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VIA EMAIL

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Autorité des marchés financiers
British Columbia Securities Commission
The Manitoba Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission
Ontario Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Superintendent of Securities, Department of Justice & Public Safety, Prince Edward Island
Securities Commission of Newfoundland and Labrador
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CSA Members,

Re: Proposed Amendments to National Instrument 31-103 and Companion Policy 31-103 Client Focused Reforms

The members of the RESP Dealers Association of Canada (RESPDAC) together with Children's Education Funds Inc. (CEFI) are pleased to provide comments to the Canadian Securities

Administrators (CSA) on the *Proposed Amendments to National Instrument 31-103* and *Companion Policy 31-103 (the Client Focused Reforms).* RESPDAC and CEFI provided comments on the CSA's initial Consultation Paper 33-404 *Proposals to Enhance the Obligations of Advisers, Dealers and Representatives Toward Their Clients*, published April 28, 2016.

The RESP Dealers Association of Canada is the industry association for Scholarship Plan Dealers (SPDs) that distribute and administer Registered Education Savings Plans (RESPs) in Canada. As of December 31st, 2017, SPDs administered over $10 billion in education savings on behalf of Canadians. Each year, thousands of students are able to attend college or university, thanks to RESPs sold and administered by SPDs to clients who save for this purpose.

Today, the members of RESPDAC are Global RESP Corporation (Global), Knowledge First Financial Inc. (Knowledge First) (who recently acquired Heritage Education Funds Inc.) and Universitas Management Inc. (Universitas Management). Children's Education Funds Inc. (CEFI) is also a scholarship plan dealer and has joined with the members of RESPDAC in the development and submission of these comments. Together these entities manage and administer group and self-directed RESPs that are qualified for sale to the public in each province and territory of Canada, under prospectuses. These products are highly complex to administer and support, subject to the regulatory requirements of the federal income tax legislation, provincial and territorial securities regulation relating to their distribution and investment management, along with the requirements of applicable federal and provincial government grants and incentives related to education savings.

Knowledge First, Global and CEFI are registered as SPDs in each province and territory of Canada. Universitas Management is registered with the Autorité des marchés financiers (AMF) in Québec and New Brunswick's Financial and Consumer Services Commission (FCNB). Knowledge First, Universitas Management and CEFI are also registered as the Investment Fund Manager for the RESPs they distribute and administer in the respective provinces and territories where they are registered to act in furtherance of such distribution.

The RESPs distributed and administered by SPDs are commonly referred to by the CSA as "scholarship plans". We will use the terms RESPs and scholarship plans interchangeably in this letter.

General Comments

Scholarship Plan Dealers use their securities dealer registration to trade only in securities of the RESPs that they manage and administer. For the purposes of the comments that follow, it is important to note that SPDs do not distribute any other security using this registration, other than their own RESPs.

RESPDAC Members and CEFI appreciate the significance of these *Client Focused Reforms* and the important role they will play in the CSA's efforts to maintain a fair and balanced regulatory environment for both investors and registrants. Our comments are provided from the perspective of our members' position as specialized niche-market participants, whose singular mandate is to help Canadians save for the cost of the post-secondary education of their students.

That said, RESPDAC Members and CEFI remain significantly concerned with the CSA's lack of response to work directly with SPDs to develop regulatory requirements that reflect both the unique nature of the RESP industry and the regulatory arbitrage that exists between SPDs and other registrants that offer RESPs. As noted in our comments, SPDs repeatedly hear concerns from customers of other registrants over the lack of fundamental expertise regarding grants, payment options and other important features of RESPs. We are recommending that the CSA both 'raise the bar' to ensure that all registrants who distribute and administer RESPs do so to the same proficiency, knowledge and technical standards as SPDs. We are also recommending (as we did in responding to the CSA's initial Consultation Paper 33-404) that the CSA work with SPDs to develop common standards for KYC and suitability that reflects the realities of our customers and ensures consistency and fairness between all SPDs.

We welcome the opportunity to meet in person with CSA representatives to discuss these important points in greater detail.

