

October 12, 2018

VIA EMAIL

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

c/o The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor, Box 55
Toronto, Ontario M5H 3S8

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, Square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3

Dear Sirs and Mesdames:

Re: CSA Notice and Request for Comment dated June 21, 2018 Proposed Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and to Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* Reforms to Enhance the Client-Registrant Relationship (Client Focused Reforms)

We are writing in response to the request for comments by the Canadian Securities Administrators (the CSA) with respect to the Proposed Amendments. We appreciate the efforts of the CSA and support regulatory initiatives aimed at protecting and informing retail investors. We gratefully thank you for the opportunity to provide our comments.

General

Dixon Mitchell Investment Counsel Inc. (Dixon Mitchell) is a privately-owned investment management firm responsible for managing more than \$2 billion in assets for institutions, foundations, endowments,

and high net worth private clients. Dixon Mitchell is registered as a Portfolio Manager, Investment Fund Manager, and Exempt Market Dealer.

We agree that the interests of registrants need to be closely aligned with the interests of investors, and that clients need improved outcomes and clearer understanding of the nature of their relationship with registrants. We do not, however, agree with the extent to which it has been proposed that the current regulations be amended. We have substantive concerns and comments about certain of the proposals, specifically, the limitation on referral fees. Following are the concerns and recommendations that Dixon Mitchell would like to present for your consideration.

Referral Arrangements

We acknowledge that research shows financial self-interest may inappropriately influence registrants' recommendations to clients and we recognize the CSA has identified conflict of interest issues surrounding referral arrangements. However, there are differences among the various registration categories, including the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada (MFDA) (together referred to as the SROs), and we believe these nuances are not adequately appreciated. The Proposed Amendments have a meaningful impact to Dixon Mitchell's business as a portfolio manager and to our referred business. We have significant concerns with respect to the effects of the proposed amendments to referral arrangements on the operation of our business and the future of portfolio management.

As a Portfolio Manager, Dixon Mitchell has an existing statutory fiduciary duty to put our clients' interests first when managing portfolios on their behalf. Know Your Client (KYC) and Suitability (SA) obligations are conducted only by our Advising Representatives (ARs) and Associate Advising Representatives (AARs) for all clients, whether direct or referred; we do not differentiate through service, fees, or otherwise, between direct and referred clients. The fiduciary level of care owed by a Portfolio Manager differs tremendously from the duties of care owed by other registrants. Portfolio Managers meet the highest conditions of registration with the securities commissions—ignoring this distinction does a disservice to investors by obfuscating the categories of registrants and limiting investor knowledge.

In *Annex E: Ontario Local Matters – Supplement to the OSC Bulletin* the Ontario Securities Commission (OSC) acknowledges that “the vast majority of households and individuals (90%+) that own securities will be working with...IIROC or the...MFDA. Portfolio Manager...registrants...are likely to be servicing at most 10% of households that own securities” (253). The OSC's statistics generally correspond with The Ombudsman for Banking Services and Investments (OBSI) who in their 2017 Annual Report disclosed 379 IIROC cases and 218 MFDA complaints versus only 44 for Portfolio Managers (17).

The SROs account for a clear majority of client-registrant relationships, and ostensibly should account for a proportionate share of the CSA's investor protection concerns. It seems punitive to capture Portfolio Managers in the Proposed Amendments, especially with regards to referral arrangements. As a boutique firm, Dixon Mitchell relies on its network of long-standing referral relationships to help grow our client base. The network includes professionals who specialize in providing insurance advice, estate and legacy planning, or tax planning, and whose clients benefit from prudent investment counsel and portfolio management, at a cost equivalent to our direct clients. Portfolio Managers offer the highest standard of care available in the securities industry; we fully believe that referrals to our services are in the best interest of clients.

Concerns:

- The Proposed Amendments are being implemented across the CSA and the SROs in an inconsistent way that is harmful to Portfolio Managers. The proposed timing creates favoritism towards the SROs, resulting in a severe competitive disadvantage against other registrants.
- The proposed changes will significantly impact many registrants' referral arrangements, especially with financial planners. There is a very real risk that some may decide to become mutual fund representatives and bring over their clients to keep existing relationships and revenue lines intact. This would be harmful to investors, as mutual fund offerings tend to have higher costs, lower transparency, and generally poorer performance. The proposed prohibition on deferred sales charges is not enough to deter these risks.
- The CSA has expressed a belief that referral fee payments provide an incentive for registered individuals to give up their registration and the intent seems to be for the reverse to be true. The migration of financial planners to the SROs and to financial institutions may further consolidate financial services conglomerates and encourage vertical integration, thereby limiting fair competition and the competitive ability of other registrants.
- It is unclear where the clients being referred to portfolio managers by financial planners today would go in the future. The discontinuation of certain types of referral arrangements may limit investors' access to securities related services.

