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Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Registrar of Securities, Northwest Territories
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Re: Response to Proposed National Instrument 31-103 Registration Requirements (Revised Proposal)

Dear Sirs / Mesdames:

PFSL Investments Canada Ltd. ("PFSL") sincerely appreciates the opportunity to continue our participation in the development of proposed National Instrument 31-103 Registration Requirements ("NI 31-103") by submitting comments to the Canadian Securities Administrators ("CSA") in response to the revised proposal. It is our belief that open consultations among policy makers, regulators and industry participants is the cornerstone of a well functioning financial services industry and we are grateful that the CSA continues to consider external concerns and recommendations in the development of key regulatory initiatives. We are also very supportive of this particular initiative as the CSA attempts to usher in a much needed harmonized regulatory regime. We believe that, if done properly, harmonization will lead to significant benefits for the Canadian financial services industry as well as Canadian investors.

As we mentioned in our original submission to the proposed Instrument, PFSL is a subsidiary of Citigroup, one of the world's largest financial services firms with some 200 million customer accounts in over 100 countries. While part of a large corporate umbrella, PFSL dedicates its efforts to providing middle-income families with access to simple, yet essential financial products and services through one of the nation's largest mutual fund-licensed sale forces. We consider our dedication to this segment of the Canadian population one of our most distinguishing features since they are typically overlooked by other financial service providers. However, servicing modest investors with smaller accounts is becoming less and less economical as a result of increasing regulatory obligations and their related costs in addition to more costly operational expenses in general. Therefore, it is with a perspective that has been enriched by our experience servicing middle-income investors and a focus on preserving their access to affordable financial products and services that we submit our response to the redraft of NI 31-103.

1. Investment Fund Manager Requirements

Although we recognize the need to establish the investment fund manager registration category in order to ensure proper oversight of fund manager activities, we are concerned with the potential unintended consequences the current framework may have on investors and certain business operations. In the proposed Instrument's current form, certain firms operating under legitimate business arrangements may inappropriately be identified as being solely responsible for having to satisfy fit and proper requirements that exceed their capabilities despite actually having limited operational risks. To be more precise, we are concerned that certain mutual fund dealers, including those who deal in funds of funds, would be required to satisfy the requirements of an investment fund manager in-house. Although such mutual fund dealers may be permitted to direct a fund, in practice they simply use their authority to set the parameters and contract with a third-party firm to provide the day-to-day management of the funds. Since such a third-party firm would have all of the required licensing and experience, the regulatory obligations for a fund manager would be satisfied through this contractual arrangement. The proposed Instrument as currently drafted may prohibit such arrangements, even though these mutual fund dealers are able to satisfy the objectives of the registration by retaining the required expertise through contractual arrangements.

We would ask that the CSA recognize that there are legitimate arrangements in the industry where certain firms that may be *permitted* to direct an investment fund have a more qualified and capable firm perform this function for them. We believe that it would be beneficial if the proposed Instrument provided exemptions for firms, where appropriate, or permitted those who actively perform the functions of an investment fund manager satisfy the requirements of this category on behalf of the registered firm.

2. Mutual Fund Dealer Category

Although many portions of the proposed Instrument have been improved through the recent revisions, we believe that the permitted activities for the mutual fund dealer category are still overly restrictive and prescriptive. Since mutual fund dealers and their representatives meet more stringent regulatory requirements and operate within a well-regulated area that includes fairly strict proficiency, capital and insurance requirements, prohibiting or requiring them to register to deal in simpler products does not seem necessary and could even represent a potential disservice to the consumer. Requiring registration for less complicated products, such as scholarship plans, and prohibiting trades in fairly basic products, such as GICs, effectively limits the options that are available to the clients of mutual fund dealers. We request that the CSA reconsider the limitations that have been placed on this category of registration. We believe that expanding the permitted activities for this category would not only increase the investment options available to clients of mutual fund dealers, but also benefit regulatory efficiency since multiple registrations for the sake of lesser products could result in unanticipated administrative and regulatory complications that detract from the general principle-based approach of the proposed Instrument.

If left in its current form, it is likely that the current restrictions on the mutual fund dealer category will unfortunately result in a situation know as “layering”, where registrants who have satisfied a series of more onerous requirements have to ensure that they meet a series of duplicative requirements in order to register in a more limited category. A more effective and attractive alternative to the proposed Instrument’s prescriptive approach to this category and its resulting “layering” affect would be to provide the appropriate SRO with the authority to determine in which products its members are permitted to deal. SROs have a more informed understanding of their members’ proficiencies and granting them this authority would likely reduce the potential for “layering” and leave the regulatory framework more capable of handling market and product innovation. Another alternative would be to arrange the registration categories in a hierarchical manner in which the permitted activities for any given registration category include not only those specifically tailored to that category, but also the activities of any category listed under it in the hierarchy. Such an arrangement would therefore permit registrants to deal in those areas and products for which they have clearly satisfied the proficiency requirements.