Know Your Client Proposals

RESPDAC Members and CEFI agree that a deep and meaningful understanding of each client and their personal and financial circumstances, will ensure that a proposed investment is suitable and will serve the client well for the long term. However, we again reiterate our request for a common set of KYC requirements for SPDs that reflect our customers' needs and the unique features of our products.

Client Personal & Financial Circumstances

We have concerns about the degree of detail proposed by the Reforms, for Scholarship Plan Dealers. We anticipate circumstances where clients may not be willing to divulge information about their finances, outside of their plans to save for the cost of post-secondary education, to a scholarship plan dealing representative. Having and using information that will allow SPDs to make more informed choices when making recommendations for their client's proposed RESP investments is certainly a priority. As such, we would propose working with the CSA to develop a set of requirements applicable specifically to Scholarship Plan Dealers.

Client Financial Goals

RESPDAC and CEFI appreciates that the CSA has identified "investing for the post-secondary education of the investor's children" as a financial goal that individual registrants should consider when assessing a client's investment objectives. However, as specialists only in RESPs, we are concerned that the proposed reforms establish a broader requirement for individual registrants, including Scholarship Plan Dealer ("SPD") Dealing Representatives, to inquire about **all** of the client's financial goals, as part of a more general requirements to determine investment objectives. Clients seek the services of SPDs specifically for assistance with saving for post-secondary education. SPDs already have policies and procedures in place, to collect and assess KYC information in fulfilling suitability requirements. Requiring SPDs to inquire about broader financial goals may only serve to confuse clients, who may wonder why the SPD needs this information. Further, it is not clear how this information would be used as part of the SPD KYC and suitability processes.

Client Investment Objectives

We appreciate the effort of the CSA, as set out in the proposed reforms, to address concerns related to the client's investment rate of return. However, the suggestion in the Companion Policy that "*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*" is, in our view, unrealistic behavior for our registrants to follow. Scholarship plan representatives are not trained in giving financial planning advice. In many cases, their area of expertise is limited to scholarship plans. Instead, this should be done by individuals and firms that operate in the financial planning industry. Only a portion of individual registrants also practice financial planning and even a smaller portion of them are formally trained as financial planners. Individual registrants that are not trained in and do not engage in the practice of financial planning, are simply not appropriately qualified and/or do not have sufficient information to give advice relating to personal debt or cash flow management.

We suggest instead that, if an individual registrant, in considering the client's investment objectives, personal and financial circumstances, believe the client could benefit from financial planning advice, that the registrant may only provide that advice if he/she is a qualified, practicing financial planner. Otherwise, the individual registrant should recommend that the client seek out the services of a qualified financial planning firm. Giving this advice should not preclude the individual registrant from providing a security recommendation to the client, provided the recommendation is suitable in view of the rest of the requirements in the Instrument.

Rate of Return

We are also concerned with the reference in the proposed reforms requiring the registrant to set the investment return that would be required to meet the client's financial goals, taking into account the client's risk profile. SPDs provide investment solutions that assist clients with saving for post-secondary education. They are not in the business of, or are trained, to recommend investment solutions that are based on a rate of return. Our Dealing Representatives recommend the scholarship plan that is best suited for the customer considering the products and features of each Plan, as well as the customer's ability to afford the proposed contributions to be made to their RESP. Whatever amount a customer can afford to contribute to their RESP will help achieve the customer's financial goal of saving of post-secondary education. Their Plans are each unique in design and are not set up for customers to move between different Plans based on the Plan's investment performance. We recommend that SPDs be excluded from these requirements.

Client Risk Profile

We note that the requirement in section 13.2(2)(c)(v) of the proposed regulation to gather information related to and assess a client's 'risk profile' remains an integral part of the proposed reforms, despite the opposition to this requirement noted in 'Annex D – Summary of Comments on Consultation Paper 33-404 and Responses'. The description in the proposed changes to the Companion Policy of the client's risk profile and its determination, are a good first step to helping registrants understand this new concept. However, in our view, registrants will require more guidance and comprehensive details to not only understand, but effectively implement this new requirement across different business models. Registrants need a definitive, reliable

framework to follow to implement this requirement, one that is easy to understand and ensures consistent outcomes across different business models.

