Federation of Mutual Fund Dealers
Fédération des courtiers en fonds mutuels

March 1st 2019

The Secretary
Ontario Securities Commission
20 Queen Street West
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comments@osc.gov.on.ca

Re: OSC Staff Notice 11-784 Burden Reduction

The Federation supports the Ontario Securities Commissions' ("OSC's") efforts as well as the efforts of various Canadian Securities Administration ("CSA") members and the Ministry of Finance. We believe that it is possible for regulators to meet their statutory mandates and at the same time eliminate unnecessary rules and processes and enhance competitiveness for businesses by saving time and money for issuers, registrants, and other market participants which will, in turn, save time and money for investors. Investors ultimately bear all costs.

This is a timely initiative. "The ramp-up in operating costs in the past year relates to the relentless buildup in the regulatory burden carried by industry firms," notes Investment Industry Association of Canada ("IIAC") President and CEO Ian Russell in his January 2019 letter to the industry.

According to the IIAC, operating expenses rose by almost 6% in 2018, outpacing the average annual increase of 3.5% over the previous three years – a trend that the IIAC attributes to both rising regulatory costs and spending on technology (the latter of which is driven by both compliance and competitive considerations). The IIAC anticipates costs will continue rising.

We agree with and support the IIAC's comment regarding national harmonization. In particular that the OSC is seeking input on "changes that the OSC could make on an interim basis in Ontario only that would assist market participants while we continue to pursue coordinated national changes." *However, many of the most out-of-date and burdensome requirements arise from regulatory requirements and policies that are national in scope. We hope that the CSA will consider these* [broader] *suggestions going forward as they work collaboratively to reduce the regulatory burden for capital market participants across Canada.*

General

- Finalize the national securities regulator and harmonize rules across provinces.
- Ensure that harmonization doesn't mean a larger bureaucracy with more staff and the same level of fees being collected.
- Ensure only one registrant filing and set of fees is required to operate in Canada
- Refine mutual fund licensing and regulation as a subset of securities and streamline where possible.

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- Use principles-based regulation where feasible.
- Enshrine an ongoing process to ensure only new rules that are required are introduced and old rules are reviewed and eliminated— in other words, a more targeted rule book that aims to regulate on a cost/benefit basis.
- Continue to invest in technology to reduce the costs of regulatory oversight for market participants. And,
- The needs of investor protection must be better balanced with financial advisor and financial planner regulations to ensure the cost of advice remains viable.

Cost Benefit Analysis

As the Federation has stated in previous submissions over the years, the Ontario Securities Act ("the Act") requires the OSC to publish a "description of the anticipated costs and benefits of the proposed rule" as part of the rule notice. We believe this is a critical step in the rule-making process. However, what is delivered is not much more than "we believe the benefits to outweigh the costs". We do not believe that this satisfies the Act's intended requirement and would encourage the OSC to develop a serious cost benefit analysis process.

Blanket Relief

We recommend that the Act be amended to provide the OSC with the authority to issue blanket exemptive relief. It is unduly burdensome and costly to both the OSC and individual firms to address individual applications for exemptive relief that is required or desired by multiple industry participants on a firm-by-firm basis.

Alternative Funds & CCO Proficiency

When NI 31-103 was developed, the CSA was clear that a mutual fund registrant could trade in anything that met the definition of a mutual fund under securities legislation. As a result, dealers and their advisors could trade in prospectus exempt funds without additional proficiency, e.g. EMD proficiency, so long as they complied with the prospectus exemptions, e.g. selling prospectus exempt funds to accredited investors. This means that a mutual fund registrant can sell prospectus exempt funds to accredited investors without additional proficiency.

However, due to a revision to NI 81-104 that covers a wide range of mutual funds, a derivative proficiency was imposed. This seemed to make sense when NI 81-104 dealt with commodity pools, but not now especially considering that an alternative fund is subject to greater investment restrictions and increased transparency to a non-accredited investor.

