Via email

October 19, 2018

The Secretary
Ontario Securities Commission
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and

Me Anne-Marie Beaudoin, Corporate Secretary
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Dear Sirs/Mesdames,

Re: Proposed Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103") and to Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("31-103 CP")

This comment letter is being submitted on behalf of the following entities within RBC: RBC Dominion Securities Inc., RBC Direct Investing Inc., Royal Mutual Funds Inc., RBC Global Asset Management Inc., RBC Phillips, Hager & North Investment Counsel Inc., RBC InvestEase Inc. and Phillips, Hager & North Investment Funds Ltd. We are writing in response to the Canadian Securities Administrators' ("CSA") request for comment on the proposed amendments to NI 31-103 and 31-103 CP Reforms to Enhance the Client-Registrant Relationship (Client Focused Reforms) published on June 21, 2018[1] (the "Notice").

Since the implementation of NI 31-103 in 2009, we recognize the substantial efforts and the advancements that the CSA has made in developing a harmonized and streamlined regulatory framework for dealers, advisers and investment fund managers. We are pleased that the CSA has continued to monitor industry developments, and has published for comment further amendments which address investor protection initiatives and the adoption of certain comments previously raised.

RBC fully supports the CSA's goals underpinning the proposed amendments: to better align the interests of registrants with the interests of their clients, to improve client outcomes and to make clearer to clients the nature and the terms of their relationships with registrants.

RBC is committed to providing services that will meet the needs of a broad, diverse and evolving investing population. This commitment is evidenced by the continuum of service offerings that RBC has adopted over the years to support varying client needs and preferences, ranging from the self-directed

[1] CSA Notice and Request for Comment Proposed Amendments to NI 31-103 and 31-103 CP

investor, to the investor seeking accessible investment advice – whether in person, over the phone or in a digital environment – to the investor requiring more personal advisory services, to the investor seeking holistic, discretionary services. Further, even within the same registered firm, a particular client will often have very different needs from another client within that same registered firm, necessitating that registrants have the ability to tailor their services to meet these different needs.

As a result, you will see that there are several themes that resonate throughout our comment letter:

- the need for *regulatory flexibility* – providing registrants the latitude necessary to structure their business models to meet the demands and needs of their clients;

- maintaining *investor choice and access* – balancing registrants' obligations to understand the securities they offer their clients, with risk-based and efficient approaches so as to not force registrants to reduce the range of solutions they can offer; and

- focussing on *client outcomes*, rather than disproportionately emphasizing any one aspect of the investment decision – recognizing that while cost is definitely an important factor to be considered, it is but one factor of many that drive positive outcomes for clients.

With those themes in mind, we are pleased to provide below our specific comments regarding the proposed amendments.

Know-Your-Client (KYC)
We support the CSA's policy objective that registered firms and individuals thoroughly understand and document their clients' characteristics, obtained from meaningful interactions, - whether in person, over-the-phone or via a digital platform - in order to provide a framework for subsequent suitability determinations, investment recommendations, or trading of securities. In fact, this is the foundation of how we serve our clients. We also acknowledge that the CSA has considered carefully the comments in respect of Consultation Paper 33-404, which we can see reflected in the current proposed amendments. Nonetheless, we believe that registered firms and individuals would benefit from additional guidance in 31-103 CP. We also suggest that the guidance recognize that clients ultimately decide the extent to which they are willing or comfortable in sharing their personal and financial information, particularly that which may be held outside the registered firm.

Tailoring the KYC process

We appreciate the CSA's comments in the guidance that registered firms should tailor their KYC processes to reflect their business models, which would provide registered firms with flexibility to meet differing clients' expectations regarding level of service and, by extension, the price they wish to pay for that service. That said, we think that registered firms would benefit from additional guidance from the CSA as to how they may tailor their processes in a compliant manner; the present examples focus on the more complex end of the service continuum (i.e. fully customized approach and portfolio manager with discretionary authority). It would assist registered firms for the CSA to provide examples of potentially less complex offerings such as more transactional relationships or client profile-based approaches. We believe that it is essential that registered firms be afforded the flexibility necessary to provide a variety of service models to allow clients to choose that which meets their needs for the price they are willing to pay.