Recommendations:

- The implementation and timing of the Proposed Amendments should be harmonized among the CSA and the SROs. If changes are not implemented on a parallel track with the SROs, they create a fundamentally unlevel playing field among registrants.
- The CSA should allow payment of referral fees to Certified Financial Planner (CFP) designation holders governed by the Financial Planning Standards Council (FPSC). The certification process to become a CFP professional is extensive, and the FPSC enforces several standards, including Code of Ethics and Rules of Conduct, which demonstrate comparative standards of professional responsibility.
- The CSA should allow payment of referral fees to non-registrants who legitimately provide planning or accounting services.

Limitation on Referral Fees

The proposed amendments would place Portfolio Managers at a severe competitive disadvantage with larger, less independent institutions.

The CSA has made certain assumptions about market power concerns and the ability of financial planners to extract referral fees from registrants. While we comprehend the CSA's goal of avoiding large payments for little value, we contend that the value is not always in the services; oftentimes, the value is in the connection. Financial planners spend considerable time establishing relationships and building trust with their clients. When they recommend us to a client, they do so because they believe our independence, our discipline, and our stewardship are in the best interest of the client.

As a boutique business Dixon Mitchell does not have the resources to compete in a direct marketing arena against the big banks and large investment firms. The Proposed Amendments would force us to terminate many of our existing business relationships, focus intensive resources to direct marketing

channels and employment of sales and marketing staff, and develop our own channels to liaise with various financial specialists engaged with mutual clients.

Concerns:

- Limiting referral fees will reduce the incentives against mutual fund trailing commissions. Financial planners will seek to preserve their compensation stream by moving clients elsewhere, while registrants will seek to retain them. Investors will be caught in the middle and may lose confidence in the securities industry.
- Without a competitive referral network independent of the SROs, investor access to portfolio managers will be obscured; their choice of investment advisors will be restricted, and the investment products offered by these advisors may not be in the clients' best interest.
- The proposed amendments will have devastating effects on various small businesses and sole proprietorships. The livelihood of many financial service providers will be threatened.

Recommendations:

- The CSA should increase the limitation period from three years to five years.
- The CSA should increase the limitation amount from 25% to 50%, in order that Portfolio Managers are able to compete with mutual fund and segregated fund distribution channels.
- The CSA should consider addressing referral issues at the SRO level directly so as not to endanger portfolio managers who may not be able to maintain business growth under the new regime. The CSA should consider exempting Portfolio Managers from the Limitation on Referral Fees. This would protect investor options and would not damage the competitive power of the SROs, as many retail investors may not meet the minimum account size required for discretionary investment management.

Responses to Questions

Does prohibiting a registrant from paying a referral fee to a non-registrant limit investors' access to securities related services?

Yes, prohibiting a registrant from paying a referral fee to a non-registrant limits investors' access to securities related services. Financial planners will likely no longer be able to remain independent and will be absorbed into banks and larger firms. Without reasonably objective guidance, clients may default to their bank's asset management divisions or be drawn by firms with prominent marketing but incompatible services. Investors would be increasingly directed to segregated funds, annuities, or mutual funds. These may include higher-cost or high-risk alternative investment vehicles, may provide lower transparency, and may result in poorer returns for investors.

Would narrowing section 13.8.1 [Limitation on referral fees] to permit only the payment of a nominal one-time referral fee enhance investor protection?

No, permitting only the payment of a nominal one-time referral fee would not enhance investor protection. Referrals to Portfolio Managers provides greater access for investors to independent investment advice at a lower fee than most alternatives and does not denigrate investor protection.

Conclusion

The implementation of the Client Relationship Model II (CRM2) reporting requirements in 2017 were a positive beginning to enhanced investor protections. However, we do not believe sufficient time has passed to precisely measure their effectiveness. These reports include itemized details on the fees and performance of their investment accounts, including referral fees paid, and improve investors' ability to assess how they are progressing towards their financial goals, which closely align with the CSA's stated goals for the Proposed Amendments. Implementing the Proposed Amendments so soon after CRM2 implies that either the CSA was too hasty in its reforms in 2017, or that there is a deep mistrust of industry participants. While there may be some unprincipled players in the securities landscape, they are by no means representative of the industry. The financial planners we partner with do put their clients' best interests first, and they refer them to us because they know we do the same.

At Dixon Mitchell integrity is the backbone of our business. We have painstakingly built our firm on our reputation for discipline and prudence. We take our fiduciary duty as a Portfolio Manager very seriously and consistently provide better results with more transparency and lower costs to clients. We respectfully urge the CSA to reconsider the referral arrangements and limitations on referral fees, so as not to eradicate an important part of the growth and survival of independent investment managers.

We thank you once again for the invitation to participate and opportunity to provide these comments. Please do not hesitate to contact the undersigned should you have any questions or wish to discuss our submission. Thank you for your time and consideration.

Yours truly,



Rob Mitchell, CFA

President

Dixon Mitchell Investment Counsel Inc.