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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
Superintendent of Securities, Nunavut

Sent to:

Ms. Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
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The Secretary
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Re: Draft Regulation to amend *Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations* and Draft Amendments to *Policy Statement to Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations*

Dear Mesdames/Sirs,

Universitas Management Inc. wishes to thank the Canadian Securities Administrators (the "CSA") for the opportunity to comment on the draft Regulation to amend *Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("Regulation 31-103") and the draft amendments to the *Policy Statement to Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations* (the "Draft Policy Statement") (collectively the "Proposed Reforms"). Rest assured that we understand the importance of this consultation from the perspective of protecting the interests of investors. The purpose of this document is to submit comments on the Proposed

Reforms and to respond specifically to one of the questions posed by the CSA in the Notice of Consultation dealing with the Proposed Reforms, published on June 21, 2018.

Presentation of Universitas Management Inc.

Universitas Management Inc. ("Universitas Management") is a wholly owned subsidiary of the Universitas Foundation of Canada, a non-profit organization founded in Quebec, in 1964, with the goal of giving every child the opportunity to pursue an education. Today, our organization is a pillar in the field of education savings and a leader in the registered education savings plan (RESP) industry, promoting education through savings strategies that favour access to education and academic perseverance.

Universitas Management is a duly registered scholarship plan dealer, the main distributor of the plans promoted by the Universitas Foundation of Canada and the investment fund manager for the trusts issuing the REFLEX, UNIVERSITAS and INDIVIDUAL scholarship plans (the "Scholarship Plans"). Its head office is located in Quebec City, Quebec.

Our scholarship plan representatives only distribute products promoted by the Universitas Foundation of Canada, and exclusively in Quebec and New Brunswick.

It is in this context that we are submitting our comments to you.

Comments on the Proposed Reforms

1. General comments

Universitas Management welcomes the CSA's general consideration to promote the digital shift among the registrants. This concern is quite noticeable in the proposals set out in the Policy Statement, particularly regarding the client's confirmation of the accuracy of the information collected or updates that could be obtained through its electronic signature, or the fact that this information could be collected via an online platform. Of course, in these situations, the registrant remains solely responsible for its fundamental obligations.[1]

We appreciate the fact that the proposed regulatory reforms are generally based on principles without necessarily attempting to impose a specific manner of fulfilling the obligation. This flexibility will enable registrants to comply with their obligations while both taking the initiative and being innovative as a function of their business model, thereby promoting the efficiency of the markets and the diversity of products and services offered to investors.

We also acknowledge the work done by the CSA in providing details on their interpretation of the proposed regulatory provisions in the Draft Policy Statement with concrete examples. This will facilitate the understanding of the CSA's expectations by the participants in the financial services industry.

2. Know your client

Generally speaking, we are in favour of the Proposed Reforms to the fundamental obligation to know your client. For Universitas Management, the proposed maximum time period of 36 months – or on acquiring knowledge of a significant change

[1] Draft Policy Statement (English blacklined version), page 68

in the client's circumstances – for purposes of updating the information in the client's file, seems reasonable and will promote the suitability for the client of the transactions conducted on their behalf. In addition, we share the CSA's interpretation of what constitutes a significant change in the client's circumstances, namely, a change in their risk profile, investment time horizon, or investment needs and objectives, as well as any change that one would reasonably expect to have a significant impact on their net worth or income. The essential elements for knowing your client proposed by the CSA (i.e., their personal circumstances, financial circumstances, investment needs and objectives, investment knowledge, risk profile and investment time horizon) seem completely logical to us for purposes of knowing your client sufficiently well to be able to make a suitable recommendation for them.

However, we have some reservations regarding the following interpretation by the CSA of the obligation to know your client's investment objectives: "Depending on the nature of the relationship with the client, and the securities and services offered by the registrant, registrants should take into account whether there are any other priorities, such as paying down high interest debt or directing cash into a savings account, that are more likely to achieve the client's investment objectives and financial goals than a transaction in securities."[2] The scholarship plan representatives acting for Universitas Management are not necessarily trained in giving financial planning advice. In many cases, their area of expertise is limited to scholarship plans. This interpretation opens the door potentially to requiring scholarship plan representatives to advise their clients on aspects of their financial circumstances without having the requisite training or licenses for doing so. Respectfully, we call upon the CSA to exercise caution regarding this statement.