Client's financial circumstances

While we agree that a client's financial circumstances ought to be understood, documented and factored into suitability determinations, we note that clients are frequently reluctant if not outright resistant to sharing the details of their financial circumstances. The CSA suggests in the guidance within 31-103 CP that registered firms "*should*" obtain a detailed breakdown of clients' financial assets. We respectfully request that this be changed from "should" to "make reasonable efforts" to obtain the breakdown, so that

registered firms can apply some judgment as to the detail they require in context with their relationship with the client. This would allow for clients to determine the extent to which they wish to share their information, without being at risk of being denied the services they are seeking.

We also submit that this requirement should be subject to the respective proficiencies and expertise of registered individuals. While all registered individuals are demonstrably proficient in respect of investments in securities, they may not be similarly proficient with respect to other aspects of a client's financial circumstances, such as debt obligations. Accordingly, registered firms and registered individuals ought to have sufficient flexibility in implementing the KYC requirements so as to ensure that they are providing advice that is not within their level of expertise.

Adapting the expanded KYC requirements to online advisers' business models

We acknowledge the reference in the guidance in 31-103 CP to the collection of KYC information that may be gathered in an online environment. It seems to us that the depth of information requires an interactive approach, and it is not clear to us how all of the information could realistically be compiled via an algorithmic approach such as that used by online advisers. Assuming that this is in part what the CSA was contemplating in respect of "tailoring" of business models, we request some specific guidance as to how online advisers could meet the CSA's expectations in a compliant manner.

Permitted Clients

The scalability of the enhanced KYC requirements should also extend to the nature of the client as permitted clients do not require and likely do not want the level of additional protection as proposed in the Client Focused Reforms. Further, certain of these clients may only have a portion of their overall assets with a portfolio manager, for example, and oftentimes may not be willing to share with the portfolio manager the full scope or details of their other assets. They may also be less receptive to an annual KYC update. There should therefore be an exemption for these clients from the additional prescriptive KYC requirements, whether in a managed account or not.

Know-Your-Product (KYP)

The CSA has proposed amendments in respect of the (1) review, approval and monitoring of securities registered firms make available to their clients, (2) expectation that registered individuals are aware of the products that are available at their registered firm, (3) responsibility of registered individuals to thoroughly understand the securities that they recommend to or trade for clients, and (4) obligation of registered firms to ensure adequate access to information and training to allow its registered individuals to satisfy their responsibilities.

We support the CSA's policy objectives as categorized above, but we are concerned that the guidance provided in part 13.2.1 of 31-103 CP could lead registered firms to adopt policies and procedures that detrimentally impact clients' access to securities. We do not believe that it would be in clients' interests for registered firms to limit the range of securities made available or to otherwise restrict access to securities that could be suitable to clients' circumstances primarily, if not solely, in order to satisfy an overly cautious interpretation of the applicable regulatory obligations.

Obligations of Registered Firms

Interpretation of making "a security available to clients"

Upon reviewing Sections 13.2.1(10) and (3), we are concerned that the guidance provided in Part 13.2.1 of 31-103 CP concerning the CSA's view as to what would constitute a registered firm making "a security available to clients" may be overly inclusive. We agree that purchasing or recommending a security, or placing it on a firm's shelf, or advertising or promoting a security would all be consistent with what we would consider to be "making a security available to clients."

We do not, however, agree that selling a security for a client should constitute "making a security available to clients." Otherwise, a client seeking to merely liquidate a security not already approved by a registered firm, would be required to wait until the registered firm has reviewed and approved it, assuming that the security is indeed eventually approved, prior to being able to complete the desired sale. We note that narrowing the interpretation in this way would in no way relieve the registered individual from his or her obligation to understand the product and to discuss potential impacts of the sale with the client prior to proceeding. In the event the registered firm subsequently seeks to actually make the security available to clients, it would at such time engage its review and approval procedures.

Risk-based review and approval of securities

We agree with the CSA's proposed requirement that registered firms take "reasonable steps" to understand the securities that it makes available to clients, and to ensure that such securities are approved in advance of being made available. We are concerned though, that the guidance in 31-103 CP appears to suggest that this in fact means that registered firms will be required to review and approve each specific security that they make available.

