Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission Financial
Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Nova Scotia Securities Commission
Ontario Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

October 19, 2018

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
Montréal, QC H4Z 1G3
Fax: 514-864-6381
consultation-en-cours@lautorite.qc.ca

Re: Canadian Securities Administrators Notice and Request for Comment - Client Focused Reforms Proposed Amendments to National Instrument 31-103 and Companion Policy 31-103CP

OVERVIEW

Kinsted Wealth was incorporated in 2002 and is registered as a portfolio management firm in the jurisdictions of British Columbia, Alberta, Saskatchewan and Manitoba as well as an Investment Fund Manager in Alberta.

This response is exceptional as it is the first time in our history that Kinsted has responded to a "Request for Comment" by the CSA. However, the nature of this proposal, particularly the section on "Conflicts of Interest", is exceptional and thus warrants our response. As well as our written response, we have been involved with the Portfolio Managers Association of Canada in the pursuit of appropriate regulation and good governance of the capital markets.

GENERAL COMMENTS

We support and applaud the CSA for their efforts with these proposed amendments to ensure that the KYC, KYP, suitability requirements and disclosure documents are adhered to in the best interest of the client. After reading the draft proposal from PMAC we are in support of their comments, perspective and position with respect to their response.

We embrace our fiduciary duty to our clients as a discretionary manager and would continue to support all efforts that guide our industry to accept such responsibility. The responsibility to be compensated for managing someone's investments (or for those licensed to sell securities) should not to be taken lightly, and thus the regulations should continue to reflect the degree of this responsibility. However, we respect that an overarching standard in a very diverse industry is complicated. Continuing to improve the standards in which our industry operates is a necessity. Any amendments being proposed that are focused on the best interest of the client, with an understanding, respect and balance for the practical realities of operating in the industry, will always be supported by Kinsted Wealth.

We also appreciate and respect that providing guidance to rules surrounding the process in completing a KYC is difficult. Providing clear direction on terms such as "personal circumstances, objectives, investment knowledge, and risk profile", as these terms are subjective and relative to one's perspective and bias, is challenging. But continued effort in these specific areas should increase the quality of these processes and should ultimately be reflected in the success of the client-registrant relationship.

However, the exceptional component of this proposal is the Conflicts of Interest section. We appreciate that any relationship whereby someone is compensated for a referral creates a conflict and requires appropriate due diligence and disclosure. SROs setting guidelines that dictate the amount of the referral fee, the maximum percentage of the management fee that can be paid as a referral fee and the duration of the fee, is crossing from providing guidance and regulation to protect the integrity of our capital markets, to being involved in private enterprise. We don't believe the CSA should be determining the monetary value of our, or our referral sources, services. We believe in a free market economy whereby the market should determine the value of services provided. Transparency in fees and costs are an important part for the market to make a well-informed decision, which current guidelines provide direction on. Guidelines on who can be paid a referral fee by a registrant is one area that there may be an opportunity to tighten policies on, which is presented later in this paper.

The CSA wants to ensure that the conflicts of interest inherent in a referral agreement are appropriately and properly identified to achieve the goals of the proposed amendments listed below. We completely agree with this objective. However, we are stating in this comment paper that the regulations are currently in place to achieve the management and mitigation of this conflict and the achievement of these stated goals.

STATED GOALS AND OVERVIEW OF THE PROPOSAL

The CSA's stated goals (page 2) for reforms are to:

1) better align the interests of registrants with the interests of their clients,
2) improve outcomes for clients, and
3) make it clearer to clients the nature and the terms of their relationship with registrants.

The SROs state (page 2) that they are "committed to changes at the core of the Proposed Amendments which would require registrants to promote the best interests of clients and put clients' interest first. This is a fundamental change that focuses on the clients interests in the client-registrant relationship." We are surprised that a focus on what is best for the client is considered a fundamental change. As a fiduciary, the idea of "what is best for our client" is engrained in our corporate culture, processes and decision-making framework. Continued conversations on how to implement an industry wide fiduciary duty remain important.

Conflicts of Interest – Referral Agreements

The request for comment paper specifically states on Page 8 that "the Proposed Amendments would require all existing and reasonably foreseeable conflicts, not just material conflicts, to be addressed in the best interest of the client". We agree with this statement.

Under current guidelines the registrant is held responsible for fulfilling these obligations. We encourage the CSA to not manage to the lowest common denominator and amend current policies to capture registrants that are not abiding by the spirit and letter of the current regulations. If registrants are not abiding by the current regulations, they most likely would not abide by more restrictive regulations and thus the amendments end up just affecting those already abiding by current regulations. The registrant is responsible for the proper execution of the referral agreement and that the services being compensated for within the referral agreement are being provided. If the referral fee (or management fee for that matter), are unreasonably high and thus the value for the services are perceived as low, the competitive landscape will apply the appropriate pressure.

