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October 19, 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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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 ("31-103CP")***

Belay Wealth Inc. is a Member of the MFDA and is registered as a mutual fund dealer in Alberta and Saskatchewan. Belay is founded on a belief that clients need, and deserve, qualified professional financial service regarding financial planning, insurance, investments and wealth management, tax, and accounting.

We appreciate the opportunity to provide the following comments on the Proposed Amendments in the Notice and Request for Comments (the "Notice") that the CSA published on June 21, 2018.

General Comment

We are concerned that 31-103CP uses mandatory language in many places, even though companion policies are supposed to provide clarification and guidance to clarify a rule but are not supposed to impose mandatory requirements. We encourage the CSA to revise the proposed amendments to 31-103CP to remove the mandatory language. We also encourage the CSA to reaffirm that if any mandatory language is retained, it will not be treated by CSA Staff as having binding effect.

CSA 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 and gives example of matters that created such 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 acknowledge that suitability of investments is persistently the leading source of complaints as this has historically been the case and, in our opinion, will likely continue to be despite any future regulatory amendments. However, that the research and findings reviewed were insufficient for the CSA reasonably to reach the conclusion that investors incur material harm due to these factors we urge the CSA to conduct further work in this regard prior to any further advancement of the Proposed Amendments. We are also concerned that the CSA has repeated that "Clients are not getting outcomes that the regulatory system is designed to give them" without ever articulating those desired outcomes: it is difficult for regulators or industry to assess whether the Proposed Amendments can achieve a result when the desired result is not clearly defined.

3.4.1 Firm's obligation to provide training

The proposed amendment to 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 would be virtually impossible and even if it could be developed and delivered, it would only be with an enormous expenditure of money, time and resources without any foreseeable benefit as the likelihood of registered individuals retaining any such information for any length of time is extremely doubtful. For example, an independent mutual fund dealer with a reasonably broad product shelf – an arrangement that the CSA appears to want, based on its concerns with proprietary products and limited product shelves – can have more than 6,000 different fund codes that represent different combinations of investment mandates, costs, and commission structures. Each of those mutual fund product codes provides at least one updated fund facts document each year. A dealing representative who is required to be trained on each product including updates each year, and to document the training to show that the requirement has been met, can easily spend 10 minutes per product. That will require 60,000 minutes, or 1,000 hours, of product training each year which is the equivalent of doing nothing but training from the beginning of January to the end of June. An investment dealer with access to tens of

thousands of different listed securities and fixed income products would be unlikely to be able to meet the training requirement as described in the proposed amendment.

We suggest that the wording be amended in NI 31-103 to say that firms must provide training 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 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 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 believe that there should be a clear exception for other compensation, arrangements, and incentive practices that registered individuals receive pursuant to any other registrations held outsight of the firm and that are subject to regulatory oversight including but not limited to insurance, deposit broker, and mortgage broker licensing. We do not believe that monitoring other regulated compensation should be the responsibility of the firm and, in any case, would place a costly and unmanageable burden on registered firms.

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 and/or incapable of selling. A registered firm should only be required to document the reason why the specific referral may be of benefit or interest to the client.

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

13.2 Know your client

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". While we agree that details of a client's financial circumstances may be helpful in making a suitability determination, we are also concerned about the reluctance of clients to provide such detailed information due to privacy or materiality concerns on their part. We are also concerned that mandating a review of securities that are

outside a representative's or firm's registration category may create client confusion about the range and nature of advice being provided. We recommend that the comments in 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 31-103CP "Client's liquidity needs" introduce a client liquid needs assessment that essentially will require registrants to complete a detailed and extensive cashflow 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 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. In our opinion, this cashflow analysis will not only be challenging (for example, does a line of credit satisfy any or all liquidity needs) and costly for registrants to conduct, it will be also be unwelcome by clients who will find it both invasive and time consuming. Apart from concerns about imposing mandatory requirements through a companion policy, without a materiality consideration to the requirement small clients will become even more uneconomical which will further limit their investment and service options.

