October 17, 2018

BY 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

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Me Anne-Marie Beaudoin
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Dear Sirs/Mesdames

RE: Proposed Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103")

and to

Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103CP")

The Association of Canadian Compliance Professionals ("ACCP") is an organization representing over 50 compliance professionals operating across the country.

The ACCP appreciates the opportunity to provide the following general comments on the CSA/ACVM Notice and Request for Comments ("the Notice") dated June 21, 2018. Our comments are as follows:

CSA/ACVM Key Concerns

The Key Concerns section of the Notice lists significant investor protection concerns with respect to the client-registrant relationship identified by the CSA/ACVM and gives examples of matters that created concerns such as registrant's financial self-interest influencing client recommendations, compliance reviews finding inadequate collection of KYC information, and the leading source of client complaints consistently being the suitability of investments.

We agree that the suitability of investments is consistently the leading source of complaints as this has historically been the case and, in our opinion, will likely continue to be in spite of any future regulatory amendments. However, we have concerns that the CSA/ACVM is firmly of the opinion that material harm is being done to investors as a result of registrant financial self-interest and inadequate KYC information collection.

Specifically, we are of the view that the research and findings reviewed were not comprehensive enough to support this determination and we urge the CSA/ACVM to conduct additional research in this regard prior to any further advancement of the Proposed Amendments.

Notwithstanding the above, we have the following comments with respect to the current Proposed Amendments.

General Comments

While the ACCP is pleased that the CSA/ACVM is not proposing to impose a specific overarching best interest standard on registrants, we are very concerned that you have effectively done so by incorporating frequent references to "client's best interest" throughout the Proposed Amendments. In addition, the extensive additions to NI31-103CP are, in many cases, very prescriptive in nature and we believe this will effectively result in registrants having to demonstrate compliance with guidance rather than rule.

We are also concerned that the CSA/ACVM appears to have underestimated the significant impact of one-time and ongoing costs that registrants would incur as a result of the Proposed Amendments as well as the potential unintended consequences for investors such as less

registrants providing advice, less diversity of products available through a single registrant, and the inevitable flow through of additional registrant costs to investors.

3.4.1 Firm's obligation to provide training

Proposed amendment 3.4.1(1)(b) states that a registered firm must provide training to its registered individuals on "*the structure, features, returns and risk, and the initial and ongoing costs and the impact of those costs, of the securities available through the registered firm for the registered individuals to purchase or sell for, or recommend to, clients*".

This appears to require firms to provide training on each and every one of their approved products which may number in the thousands and to be done with the expectation that registered individuals would retain the information imparted.

Such training for thousands of approved NI 81-102 prospectus mutual funds would be virtually impossible and even if it could be developed and delivered, it would be an enormous expenditure of money, time and resources without any foreseeable benefit as the likelihood of registered individuals retaining such information for any length of time is extremely doubtful.

We suggest that the wording be amended in NI 31-103 or in NI 31-103CP to clarify that training must be provided to registered individuals on how to meet Know your product obligations for the different product types sold by the firm and how to document that they have done so prior to purchasing, selling or recommending any specific product. Training at the individual product level may still be appropriate for certain exempt products.

Please also refer to our related comments in 13.2.1 Know your product.

11.5 General requirements for records

The changes to Section 11.5 of NI 31-103CP under "Suitability determination" include an expectation of firms to "*establish a process to periodically review a sample of client files to ensure that the suitability process is consistently applied throughout the firm*".

We believe that MFDA member firms are already complying with this proposal as they are currently required to include such testing in their branch review audit programs.

Proposed Section 11.5(2)(q)(ii) of NI 31-103 states a requirement for firms to document *"other compensation, arrangements and incentive practices from which the firm or its registered individuals, or any affiliate or associate of that firm, benefit"*.

We are very concerned that it does not include an exemption for other compensation, arrangements and incentive practices received by its registered individuals through any other registrations held outside of the firm subject to regulatory oversight including but not limited to

insurance, deposit broker and mortgage broker registrations. We do not believe that this should be the responsibility of the firm and, in any case, would place a costly and unmanageable burden on registered firms.

NI 31-103CP "Referral arrangements" states that a registered firm must demonstrate "*why the registered firm has determined that the specific referral is in the client's best interest*".

