



BY EMAIL: comments@osc.gov.on.ca and to consultation-en-cours@lautorite.qc.ca

October 22, 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

Attention:	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
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Dear Sirs/Mesdames:

CSA Notice and Request for Comment on Client Focused Reforms - Proposed Amendments to National Instrument 31-103 and Companion Policy NI 31-103CP

We are writing to provide you with comments on behalf of Scotia Capital Inc.¹ and Scotia Securities Inc.² (collectively, **Scotia** or **we**) with respect to the Canadian Securities Administrators (**CSA**) notice and request for comment on the proposed amendments to National Instrument 31-103 and Companion Policy NI 31-103CP (the **Proposals**). The Proposals aim to “better align the interests of securities advisors, dealers and representatives (registrants) with the interests of their clients, to improve outcomes for clients, and to make clearer to clients the nature and the terms of their relationship with registrants.”

¹ Scotia Capital Inc. is an investment dealer and a member of the Investment Industry Regulatory Organization of Canada. Its divisions include ScotiaMcLeod, and Scotia iTRADE.

² Scotia Securities Inc. is a mutual dealer and a member of the Mutual Fund Dealers Association of Canada.

We fully support the CSA's stated objectives. Our industry is built upon trust and, at its core, is the relationship between the advisor and the client. At Scotia, we believe that our clients have the right to be better off and we have always supported high standards of conduct and a regulatory regime that promotes investor protections while maintaining fair, efficient and competitive capital markets.

General

We appreciate and recognize the CSA's efforts in the Proposals to enact principles-based reforms that accommodate different business models and individual client situations and address investor expectations. In order for rule-making to achieve stated objectives and outcomes, resulting in meaningful investor protections, rules and concomitant guidance must provide the industry with consistency, clarity and certainty. In addition, clear guidance is invaluable in ensuring that various regulators adopt a consistent interpretation of the rules.

Principles-based regulation should be coupled with guidance, but the guidance itself cannot be prescriptive as it then undermines the rule itself. The Companion Policy is not drafted in a way that allows for flexibility and scalability. We submit that more work needs to be done in consultation with all stakeholders, the industry and investors.

Suitability

Over the decades in which the investment industry has evolved, the line between trading and advising has shifted to the extent that personal investment advice is foundational to the dealer service offering. We agree that moving from trade-based suitability to an overall portfolio-level suitability analysis is an improved outcome for certain clients, notably where dealers are providing holistic advice and recommendations. However, it is important to consider when and how advice /recommendations are provided, and with respect to what products, as portfolio-level suitability analysis may not be appropriate for all clients in all cases.

Investment objectives and financial goals should be permitted within a portfolio of accounts or **by account**, allowing clients the flexibility to have separate accounts for different investment objectives pursuant to a goal based framework. This is especially important with respect to transaction advice or specific-purpose investing, such as speculative investing. The Proposals may inadvertently force clients to the order-execution only channel for such investment purposes, which may not be in the client's interests. We do note that it is unclear whether portfolio-level suitability is intended to capture households, families or other accounts within a financial institution that cross legal entities. Information sharing across legal entities within a large financial institution may pose regulatory and system challenges. Clarity with respect to the breadth of this requirement would be welcomed.

Know Your Product (KYP)

Product knowledge is a pivotal element required in order to effectively determine whether an investment is suitable for a client. The firm currently has obligations to conduct product due diligence and ensure that products on the firms' lists are suitable for retail investors. In addition, advisors are investment professionals with high proficiency and ethical standards; existing suitability requirements require advisors to understand specific products recommended to their clients.

As such, we do not believe that it is practical or necessary for firms to conduct a security-by-security analysis or for advisors to be familiar with all products on their firm's shelves, given the size of most, if not all, firms' shelves. Rigorous, prescriptive KYP approval and monitoring processes will likely be challenging to implement and may reduce options available on product shelves.

We support a flexible, principles-based approach to KYP, permitting firms to conduct risk-based product due diligence (for example, classifying standard products, or products with similar features such as conventional mutual funds, or certain listed equities and conducting blanket due diligence) and rely on external data providers for product information. The role of advisors as investment professionals within the framework of the firm would not change – advisors would be responsible for KYP for all products recommended to clients.

Conflicts of Interest - Referrals

We submit that permitting referrals only as between registrants would constrain actual referrals that meet client needs. Referrals between affiliated entities, whether registrants or non-registrants, permits the right-channeling of clients to ensure they are able to access products and services most suitable to their needs. Such referrals should not add to a higher client expense or result in conflicts of interest that are not otherwise managed or prohibited.

Publicly Available Information

We fully support efforts to promote greater transparency and clarity to clients to ensure they have all available information to make informed decisions. In the case of certain registrants, such as order execution only firms, it may make sense for the information noted in the Proposals to be publicly available. In addition, we agree that it is reasonable to make this information available to clients who are considering opening an account. That said, some the information required to be made publicly available under the Proposals is proprietary, competitive information and the mandated disclosure is far reaching. We note also that context and discussion may be important elements in ensuring an investor can make appropriate comparisons in the offerings between firms; a mechanism that directs clients to engage in such discussions with an advisor and discourages a self-serve approach may be more beneficial to the client and result in less confusion with respect to firm offerings.

Institutional Client and Portfolio Manager Exemption

We note that the proposal to exempt registrants dealing with institutional clients from KYC and Suitability included in the Consultation Paper have not been carried forward. In addition, no exceptions are made for portfolio managers exercising discretionary authority pursuant to a fiduciary standard of care. These exemptions provide clarity with respect to the standards made explicit in the Proposals as against existing standards for institutional clients and portfolio managers and we ask that the exemptions be reconsidered.

Transition

As a practical matter, we would like to highlight that the changes that the Proposals would require to our information collection and reporting processes, including client facing, back-office and compliance systems, are substantial. The transition period proposed is to ensure clients have a positive and seamless experience. We can implement reforms manually to meet this objective within the proposed timeframe, however, this would not serve clients as well as a holistic solution given the breadth and depth of these reforms.

Conclusion

In conclusion, we would like to reiterate that we fully support the objective of better aligning the interests of registrants with the interests of their clients, improving outcomes for clients, and making clearer to clients the nature and the terms of their relationships with registrants. We support regulatory reforms to enhance the advisor and client relationship. Regulatory reforms should preserve the characteristics that have allowed different business models to flourish, ensuring the availability of a wide range of financial products and services for investors to choose from.

To this end, we encourage you to implement the Proposals in a way that reinforces principles-based regulation, recognizes the various business models that meet client needs and allows firms to implement changes in a client-centric, risk-based, thoughtful, considered and technologically-abled way.

We appreciate this opportunity to provide comments on these proposed regulatory reforms that may inform the CSA's work in this important area. We look forward to continuing to work with the CSA to achieve these important goals.

Yours truly,



Alex Besharat
Senior Vice-President and Head Canadian Wealth Management
The Bank of Nova Scotia