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Dear Regulators

Comments on the proposed client-focused reforms

Thank you for the opportunity to submit comments to the proposed amendments to NI 31-103 (the client-focused reforms).

Some of the proposed amendments will adversely affect small firms

We understand the regulators' desire to protect investors as much as possible. At the same time, we remind the members of the CSA that their mandate also extends to supporting fair and efficient capital markets. Some of the proposed amendments, if enacted, would pose considerable hardship especially on small firms to comply. The time and cost to implement comprehensive new policies and procedures, to monitor them, to provide ongoing training, and to regularly evaluate the effectiveness of their

training, will adversely impact the small firm's need to continually develop new business or even to simply sustain its existing business. A two-year transition may not be adequate to bring a firm up to the expected speed, and the time and money to comply on an ongoing basis may be too much for small firms.

Although not part of the proposed amendments, we urge the regulators to consider relieving some of the pressure on small firms, especially exempt market dealers with mainly transactional clients, by allowing part-time CCOs, CCOs employed by more than one firm, or the outsourcing of the CCO role to compliance professionals.

The best interest standard is subjective and unfair

We wish to state at the outset that we agree that the registrant's duty to act fairly, honestly and in good faith extends to putting the client's interests before the interests of the registrant firm or the individual registrant. However, our concern with a best interest standard (even if it is currently limited to conflicts of interest) is that it is both subjective and fluid. That makes it unfair to the registrant. Putting a client's interests first—which seems to carry an implication that it is a duty more onerous than that of putting a client's interests before the registrant's—is nevertheless a more objective test than a best interest standard. We suggest conflicts should be addressed and resolved by putting a client's interest first, rather than by requiring them to be addressed in the client's best interest.

We have specific comments and questions

We offer the following comments and questions on specific sections of the proposed amendments:

1. The proposed requirement in paragraph 13.3(2)(a) that a registrant must reassess suitability in a client's account when a new registered individual becomes responsible for the account appears to us to be an invitation to potential abuse. The new registrant may be tempted to make changes to an account because the only way to earn compensation on an inherited or transferred account may be by making new trades. We do not believe the requirements for determining suitability will be sufficient in this scenario.
2. The same requirement to reassess suitability as set out in paragraph 13.3(2)(b) should be rephrased so that it applies only when the registrant knows or ought reasonably to know of changes in a security. It is possible, for example, that an issuer is insolvent or otherwise unable to meet its financial obligations but that is not common knowledge for some time. The registrant's obligations should not commence until that information is public, especially if the securities were purchased in the exempt market. This requirement may not be feasible for exempt market dealers that operate mostly on a transactional basis. Firms that have transactional clients may not necessarily open an account for a client, since once the trade is complete, the client deals directly with the issuer.
3. Subsection 13.4.4(3) prohibits a registrant from acting under a power of attorney from a client except in certain circumstances. We have come across many elderly clients who have no immediate family or do not trust their immediate family with financial matters. Those clients almost invariably prefer their trusted, long-time investment advisers to make financial decisions on their behalf. We are acutely aware of the material conflict that situation poses, especially as these are vulnerable

clients, and we can offer no solution. But it does seem to us that an outright ban may in certain circumstances be excessive. Would the regulators be open to providing discretionary relief in exceptional situations?

4. Section 13.8 proposes to prohibit referral fees being paid to non-registrants. Some firms rely on their clients and service providers to refer new clients as part of their market development strategy. We see no reason why they should not pay a small incentive for those referrals if they disclose to the client the amount paid and the impact on the client's return. While we do not believe investor protection would be enhanced by the payment of a nominal one-time referral fee, we see no harm in paying a referral fee if the client understands what is happening. In some ways, paying a non-registrant may result in a lesser conflict than paying a registrant, where there is an opportunity to strategize about sharing a client's investment activities. You have asked whether paying a referral fee to a non-registrant would limit investors' access to securities-related services. We think many investors become aware of securities-related services through their interaction with other professionals such as financial planners, insurance agents, mortgage brokers and the like.
5. Please clarify the intention behind the following wording in the KYC section of the Companion Policy; we do not understand what it means: determining how subjective elements of know your client, including investment time horizon, investment objectives and risk profile are established for clients and demonstrating this process.
6. We are of the opinion that the thoroughness test in the Understanding the Client section of the Companion Policy is too onerous. Later in the section, reference is made to a meaningful understanding, which we believe to be a more appropriate test. We suggest all references in this section to a thorough understanding be replaced with a meaningful understanding.
7. The guidance in the Companion Policy on the Client's Investment Objectives states a client's financial goals should be specific and measurable. We think this will compel registered individuals to focus on numbers rather than taking an holistic approach to goal-setting for the client. Although a dollar amount by a certain time frame is obviously necessary to assist a client in setting out his or her objectives, we believe the statement about the goals having to be specific and measurable without more will result in a narrowed focus.
8. In the same section and again later, registrants are asked to take into account other financial priorities such as saving or paying down debt. This is tantamount to requiring registered individuals to act as financial planners, which they may not be qualified to do.
9. We acknowledge the regulators' appreciation of the need to be flexible when determining a client's investment knowledge and risk profile. However, there is a statement in the Client's Investment Knowledge section of the Companion Policy that could be reframed. The implication is that it would be wrong to sell high-risk products to someone who has little investment knowledge. While we agree that is mostly true, we also think that the guidance should not dissuade the sale of higher-risk but less complex products to younger investors who may want to explore less conservative options.
10. Please explain the following excerpt in the Client's Risk Profile section in the Companion Policy: A registrant who is only gathering risk tolerance information, especially for exempt market products, may not obtain a meaningful understanding of what is a client's actual risk tolerance. In our view, having a single category for risk tolerance, applied to all clients, is not acceptable.

11. The explanation in the Companion Policy that a registrant's duty to put a client's interest first in determining suitability is not fulfilled using a reasonableness standard brings the duty too close to a fiduciary standard. The guidance seems to go beyond what paragraph 13.3(1)(b) contemplates.
12. Please expand on the guidance under Description of Products and Services. Is the reference to terms and conditions on registration meant to be to restrictions imposed at the time of registration? For clarity, if a firm has been found to be deficient in an examination and terms and conditions are imposed for a certain period as a result, is the firm expected to publicly disclose that information?

Once again, thank you for the opportunity to provide comment on the proposals.

Sincerely
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