The current regulations in NI 31-103 S 13.7-13.10 are in place to ensure that the registrant:

1) Ensures the referral arrangement is not prohibited;
2) Fulfills its KYC, KYP, suitability and disclosure requirements;
3) Contains all the details in 13.8 in a written referral agreement;
4) Execute proper due diligence of the referral source to ensure the source is qualified, will be delivering the service the referral fee is intended to compensate for, and does NOT engage in any registerable activities, to the best of the registrant's ability.

If the registrant has decided that the referral source will not violate any of these rules and is offering the services in the referral agreement as outlined, and the services and corresponding costs associated with those services are disclosed, understood, and signed off by all interested parties, the letter and spirit of the existing guidelines are fulfilled.

[We use the term "referral and servicing" fee with our clients as it better defines an expectation of the service being provided by the referral source for the compensation provided.]

If a registrant feels that the expected referral fee is mis-appropriately priced, appreciating the value of the services provided by the referral source, the registrant should decline to do business with that referral source as it is their personal and corporate brand associated with that cost. We have worked with referral sources, using our market knowledge and experience, to set expectations of referral fees that have the total cost commensurate with the combined services being provided. As business owners we lead a corporate culture of "putting our client's interest first" because we believe those businesses that do so will succeed and hopefully lead our industry to a higher standard of safeguarding our clients best interest. (This is the Kinsted vision statement).

Adding restrictions on the amount of the referral fee (and thus dictating the value in the referral sources services), the duration of the referral fee (implying that the value of the planning relationship does not extend beyond 36 months), and not permitting the addition of a referral fee over and above a "retail" management fee, (implying the cost of independent financial planning needs to be absorbed by the registrant) does not assist in achieving any of the stated goals of this proposed amendment. The rules that are in place currently protect the client-registrant relationship by managing any conflicts of interest to the client's best interest and in doing so help improve the success of the client-registrant relationship.

We believe that the existence of a current, well thought out, well executed financial plan (which is not a service we provide as a discretionary portfolio management firm) assists greatly in the pursuit

of determining suitability and portfolio construction. Therefore, we should be encouraging investors to have a current financial plan as that would assist the SROs in achieving the goals stated in this proposal. Appreciating that some plans may be straight forward and succinct, and others may take hundreds of hours to execute and update, the financial planning referral source needs to be compensated for their work. The extent and value of that compensation should be determined by the marketplace.

Area of Improvement

We acknowledge the specific concern of the SROs where a licensed person is suspended or expelled from the financial services industry, then refers their book of clients to a registrant and is then compensated via a referral agreement for working in our industry but now outside the scope of the CSA, is worrisome. However, section 13.9 outlines that it is the registrant's responsibility to ensure the person receiving the referral fee is "appropriately qualified". We would not consider someone that has had their license suspended or revoked appropriately qualified. Of note, is that this comment does not include circumstances where someone has given up their license in extenuating circumstances (such as employment termination). Notwithstanding the reputational risk of a registrant doing business with someone such as this, 13.9 could be amended to be more specific around what "appropriately qualified" means. Place the responsibility on the registrant to review the license history of the referral source and check character references to ensure that these situations do not occur. There could also be the addition of adding a review of this process in the CCO annual report.

Summary

We appreciate that in desiring to eliminate inappropriate referral agreements, it can seem to be appealing to introduce broad scope changes that address egregious abuses, that we are certain the CSA has witnessed, regarding the use of referral agreements. These egregious behaviors erode the fabric of the client-registrant relationship and reduce the probability of better outcomes for the investor – notwithstanding the sometimes irreputable damage to the integrity of the capital markets and financial services industry. However, we object to all of the proposals regarding amendments to the regulations surrounding referral agreements as presented as we feel it does not achieve that stated goals of the amendments.

In the continued efforts to execute our responsibilities to complete our KYC and suitability requirements to the best of our ability, we strongly believe that a client that is working with another independent professional, that is "appropriately qualified" to provide services such as financial planning, risk management etc., can be helpful in fulfilling our responsibilities. This relationship, if executed to the letter and spirit of NI 31-103, can create wonderful outcomes for the investing public. The determined value of those services, and for that of any portfolio management firm, investment advisor, dealer, bank, etc., should be left to a free market economy, not a regulator.

We thank all of the staff at the CSA for their hard work in protecting the integrity of the capital markets and offer to work with the CSA to demonstrate how strong leadership, management, corporate culture and experience can lead to the successful and appropriate execution of referral agreement.

Regards,
Collin Gordon, MBA
Chief Compliance Officer
Kinsted Wealth Inc.