The comments in 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 discussed above, this would also require a lengthy and detailed cashflow analysis that we feel is unwarranted and without material benefit. As mentioned in our client liquidity needs comments, registrants will effectively have an overall financial planning obligation indirectly imposed upon them. This being the case, we anticipate that registrants will most likely 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 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 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, monitor and document client explanations performed by registered individuals will require many registrants to make costly system enhancements and incur ongoing significant costs. 31-103CP doesn't recognize that investment returns are inherently uncertain. Apart from concerns about imposing mandatory requirements through a companion policy, a requirement to provide estimated future returns will almost certainly create client confusion and client complaints to regulators when the estimates inevitably differ from actual results (through no fault of the firm or representative).

Section 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 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.

Section 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 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 the of the information". We would appreciate clarification that it will suffice for registrants to simply document that a client review took place on a specific date and there were no material KYC changes, without some evidence of client confirmation such as an updated KYC form.

13.2.1 Know your product

Section 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, 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". Also, 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".

As noted above, registrants may have thousands of individual securities approved for sale and It would be virtually impossible for a firm to provide training that could reasonably be expected to provide registered individuals with a retainable general understanding of <u>each and every</u> security as described above in 31-103CP. Consistent with our earlier comments regarding training, we suggest that the wording be amended in both NI 31-103 and 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.

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…". 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

Section 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 31-103CP 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 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 31-103CP introduces a 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 and a significant transition period should be permitted.

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

31-103CP "What is a conflict of interest" states that "we do not expect registrants to anticipate every potential conflict of interest no matter how remote the conflict might be" and "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 these statements which acknowledge the importance of materiality, yet NI 31-103 and 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: for their own protection, they will be forced to anticipate every potential conflict of interest, no matter how remote. What material benefits would there be to investors from requiring registrants to meet 13.4 requirements for immaterial conflicts of interest?

13.8 Permitted referral arrangements

We do not believe that there is any need or benefit to section 13.8.1(a) which limits the payment of referral fees to a maximum of 36 months. Registrants provide a range of services to clients beyond investment advice and trading – such as financial education, retirement planning, tax advice, estate planning, cash-flow analysis and planning, and financial planning (services that many of the other proposed amendments imply registrants should provide to their clients) – for which the registrant is paid from account and referral fees. The need for these other services is typically ongoing over the course of many years, so a limitation on the duration of referral fees will result in limitations on registrants' ability to continue providing the services over a period that matches the client's needs. We therefore recommend removing proposed section 13.8.1(a).

The proposed limitation in section 13.8.1(b), which provides that referral fees can only be a maximum of 25% of the fee the client pays to the party receiving the referral, is unnecessary in light of the proposed restriction in section 13.8.1(c), which provides that the referral fee cannot increase the fee paid by the client to the party receiving the referral. Rather, it is an unwarranted intrusion into business arrangements between the referring and receiving parties. We therefore recommend removing proposed section 13.8.1(b).

13.18 Misleading Communication

We support the proposed prohibitions in section 13.8 against using unapproved or misleading titles or designations.

14.2 Relationship disclosure information

Section 14.2(2)(k) requires 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 NI 31-103 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. Rather, it will simply result in additional litigation and regulatory 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 them reacting to the additional KYC information disclosure as an unnecessary and unwanted invasion of privacy rather than enhanced investor protection. Their investing experience will become much more time-consuming and expensive – expensive because registrants will inevitably pass along the significantly higher costs resulting from the considerable additional time, expenses incurred, and resources required for system enhancements, training, client facing time, documentation, records, and compliance.

The unintended consequences for investors may include a narrower range of products being 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 circumstance.

Thank you for the opportunity to provide our comments. Please contact me with any questions you may have.

Yours truly,

"*Shannon Sabey*"

Shannon Sabey, CFP®
President