As a result, we recommend that the requirement to prepare and analyze a client's risk profile be removed from these proposed reforms, and suggest the CSA work with independent risk management experts, as well as seeking input from registrants, to develop an easy-to-understand and easy-to-implement solution to this complex requirement.

Updating KYC Information

Generally speaking, the Proposed Reforms for updating KYC information in the client's file, seems reasonable and will promote the suitability for the client of the transactions conducted on their behalf. 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, RESPDAC Members and CEFI question the need for specific timeframes for registrants to update client KYC information, as set out in section 13.2 of the proposed reforms. If the policy objective is to ensure that registrants are using their best efforts to ensure KYC information is updated as changes occur, establishing an arbitrary time period to determine if changes have occurred may not meet this objective.

Instead, we suggest registrants be required to establish policies and procedures that require the firm and its representatives to pro-actively make inquiries with the client, as to whether there have been any changes to their KYC information, without a mandated timeframe. This could include requests for updates in client trade confirmations, statements of account and other forms of client communication. It could also include such requests through email and other proactive messaging campaigns. This would ensure clients are aware of the importance of keeping their information up to date and avoid unnecessary communication and meetings with clients whose information has not changed.

Know Your Product – Representative

RESPDAC Members and CEFI support the proposed reforms that would establish a regulatory framework for KYP obligations for individual representatives. We believe it is essential for all representatives 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. Scholarship plan representatives' training on the features of the RESP products they offer is already deeply rooted at the heart of their practices.

In fact, we recommend extending the proposed reforms, as set out in proposed paragraph 13.2.1(3) of the instrument, to include the type of account in which the security will be held. As RESP specialists, our members repeatedly hear from customers how other registrants, who do not specialize in RESPs, lack the basic knowledge related to both this type of account and the tax implications of holding different securities within a RESP. We question whether individual representatives should even be able to offer or recommend securities to be held in a RESP without demonstrating a minimum level of proficiency for this unique and inherently complex product type.

Know Your Product – Firm

We also support the proposed reforms that would establish a regulatory framework for firm KYP obligations. We do have concerns with the requirement for firms to understand a security in comparison to other similar securities in the marketplace and that they must take that into account when determining whether or not to approve the security to be made available to clients. In our view, these additional requirements expand the KYP obligations to include knowledge of competitors' products, a 'KYCP' obligation.

However, we suggest it is unlikely a firm will ever be able know its competitors' products to the same level of detail as its own products, and are concerned that, while this is not specified as the standard for completing this analysis, it will become the perceived standard for clients, especially those who become aggrieved.

As RESP specialist firms, we also offer the following additional KYP suggestion for firms – that the firm's KYP obligations extend to not only the types of securities offered, but also the types of accounts in which these securities are held. As noted above, we are recommending that all individual representatives be required to demonstrate proficiency in RESPs in general before offering this registered account type to customers. We recommend that proposed paragraph 13.2.1(4) be extended to include not only ***securities*** that their sponsoring firm has approved, but also ***account types*** that their sponsoring firm has approved.

For firms that want to approve and make available to their representatives RESPs as an account type, we also recommend that the firm be required to disclose whether or not it offers all available government grants and incentives for RESP holders. If not, assuming the CSA adopts a 'KYCP' obligation as discussed above, the firm should be required to compare themselves to other firms that do offer all RESP available grants and incentives. RESP grants and incentives, highlighted by the Canada Education Savings Grant ("CESG"), are an essential component of RESPs. The CESG is administered by Employment and Social Development Canada, who maintains a listing of all approved "Promoters", those firms that are approved by ESDC to offer RESP grants and incentives. Firms offering RESP accounts should be required to identify themselves, or the issuer of the security being recommended for the RESP, and inform customers whether they will be able to apply for available government grants and incentives and if not, identify which grants and incentives the customer will not be able to receive. The list is located at https://www.canada.ca/en/employment-social-development/services/student-financial-aid/education-savings/resp/resp-promoters-list.html

Suitability

General Comments

We find the proposed guidance non-specific and broadly worded, which we believe will lead to questions about how firms are to evidence and effectively demonstrate that a particular action for a client was made in a way that put the client's interests first.