If true, we do not believe that this would constitute a "reasonable step" in that it would be unduly onerous to those registered firms that presently endeavor to provide their clients access to a wide range of available securities. For context, RBC Dominion Securities Inc., which offers an "open architecture" model allowing its clients and registered individuals access to a wide range of securities from which to choose, currently has clients holding the following (numbers have been rounded):

Investment Category	**Number of Unique Securities**
Exchange Traded	35,000
Fixed Income	170,000
Mutual Funds and other FundSERV transacted	23,000
Other (rights, options, etc.)	27,000
Preferred Shares	2,600
Total	**257,600**

The likely outcome of such an interpretation would be for registered firms to significantly narrow the range of securities made available to clients. This would in turn give rise to the difficult issue of what the registered firm should do in respect of securities that would no longer be made available to clients. We believe that this is neither in the interest of clients – who would necessarily have less choice – nor the capital markets in general. Firms will likely choose established product manufacturers with which they are familiar, making it increasingly difficult for newer product manufacturers to establish themselves.

We submit that it would be both consistent with the noted policy objective and manageable for registered firms to apply a risk-based approach to review and approve of the securities they make available to their clients. One possible approach would be to allow registered firms to group securities of similar risk attributes, investment objectives, and cost characteristics and review and approve the group, rather than individual securities. It would be incumbent upon the registered firms to define the groups in good faith. This approach is currently used by RBC's registered firms. This approach would also in no way relieve registered individuals of their responsibility to thoroughly understand the specific securities they recommend to or trade for clients.

We further submit that it would be appropriate to provide an exception to the prior approval requirements in respect of trades of non-approved securities by third-party portfolio managers or sub-advisers. This exception would apply in respect of trades for managed accounts, both directly undertaken by the third-party portfolio manager (i.e. a "separately managed account") as well as indirectly where a sub-adviser makes a change to its investment model which is then implemented by trades for clients' accounts (i.e. a "unified managed account"). Such third-party managers are highly knowledgeable investors, registered or licensed under applicable securities laws, and we do not believe that there would be sufficient benefits to restricting their investment decisions based upon a particular approved products list, to outweigh the practical challenges in imposing that list on those third-party managers.

Efficient allocation of resources in respect of reviewing, approving, and monitoring securities

Similar to the discussion above with respect to compliant approaches to reviewing and approving securities made available to clients, we are concerned that the guidance in 31-103 CP could lead to detrimental client impact. Specifically, the guidance consistently references the registered firm in the singular. We recommend that the guidance be expanded to permit affiliated registered firms to share resources in implementing procedures for reviewing, approving and monitoring securities made available to clients. We do not believe that this would in any way relieve any of the respective registered firms from their regulatory obligations, but it would allow for certain efficiencies in doing so. If each registered firm is required to independently review, approve and monitor securities made available, this will invariably increase costs, which ultimately will impact the range of securities available to by clients.

Challenges in monitoring for significant changes to securities

We agree with the CSA's position regarding the importance of ensuring that registrants consider significant changes to those securities made available to clients so as to ensure that they remain appropriate and consistent with the basis upon which they were approved. That said, we have two concerns with the CSA's approach as currently proposed: (1) we believe that obligating the registered firm in this respect would pose significant challenges without sufficiently furthering the CSA's policy objective; and (2) extending the requirement beyond those securities made available would be logistically challenging without commensurate benefit to client outcomes.

Further to the discussion above noting the wide range of securities that may be made available, it would be extremely challenging for registered firms to reliably identify securities that have significantly changed, absent some form of industry tool that highlights such changes. Being mindful that registered individuals have the responsibility of ensuring that they thoroughly understand the specific securities they recommend to or trade for clients, coupled with their responsibility to consider securities held in a client's account whenever making a suitability determination, we do not believe that it is necessary to extend the obligation to the registered firm. We therefore suggest that registered firms instead monitor for significant changes to securities made available to clients on a commercially reasonable/reasonable efforts basis. In addition to securities that a registered firm chooses to make available to clients, a registered firm also has custody of a large number of securities that have been transferred in or deposited by clients. Given that these securities have not been made available by the registered firm, they have also likely not been subjected to that firm's review processes. Requiring registered firms to incorporate such securities into their monitoring processes is likely to lead registered firms to reject such securities outright. This may result in clients being forced to sell those securities, potentially incurring early redemption or other fees. Alternatively, in the case of securities which are not subject to redemption, are illiquid or do not have a secondary market, clients may be forced to maintain an account at their former registered firms solely to retain those securities, which have been rejected by their new registered firm. In each case, this is certain to have a negative impact on clients, who have demonstrated their desire to consolidate their investments.

Inadvertent negative client impacts in respect of transfer or deposit of non-approved securities

As currently drafted, the proposed amendments would prohibit a registered firm from accepting a transfer or deposit of securities until such time as they have been reviewed and approved by the registered firm. At a minimum, this would delay such securities being received into a client's account, effectively freezing the client's ability to transact until such time as the deposit or transfer can be completed. Moreover, the registered individual would be prohibited from making a suitability determination and, accordingly, any recommendations in respect of such securities – exposing the client to market risk without the benefit of the advice they expect.

