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Delivered by email: comments@osc.gov.on.ca

The Secretary
Ontario Securities Commission
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Dear sir / madam:

On behalf of Sun Life Financial, we appreciate the opportunity to provide input into the consultation by the Canadian Securities Administrators (CSA) on its Proposed Amendments to National Instrument 31-103 (the Reforms).

At Sun Life, our purpose is to help our clients achieve lifetime financial security and live healthier lives. This means that the needs of our clients are at the heart of everything that we do.

The comments below reflect our lines of business. This includes Sun Life Financial Investment Services (Canada) Inc. (SLFISI), which is one of Canada's largest mutual fund dealers with assets under administration of approximately \$25B. With nearly 2,300 advisors operating in more than one thousand locations in Canada, SLFISI serves a broad range of Canadians including many mid-market clients with smaller accounts. SLFISI offers mutual funds from leading investment fund managers in Canada including its affiliate, Sun Life Global Investments (Canada) Inc (SLGI). SLGI is an investment fund manager and portfolio manager with approximately \$24B in assets under management. SLGI offers a diverse lineup of mutual funds and investment solutions, which we manage in-house and through sub-advisory relationships. In addition, Sun Life Institutional Investments (Canada) Inc. (SLIIC) is an institutional investment management company and exempt market dealer operating in Canada with approximately \$11B in assets under administration. SLIIC distributes prospectus exempt pooled funds to institutional investors and provides portfolio advisory services to institutional clients.

Summary of our comments

We are pleased to see the action the CSA is taking on its investor protection initiatives to better align the interests of registrants and investors, improve investor outcomes and raise the bar for registrant conduct when dealing with providers of financial services and products.

We support the intent of the CSA Reforms to put the client's interest first and further strengthen investor protection. Recent efforts to increase the transparency of compensation and fees paid by clients have made good progress to address conflicts of interest and investor understanding of their investments and costs. Planned regulatory changes to increase proficiency and mandatory education requirements for advisors will also help continue to strengthen the standard of professionalism and industry knowledge. Together, these changes are making important strides to enhance the client-registrant relationship.

With this in mind, we would like to highlight the following recommendations for your consideration as the Reforms are finalized. We have also included additional comments on the areas where we are seeking clarifications and amendments in the Appendix.

1. Know Your Product

In our view, the proposed Know Your Product (KYP) obligations do not sufficiently account for product complexity and may result in reduced investor choice due to a narrowing of a firm's product shelf to manage the costs of performing due diligence for a large product shelf. Similar to the Know Your Client (KYC) obligations, KYP obligations should be tailored to a firm's business model and product offerings. While we support the CSA's desire for further KYP due diligence, in order to effectively operationalize the Reforms, we recommend clarifications that allow similar products to be categorized together in a firm's due diligence review process, based on the complexity of the product offerings.

2. Conflict of Interest

We agree that addressing conflicts of interest is fundamental to protecting investors and that conflicts should be identified and addressed in the best interest of the client. We recommend that the Reforms be amended to confirm that disclosure alone can be an appropriate and sufficient means of addressing non-material conflicts of interest. We also support the proposed Companion Policy text, which considers materiality in managing conflicts and recommend that the proposed National Instrument text be revised to reflect a materiality threshold. This would be consistent with the CSA Consultation Paper 33-404 – *Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives toward their Clients* (CP 33-404) released in April 28, 2016, which included a materiality threshold for identifying and addressing conflicts of interest.

3. Cost

In our view, there is a disproportionate emphasis on low cost products in the Reforms, as a result of carving cost out as a separate product feature. We recommend that the Reforms clarify that a firm's compliance with KYP obligations would be satisfied based on the implementation of appropriate product selection processes that factor in product features, costs, risks and limitations.

We recommend that the suitability sections of the Companion Policy be revised to be consistent with the KYP section of the National Instrument to balance the suitability comments and

expectations that product selections and recommendations be based on a number of factors (e.g. product features, costs, limitations and risks) and that where such elements are the same, then cost could become the determining factor. This will help clarify that lower cost investments are not necessarily the best investment choice to meet suitability requirements and that advisors should consider other product features and risks in their recommendations to meet client objectives.

4. Safe Harbour

We recommend that the CSA provide additional clarity on how a registrant may fulfill their suitability determination obligations. Specifically, we recommend that consideration be given to a “safe harbour” provision in line with the United States Securities and Exchange Commission (SEC) proposed Regulation Best Interest, where if a registrant meets its obligations under the specific suitability factors and manages material conflicts of interest in the best interests of the client, the registrant is deemed to have put the client’s interests first in the suitability determination. SEC Regulation Best Interest provides that the best interest standard is deemed satisfied if the suitability determination, disclosure obligation and the conflicts of interest obligations are met.