RESPDAC is not an SRO. As such, SPD's lack consistency for KYC information and resulting suitability analysis. We would welcome the opportunity to work with the CSA to develop uniform rules and guidance for KYC information suitability assessments that would be applicable to all Scholarship Plan Dealers.

Suitability Determinations

On the issue of reassessing the suitability for the client in cases in which a new representative is assigned to the client's account, while we agree with this principle, we anticipate the practical 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(s) would be 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.

Portfolio Approach to Suitability

We support the continued shift away from trade-based suitability, moving to portfolio suitability, as the basis for an initial and ongoing suitability determination. However, we question the proposed requirement of the registrant to inquire as to the client's other investments or holdings at other firms.

Clients may not want to disclose this information for fear of putting their relationship with the other firm at risk. Further, it is not clear what standard the firm and its representatives will be held to, or could be held to, if the client refuses to disclose some or all of this information. Will a firm or representatives be required to make multiple inquiries until the information is provided? Will the firm or representative have to provide detailed risk disclosure information to the client if the information is not provided. Does this information form part of required information for KYC purposes that, if not provided, will require the firm to deny service to the client?

We do not support this requirement as currently proposed. We believe it will create a negative and untrustworthy relationship between the client and the firm, which is not conducive to the firm fulfilling its KYC and suitability obligations. Instead, we recommend it be reconsidered to address the concerns we have set out above.

Conflicts of Interest

General Comments

RESPDAC Members and CEFI generally support the proposed reforms as they pertain to the identification and management of conflicts of interest.

Referral Arrangements

We note the revisions regarding permitted referral arrangements in the proposed section 13.8 of the Instrument require that both parties to a referral arrangement be securities registrants. SPDs currently treat existing agreements with third-parties where the firm receives names and contact information of informed prospective customers in exchange for compensation, as “Leads Agreements”. These agreements currently comply with existing privacy legislation in the provinces and territories where they exist. The firms who provide information under these Leads Agreements are not in the securities or investment industries and it would be unreasonable to expect that they would or could become registrants in order to continue these agreements. As a result, we are of the view these revisions would eliminate these Leads Agreements.

We suggest that Scholarship Plan Dealers who enter into Leads Agreements be exempted from these provisions. Leads Agreements are not within the intent or the spirit of the existing referral arrangement requirements. Referral arrangements more typically involve two firms, each of which offers securities, investments and other financial services products. The need for referral arrangements arises where one firm has a customer who wishes to purchase, or receives a recommendation to purchase, a product or service that the firm does not offer. This firm enters into a referral arrangement with another firm that does offer the product or service the customer wants or needs, and will often receive compensation in exchange for making the referral.

Leads Agreements are different from this. Parties who provide names and contact information to Scholarship Plan Dealers are not selling securities, investments or other financial products. In many cases, these parties are not selling anything; rather the party often serves as an aggregator for products, services and information that is provided for free and is of interest to certain targeted groups, such as new parents or young families. Members of the targeted group agree to provide their names and contact information in exchange for obtaining details on the products, services or information offered by the aggregator, who partners with the various actual providers of these items. For RESPs, the parties will enter into agreements with SPDs, to supply the names and contact information of interested and informed members of the targeted groups. This is a different from the typical referral arrangement and, in our view, should not be captured by the existing or proposed requirements of NI 31-103.

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 all Scholarship Plan Dealers. However, in regard to the Proposed Reform of section 13.18(2)(a), which prohibits a representative from using a recognition based partially or entirely on their sales activity or revenue generation, the example given in the Companion Policy 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 it 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.

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.

However, Regarding draft section 14.2(2)(o) of Regulation 31-103, we are surprised to note that the CSA suggests 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). We suggest 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), the Draft Companion 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."* (Blacklined Version,p126). 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 is simply too risky to include this obligation in the draft Regulation.

RESPDAC and CEFI appreciates the opportunity to comment on the Proposed Amendments to National Instrument 31-103 and Companion Policy 31-103 and looks forward to participating in the next phase of this consultative process.

Sincerely,

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