



December 13, 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

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor, Box 55
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
comments@osc.gov.on.ca

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, Square Victoria 22e étage
C.P. 246, tour de la Bourse
Montreal (Quebec) H4Z 1G3
Fax: 514-864-6381
Consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames,

Re: Proposed Amendments to National Instrument 81-105 Mutual Fund Sales Practices
(*"NI81-105"*)

and

Related Consequential Amendments

Portfolio Strategies Corporation ("PSC") is a Calgary-based dealer that is a member of the Mutual Fund Dealers Association of Canada and registered as a mutual fund dealer and exempt

market dealer in Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, and Quebec, and as an investment fund manager in Alberta and Ontario.

We appreciate the opportunity to provide comments on the CSA/ACVM Notice and Request for Comments (the “Notice”) dated September 13, 2018. Below we provide our responses to the questions posed in the Notice.

ANNEX A PORTFOLIO STRATEGIES RESPONSE TO SPECIFIC QUESTIONS OF THE CSA RELATING TO THE PROPOSED AMENDMENTS

Definition of “member of the organization”

- 1. Under the Proposed Amendments, we propose to expand the definition of “member of the organization” in NI 81-105 to capture an “associate”, as defined under securities law, of the investment fund manager, of the principal distributor or the portfolio adviser of the mutual fund. Aside from potential future modernization amendments contemplated further below, are there additional immediate changes or updates we should consider making to the definition in connection with the implementation of the Proposed Amendments? For example, would paragraph (e) of the definition still be relevant further to the elimination of the DSC option?*

No comment.

Repeal of Section 3.1 of NI 81-105

- 2. Would the proposed repeal of section 3.1 of NI 81-105 have the expected effect of eliminating all forms of the DSC option? If not, what other measures should be taken to ensure that all forms of the DSC option are eliminated?*

The proposed repeal of section 3.1 of NI 81-105 would have the expected effect of eliminating all forms of the DSC option, however we do not agree that all forms of the DSC option (including low load funds) should be eradicated. In most cases, financial advisors perform a substantial amount of planning work before the sale of an investment product takes place. This work needs to be paid for, and DSC/low-load purchase options help defray the costs of such work.

- 3. Would there be any sales practices and/or compensation arrangements with a redemption fee schedule and redemption fee that could exist despite the repeal of section 3.1 of NI 81-105? If so, are rule changes required to specifically prohibit redemption fees that are charged for purposes other than to deter excessive or short-term trading in funds?*

Yes, segregated funds with a DSC option would still exist as a compensation arrangement with a redemption fee schedule and redemption fee, despite the repeal of section 3.1 of NI 81-105. Regulatory arbitrage towards insurance registration is a significant risk that will negatively impact CSA registrant AUA/AUM, and financial stability.

4. *We do not expect that the repeal of section 3.1 of NI 81-105 will have any impact on the availability and use of other sales charge options, including the front-end load option as it currently exists today.*

a) Are there any unintended consequences on the front-end load option with the repeal of section 3.1 that we should consider?

With the repeal of section 3.1, an unintended consequence on the front-end load option would be an increasing shift to the use of funds with a higher front-end load, including those with a maximum charge of 5%.

b) Are there any other types of sales charge options that will be impacted by repealing section 3.1?

We are not aware of any other types of sales charge options that will be impacted by repealing section 3.1.

Amendment of section 3.2 of NI 81-105

5. *We expect that fund organizations will make available a trailing commission-free class or series of securities of a mutual fund to participating dealers who do not make suitability determinations. Would fund organizations have any issues with making available a class or series of securities of a mutual fund without trailing commissions to such dealers?*

F-class series funds are already available to dealers, as a class or series of securities of a mutual fund without trailing commissions; fund organizations would not have any issues making this available, as it already exists. It would be redundant to create another similar trailing commission-free product.