We submit that the following approaches would avoid this inadvertent client impact. First, a reasonable period of time ought to be provided for registered firms to complete their review and approval, following the receipt of such securities. This delay would allow registered firms to complete transfers or deposits of such securities, and also permit registered individuals to incorporate such securities into their suitability determinations. Second, if the interpretation of making a "security available to clients" is narrowed to exclude a sale of a security for a client – as suggested above – then a registered firm would not be

precluded from executing a sale of such securities, where suitable or possible, allowing a client to mitigate the market risk of otherwise being forced to hold such securities.

Portfolio Managers

In our view, the new KYP proposals should not be applicable to portfolio managers or the security selection process that they undertake. For example, we do not believe it is necessary or appropriate to apply KYP obligations on portfolio managers purchasing individual securities (whether for a client's account or in the context of managing a fund). Such securities are not the same as a "product" on a shelf, but rather, the portfolio manager is looking at securities eligible for its mandate and it is unclear to us how a portfolio manager would conduct a detailed KYP analysis on such securities as the CSA has proposed.

Further, portfolio managers often create, or put their managed account clients into model portfolios or pooled funds to implement a client's strategy. These pooled funds allow investors to potentially access otherwise inaccessible strategies or investments. Again, these are not "products" but rather vehicles that are intending to satisfy a client's specific investment strategy and are therefore not conducive to the same prescriptive elements of KYP proposed in respect of a registrant analyzing products on a shelf. Further, when a portfolio manager creates a fund, the KYP is inherent in the creation of the fund and undertaking a separate KYP process becomes redundant and unnecessary. It would also be very difficult to undertake a comparative market analysis of products offered by similar registered firms when those products are private investment funds for which no public information is available.

Permitted Clients

As noted above and for similar reasons, permitted clients should be exempt from the KYP proposals, whether in a managed account or not.

Exempt Market Dealers

Similarly, an exempt market dealer whose clients are primarily permitted clients who have waived suitability should similarly be exempted from the new KYP proposals; in that situation, there would be no need to undertake and engage in an extensive KYP process.

Obligations of Registered Individuals

General understanding of securities available through their registered firm

We agree with the CSA's position that registered individuals should have a general understanding of the securities that their registered firm makes available to clients. However, upon reviewing the guidance in 31-103 CP, particularly the use of "each security that a firm makes available," we are concerned that it will not be possible for those that are with registered firms that offer a wide range of available securities to have a general understanding of *each* security. We draw your attention to the example above in respect of the number of securities that RBC Dominion Securities Inc. has made available. We believe that it would be consistent with the CSA's policy objective to limit this to requiring registered individuals to have a general understanding of the various types of securities, their structures, returns, risks and costs that their registered firm makes available. We suggest that this be further limited to those types of securities the registered individual is permitted to recommend or trade based on their registered firm's business model or for which the registered individual has the necessary registrations and/or required proficiencies.

Transfer or deposit of non-approved securities

With respect to the proposed s. 13.2.1(6)(b) of NI 31-103, we note that registered individuals do not practically have the ability to prevent any security from being transferred into a client's account, other than in registered firms comprising a small number of registered individuals. We propose amending this provision as follows:

> (b) the individual must not ~~permit the security to be transferred into the client's account or the~~ trade in the security unless the individual takes reasonable steps to understand…

We submit that this change is both pragmatic and consistent with the CSA's policy objective.

Suitability Determination

The CSA has proposed extensive changes to the suitability requirements, including (1) a requirement that registrants put their clients' interests first when making a suitability determination, (2) moving away from trade-based suitability to a broader, "investment action"-based suitability, and (3) explicitly requiring registrants to consider certain factors – including costs and their impact – in making suitability determinations.

We support the CSA's proposal to require registrants to put clients' interests first when making a suitability determination and the proposal to apply the suitability determination not just to trade-based recommendations but also more holistically to investment actions taken on behalf of clients.