The SEC’s Regulation Best Interest builds on the earlier work of the Australia Securities and Investments Commission that provided specific guidance to industry participants on how to demonstrate compliance (“safe harbour”) with Client Best Interest obligations in Regulatory Guide 175 detailing suitability requirements, which was most recently updated in 2017. The inclusion of this form of guidance in jurisdictions with similar regulatory regimes to Canada is worthy of consideration in assessing the benefits of including a “safe harbor” provision in the proposed Reforms.

5. Implementation

Several of the Reforms will require extensive changes to registrants’ operations. Changes in the areas of technology or compensation require significant time to operationalize effectively, given the design and implementation work required. As a result, we recommend that further industry consultation on implementation timelines be held.

Thank you for considering our comments. We look forward to continuing to actively participate in the consultation and these important Reforms.

Sincerely,



Jacques Goulet
President, Sun Life Financial Canada

Appendix I - Additional comments on the Reforms

1. Know Your Product – Firm Due Diligence Obligations

We anticipate that firms will either significantly narrow their product shelf to assist advisors to understand and consider a reasonable number of products or firms will adopt an exclusively proprietary product shelf. As a result, a potential outcome of the Reforms may be a reduction in the investment choices available to clients which, in our view, will not be in the best interest of clients generally.

We support the CSA's approach that the extent of the KYP process required for a security will depend on the structure and features of that security. The level of due diligence required should vary with the complexity of the product, so that mutual funds and more complex securities aren't treated in the same manner. As noted above, we recommend that it be clarified that an acceptable approach to addressing KYP would be for securities to be bucketed based on common characteristics (e.g. Canadian Mutual Fund/Large Cap Equity/Offered by Simplified Prospectus/MER & Commission Structure within a standard range/Established Investment Fund Manager), with the category being subject to a detailed initial review and periodic review, as opposed to each individual security meeting the criteria. This approach would permit firms to triage their review and focus their KYP resources on those products and securities that had not already been considered broadly or where exceptions were found. The benefit of such an approach is that it would facilitate firms' ability to maintain a broader shelf of securities by applying the review process to all, but with a focused obligation on those that had not already been determined to fall within the risk appetite of the Dealer. Such an approach would recognize that Dealers and Advisors are accountable not only for the securities they recommend but also those that arrive via consolidation and transfer-in.

For transfers-in, we recommend that KYP obligations be limited to a reasonable level of due diligence and also consider the complexity of the securities being transferred-in. The Reforms should also continue to allow for a reasonable period for the advisor to take action in due course to find a more suitable product from the firm's product shelf. This transitional period will assist client's looking to consolidate or transfer assets without forcing liquidation on otherwise suitable investments or creating delays in transfers. The approach recommended above permitting firms to conduct KYP at a category level where specific criteria had been met would simplify the transfer-in process by providing a level of assurance in most instances. By way of example, if a client were to transfer their portfolio to SLFISI and one of the funds in the portfolio was the Fidelity Canadian Large Cap, which had not yet been reviewed by SLFISI but met all the criteria of the SLFISI Canadian Large Cap category, we would suggest this review be considered sufficient without further detailed review.

2. Conflicts of Interest

Managing conflicts of interest, including compensation or incentive-related conflicts, is critical to removing potential bias in product selection and recommendations. While we are in support of the intent of the proposals on this topic, we recommend the CSA revise the Reforms as follows:

- We recommend that the Reforms clarify that offering proprietary products on a product shelf or recommending a proprietary product is not subject to a higher compliance standard than non-proprietary products. For firms with an open shelf that offer proprietary and non-proprietary products, any decisions to include funds from an affiliated fund company could be open to challenge as biased. As a result, products that have met the KYP, conflict of interest and suitability obligations outlined in the Reforms should be considered to have met the standard and should not be subject to additional scrutiny.
- As part of the conflicts of interest framework, firms should be provided the ability to address non-material conflicts through disclosure and we would appreciate clarity on circumstances where disclosure would be an appropriate mitigant. This amendment would bring the National Instrument in line with the Companion Policy, which references that conflicts of interest that are not material may be addressed in a manner that is proportional to the risk. We note that this approach would be consistent with CP 33-404 which included a materiality threshold for identifying and addressing conflicts of interest.
- In addition, the Reforms currently require disclosure of conflicts that will exist throughout the relationship both at account opening and then when the conflict actually arises. In our view, this duplication is burdensome and unnecessary. We recommend that these types of conflicts need only be disclosed at the time of account opening.

3. Suitability Determination

KYP, KYC, managing conflicts of interest, cost considerations and a reasonable range of alternative actions are all important elements in making suitability assessments. If an advisor has met these requirements, they have fulfilled the suitability obligations in putting the client's interest first. The requirement to consider "any other factor that is relevant under the circumstances" is very broad, and in our view, unnecessary. Accordingly, we recommend that this statement be removed from the National Instrument.

4. Implementation

The proposed Reforms will result in significant changes to ensure compliance with the new standards. One of the more substantial changes will be the implementation of processes and system modifications required to implement KYC, KYP and suitability. We expect that such changes will extend beyond the proposed two year implementation period. We recommend that further industry consultations be held to understand the implications prior to determining transition periods.