs is being expanded into areas that are traditionally the purview of the courts. The commenter recommends that fiduciary obligations remain under corporate statutes and that SRAs regulate disclosure and only intervene where required by the public interest.	In fulfilling its responsibilities to foster efficient capital markets and confidence in those markets, the CSA may find it necessary to make rules that extend beyond the corporate law requirements that apply to directors and officers in the context of a take-over bid or issuer bid. The CSA also note that the fiduciary duties required of directors and officers under corporate law do not necessarily apply to persons holding equivalent positions with non-corporate entities such as income trusts.
147.	**Rule-making heads of authority** **(s. 11.3)** (Bennett Jones)	The commenter states that SRAs should have the rule-making authority to designate derivatives traded in the over-the-counter market not to be securities.	Under section 1.7(1)(d) an SRA may designate (by order or rule) a right, obligation, instrument or interest not to be a derivative. Since the definition of "security" includes a derivative, a designation under section 1.7(1)(d) will have the effect the commenter is looking for.
148.	**Rule-making heads of authority** **(s. 11.3)** Investment funds (BLG)	The commenter notes generally that the rule-making heads of authority are broader than the present authorities in Ontario. The commenter is concerned, particularly from the perspective of investment funds, that broader authorities are proposed. The commenter states that the CSA should signal its intentions regarding mutual fund and investment fund regulation.	The CSA note that the heads of rule-making authority in the USA are intended to harmonize and consolidate existing heads of rule-making authority from all jurisdictions. We point out, however, that the heads of rule-making authority must be read in the context of the legislation and must be related to the overall purpose of the legislation. The CSA will continue to make its intentions known about investment fund regulation through vehicles like CSA notices, concept papers, requests for comment and stakeholder consultations.
149.	**Rule-making heads of authority**	The commenter asks whether the head of authority to vary or remove a withdrawal right in section 11.3(4)(xi) will apply to mutual funds.	The CSA could make a rule to vary or remove a withdrawal right for mutual funds under this head of rule-making authority. Whether the CSA makes a rule will depend on the outcome of

USA Part 11: Decisions and Rule-Making Authority			
#	Themes	Comments	Responses
	(s. 11.3) Investment funds (BLG)	apply to mutual funds.	policy work related to the Point of Sale Disclosure Project.
150.	**Rule-making heads of authority** **(s. 11.3)** Investment funds (BLG)	One commenter notes that in item 20 of section 11.3, dealing with investment funds, the words funds or fund are used but not defined in existing securities legislation. The commenter suggests that new terms will be open to different interpretations and should be tightened up or separately defined.	In the context of this provision, it is clear that the references to fund or funds is to investment funds.
151.	**Rule-making heads of authority** **(s. 11.3)** Commodity pools (IFIC, BLG)	Two commenters note that commodity pools and labour sponsored investment funds are considered investment funds and do not understand why specific heads of authority pertaining to them are necessary. The commenter instead suggests ensuring that rule-making powers under "investment funds" are broad enough to catch all possible rule-making initiatives regarding investment funds.	The heads of authority are intended to harmonize and consolidate existing heads of rule-making authority. The CSA acknowledge that the heads of rule-making authority for investment funds apply equally to labour sponsored investment funds and commodity pools. Section 11.3 includes additional heads of authority to provide a basis for current rules for these types of funds. However, we will consider if we can simplify the heads of rule-making authority in this area.
152.	**Rule-making heads of authority** **(s. 11.3)** Investment funds (BLG)	The commenter notes that the rule-making authority regarding investment clubs permits the CSA to make rules to designate "mutual funds" as "investment clubs" (see item 20(viii) of section 11.3). The commenter asks why this authority is needed and why it is restricted to mutual funds rather than investment funds.	The heads of authority are intended to harmonize and consolidate existing heads of rule-making authority. Under current legislation, some jurisdictions have the authority to make rules designating mutual funds as private mutual funds and a private mutual fund includes, in part, a mutual fund operated as an investment club. Since the concept of private mutual fund does not exist in the USA, section 11.3 gives the SRA the power to designate a mutual fund as an investment club. The final wording may change as we further refine the references to mutual funds and investment funds.