Registrants Require Flexibility in Adapting Suitability Requirements to the Specific Investment Action and to Various Business Models

However, the CSA has proposed to expand Section 13.3(1) of NI 31-103 (as well the supporting provisions in NI 31-103CP) extensively to elaborate on the specific factors that registrants must take into account when determining whether an investment action is suitable for a client. While some of these factors will absolutely be relevant to certain investment actions and appropriate for consideration in accordance with certain business models, not all of these factors will necessarily be relevant to every single type of investment action taken on behalf of clients or to all business models. Registrants need flexibility to determine what criteria are relevant when determining whether a particular investment action is suitable for a client on a particular platform.

As such, we believe that the lead-in language to Section 13.3(1) should be modified to make it clear that the delineated list of factors are to be taken into account in a suitability analysis "as appropriate" to the investment action at hand. This level of flexibility is appropriate given the additional scope of investment actions to which the suitability determination would apply, and given that registrants, in determining what criteria are most relevant to a suitability determination in a particular circumstance, will ultimately be guided by the overarching obligation to put their clients' interests first when determining what investment actions to take.

The guidance in the NI 31-103CP under the heading, "Factors for determining suitability" should similarly be modified to provide for this same level of flexibility.

Registrants Require Flexibility with respect to the Portfolio Approach to Suitability

To elaborate on the above comment, certain of the guidance in the 31-103 CP should also be modified to enable firms to take the most appropriate approach to suitability depending on their business model, client needs and the investment action at hand. For instance, although taking a portfolio approach to suitability as outlined in Section 13.3 of 31-103 CP – which would involve taking into consideration a client's multiple accounts held at a firm – would be appropriate in many circumstances, there could be other circumstances where such an approach is neither appropriate nor desired by a firm's clients. For instance, a client may have certain accounts that have discrete investment mandates and objectives that are not relevant to the management of a client's other accounts having completely different mandates and objectives, and that are not dependent on the outcome of these other accounts. In such circumstances, it would not be necessary or appropriate for a registrant to make a suitability determination on an aggregated portfolio basis. Our view is that, similar to the requirement in respect of investments held *outside* of a firm, in respect of which a registrant is accorded latitude, *depending on the circumstances* to *inquire* about the extra-firm investments, the same latitude should be provided in respect of the portfolio approach to suitability within the firm; namely, that *depending on the circumstances*, firms should have

flexibility to *inquire* about a client's various accounts within the firm, and if the client and the registrant feel it is appropriate, then the suitability analysis should be conducted on this multiple-account, portfolio basis.

Challenges in Identifying the Absolute, "Lowest Cost" Security

We support the CSA's proposal that registrants be expected to take costs into consideration as part of the suitability determination. However, as drafted, NI 31-103CP indicates that, unless registrants have a reasonable basis for determining that a higher cost security will be better for a client, then the CSA expects registrants to trade or recommend the "lowest cost" security available in the circumstances that meets the suitability criteria.

Given the breadth of potential investment alternatives for clients, and the related differences in cost structures between securities, which often makes for apples-to-oranges comparisons, it is often not practical to come to a determination of what the absolute, "lowest cost" security available to a client would be. We think this guidance should be modified to remove the expectation that registrants recommend the "lowest cost" security given the challenges in arriving at such a determination, and that it should be sufficient to require registrants to assess the relative costs of various options, as well as the impact of those costs, and that this assessment be factored into the overall suitability analysis. We are of the view that the currently proposed approach focusses disproportionately on price, rather than on clients' investment outcomes.

Portfolio Managers

Portfolio managers are subject to a very high standard of care towards their clients and part of that standard already involves the selection of suitable investments for their clients (including funds that they may manage); it is therefore not necessary to apply additional prescriptive suitability factors to portfolio managers. Further, the detailed considerations of cost under the enhanced suitability provisions proposed by the CSA are inapplicable to portfolio managers who charge account fees to their clients based on their client's assets under management.

Permitted Clients

Where a portfolio manager manages the assets of a permitted client (such as a pension plan, for example), such clients often come to the portfolio manager with a stated objective and/or their own set of statement of investment policies and procedures. While the portfolio manager addresses the suitability of such clients, it does so in accordance with the client's own mandate and it is not appropriate to apply all of the proposed prescriptive suitability criteria outlined in the Client Focused Reforms. Further, such clients may not be as forthcoming with the total picture of their assets and assessing portfolio level suitability would not be possible. There should therefore be an exemption from the additional prescriptive suitability requirements as they relate to these types of clients, whether in a managed account or not.

Conflicts of Interest

The CSA has proposed extensive changes to the conflict of interest requirements, including (1) removing the materiality standard as it relates to the requirement for firms to identify existing and potential conflicts of interest; and (2) not recognizing disclosure in itself as sufficient means to address conflicts of interest and to satisfy the registered firm and registered individual's obligations.