3. Know your product

Generally speaking, we are in favour of the Proposed Reforms regarding the fundamental obligation to know your product. We believe it is essential for the registrant to have a good mastery of the structure, features, potential returns, as well as the risks associated with the financial products offered by them in order to properly meet the client's needs. Moreover, our representatives' training on the features of the products offered is already deeply rooted at the heart of Universitas Management's practices.

However, the proposed obligation to understand a comparison with other similar products offered in the market when the time comes for the firm to approve a product could be difficult to apply in practice when one also considers the proposed obligation to manage conflicts of interest in the client's best interest. In considering these two obligations, the registered firm would not approve any product with features that vary slightly from those of a competitor's product and some of whose characteristics are less advantageous for the client (for example, higher fees), but some of whose other characteristics are different and might be better suited to certain clients. This measure could have the unintended consequence of leveling the supply of products and services offered in the market (and leveling their prices), thereby limiting the variety of options available to clients. In our opinion, the principle of market competition is already at work and does not need to be codified by a regulatory requirement whose practical application seems uncertain.

4. Suitability determination

Generally speaking, Universitas Management welcomes the Proposed Reforms. In our view, it is highly desirable to put the client's interests first when determining whether a transaction is suitable. Our clients' interests are already central to our concerns.

[2] Draft Policy Statement (English blacklined version), page 71

On the issue of reassessing the suitability for the client in cases in which a new representative is assigned to the client's account, we agree with this principle. However, the practical application of this principle could entail certain difficulties. For example, in a situation in which an experienced representative leaves their employment or takes retirement, the registered firm would have to reassign a very large number of accounts. The representative(s) who would be succeeding the representative who is leaving and taking over his or her accounts would have a large quantity of accounts to assess at the same time, on top of their daily tasks of meeting with clients, following up and updating current client files, administrative tasks, and continuing education. With the introduction of this proposed provision, the new representative would find themself in a situation in which it would be impossible, in practice, to fulfil their regulatory obligation in the near term for lack of time. We would suggest that the CSA clarify this provision by taking into account the last update of information in the file made by the previous representative. For example, in the case of a scholarship plan dealer, if the previous representative had updated the information in the file 12 months earlier, the new representative would have 24 months to update the information in the file and reassess suitability, where applicable.

5. Conflicts of interest

The proposed obligation to address conflicts of interest between the registrant and the clients in the best interest of the client is laudable and, in principle, desirable. In this regard, in the Proposed Reforms, the CSA also states that if the conflict cannot be addressed accordingly, it must be avoided. We are reassured to note that the CSA sets out certain controls that could be implemented in order to address conflicts of interest in the clients' best interest in situations involving proprietary products.[3] This indicates to us that the business model of a registrant offering only proprietary products still has its place.

6. Referral fees

Does prohibiting a registrant from paying a referral fee to a non-registrant limit investors' access to securities related services?

Yes. For the following reasons, Universitas Management is not in favour of this proposed prohibition. In our opinion, the key point is the referred person's free and informed consent to the registrant contacting them. Provided such consent has been given, we see no valid reason for limiting the scope of the potential business alliances that a registrant may conclude with partners in their community in order to increase awareness of their products and services.

This fundamental concept of consent by the person concerned is already regulated in Quebec by the *Act respecting the protection of personal information in the private sector*[4] and, in the other Canadian provinces, by the *Personal Information Protection and Electronic Documents Act*[5]. Indeed, the provisions of these statutes state that no person may communicate to a third person the personal information contained in a file that he holds on an individual, or use it for purposes not relevant to the object of the file, unless the person concerned consents thereto or such communication or use is provided for by the statute.