USA Part 11: Decisions and Rule-Making Authority			
#	**Themes**	**Comments**	**Responses**
153.	**Rule-making heads of authority** **(s. 11.3)** Investment funds (BLG)	In section 11.3, item 20 (ix), the commenter asks why the CSA have retained rule-making authority regarding "contractual plans" without defining what is meant by this term.	The heads of authority are intended to harmonize and consolidate existing heads of rule-making authority. Section 11.3(61) provides that terms used in rules can be defined in the rules. The CSA will consider defining this term in the uniform rules on investment funds under the USL regime.
154.	**Rule-making heads of authority** **(s. 11.3)** Investment funds (BLG)	The commenter asks who "persons who administer or participate in the administration of the affairs" of investment funds are in item 20 (xii) of section 11.3 and whether they are different from investment fund managers.	The CSA have adopted a function-based approach to drafting rule-making heads of authority to provide maximum flexibility. The introductory wording in the heads of authority is intentionally broad since specific heads of rule-making authority may not anticipate every matter for which a rule might be necessary. In item 20, this phrase is intended to refer to investment fund managers and other persons providing similar administrative services to investment funds. However, the CSA will consider using similar language to describe this concept in all relevant rule-making heads of authority.
155.	**Rule-making heads of authority** **(s. 11.3)** (BLG)	The commenter asks who "persons who are not entirely independent" of the investment fund are in section 11.3, item 20(xiv), and whether this reference would include persons who are not entirely independent of the fund manager.	Given the unique nature of investment fund management and distribution, the CSA may wish to regulate transactions with parties not independent from the investment fund manager. This head of authority has been drafted broadly to provide the necessary authority to regulate those transactions.
156.	**Rule-making heads of authority** **(s. 11.3)** Investment funds (BLG)	The commenter asks what are the "operating rules respecting management, stewardship, safekeeping and composition of assets of investment funds" in item 20 (xiii) of section 11.3 and how these rules would differ from the rules made under item 20 (iv)(xii) and (xvi) of section11.3.	The heads of authority are intended to harmonize and consolidate existing rule-making authorities. The CSA believe that each of the items mentioned in the comment reflect a distinct area of regulation. In particular, item 20 (xiii) focuses on the custodianship of an investment fund's assets while item 20(iv) focuses on the calculation of its net asset value, item 20(xii) focuses on imposing requirements on its portfolio advisers, promoters and administrators, and item 20 (xvi) focuses on criteria to permit a person to act as a portfolio

USA Part 11: Decisions and Rule-Making Authority			
#	**Themes**	**Comments**	**Responses**
			adviser.
157.	**Rule-making heads of authority (s. 11.3)** Investment funds (BLG)	The commenter notes that "investment fund manager" is a defined term in the USA, yet the rule-making authorities refer to a "person responsible for the management of an investment fund". The commenter asks whether the latter phrase refers to something different than the defined term.	The CSA have taken a function-based approach to drafting rule-making heads of authority to provide maximum flexibility. The introductory wording in the heads of authority is intentionally broad since specific heads of rule-making authority may not anticipate every matter for which a rule might be necessary. This phrase is intended to refer to investment fund managers and any other persons providing similar services to investment funds. However, the CSA will consider using similar language to describe this concept in all relevant rule-making heads of authority.
158.	**Rule-making heads of authority (s. 11.3)** Investment funds (BLG)	The commenter notes item 20(xviii) of section 11.3 refers to conflicts of interest between security holders of an investment fund and the investment fund manager. Conflicts provisions in securities legislation and proposed National Instrument 81-107 *Independent Review Committee for Mutual Funds* refer to conflicts between the fund manager and the best interests of the fund. This refers to fiduciary duties owed to security holders on a collective basis but not to individual security holders. The words "security holders of an investment fund" in the rule-making authority adds an element of uncertainty.	The CSA will review the rule-making authority to remove any ambiguity.
159.	**Rule-making heads of authority (s. 11.3)** Investment funds (BLG)	The commenter asks whether the independent governance agency referred to in item 20 (xvii) of section 11.3 refers to an independent governance agency for the funds.	Yes it does.