It is uncertain how removing the materiality standard and identifying all non-material conflicts would be in the best interest of the client, as non-material conflicts would by definition, not negatively impact nor cause the registrant to be influenced to put their interest ahead of the client. Identifying all potential non-material conflicts represents a substantial expenditure of time and effort, given the number of clients, accounts and transactions managed by a registrant. If the conflict is not material in nature, this could likely delay the execution of time sensitive transactions, thus not acting in the best interest of the client. We believe the requirement in Section 13.4.5(1) should include the word "material" to limit the conflicts disclosure to material conflicts of interest. If the requirement to address non-material conflicts remains, we

ask whether the CSA could provide additional guidance through examples or situations where such non-material conflicts may impact a client, and in what situations a reasonable client would expect to be informed about a non-material conflict. We must be mindful and consider the context of this additional information, and the possible confusion it creates for clients, given the significant amount of disclosure already provided to clients.

The proposals indicate that disclosure in itself not be recognized as a sufficient means to address conflicts of interest in the best interest of the client and satisfy the firm and registrant obligations. This approach is inconsistent with the approach implemented in other areas of NI 31-103, as outlined in Sections 13.10, the disclosure of referral arrangements which specify creating a conflict of interest; 14.3 the obligation to disclose a registrant's policies related to the fair allocation of investment opportunity; and the inclusion of disclosure related to fees and conflicts in the relationship of disclosure information. We believe that registrants must exercise their professional judgment to determine which material conflicts cannot be properly addressed through disclosure alone and implement appropriate controls for those conflicts. We also believe that disclosure alone can effectively address conflicts of interest in the best interest of clients in some circumstances and recommend that the CSA amend the proposals as such.

Proprietary Pooled Funds

The use of proprietary pooled funds do not result in the same types of conflicts of interest as other products. As stated earlier, pooled funds are investment vehicles that have been created to satisfy certain clients' investment objectives and that allow clients to access certain investment strategies of a portfolio manager. The additional conflict controls outlined in the proposals would create a burden that is not commensurate with the potential conflict, if any. As such, in our view the enhanced conflict of interest rules should not apply to proprietary pooled funds and disclosure should be sufficient to address any potential conflicts with offering such products.

Distribution of Only Proprietary Funds or Products

It is unclear to us whether the CSA considers the distribution of only proprietary funds or products to clients (or segments of clients) to be a conflict of interest or not – and if so, how that conflict should be mitigated or managed. In our view, so long as the firm ensures that there is a wide enough array of proprietary funds to suit the financial needs and objectives of the vast majority of its clients and clearly discloses the fact to clients that the only recommendations they will receive is for proprietary funds, this should be sufficient. If the CSA considers this practice to be a conflict of interest, it would be important for the CSA to explain why this is so, but also to clearly state that this conflict can be mitigated through clear disclosure. Associated with this, is the need for the CSA to clearly state that a proprietary funds-only firm do not need to consider their funds against the vast array of "other" third party funds as part of the KYP obligations. It does not seem to be reasonable to require a firm to review "other" third party funds, when the firm only intends to distribute proprietary funds and clearly discloses this.

Making Available Different Products and Services for Different Levels of Clients

In recognition that not all clients have the same financial needs and objectives, which include having differing levels of resources available for investment, we consider it important for the CSA to clearly state in a suitable place in the Companion Policy that firms may offer different products and services for different levels and types of clients. This may mean that some clients will be offered only non-complex lower cost proprietary funds, with others being offered more complex proprietary funds (with an associated higher cost), and some being offered, for an associated higher fee, more complex investing advice and services, such as managed accounts, alternative funds, third party funds, separate securities (non-funds) etc. Not all clients will be offered the same array of services and products, nor will they have access to the same level of advisor or portfolio manager. This may be offered by a single firm or different firms with different regulation and registrations. For each level of client, the firm should be able to articulate which products and services would be suitable for that client level, and why the more restricted or more expansive advice (with the differing costs) would be available for the differing levels of clients. We have gathered from several sources in the publication (including the notice and the Companion

policy), but we do not feel there is a prominent enough statement to allow for this kind of securities distribution model with one firm, or group of related firms. We consider a prominent all-encompassing statement to this effect to be important – as it would allow for sufficient understanding of each element of the regulatory regime (KYC, KYP, suitability, management of conflicts, disclosure etc.) to be read in the context of this overriding principle.

