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October 19, 2018

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Securities Commission of Newfoundland and Labrador  
Superintendent of Securities, Northwest Territories  
Superintendent of Securities, Yukon Territory  
Superintendent of Securities, Nunavut

The Secretary  
Ontario Securities Commission  
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c/o Me Anne-Marie Beaudoin  
Corporate Secretary  
Autorité des marchés financiers  
800, Square Victoria, 22e étage  
C.P. 246, tour de la Bourse  
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[consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)

Dear Sirs and Mesdames:

**CSA Notice and Request for Comments 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)**

This letter responds to the Notice and Request for Comments published by the Canadian Securities Administrators (the “CSA”) regarding proposed amendments to National Instrument National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and to Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* on June 21, 2018 (the “**Proposed Amendments**”).

In this letter, we wish to comment on one issue concerning the Proposed Amendments, however we encourage the CSA to carefully consider all comments received on the

Proposed Amendments, given the potentially material impacts of the Proposed Amendments on the efficiency of Canadian capital markets.

We wish to observe that the Proposed Amendments do not provide carve-outs from the enhanced and new investor protection provisions for registered firms in relation to services provided to permitted clients that are not individuals (i.e. institutional clients)<sup>1</sup>. This is troubling, as it is inconsistent with the carve-outs and exemptions for registered firms dealing with institutional clients in Consultation Paper 33-404 *Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives toward their Clients* dated April 28, 2016 (the “**Consultation Paper**”). The Consultation Paper provided exemptions for registered firms, when dealing with institutional clients, from the enhanced know-your-client (**KYC**) and suitability obligations and the new know-your-product (**KYP**) obligation. In addition, proposed guidance in the Consultation Paper stated that, when dealing with institutional clients, disclosure alone could be a sufficient means for resolving conflicts of interest. Collectively, we refer to these exemptions and guidance in this letter as the “**Institutional Client Carve-Outs**”.

The Institutional Client Carve-Outs reflected the CSA’s policy view that institutional clients do not require the same type of investor protection measures as retail clients because of fundamental differences in the nature of the registrant relationship. When dealing with retail clients, registered firms generally possess greater investment knowledge than their clients and have stronger bargaining power in negotiating the terms of service. In contrast, institutional clients generally have sophisticated investment knowledge and stronger bargaining power when engaging registered firms to provide services. Consequently, the additional costs and time associated with the KYC, KYP and suitability obligations set out in the Proposed Amendments are unlikely to provide any material benefits to institutional clients. Similarly, institutional clients are well positioned to make their own decisions regarding conflicts of interest based on disclosures provided by registered firms. In our experience, institutional clients would find the sorts of prescriptive elements of the Client Focused Reforms unduly burdensome, unnecessary and unwelcome.

We note that the Investment Industry Regulatory Organization of Canada (IIROC) maintains different rules for investment dealers when dealing with retail and institutional clients, including with respect to account opening, operation and supervision<sup>2</sup>, and related

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<sup>1</sup> The definition of “institutional client” in the Consultation Paper included: (i) Canadian financial institutions; (ii) registrants acting as principal; and (iii) various other categories of institutional investor that have waived the suitability requirement, including pension funds, government and government-related entities, accounts and investment funds managed or advised by registrants and other investors with net financial assets of \$100 million.

<sup>2</sup> IIROC Rule 2700: Minimum Standards for Institutional Customer Account Opening, Operation and Supervision.

proficiency standards for dealing representatives<sup>3</sup>. The Institutional Client Carve Outs would be consistent with IIROC's approach.

We recommend that the CSA reintroduce the Institutional Client Carve Outs to the Client Focused Reforms. In the alternative, we suggest that the Client Focused Reforms should include a framework for a registered firm to obtain waivers from a permitted client that is not an individual in relation to the KYC, KYP, suitability and conflict obligations.

We note that in its publication of the Proposed Amendments, the CSA provided no explanation for why the institutional client carve-outs contemplated in the Consultation Paper were not preserved in the Client Focused Reforms. We understand that some concern was expressed regarding the complexity of establishing a third category of investor, in addition to the "accredited investor" and "permitted client" categories already applicable under Canadian securities laws. This concern could be addressed simply by limiting the Institutional Client Carve-Outs to "permitted clients other than individuals" or a smaller subset of permitted clients, if considered necessary by the CSA.

Should you wish to discuss our comments, please direct your inquiries to John Black at (416) 862-6586, Lori Stein at (416) 862-4253 or Blair Wiley at (416) 862-5989.

Yours very truly,

***Osler, Hoskin & Harcourt LLP***

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<sup>3</sup> IIROC Rule 2900: Proficiency and Education.