USA Part 11: Decisions and Rule-Making Authority			
#	**Themes**	**Comments**	**Responses**
160.	**Rule-making heads of authority** **(s. 11.3)** Investment funds (BLG)	The commenter asks what is meant by item 20 (xxiii), of section 11.3, which provides for rule-making authority in relation to the fees payable by an issuer to an adviser as consideration for investment advice.	This head of authority permits SRAs to make rules governing fees payable to an adviser for advisory services and is based on an existing rule-making head of authority in Ontario securities legislation.
161.	**Rule-making heads of authority** **(s. 11.3)** Investment funds (BLG)	The commenter states that investment funds should be excluded from the rule-making authorities in relation to governance issues under item 29 because the rule-making authorities under item 20 deal with investment fund governance.	The CSA will take this comment into consideration.
162.	**Basket rule-making authority** **(s. 11.3(63))** (Torys, BLG, Advocis)	Two commenters submit that the basket head of authority to make rules contained in item 63 of section 11.3 is inappropriate and unnecessary in light of the breadth and extent of the other rule-making authorities in section 11.3. Another commenter is concerned that rule-making authority in general, and the basket head of rule-making authority in particular, are overly broad powers that may promote a move away from harmonization and should be subject to some limits.	The general rule-making authority in item 63 of section 11.3 links "any matter" to the "purposes of this Act". Accordingly, any "matter" that becomes the subject matter of a rule must be linked to the "purposes of the Act". A general rule-making authority is usually placed in a statute since specific rule-making authorities may not cover every matter that may be the subject matter of rules. The CSA note that the basket head of rule-making authority in the USA is modelled on the current legislation in Alberta.

USA Part 12: Prohibitions, Duties, Offences and Penalties			
#	**Themes**	**Comments**	**Responses**

USA Part 12: Prohibitions, Duties, Offences and Penalties			
#	Themes	Comments	Responses
163.	**Misrepresentations prohibited (s. 12.1)** (Macleod Dixon, DWPV, Bennett Jones)	Three commenters find section 12.1 too broad and suggest that it should be limited to a specific context such as misrepresentations in connection with or pursuant to securities laws, or to misrepresentations in disclosure documents.	The CSA acknowledge the commenters' concerns and recognize that they should be given further consideration.
164.	**Representations while involved in investor-relations activities and trading (s. 12.2)** (Credit Union Central of Saskatchewan)	The commenter is concerned that the prohibition in section 12.2 (prohibiting a person from representing that the person or another person will resell or repurchase a security or refund all or any of the purchase price) could affect the purchase and resale of cooperative and credit union securities, which are currently issued on an exempt basis.	Section 12.2(2) of the USA provides an exemption from the prohibition in section 12.2(1) for a security that carries an obligation of the issuer to redeem or repurchase the security or a right of the owner to require the issuer to redeem or repurchase the security. The prohibition and exemption exist in current securities legislation in some jurisdictions.
165.	**Representations while involved in investor-relations activities and trading (s. 12.2)** (TSX Group)	The commenter supports the prohibition against false or inaccurate exchange listing representations. The commenter notes that this prohibition is similar to one of its policies and it will continue to maintain consistency between its policy and this prohibition.	The CSA thank the commenter for the expression of support.
166.	**Representations while involved in investor-relations activities and trading (s. 12.2)** (Bennett Jones)	Section 12.2, which prohibits representing that securities will be resold or repurchased, giving an undertaking relating to future price, and making representations as to whether a security will be listed, should expressly permit an issuer to provide investors with a general timeline respecting liquidity events (including a public listing) without violating securities laws.	The CSA do not agree. This provision is consistent with current legislation that requires the issuer to obtain the regulator's permission to make statements about the listing of its securities.

