October 19, 2018

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

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, Square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3

Delivery via email to: comments@osc.gov.on.ca and consultation-en-cours@lautorite.qc.ca

RE: CSA Notice and Request for Comment – Proposed Amendments to NI 31-103

Dear Sirs and Madams:

I am writing on behalf of Tri View Capital Ltd. ("**Tri View**") in my capacity as Chief Compliance Officer in regard to *CSA Notice and Request For Comment - Proposed Amendments to National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations* and to *Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations Reforms to Enhance the Client-Registrant Relationship (Client Focused Reforms)* (collectively, the "**Proposed Amendments**"). We thank the individuals and authorities named above for reading and considering our remarks towards the request for comment released by the Canadian Securities Administrators ("**CSA**"). We are always eager to work towards continually improving our industry and better serving our clients.

Tri View is an Exempt Market Dealer ("**EMD**") based out of Calgary, Alberta. We are registered in British Columbia, Alberta, Saskatchewan, Manitoba, and Ontario. We are a member of the Private Capital Markets

Association of Canada ("**PCMA**") and would like to take this opportunity to echo the opinions put forward in their respective comment letter. While we have not reviewed the final letter from PCMA, we have participated in their review process by contributing our comments and conversing with other PCMA members. We believe the remarks in their comment letter will largely overlap with our own.

Our letter will outline our comments on the various components of the Proposed Amendments. We will then address the additional questions posed by the CSA.

Thank you for your time and consideration in reviewing our comments. Please contact the undersigned if you have any questions about the contents of this letter.

Sincerely,

Jessica Mitchell
Chief Compliance Officer
Tri View Capital Ltd.

Life Plaza
Suite 605, 734 - 7th Ave SW
Calgary, AB T2P 3P8
T: (403) 984-6570
E: jmitchell@triviewcapital.com

cc: Craig Burrows – Chief Executive Officer, President, and Ultimate Designated Person of Tri View Capital Ltd.

Enclosure.

Proposed Changes to s.13.2(4.1) (Know Your Client Requirements)

We understand the importance of ensuring Know Your Client ("**KYC**") information is accurate and current in order to make proper suitability assessments for clients. Tri View's current practice is to ensure that KYCs are amended in the event of a material change or every 12 months, whichever is sooner, prior to conducting a transaction or making a suitability recommendation. We agree with the general concepts behind the Proposed Amendments for this section. That being said, we would seek clarity on the following items:

1. What constitutes a material or significant change? For example, net financial assets are a key factor in making a suitability recommendation for clients. However, if a client's net financial assets changes by a nominal amount, would that constitute a material change?
2. What criteria would determine whether a Dealing Representative ("**DR**") or EMD knows, or reasonably ought to have known, about a significant change? We believe DRs and EMDs should or ought to know about these types of changes by employing common sense, but that they should also be able to take the client at their word unless they have reason to believe that the client is being dishonest or does not understand the questions being posed to them. We agree it is prudent for DRs and EMDs to have general measures in place to detect significant changes in KYC information; however, if clients are dishonest, we would hope that the onus of responsibility would fall on them as long as DRs and EMDs could prove they took reasonable steps and followed common sense.
3. The way that we interpret the Proposed Amendments, when EMDs receive trailers in respect of a particular client, an updated KYC is required every 36 months. This requirement may be difficult to carry out in practice as clients tend to be averse to filling out paperwork, particularly if there is no pending motivation for them to complete the paperwork. It should be noted that an EMD does not hold any assets of the client nor does it have any enforcement ability for clients who refuse to comply with a request to update their KYC. We would propose that the guidance be to obtain updated KYCs from on-going clients at regular intervals, but not to make it a legislative requirement as clients may view this as a bureaucratic burden in certain circumstances. Alternatively, the requirement could be to request an updated KYC at specified intervals; if the client does not respond to requests, the EMD can simply keep a copy of the request in their records.