Based on this principle, any party wishing to refer a client to a registrant must first obtain the client's consent. The referred client will therefore be willing and, in many cases, need to be contacted by the registrant to obtain a presentation of its

[3] Draft Policy Statement (English blacklined version), pages 91-92
[4] c. P-39.1
[5] S.C. 2000, c. 5

products and services. In our opinion, it would be contrary to the interests of the client or potential client to deprive them of this channel of communication where, of course, the client wishes to be contacted by the registrant.

In Quebec, the concept of referral arrangement under the *Act respecting the distribution of financial products and services*[6] only comes into play in certain circumstances. In fact, a distinction is made according to the quality of the person who receives compensation following a client referral. Only a representative or distributor may receive compensation tied or conditional to the sale of a product or the provision of a financial service. Any other person who is not governed by the *Act respecting the distribution of financial products and services* may receive compensation following the referral of a client. However, such compensation must not depend on the result of the referral or vary according to the sale of a product or the provision of a service[7]. In our opinion, it would be appropriate to find this same logic in the CSA's Proposed Reforms pertaining to referral fees. In cases of a commission for the conclusion of a sale, certain specific restrictions such as those suggested in the Proposed Reforms could apply. As in the insurance sector, a flat fee unrelated to the conclusion of a sale would be excluded from the application of the provisions dealing with referral fees.

In addition, this proposed reform aimed at prohibiting a registrant from paying a referral fee to a person not registered to deal in securities is not consistent with section 684 of *Bill 141: An Act mainly to improve the regulation of the financial sector, the protection of deposits of money and the operation of financial institutions*[8] (hereafter "*Bill 141*") as assented in last June which amends the Quebec *Securities Act*[9] by authorizing mutual fund dealers and scholarship plan dealers to only share their commissions with the following individuals and legal persons:

- another dealer or adviser governed by that act;
- a firm, an independent representative or independent partnership governed by the *Act respecting the distribution of financial products and services* (chapter D-9.2);
- a broker's or agency licence holder governed by the *Real Estate Brokerage Act* (chapter C-73.2);
- a dealer or adviser governed by the *Derivatives Act* (chapter I-14.01);
- a deposit institution authorized under the *Deposit Institutions and Deposit Protection Act* (chapter A-26);
- an insurer authorized under the *Insurers Act* (2018, chapter 23, section 3); or
- a federation within the meaning of the *Act respecting financial services cooperatives* (chapter C-67.3).[10]

Section 547 of *Bill 141* introduces a clarification to the effect that a person receiving an amount from the sharing of a commission is not required, by virtue of that fact, to be registered with the Autorité des marchés financiers. We are aware that *Bill 141* is only effective in Quebec. We would still recommend that, as an integrated regulator, the AMF should act consistently by considering the other regulatory developments that were recommended by the AMF itself to the Minister of Finance for assent in June 2018. If the draft of section 13.8(1)(a) of Regulation 31-103 were to remain as currently drafted, the impact in Quebec would be to nearly entirely restrict the effects of section 684 of *Bill 141* regarding mutual fund dealers and scholarship plan dealers, since draft section 13.8(1)(a) of Regulation 31-103 is much more restrictive. It seems surprising that a regulator would propose a regulatory reform with contradictory effects to another regulatory reform adopted a few months earlier. For

[6] c. D-9.2
[7] Avis relatif à l'indication de clients en application de la Loi sur la distribution de produits et services financiers, 2010
[8] c. 23, 2018
[9] c. V-1.1
[10] *An Act mainly to improve the regulation of the financial sector, the protection of deposits of money and the operation of financial institutions*, c. 23, 2018

these reasons, we would recommend that the CSA broaden the scope of draft section 13.8(1)(a) of Regulation 31-103 to permit the payment of a referral fee to the individuals and legal persons listed in section 684 of *Bill 141*.

i. Limitations on referral fees

Universitas Management can only be in favour of the proposed additional restriction to the effect that a referral fee cannot result in an increase in the amount of fees or commissions that would otherwise be paid by a client to the party who received the referral for the same product or service. It is very important for Universitas Management to treat all its clients fairly. This entails billing all our clients for the same fees and commissions, regardless of whether they were referred to us or not.