USA Part 12: Prohibitions, Duties, Offences and Penalties			
#	**Themes**	**Comments**	**Responses**
167.	**Prohibition on unfair practices (s. 12.6)** (DWPV, IFIC, Bennett Jones)	Three commenters disagree with the prohibition on unfair practices. One notes that the prohibition on engaging in unfair practices represents a fundamental change in Canadian law that is undesirable and beyond the CSA's mandate in developing uniform securities laws. One commenter took particular issue with the definition of "unfair practices". The commenter finds it sweeping and vague. The commenter predicts that the term will result in the imposition of a duty on all parties to any transaction involving the purchase or sale of securities to act in good faith and contract only on "fair" terms, which is problematic because the object of negotiations in a commercial context is for each party to gain at the other's expense. It would also impose on courts the function of examining the fairness of contracts. It could also encourage a multiplicity of lawsuits. One commenter finds the term "harsh and oppressive" vague and ambiguous and notes that there is no judicial interpretation of it. The commenter suggests that guidance be provided to the circumstances that may be considered harsh and oppressive. The third commenter also expressed the view that the prohibition on unfair practices would be a fundamental and unnecessary change in current law. The commenter states that "unfair practice" is defined in an open-ended manner and would impose an obligation of good-faith negotiations in a pre-contract setting. This would impose profound restrictions on accepted negotiation tactics. The commenter also is of the view that the items comprising an "unfair practice" are generally covered by common law or by equitable doctrines such as "unconscionability", but	The CSA do not agree. The prohibition and definition of unfair practices in section 12.6 are consistent with similar provisions in current securities legislation in some jurisdictions. The Concept Proposal specifically identified that the prohibition on engaging in unfair practices exists in some jurisdictions and would be added to the USA.

USA Part 12: Prohibitions, Duties, Offences and Penalties			
#	**Themes**	**Comments**	**Responses**
		these doctrines can only be invoked in extreme and well-known circumstances. Finally, the commenter states that the point of commercial negotiations is to maximize position, and this often occurs at the expense of the other party. As drafted, section 12.6 could be used by a party less skilled at negotiations to remedy the defects of its negotiating strategy.	
168.	**False or misleading statements prohibited (s. 12.7)** (Macleod Dixon)	One commenter objects to section 12.7, which prohibits making a false or misleading statement or providing information or records to the SRA that is false or misleading or that omits to state a fact that is either required to be stated by securities laws or necessary to be stated so that the statement, information or record is not false or misleading. The commenter objects to section 12.7 because there is no prescribed standard of disclosure for many of the discussions or documents to which this section would apply.	The CSA do not agree. There are already similar provisions in current securities legislation in some jurisdictions.
169.	**False or misleading statements (s. 12.7)** (Bennett Jones)	The prohibition on making false or misleading statements (section 12.7) applies to "records". The definition of record is very broad and includes records that an issuer might have inherited from a prior transaction and had no control over. Since the record production provisions require issuers to produce documents to an SRA, it is oppressive to suggest that a person who complies with a document production order would be guilty of an offence where the current issuer did not create the document in question.	Please see response to comment 168.
170.	**Fraud and market manipulation**	The prohibition against fraud and market manipulation should be subject to a knowledge requirement.	The CSA acknowledge the commenter's concern and recognize that it should be given further consideration.