6. *Would fund organizations encounter any issues, including any operational challenges, in confirming whether a participating dealer has made a suitability determination, and is thus eligible to be paid a trailing commission in compliance with subsection 3.2(4) of NI 81-105? If so, please explain.*

It should be the dealer's responsibility to report whether or not they have made a suitability determination and are thus eligible to be paid a trailing commission in compliance with subsection 3.2(4) of NI 81-105. Fund organizations would not

encounter any issues regarding this distinction, if the participating dealers had separate codes to reflect the appropriate dealer channel (advice vs. no advice).

Transition Period

7. *Are there any transitional issues for fund organizations and participating dealers with implementing the Proposed Amendments within the proposed 1-year transition period? If so, please provide details of the relevant operational, technological, systems, compensation arrangements or other significant business changes required, and the minimum amount of time reasonably required to operationalize those changes and comply with the Proposed Amendments.*

There would be transitional issues for fund organizations and participating dealers, with implementing the Proposed Amendments within the proposed 1-year transition period. It would be unjust to halt a DSC program that was internally or externally financed, based on an agreed redemption fee schedule; DSC schedules should be allowed to run their course until their scheduled expiry. At the end of the DSC schedule it would make sense to auto-convert A-series or D-series to a trailing commission-free F-series fund.

8. *With the implementation of the Proposed Amendments, would the required changes to the disclosure in the simplified prospectus and fund facts documents within the proposed 1-year transition period necessitate amendments outside of a mutual fund's prospectus renewal period? Would these changes be considered to be material changes under NI 81-106?*

Yes, with the implementation of the Proposed Amendments, the required changes to the disclosure in the simplified prospectus and fund fact documents within the proposed 1-year transition period would necessitate amendments outside of a mutual fund's prospectus renewal period, and these changes would be considered to be material under NI 81-106.

9. *By the effective date of the Proposed Amendments, the CSA expect that those participating dealers who do not make suitability determinations in respect of a client will have switched any existing mutual fund holdings of such client to a trailing commission-free class or series of the relevant mutual fund.*

(a) Switching a client from a class or series of securities of a mutual fund that pays a trailing commission to one that does not pay a trailing commission would trigger the delivery requirement for the fund facts document. As a transitional measure, should there be an exemption from the fund facts document delivery requirement for such switches? Such an exemption would mean that the investor would not have the right of withdrawal from the purchase, however, the investor would continue to have a right of action for rescission or for damages if there is a misrepresentation in the prospectus of the mutual fund, including any documents incorporated by reference into the

prospectus, such as the fund facts document. In some jurisdictions, investors have a right of rescission with delivery of the trade confirmation for the purchase of mutual fund securities and this right would remain unchanged with such an exemption.

Yes, as a transitional measure there should be an exemption from the fund facts document delivery requirement for switches from existing mutual fund holdings to a trailing commission-free class or series of the relevant fund. Although it is a different series, it will be the same fund and therefore there should be no rescission requirement simply for switching into a less expensive version of the identical fund that an investor had already decided to purchase.

b) Are there any other types of exemptions from CSA or SRO rules that we should consider to facilitate switches to trailing commission-free classes or series of mutual funds? If so, please describe.

Auto-conversion from A or D series to F-series would be another type of exemption from CSA or SRO rules that should be considered, in order to facilitate switches to trailing commission-free classes or series of mutual funds.

10. At this time, the CSA is allowing redemption schedules on existing DSC holdings as of the effective date of the Proposed Amendments to run their course until their scheduled expiry, and fund organizations to continue charging redemption fees on those existing holdings that are redeemed prior to the expiry of the applicable redemption schedule. Should the CSA propose amendments to require existing DSC holdings as of the effective date of the Proposed Amendments to be converted to the front-end load option or other sales charge option? If so, are there any transitional issues for fund organizations and participating dealers with converting existing DSC holdings to another sales charge option? What would be an appropriate transition period?