Proposed Changes to s.13.2.1 (Know Your Product Requirements)

The obligation of a firm to compare a private security with other similar securities is not realistic and would be difficult to carry out in practice. It is not typically reasonable to compare exempt market products to other similar public offerings, as there are often material differences in company size, reporting obligations, and liquidity options. In terms of comparing one exempt market product to another, this could be problematic due to lack of publicly available data. Exempt market issuers are not required to provide third parties with their due diligence materials, nor are these materials readily available elsewhere. This may cause exempt market dealers to rely on limited information, which may not lead to the most appropriate comparisons being made. We do

not see how comparisons made with potentially mismatched products or through lack of available information would ultimately benefit clients.

We agree with the concept of formally approving securities made available for sale, and monitoring and reassessing previously approved securities. However, we find that this leads to questions as to what would be considered sufficient monitoring and reassessing. For example, what if the issuer only uses the accredited investor exemption, meaning there is no legislative requirement to provide audited financials, and does not voluntarily provide updates or financial statements? We would hope the thresholds would consider a best-efforts standard where EMDs review available information and ask reasonable questions, but that there are concessions made when issuers are not required or willing to provide information. Would the CSA consider regulation that allows EMDs to launch a complaint to regulators for issuers who fail to provide audited financials and Management & Discussion Analysis for investors? Alternatively, would the CSA consider mandating audited financials and investor updates even for issuers using only the accredited investor exemption? We understand these requirements currently exist for the offering memorandum exemption, but we believe it would be beneficial to extend these requirements to issuers using the accredited investor exemption as well. The companion policy indicates that part of the purpose of re-evaluating securities is to determine whether securities are still appropriate for clients to hold; this could pose particular challenges for EMDs as most products are largely illiquid, making the recommendation somewhat irrelevant. It is important to note that exempt market product suitability is determined at the time of the investment and as it is illiquid, there is minimal ability to divest or redeploy assets based on new suitability assessments in the future.

We agree that registered individuals should generally understand the securities available through their firm, and specifically understand the securities that are sold and recommended to their clients. However, we are unclear as to what constitutes the difference between a general and specific understanding. The companion policy indicates that a "general understanding" consists of knowing the structure, features, returns, risks and costs of each security. The companion policy further indicates that "thoroughly understanding" a security consists of knowing the structure, features, returns and risks, initial and on-going costs and how those impact investors. There is not a significant distinction between general and thorough understanding based on this guidance.

In our opinion, it would be overly difficult for dealing representatives to have substantial and specific knowledge of every product on a firm's shelf. An unintended consequence of this proposal may be that exempt market dealers narrow their shelf of approved products, which would subsequently limit the choices available to investors. There is certainly no argument against a dealing representative thoroughly understanding any product that they sell or recommend. Rather, we would recommend that the "general understanding" definition be limited to understanding the basic structures and features of the product.

In regard to guidelines or client profiles, we would be against imposing concentration limits and specific product guidelines that assert which clients may find this product suitable. The reason is that suitability of a product for a client is already evaluated on a case-by-case basis. It seems

unnecessarily limiting to the firm to impose additional restrictions when a suitability analysis is conducted regardless. We would suggest that principles-based regulation be maintained in this area.

Proposed Changes to s.13.3 (Suitability determination)

Generally, we agree that it makes sense to consider certain specific factors in making suitability determinations. In regard to considering overall concentration and liquidity across all the client's accounts at the firm, we would request clarification as to what that consideration entails as it could involve a degree of subjectivity. For example, it makes sense to consider accounts of spouses together, but should their adult children be included if they are at the firm as well? As another example, it makes sense in theory to factor in holding companies, but what if a holding company is owned by multiple people? We would suggest the scope of accounts be limited to include spouses, dependants, and companies owned for the individual's personal benefit. Alternatively, it may make sense to clarify with clients how they want their suitability analysis to be considered in more complex family and/or corporate situations as described above.

We agree with the concept of assessing client suitability at a portfolio-level. However, it is important to emphasize that DRs are only trained on the specifics of exempt market products. They can certainly make a recommendation that clients speak to individuals registered in different categories (for example, referral to a portfolio manager), but they are only truly proficient in exempt market securities. We believe the many securities available to clients (i.e. shorts, margin, derivatives, hedge) require specialization and that clients will need more than one financial advisor to asses their financial goals.

There are many triggering events that would require a registrant to reassess suitability for products that a client holds. This could pose additional challenges to EMDs, because most exempt market products are largely illiquid, making the recommendation somewhat irrelevant.