In order to meet the best interest standard expressed therein, a registered firm would require an unreasonable amount of knowledge and expertise about products that they are not qualified to and/or capable of selling. A registered firm should only be required to document the reason why the specific referral may be of interest to the client.

Apart from the above comments, we believe that the proposed changes to 11.5 are reasonable and consistent with the balance of the Proposed Amendments. However, it should be noted that any suggested changes put forth by the ACCP within this comment letter with respect to the balance of the Proposed Amendments may also require changes to 11.5.

13.2 Know your client

NI 31-103CP "Client's financial circumstances" states that *"registrants should obtain a breakdown of financial assets, including deposits and type of securities such as mutual funds, listed securities, exempt securities, and net worth, which should cover all types of assets and liabilities"*.

We agree that details of a client's financial circumstances may be helpful in making suitability determinations but we are also concerned about the reluctance of clients to provide such detailed information due to privacy or materiality objections on their part. We recommend that the comments in NI 31-103CP be amended to note that a detailed breakdown is only required if the proposed investment action is material and the client does not object to providing such details.

The comments in NI 31-103CP "Client's liquidity needs" introduce a client liquidity needs assessment that essentially will require registrants to complete a detailed and extensive cash flow analysis and documentation of a client's short and long-term income and expense, planned major expenditures and reserves set aside for potential job loss or disability.

In our opinion, this is a new obligation not actually set forth in NI 31-103 that effectively imposes a comprehensive financial planning obligation on registrants that is far beyond current requirements to ascertain a client's investment time horizon. We also believe that the liquidity needs assessment will be challenging (for example, does a line of credit satisfy any or all

liquidity needs?) and costly for registrants to conduct. It will also be unwelcomed by many clients who will find it both invasive and time consuming.

The comments in NI 31-103CP "Client's investment objectives" introduces a requirement to determine a client's overall financial needs in addition to the current requirement to determine the client's investment needs. As with the new client liquidity needs assessment discussed above, the overall financial needs assessment requires a lengthy and detailed cash flow analysis that effectively imposes a comprehensive financial planning obligation upon registrants. We feel this is unwarranted and without material benefit.

In addition, if registrants are required to complete comprehensive financial plans for investors , we anticipate that registrants will impose significant new upfront fees on clients in this regard which will only encourage many individuals to forego advice and do their own investing.

The comments also introduce a requirement to identify alternate actions that may be more likely to achieve the client's investment objectives and financial goals. We are concerned that this could result in registrants providing advice beyond their qualifications and/or category of registration that will make them vulnerable to both litigation and/or disciplinary action. It should also be made clear in NI 31-103CP that clients can decline any proposed alternate action in order to proceed with the securities transaction initially proposed.

The comments also introduce an expectation that registrants will provide clients with an estimated investment return required to meet the client's overall financial goals. Any such estimated investment return projections should be limited to investments held through the registrant.

The comments regarding the estimated investment return are followed by one that expects registrants to also provide ongoing information to clients regarding the performance of the investments in comparison to the estimated investment return. The development and implementation of processes to estimate needed returns, track actual returns, compare the two, and to monitor and document client explanations provided by registered individuals will require many registrants to make costly system enhancements and incur ongoing significant costs that will be passed along to investors.

13.2(2)(c)(v) of NI 31-103 will now require the registrant to obtain sufficient information regarding the client's risk profile rather than the client's risk tolerance. As noted in the comments in NI 31-103CP "Client's risk profile", it adds a requirement for registrants to understand the client's capacity to "*endure potential financial loss, sometimes referred to as risk capacity*" in addition to the current and ongoing requirement to understand the client's risk tolerance.

While some registrants already use risk profile documents, many registrants will need to introduce the concept to their registered individuals. We support the concept of risk profiles but it should be noted that system enhancement, training and record keeping costs will be significant for many registrants. We firmly believe that registrants should also be permitted to use suitable and appropriate risk profiles of their own design rather than one industry wide prescribed format.