Lastly, we ask that the CSA take into consideration the current, long-standing business models of registrants as we believe that the best interest standard should not be applied in a "one size fits all" approach against registered firms.

Business Titles, Designations, Awards or Recognition

The CSA is proposing to add a new Section 13.18 to NI 31-103 to specifically prohibit registered individuals or firms from holding themselves out in a manner that could reasonably be expected to deceive or mislead a person regarding such matters as the proficiency, experience or qualifications of the registrant. The CSA has proposed a further elaboration on this prohibition such that a registrant would be specifically prohibited from using a title, designation, award or recognition that is based *partly or entirely* on that registered individual's sales activity or revenue generation [emphasis added].

We support the prohibition on registrants holding themselves out in any type of deceptive or misleading manner. We further agree that individual registrants should not use titles that are based entirely or are inappropriately weighted toward the individual registrants' sales activity or revenue generation. However we are concerned that an absolute prohibition on the use of titles that are based even "partly" on sales activity or revenue generation ignores the commercial reality that promotions of individual registrants – along with the accompanying changes in their titles - are often based at least in some respect on the extent to which the individual registrants' actions contribute to the commercial success of a firm which necessarily includes a revenue component. In our view, the overarching prohibition on holding oneself out in a deceptive or misleading way, coupled with a prohibition on the use of titles that are based primarily on sales activity or revenue generation provides sufficient protection on this front. So long as firms have adequate controls in place to mitigate inappropriate incentives, these safeguards will be sufficient to address any concerns.

Referral Arrangements

The CSA has proposed additional restrictions relating to referral arrangements involving registrants, including restrictions relating to the size of referral fees (to be capped at no more than 25% of the fees or commissions collected from the client by the party who received the referral), the duration of the referral fee payment (to be paid for no longer than 36 months after the date of the referral), as well as a prohibition on the payment of referral fees to any non-registrants. We have three comments relating to this set of proposals.

Proposed Prohibition on Payment of Referral Fees to Non-Registrants is Not Appropriate

We have significant concerns regarding the proposed prohibition on the payment of referral fees by registrants to non-registrants. We understand that the proposed prohibition is meant to address, in part, concerns over regulatory arbitrage – i.e., instances where certain registered individuals may be incented to give up their registration by relying on referral payments from registrants to whom investors have been directed instead. However, we feel that an absolute prohibition on the payment of referral fees to all non-registrants is too blunt a tool to deal with this issue. Further, the CSA also has available to it certain enforcement tools to deal with these concerns rather than turning to an absolute prohibition.

The overall prohibition would also result in, for instance, registrants being prohibited from paying referral fees to their own affiliated non-registrants. These may include financial institutions otherwise subject to their own robust regulatory regimes, or to professionals such as accountants, lawyers and consultants, all of whom appropriately refer those in need of registrable securities services to securities registrants. We are deeply concerned that implementing such a broad prohibition would be harmful to clients who may no

longer be channelled to the appropriate services that would be beneficial to them. Clients may suffer as they will not have help from those they trust in finding their home of best fit.

Moreover, in scenarios where clients are being referred to registrants, those clients are protected by existing requirements relating to referral arrangements – including the requirement for a referral agreement to be in place, requirements for comprehensive disclosure to be provided to the client in writing before an account is opened or services are provided.

25% Fee Cap Not Appropriate in Certain Situations so long as the Absolute Value of Referral Fee is Still Within Reasonable Thresholds

The proposed language limited registrants from paying a referral fee that constitutes a series of payments that exceeds 25% of the fees or commissions collected from the client by the registrant could result in unintended consequences for firms servicing clients with smaller account balances or firms launching new products or services with lower fees. A percentage threshold is not appropriate in these situations and could restrict registrants that launch new products or services tailored to clients with smaller account balances from compensating individuals fairly for appropriately referring clients to the registrant. In these situations a one-time absolute value of referral fee within reason is more appropriate.

3 Year Limit Not Appropriate

It is our view that imposing a three-year time limit is arbitrary and would be detrimental to investors as it may have unintended consequences. For example, it may lead to non-registrants referring clients to other non-registrants who are not subject to NI 31-103 as opposed to registrants who are subject to more regulatory oversight, because these non-registrants are not subject to the same restrictions. Investors are also given thorough disclosure prior to being referred and are well aware of these relationships from the outset so it is unclear where the harm to investors lies.