USA Part 12: Prohibitions, Duties, Offences and Penalties			
#	Themes	Comments	Responses
	(s. 12.8) (Bennett Jones)		
171.	**Exemptions from tipping, trading and procuring prohibitions** **(s. 12.12)** (Bennett Jones)	One commenter states that the insider trading regime should expressly permit what are colloquially known as "big boy" letters to be exchanged between the parties to a trade and that a trade made subject to the appropriate warnings should not give rise to liability on the part of the selling shareholder. The commenter suggests that this exemption should be built into Part 6 and section 12.12.	The CSA do not agree with the comment. The suggested changes would result in a change to the existing insider trading prohibitions.
172.	**Withholding and destroying information and hindering** **(s. 12.13)** (IDA)	The prohibition on hindering or interfering with an SRA in the performance of its duties in section 12.13(2) of the draft legislation should apply to recognized entities as well.	Additional research and analysis is required before this prohibition can be made to apply to recognized entities. This work is beyond the scope of the USL Project.
173.	**Withholding and destroying information and hindering** **(s. 12.13)** (Bennett Jones)	The commenter queries the interplay between section 12.13 and document retention policies of issuers.	The CSA acknowledge that a person may be in contravention of the prohibition despite complying with a document retention policy.
174.	**Binding effect of decisions and undertakings** **(s. 12.16)**	The section which states that a person must comply with an SRA decision or a written undertaking given to the SRA (section 12.16) should also apply to decisions of and undertakings given to recognized entities.	Additional research and analysis is required before this requirement can be made to apply to recognized entities. This work is beyond the scope of the USL Project.

USA Part 12: Prohibitions, Duties, Offences and Penalties			
#	**Themes**	**Comments**	**Responses**
	(IDA)		
175.	**Defences (s. 12.14)** (CBA)	One commenter submits that the defence of due diligence should be available in respect of the offence of misrepresentation in section 12.1.	The CSA agree with the commenter and note that the USA includes a general due diligence defence (in section 12.14(1)) that would apply to section 12.1.
176.	**General offences (s. 12.17)** (IFIC)	The commenter believes that it is inappropriate to allow SRAs to determine whether a contravention will be prosecuted as an offence. The commenter believes that specific offences and their penalties should be enumerated in the USA so as to achieve a deterrent effect.	The USA would maintain the status quo in some jurisdictions and change it in others whose legislation specifically lists those provisions that may, if contravened, be prosecuted as an offence. The purpose of the change is to provide a uniform approach.
177.	**Complicity Defences (s. 12.17)** (Bennett Jones)	The commenter states that section 12.17(2) dealing with complicity of directors and officers, could result in a director or officer facing culpability for actions that were not sanctioned explicitly or implicitly by them. The commenter prefers the approach taken in section 6.17(1) of the SAA.	The CSA do not agree. Both sections make directors and officers culpable only if they authorized, permitted or acquiesced in the contravention.
178.	**Penalties (s. 12.18)** (IFIC)	The commenter notes that section 12.18(3) describes the penalty and conviction procedures to be followed when it is not possible to determine the profit made or loss avoided by reason of the contravention. The commenter does not see when a profit made or loss avoided would be undeterminable. The commenter also states that the USA should contemplate the circumstances where there is a contravention but the offence does not involve profits made or loss avoided. The commenter gives the example of divulging inside information that is never acted on.	The CSA do not agree. We note that, in the commenter's example, the profit or loss would be zero. Whether the profit or loss is undeterminable or zero, the effect of the provision would be the same: the person would be subject to a maximum penalty of $5 million.

USA Part 12: Prohibitions, Duties, Offences and Penalties			
#	**Themes**	**Comments**	**Responses**
179.	**Penalties** **(s. 12.17 & 18)** (IFIC)	The commenter believes that the approach in Part 12 will allow for different penalties for different offences, but there should be uniform ranges for penalties on conviction of an offence and mechanisms in place to ensure that no one jurisdiction is more or less lenient than others.	The CSA do not agree. The USA provides a range of penalties on conviction of an offence. How the courts apply the penalties in specific instances is not a matter that we can deal with in securities legislation.