13.2(4)(b) of NI 31-103 requires a registrant to review KYC information and to update KYC information if there has been a significant change when information is reviewed. The comments in NI 31-103CP "Keeping KYC information current" indicate that the review should be a *"meaningful and documented interaction with the client"* but *"it does not mean, however, that the registrant has to re-collect all of the information".* Kindly clarify that it will suffice for registrants to simply document that a client review took place on a specific date with no material KYC changes identified and that there will be no requirement to obtain some evidence of client confirmation.

13.2 .1 Know your product

13.2.1(3)(a) of NI 31-103 states that *"... the registered individual must take reasonable steps to understand at a general level, the securities that are available through the registered firm for the registered individual to purchase or sell, or to recommend to clients, and how these securities compare".*

However, NI 31-103CP "General obligations of registrants" states that *"under 13.2.1.(3)(a), registered individuals must first have taken reasonable steps to understand at a general level, each security available for them to purchase and sell for, or recommend to, clients, as well as how these securities compare to one another".*

NI 31-103CP "General offering of a firm" includes similar comments about registered individuals requiring a general understanding of securities available through the registered firm rather than security types available through the registered firm. It also specifically states that "*This involves a high-level understanding of the structure, features, returns, risks and costs of each security that a firm makes available to clients that the registered individual is able to purchase and sell for, or recommend to, a client. Registered individuals must have a high-level understanding of each such security in order to be able to compare them and to be able to select a smaller universe to focus on should they choose to do so".*

Registrants may have thousands of individual securities approved for sale and It would be virtually impossible for a registrant to provide training that could reasonably be expected to provide registered individuals with a retainable general understanding of each and every

security as described above in 31-103CP. Consistent with our earlier comments regarding training, we suggest that the wording be amended in NI 31-103 and/or NI 31-103CP to clarify that registered individuals are required to have a general understanding of the different product types sold by the firm and a high-level understanding of the specific securities that the registered individual actually sells, purchases, or recommends to clients.

If registered individuals were required to have a general understanding of each and every security, registrants would have no alternative but to drastically reduce their product shelves and the appeal of employing a strategy to only sell proprietary products will be greatly enhanced.

NI 31-103CP "Monitoring" includes a requirement for registered firms "*to monitor the performance of securities made available to clients as well client outcomes and any complaints related to the securities…"* and *"this monitoring and reassessment will include an assessment of the continued competitiveness of the securities…".*

As you are well aware, performance reporting requirements to clients are contained elsewhere in NI 31-103 and we fully support these requirements. However, we believe that any requirement for registered firms to continually monitor the competitiveness of securities would place an extremely costly and unreasonably burdensome requirement on them. We are also unclear as to the perceived benefit of such monitoring as it may simply result in clients being continually switched from one investment to another at the client's expense.

13.3 Suitability determination

13.3(1) of NI 31-103 requires registrants to conduct a suitability determination *"before a registrant acts by opening an account for a client, purchasing, selling, depositing, exchanging or transferring securities for a client's account, taking any other investment action for a client or making a recommendation or decision to take any such action…".*

We recommend that the requirement to perform a suitability determination prior to the simple opening of an account be deleted and for the suitability determination requirement for deposits and transfers to be made the same as the existing MFDA requirements for the transfer of assets whereby the suitability assessment must be performed within a reasonable time, but in any event no later than the time of the next trade.

"Portfolio approach to suitability" in NI31-103CP states that "*Depending on the circumstances, a registrant should inquire about the client's other investments or holdings held elsewhere in order to inform its suitability determination. These circumstances include the type of relationship with*

the client, the type of securities and the amount of the client's investment in proportion to their other investments or holdings".

As noted above in our 13.2 Know your client comments, we recommend that the comments in NI 31-103CP be amended to note that a detailed breakdown is only required if the proposed investment action is material and the client does not object to providing such details.

"Portfolio concentration" in NI31-103CP introduces a new suitability determination component that we believe most registered firms have not yet incorporated into their daily trade review programs. These firms will likely incur significant system development, training and implementation costs in this regard which will then inevitably be passed along to investors. Registrants will also require a lengthy transition period.

13.4 A registered firm's responsibility to identify conflicts of interest

NI31-103CP "What is a conflict of interest" states that "*Determining the materiality of a conflict will help firms determine how significant their controls should be or whether the conflict must be avoided".* We are in complete agreement with this statement which acknowledges the importance of materiality yet NI 31-103 and NI 31-103CP have both been consistently amended to replace "material conflicts of interest" with "conflicts of interest".