No, the CSA should not propose amendments that would require existing DSC holdings as of the effective date of the Proposed Amendments to be converted to the front-end load option or other sales charge option. It is unreasonable to void an existing redemption schedule established by the fund organization; investors who purchased DSCs chose a fund option which operates as a financing mechanism, allowing them to obtain investment advice at a deferred rate. This Proposed Amendment does not address the fact that the DSC compensation arrangements were previously agreed to by investors and fund companies; fund companies did not plan for a regulatory intervention as such, and they would be at a financial loss if the current DSC schedules were to be cancelled mid-term.

Regulatory Arbitrage

11. We understand that the elimination of the DSC option may give rise to the risk of regulatory arbitrage to similar non-securities financial products, such as segregated

funds, where such purchase option and its associated participating dealer compensation are still available. Please provide your thoughts on controls and processes that registrants may consider using, and on specific measures or initiatives that the relevant regulators should undertake, to mitigate this risk.

The elimination of the DSC option could give rise to regulatory arbitrage to other non-securities financial products such as segregated funds with a DSC option. The dealer will have little control over any transfer-outs to segregated funds purchased outside of and not processed by the dealer themselves. Even if dealers set a rule within their firm to dissuade advisors from purchasing segregated funds with a DSC option, nothing would be stopping advisors from transferring investors' money out to their respective MGAs, where the purchase of segregated funds with a DSC option continues to be permitted. Loss of AUA due to transfer-outs to segregated funds purchased through MGAs could cause extensive financial harm to existing securities dealers.

Modernization of NI 81-105

- 12. Given that NI 81-105 aims to restrict compensation arrangements that can conflict with registrants' fundamental obligations to their investor clients, and given that the proposed Client Focused Reforms introduce the requirement for registrants to address conflicts of interests, including conflicts arising from third-party compensation, in the best interests of clients or avoid them, should the modernization of NI 81-105 entail a consolidation of its requirements into the registrant conduct obligations of NI 31-103?*

The CSA should first finalize amendments to NI 31-103 and allow time for implementation prior to considering changes to NI 81-105. That said, modernization of NI 81-105 should entail a consolidation of its requirements into the registrant conduct obligations of NI 31-103 for simplicity purposes. Dealer compliance could then focus on enforcing a consolidated set of rules with respect to business practices, trade suitability and advisor conduct.

- 13. NI 81-105 currently applies only to the distribution of prospectus qualified mutual funds. In our view, the conflicts arising from sales practices and compensation arrangements that are addressed by the provisions in NI 81-105 are not unique to the distribution of prospectus qualified mutual funds and also arise in the distribution of other investment products, either sold under a prospectus or a prospectus exemption. Are there other types of investment products that are not currently subject to NI 81-105, such as non-redeemable investment funds, certain labour-sponsored investment funds, structured notes and pooled funds that should also be subject to NI 81-105? If not, why should these investment products, their investment fund managers and the participating dealers that distribute them, remain outside the scope of NI 81-105?*

Exempt Products are not currently subject to and should remain outside the scope of NI 81-105, as the industry needs to maintain some sort of compensation structure for

those selling these higher-risk products. Private capital raises for new and existing businesses that drive employment, technology and innovation are needed for these firms to succeed. The elimination of up-front compensation for exempt market product sales would effectively kill this form of capital raising.

14. We seek feedback on whether we should change the term "trailing commission" to a plain language term that investors would better understand and would better describe what a trailing commission is. If so, what are some suggested terms?

We suggest changing the term "trailing commission" to a plain language term, such as "service fee" or "advice fee".

15. The definition of "participating dealer" in NI 81-102 carves out a principal distributor. As a result, principal distributors are not subject to the provisions of NI 81-105 that apply to participating dealers. Should the modernization of NI 81-105 contemplate the inclusion of principal distributors in the application of all the provisions of NI 81-105? Alternatively, are there specific provisions in NI 81-105 that should also apply to principal distributors? Please explain.

No Comment.

Thank you for the opportunity to provide our comments. If the CSA/ACVM have any questions or require additional clarification, we would be pleased to discuss our comments further.

Yours truly,

"Mark Kent"

Mark S. Kent, CFA, CLU
President & CEO
Portfolio Strategies Corporation