SAA Part 3: Process and Procedures			
#	**Themes**	**Comments**	**Responses**
180.	**Application of Part 3 of SAA to recognized entities** (MFDA)	The commenter submits that the procedures and processes in Part 3 of the SAA should apply to recognized entities.	Additional research and analysis is required before these, and other powers requested by recognized entities, can be given to them under statute. This work is beyond the scope of the USL Project.
181.	**Information sharing arrangements** **(s. 3.9)** (TSX Group)	The commenter submits that the language in section 3.9(3) regarding information sharing arrangements should be bilateral. That is, section 3.9(3) should provide that information received by a recognized entity from an SRA is confidential and paramount to freedom of information legislation.	The CSA note that, as a public body, an SRA is obligated under freedom of information legislation to protect the confidentiality of personal information and commercially sensitive information collected under securities legislation. If an SRA chooses to share this information with a recognized entity (which is not a public body for purposes of freedom of information legislation), it will do so on terms and conditions that ensure that the recognized entity maintains the confidentiality of any information provided to it by the SRA. In this way the SRA can ensure that it can satisfy its obligations under freedom of information legislation. We note that recognized entities may also be subject to federal and provincial privacy legislation.

SAA Part 3: Process and Procedures			
#	**Themes**	**Comments**	**Responses**
182.	**Information sharing arrangements (s. 3.9)** (IFIC)	The commenter submits that section 3.9(1)(d), which specifies that a SRA may provide information to any person or entity that provides services to the SRA, should be narrowed to include only those persons or entities that are required to receive such information for legal purposes. The commenter is of the view that information should be protected and only shared and divulged in specific circumstances, which should be listed in the SAA.	The CSA believe that the necessary safeguards are in place to address this concern. The CSA note that a third party service provider is considered to be an agent of the SRA and is subject to the same obligations and restrictions under freedom of information legislation that apply to the SRA. Generally, this involves the third party service provider entering into an agreement with the SRA to protect the confidentiality of personal information to which the service provider has access to ensure that the SRA can comply with its obligations as a public body under freedom of information legislation. Any use of personal information by a third party service provider, other than that authorized under securities legislation, would have to be authorized by the individuals involved and would involve a new and separate consent.

SAA Part 4: Investigations			
#	**Themes**	**Comments**	**Responses**
183.	**Access to and return of material seized or obtained (s. 4.8)** (IFIC)	The commenter submits that it is inappropriate for the SRAs to have an indefinite power to retain an individual's possessions. An individual should have the right to request the return of a record, property or thing seized and if the SRA refuses, the individual should have the right to appeal the decision.	The CSA do not agree that section 4.8 permits SRAs to retain records or property indefinitely, but we also acknowledge that the provision does not contain an express right to request their return. We will review the provision in light of this comment.

SAA Part 6: Reviews, Decisions, Appeals and Administrative Processes			
#	**Themes**	**Comments**	**Responses**
184.	**Appeal from SRA decisions Defences (s. 6.19)** (ACPM, MFDA)	One commenter notes that Part 6 contemplates a right of appeal of a final decision of an SRA to the appropriate court in both the delegated and delegating jurisdictions. This structure gives rise to the possibility of having multiple appeals of the same decision with different outcomes. A single stream of appeal model would remove the potential for multiple appeals but would also raise complex legal and constitutional issues. Another commenter states that section 6.19 creates opportunities for forum shopping and may be interpreted as allowing for multiple appeals of the same decision.	The CSA are of the view that the courts are the proper arbiters of what is the most appropriate and convenient forum for parties and routinely deal with these matters. The CSA note that the courts tend to discourage forum-shopping and that safeguards against forum-shopping exist in the rules of court in each jurisdiction.
185.	**Standing to have a decision reviewed or to appeal a decision (s. 6.3 and s. 6.19)** (IFIC)	The commenter notes that only a person who is directly affected by an SRA decision is entitled to have the decision reviewed or to appeal it to court. The commenter submits that all persons affected by a decision should have the right to have the decision reviewed or to appeal it.	The CSA are of the view that the SAA establishes the appropriate test for standing to have a decision reviewed or appealed. This is the same test used in current securities legislation. The CSA believe that the adoption of a broader test under which all persons affected by a decision could appeal or seek to have the decision reviewed would be too unwieldy and would give rise to uncertainty.
186.	**Appeals and judicial review generally** (OBA)	The commenter is concerned that there is a lack of uniformity with respect to judicial review and appeals processes across Canada.	The CSA note that procedures for appeals and judicial review must fit within the laws of the province or territory from which each SRA derives its authority.