Disclosures Respecting Use of Proprietary Products

We note the requirements and guidance aimed at ensuring the equal treatment of proprietary and non-proprietary products in respect of proposed amendments concerning KYP (both in the review and approval of securities, and in the need to maintain a "product shelf" that is consistent with how the registered firm holds itself out) and Conflicts of Interest. We would like to better understand the CSA's focus on proprietary products, particularly the need for a definition thereof in proposed Section 14.2(0.1) of NI 31-103 as well as the required related disclosure under proposed Section 14.2(2)(b). We question the need or purpose served by differentiating proprietary products in the proposed manner.

Publicly Available Information

We understand the CSA's policy objective underlying the proposed Section 14.1.2 of NI 31-103 is to provide prospective clients with the opportunity to "comparison shop" prior to meeting with any particular registered firm. While we agree that an easy-to-understand and accessible overview of a registered firm's service offering could be beneficial to a client in deciding whether or not to seek that firm's services, this is only practically feasible in respect of registered firms offering limited or uniform service offerings. As the complexity and variability of services increases, it becomes challenging for registered firms to compile such an overview. This is reflected in the current Relationship Disclosure Documents (RDD), many of which are lengthy and comprehensive due to the uniqueness of services offered by the various registered individuals with the registered firm. Further, requiring additional specific information may also be misleading to clients as it wouldn't account for client-specific differences (for e.g., some products or services wouldn't be applicable or ultimately suitable for certain types of clients; portfolio managers often charge clients a fee that is based on assets under management and the disclosure of fees generally would not account for client specific fees or discounts). Accordingly, we request that the CSA consider (1) limiting the types of registered firms that would be subject to the requirement, (2) providing additional guidance noting that the use of broad ranges by registered firms in the descriptions would be compliant,

and/or (3) allowing registered firms to satisfy the requirement by making their RDD publicly available to prospective clients.

Training Obligations

The CSA has proposed the obligation for firms to provide training to their individual registrants and to require firms to ensure compliance with know-your-product requirements by providing the resources and necessary information to individual registrants. Additionally, the guidance found in Subsection 3.4.1 under 31-103 CP suggests that firms provide product training to ensure individual registrants have a sufficient understanding of the securities and their risk.

While we understand the importance of the obligation on firms to provide training to ensure individual registrants have a thorough understanding of their requirements in order to comply with the proposals, we believe that the proposals should allow for flexibility in how firms approach product training. Training materials, including self-study based materials from issuers and other market participants (i.e. research reports), delivered to individual registrants should be meaningful to individual registrants, adding value to their knowledge and understanding. We believe that a bucketing approach to product training should be considered as a method of satisfying a firm's product training requirements, rather than training on an individual product basis, which will prove extremely challenging for firms employing an open architecture approach.

We appreciate the CSA's consideration of firms utilizing training that is outsourced as outlined in 31-103 CP, as we believe that it recognizes the inclusion of the continuing education (CE) requirements established by the SROs and industry groups such as the Financial Planning Standards Council. We should be mindful of the rigorous CE requirements placed on registrants, avoiding the duplication of training requirements and recommend that these registrants be exempt from the CSA's training requirements.

Transition Period Considerations

The CSA has considered a phased implementation approach for firms to comply with the proposals upon implementation of the final rule. Specifically, the CSA has proposed a two year implementation timeline for new requirements such as know-your-client, know-your-product, suitability and conflicts of interest; one year to provide publicly available information; and an immediate implementation upon final approval for referral arrangements. We ask that the CSA consider the significant compliance and system changes that will be required by firms to comply with the proposals to support our recommendation for a transition period of not less than three years upon implementation, with the exception of the proposals pertaining to referral arrangements.

Responses to Certain Questions Asked in the Request for Comment

Referral fees

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?

Response:

With respect to the first question, please see our comments set out above under "Referral Fees."

With respect to the second question, we do not believe that narrowing Section 13.8.1 as suggested would enhance investor protection in any meaningful manner. The payment of a referral fee, however structured, in no way relieves a registrant from their regulatory obligations and responsibilities that they owe their clients. Rather, we are concerned that such an approach could inadvertently create a disincentive to referring a client to a registrant that may more appropriate to the client's needs and circumstances, in that it may cease to be in that individual's economic interest to so refer the client.

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We appreciate the opportunity to provide comments and welcome the opportunity to discuss the foregoing with you in further detail. If you have any questions or require further information, please do not hesitate to contact the undersigned.

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