Proposed Changes to s.13.4 (Identification of Conflicts of Interest)

We do not see the value in addressing all conflicts, including those that are deemed to be immaterial, especially if disclosure on its own is insufficient. What value does this bring to clients? At a certain point, especially with non-material conflicts, should clients not be allowed to make their own decisions as long as they are given sufficient information and guidance to make that decision?

We will outline our comments on the other aspects of the Proposed Amendments for conflicts of interest in the subsequent sections.

Proposed Changes to s.13.4.2 (Registered Firm's Responsibility to Address Conflicts of Interest)

As per the previous section, we do not see the value in identifying and dealing with every single conflict of interest, even if they are deemed to be immaterial. We believe that it would make sense for firms to first assess whether an identified conflict is material. We would then suggest that non-material conflicts be sufficiently handled with disclosure, and that all material conflicts take some additional form of action to be resolved.

We agree with increased record keeping for sales practices, compensation practices, and other incentive practices. It would be helpful to know what type of queries regulators are likely to make in this area so that we can fine tune our record keeping accordingly.

We agree that it makes sense for registered individuals to promptly report conflicts of interest to their sponsoring firms. Registered individuals already report Outside Business Activities ("**OBAs**") to their sponsoring firms. We do not think it will dramatically change dynamics to also require registered individuals to report potential conflicts of interest, particularly since conflicts of interest tend to result from OBAs.

It could be problematic to require EMDs and DRs to resolve conflicts of interest in the sole best interest of the client. We appreciate that the CSA has chosen not to move forward with a regulatory Best Interest Standard at this point, but we do not feel that resolving conflicts in the best of interest of clients is a more desirable outcome. It would be near impossible for EMDs and DRs to solve all conflicts of interest in the client's best interest. For example, it would be in the client's best interest to receive their investment without the DR or EMD incurring any form of compensation, but this would lead to EMDs going out of business and ultimately providing fewer investment options to clients. We believe that it would be fair to require EMDs to solve conflicts honestly, fairly, and in good faith, which is in-line with their current obligations under NI 31-103. Furthermore, there are many instances, such as described above, that we feel could be sufficiently handled with clear and simple disclosure and that would empower investors to make their own decisions.

Proposed Changes to s.13.4.3 (Registered Individual's Responsibility to Address Conflicts of Interest)

As discussed in our comments for s.13.4.2, we generally agree that registered individuals should promptly report conflicts of interest to their sponsoring firm. This would appear to follow similar parameters of a firm reviewing and approving OBAs for DRs. However, as per the previous section, we are still opposed to the concept of addressing conflicts of interest in the client's best interest. We reiterate our belief that these conflicts should be resolved by dealing with clients honestly, fairly, and in good faith. This process would ensure that conflicts are resolved in an equitable manner that ensures clients are informed and aware while maintaining the viability of our business. In addition, depending on the nature and extent of the conflict, we believe that a

conflict of interest can be appropriately dealt with through the use of disclosure, mitigation, and/or avoidance.

Proposed Changes to s.13.4.5 (Conflicts of Interest Disclosure)

Based on our current understanding, the Proposed Amendments in this section appear to be somewhat contradictory. There are increased requirements around disclosure of conflicts of interest, but also a rule that disclosure is insufficient in addressing a conflict of interest. We would appreciate guidance as to which scenarios require an action beyond disclosure and what that action might entail.

We agree with providing more disclosure in plain language at prescribed times that will allow clients to make informed investment decisions. We would argue that for non-material conflicts, it would be sufficient to provide this heightened disclosure and allow clients to make their own decision. For example, commissions, trailers, and back-end participation associated with a transaction are typically viewed as a conflict of interest. In a perfect world, it would be in the client's best interest not to pay any fees in order to conduct a transaction; however, that is impractical given that firms need to sustain themselves financially in order to provide investment services to clients. This is a scenario where, provided that the fees have been properly disclosed to clients, disclosure on its own should be sufficient. We feel that this would align with the Proposed Amendments regarding a registered firm's duty to make certain information publicly available in order to allow consumers to engage in comparison shopping amongst registered firms.