We firmly believe that the requirements should be reamended to reinstate materiality. Without materiality limitations, it will be an unreasonable and unmanageable obligation for registered firms to meet the requirements contained in 13.4. What identifiable material benefits are there to investors if registrants are required to meet 13.4 requirements for a conflict of interest identified as non-material?

13.4.4 "Conflicts of interest that must be avoided" in NI31-103 prohibits registrants from borrowing money from clients, lending money to clients, and acting as a power of attorney, trustee with respect to a trust in which a client is the settlor or beneficiary, or trustee or executor of a client's estate. 13.4.4(1), 13.4.4(2), and 13.4.4(3) contain permitted exceptions for registered individuals with respect to clients who are related persons as defined by the Income Tax Act and we fully support these exceptions.

However, 13.4.4(1), 13.4.4(2), and 13.4.4(3) also contain requirements for the registered individual to provide written notice to the registered firm and for the registered firm to provide written approval to the registered individual prior to carrying out the activity. We believe that these written notice and approval requirements are both without benefit and essentially unmanageable.

13.8 Permitted referral arrangements

13.8.(1) of NI31-103 imposes a new restriction on referral arrangements that prohibits registrants from paying fees to non-registrant firms. We believe that exceptions should be permitted for non-registered firms that are subject to supervision by a regulator or respected professional association. This would include firms such as insurance firms, deposit brokers, mortgage brokers, real estate brokers, legal firms, and accounting firms.

13.8.1(a) limits the payment of referral fees to a maximum of 36 months and 13.8.1(b) limits the referral fees paid by the party receiving the client to a maximum of 25% of the amount paid by the client to them. How were these limitations determined and what are the perceived benefits? Limiting payments to a maximum of 36 months could potentially result in some form of referral churning whereby registered individuals are motivated to direct investors to another firm once they cease to receive referral fees.

13.18 Misleading Communication

We fully support the new content with respect to holding out and the use of titles but urge the CSA/ACVM to not prescribe permitted titles but rather leave the determination of permitted titles meeting 13.18 requirements to individual registrant firms.

14.2 Relationship disclosure information

14.2(2)(k) of NI31-103 require the relationship disclosure information to include "*a statement that the registered firm has an obligation to assess whether a purchase or sale of a security is suitable for a client prior to executing the transaction or at any other time must determine that any investment action it takes, recommends or decides on, for the client is suitable for the client and puts the client's interests first*". This reference to putting "the client's interest first" is just one example of many inclusions of wording in NI31-103 and 3131-103CP that effectively establishes an overall best interest standard for registered firms and individuals against which they will be held accountable by regulators and courts. We believe that this will not provide clients with any new investor protections beyond those already in place and may simply result in additional litigious exposure for registrants.

Impact of Proposed Amendments for Investors

We believe that, for the most part, the implementation of the Proposed Amendments other than those that simply make non-SRO registrants subject to requirements already in effect for SRO registrants would largely be viewed by investors negatively. We foresee investors reacting to the additional KYC information disclosure as an unnecessary and unwanted invasion of privacy

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rather than enhanced investor protection. Their investing experience will become much more time consuming and expensive – expensive because registrants will inevitably pass along to them their significantly higher operating costs resulting from the considerable additional expenses incurred and resources required for system enhancements, training, client facing time, documentation, records, and compliance.

The unintended consequences for investors may include fewer products available through their existing or prospective dealers and significantly higher cost for receiving investment advice. This will, in turn, result in many more investors foregoing investment advice and becoming DIY (do it yourself) investors even though this may be a poor choice for many given their investment knowledge and/or personal circumstances.

Thank you for the opportunity to provide our comments. The ACCP has also had the opportunity to review the comment letter that the Federation of Mutual Fund Dealers will be submitting and we wish to take this opportunity to express our support of their comments.

Please contact me with any questions you may have by email at manny@canfin.com or by phone at 905-829-0020 ext. 227. We would also be pleased to participate in any general or targeted consultations you may have.

Sincerely,

Manny DaSilva,
Chair, Association of Canadian Compliance Professionals

Gary Legault
Vice Chair, Association of Canadian Compliance Professionals