However, Universitas Management is not in favour of the CSA's proposal to restrict the contractual freedom of registered firms by imposing a limit on commissions paid under a referral arrangement and limiting the duration of such an arrangement to 36 months. We do not see the practical utility of introducing such limitations, especially considering the restriction referred to in the preceding paragraph which assures the client that the payment of a referral fee relating to them will have no impact on the fees or commissions they incur. Respectfully, this Proposed Reform amounts to interference in the contractual affairs of registrants.

7. Misleading communications

We are generally in favour of the Proposed Reforms pertaining to misleading communications. Being transparent with our clients in all matters relating to our products and services is a primary concern of Universitas Management. However, in regard to the Proposed Reform of section 13.18(2)(a) of Regulation 31-103, which prohibits a representative from using a recognition based partially or entirely on their sales activity or revenue generation, the example given in the Policy Statement that this includes a representative's membership in the registered firm's "President's Club" seems, respectfully, to go too far in our view. We understand and support the CSA's intention to protect investors from misleading representations which could give a false impression that a representative holds an executive position with the firm or has the capacity to bind the registered firm.

However, a reference by a representative in their *curriculum vitae* or LinkedIn profile that they are a member of the "President's Club" is not of a kind that would mislead a client as to whether or not the representative holds a position as a senior executive. This is a relevant professional recognition in the sales sector which representatives should be authorized to highlight when they are presenting their profile and professional skills.

We would suggest that the CSA specify the context in which this prohibition would apply. We would recommend that they distinguish between the designation used by representative in their signature or on their business card, which should be as consistent and clean as possible, from the various elements that may be mentioned in a *curriculum vitae* or on a LinkedIn profile, where information, such as the fact that they were named as a member of the "President's Club", may be relevant.

8. Relationship disclosure information

We are in favour of greater transparency toward clients and potential clients, particularly by making information on the relationship accessible to potential clients even before the start of a client relationship, in accordance with draft section 14.1.2 of Regulation 31-103. In this regard, since we are proud of our business model and are concerned about offering very transparent services to our clients, Universitas Management has already made this information available, at present, to everyone on its website.

Regarding draft section 14.2(2)(o) of Regulation 31-103, we are surprised to note that the CSA suggest that registrants formulate assumptions on the potential returns that clients might earn. If a registered firm were henceforth required to inform its clients that certain aspects (in this case, the various charges that apply and the types of investments permitted in the portfolio based on regulatory restrictions relating to the category of registration or otherwise) could have the effect of reducing their returns, it would be misleading to not also inform clients of the various factors that could have the effect of increasing potential overall returns (for example, certain government subsidies associated with the product). The CSA should broaden the formulation of this obligation to include the disclosure of all factors that could have an impact on the client's overall returns.

In addition, regarding draft section 14.2(2)(o) of Regulation 31-103, the Draft Policy Statement specifies that registered firms should also include a "discussion of the potential for reduced overall returns if only a limited range of products is made available to the client."[11] In our opinion, the obligation to give such a warning opens the door to information that could be considered misleading, since one does not know in advance what trend the markets will take. It is possible that a portfolio containing only a limited variety of securities may perform better than a portfolio containing a very large variety of securities. Conversely, would this obligation entitle firms registered in categories involving no inherent restrictions to make representations to their clients to the effect that they have the potential for greater returns merely because they have chosen the services of a registered firm that is able to trade in a greater variety of securities? In a context of protecting investors, in our view, it would be risky to include this obligation in draft Regulation 31-103.

We thank you for giving us the opportunity to comment on the Proposed Reforms. Please do not hesitate to contact the undersigned should you have any questions regarding this submission. In addition, we would be pleased to meet with you at your convenience in order to discuss the various Proposed Reforms in greater detail and the potential impact that we expect them to have on our industry.

Yours very truly,

Noémie C. Girard, LL. B.
Legal Counsel, Corporate Affairs

c.c. **Isabelle Grenier, Executive Vice-President and Chief Compliance Officer**
Patrick Bernier, Director, Legal Affairs and Corporate Secretary

[11] Draft Policy Statement (English blacklined version), page 126