Proposed Changes to s.13.8 (Permitted Referral Arrangements) and 13.8.1 (Limitation on Referral Fees)

We do not agree with the Proposed Amendments that would prohibit referral payments to non-registrants. Currently, the majority of our referral agents are not registered individuals or entities within the securities industry. We do not see how limiting referral payments to registered individuals would have a positive impact on clients. If anything, our view is that these amendments would hinder client access to the securities industry. For example, many referral agents are registered in other industries, such as insurance or mortgage brokerages. If these types of groups are no longer able to refer clients to the securities industry, their clients may not conduct independent research and seek out someone who can provide them with advice on their investments and available alternatives. If the CSA is insistent on imposing certain criteria on who can be a referral agent, we would strongly recommend they expand the definition of "registered" beyond the securities industry to other regulated entities and professions such as insurance, mortgages, real estate, etc.

We are not overly opposed to the temporal limitations on referral arrangements and a percentage cap on how much can be paid to referral agents. However, we do not understand the justification for the numbers that were reached. In regard to the time duration, instead of imposing a universal limit of 36 months, it may be more beneficial to assess what services are being provided to the

client and assess whether a legislated end date would be appropriate. For example, an end date may not be as appropriate for an ongoing portfolio management referral, but may make more sense for transactional relationships, such as selling exempt market products. With regard to the 25% cap on payments to referral agents, we understand that it should be less than 50% to ensure that the referral agent does not profit more than the registered individual/firm, but we would appreciate understanding the rationale for how the CSA arrived at 25% as opposed to any other number below 50%.

Proposed Changes to s.14.1.2 (Duty to Provide Information)

We are not opposed to the Proposed Amendments for this section. Our only comment would be to ensure that this public information can be kept to a relatively high level. For example, listing every single product the firm sells may result in frequent updates and may be difficult to keep current. We would prefer to instead list the types of products and services the firm offers. We hope these types of general provisions are available with the Proposed Amendments.

Additional Questions Posed by the CSA

1. **Exempt market dealers often have transactional or "episodic" relationships with their clients, in contrast to the ongoing character of client relationships in other categories. Would the Proposed Amendments pose implementation challenges unique to transactional relationships, or would they have other unintended consequences related to them?**

   As we explained in our comments for s.13.2.1, there are many challenges associated with the proposed KYP changes specific to EMDs including:

   a) Comparing exempt market products to other exempt market products, or even other types of securities;
   b) Lack of available information in ongoing reassessments of products; and,
   c) Making ongoing investment recommendations for illiquid securities.

   In s.13.3, we outlined how portfolio level suitability may be somewhat difficult for EMDs given that DRs are only trained on the specifics of exempt market products.

2. **Are there other specific conflicts of interest that cannot be addressed in the client's best interest and must be avoided?**

   One example of a conflict of interest that could not be addressed in the client's best interest would be occurrences that would lead to a duplication of fees being paid by the client (i.e., two types of fee for the same service, causing the client to end up paying more money or further diminish their investment returns).

As explained in sections 13.4.2 and 13.4.3, we believe there are certain conflicts of interest that could be impractical to resolve in the clients' best interest.

3. **Does prohibiting a registrant from paying a referral fee to a non-registrant limit investors' access to securities related services? Would narrowing section 13.8.1 [Limitation on referral fees] to permit only the payment of a nominal one-time referral fee enhance investor protection?**

   As per our comments in s.13.8, we believe that prohibiting a registrant from paying a referral fee to a non-registrant would limit investors' access to securities related services. For example, some of Tri View's current referral agents are registered through provincial insurance councils. An individual may purchase insurance products and be seeking options on how to invest their money. The insurance agent cannot provide investment recommendations. If the insurance agent cannot act as a referral agent to registered securities firms, the individual may not access or find the investment services they otherwise would have through a referral arrangement.

   We do not think limiting referral fees to a one-time payment would enhance investor protection. In our experience, referral fees come out of the pre-determined commission for a transaction, and not at an additional cost to clients. Clients are already aware of the referral arrangement and the compensation terms that apply to their transactions. Therefore, we do not think further limiting referral fees in the manner described would provide added benefits to clients.