Proficiency should be tied to the product and not to the client. If dealers/advisors are proficient enough to sell funds that are exempt from any restrictions (can hold concentrated positions, use derivatives and leverage) under current proficiency requirements, then they should be proficient enough to sell a fund that has investment restrictions like alternative funds. The derivatives course is an unnecessary burden.

Dealers with an Exempt Market & Mutual Fund Registration

If a dealer is a recognized self regulatory organization ("SRO") Member, the Dealer should not have to submit financial filings to the provincial regulator for any reason, as that information can be easily obtained from the SRO if necessary.

All MFDA Members submit monthly financial filings using a web-based electronic filing system. Those MFDA Members that have an EMD license are also required to send in a quarterly financial filing to their principal CSA jurisdiction. The CSA can access every filing of every dealer at any time. It does not make sense to have a Member print off an MFDA filing at the quarter end, scan it and email it to the CSA which is what happens today.

We would expand this comment to any other areas where currently the dealer is required to file information with the MFDA as well as the OSC.

OSC Website

We agree with the IIAC's comment that *the OSC website is challenging and cumbersome to navigate in some areas, in particular, in respect of the built-in search function. When searching National Instruments, it would be much more helpful if the first search result was the most recent consolidated version of the instrument, as opposed to notice of proposed amendments, notice of ministerial approval, etc. We would suggest the Task Force examine the approach taken by other regulators, such as the Autorité des marchés financiers ("AMF"), to ensure that the information on their website is easily accessible by both the industry and the public. The website of the AMF provides a good example of a more user-friendly website experience.*

Record Retention

We also agree with the IIAC's comment regarding section 11.6 of NI 31-103. *Subsection 11.6(a) states that a registered firm must keep a record that it is required to keep under securities legislation for seven years from the date the record is created. The seven-year retention period made sense when the provincial limitation period was six years but, generally, all provinces have amended their limitation periods to two years.* Shortening this requirement to three years would help reduce the volume of records that firms must retain.

A Consistent Approach to Reporting Outside Business Activities

We agree with the Investment Funds Institute of Canada's ("IFIC's") comment that *the regulatory approach to reportable outside business activities ("OBAs") is continually evolving and is not harmonized nationally. We urge the OSC work with the other members of the CSA and with the SROs to develop and communicate a consistent approach concerning the reporting of OBAs by registrants. Given the ongoing evolution regarding OBAs, we strongly urge the offering of an amnesty period to permit registrants to report*

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activities once a consistent national approach to OBAs is developed. This will encourage registrants to report OBAs that were not previously reportable, without being subject to significant late filing penalties. We also encourage the OSC to reconsider the quantum of applicable late filing fees, which are disproportionately high for what is generally not an intentional delay in filing and are not in line with other CSA jurisdictions.

Audit to the Rule, not to Guidance

We also agree with IFIC's comment that *it is important to recognize that compliance with the rules can be achieved in a number of ways, not solely by compliance with the published guidance.* At this point we would extend this comment to the MFDA. *We recommend the OSC* [and the MFDA] *clearly articulate that guidance is only provided to assist registrants in implementing their compliance program. As a result, when conducting compliance reviews staff must audit for compliance with the regulatory requirement, not with any guidance. This clarification will reduce the regulatory burden on the industry by providing flexibility in complying with regulatory requirements. Industry members will have certainty that their compliance policies and procedures will not be judged inadequate solely in light of published guidance.*

OSC Should Join the Passport System

We join others in recommending this. We have Members whose principal regulator is not the OSC and this causes them an unnecessary regulatory burden. They must submit filings to both their principal regulator and the OSC, requiring a cumbersome coordination process between the two regulators.

We would be pleased to discuss our comments in further detail and welcome the opportunity to participate in the roundtable discussion on March 27, 2019.

Regards,

Federation of Mutual Fund Dealers

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