3. Proficiency Requirements

To begin, we would like to commend the CSA for its significant change in direction away from a prescriptive approach to proficiency with its adoption of the “proficiency principle” in the redraft of the proposed Instrument. We understand the limitations and difficulties in prescribing stipulations appropriate for all possible scenarios and we believe that this particular principle-based approach will do better to serve the proposed Instrument’s original public policy intentions. However, as with all principle-based rules, there is the potential for a lack of clarity and direction as well as a potential for an imbalance in regulatory discretion. We believe that, although it represents a positive step forward, the proficiency principle could be further improved if it were somewhat more definitive. By using the Companion Policy to establish certain parameters for key concepts in the proficiency principle, such as “reasonably necessary”, the proposed Instrument would provide individuals with greater insight regarding regulatory expectations and also give regulators more direction in terms of the its application, thereby reducing the potential for differences or difficulties in interpretation. Preserving the general principle but making it slightly more definitive would therefore increase the clarity of the proposed Instrument and also work to protect the harmonization it seeks to instill.

We also believe that this principle could be further improved through a slight alteration of its wording. In its present form, the proficiency principle requires individuals to possess the "education *and* experience" (emphasis added) to perform the activity. However, we believe that rephrasing it as "education *and/or* experience" would more appropriately reflect the spirit of the principle since having both may not be essential in all situations.

4. Outsourcing

We believe that consumer protection and the ability to hold the appropriate firms accountable for wrong doing are of the utmost importance and appreciate the attempts the CSA has made to establish clear lines of responsibility. However, we would appreciate either further clarification or the recognition of permissible exemptions to the prohibitions the proposed Instrument has placed on the outsourcing of registerable functions. Due to our unique business model, we believe that there are certain legitimate situations that would unintentionally be caught by the prescriptive rules regarding outsourcing. Similar to what has already been described above, there are existing relationships among registered companies where the roles, responsibilities and accountability of each firm are clearly defined. Although these relationships easily satisfy the CSA policy concerns, they would potentially be prohibited under the proposed Instrument. As an example and outlined in our first point, through a clearly defined agreement, a firm, such as a dealer, may package wrap funds that are created and managed by another firm. Consequently, these firms would operate under unique business models that result in them not having the type of expertise or infrastructure envisioned in the investment fund manager category. However, these dealer firms would "outsource" this function to a qualified fund manager. Under the current wording of the proposed Instrument, it appears that such arrangements would be prohibited despite the benefits they bring to Canadian investors. As a result, we would appreciate further review and clarification on this rather important point.

5. Chief Compliance Officer (Proficiency Requirements)

We commend the CSA for the revisions that have been made regarding the CCO proficiency requirements. The addition of the proficiency principle and the "grandfathering" clause has done much to ensure companies will be able to retain the services of capable and competent compliance officers. However, we believe that these requirements remain one of the proposed Instrument's most potentially problematic areas as they are rather prescriptive and serve to unduly limit the pool of qualified individuals from which registered firms can draw their compliance officers. In fact, the proposed Instrument may ultimately lead to a pronounced shortage in employable individuals who satisfy the requirements. The limitations on the field of qualified individuals will be most pronounced for investment fund managers as the stringent educational qualifications are combined with significant years of experience. Overall, these requirements will likely result in pitched competition over the few in Canada who can satisfy the requirements, leaving smaller firms and those that service smaller investors severely disadvantaged.

Although beneficial, the grandfathering clause represents more of a temporary solution to the problem and firms remain unnecessarily exposed once the currently employed compliance officers leave their employers or the industry. In addition to our concerns regarding the proficiency principle outlined above, this principle may prove to be insufficient since the CCO proficiency requirements outlined in the proposed Instrument will become the basis by which one's equivalency will be measured. As a result, it is unlikely that the proficiency principle will redress the potential for a problematic shortage of candidates who are considered to be qualified.

Part of the difficulties with the CCO proficiency requirements seems to be tied to a difference in understanding of the role of this position. In their present form, these requirements would ensure that CCOs function effectively in terms of product oversight. However, it is important that the proposed Instrument does not lose sight of the fact that the primary responsibility of a CCO is entity conduct oversight. Although the proposed Instrument states that the CCO is responsible for a firm's compliance system and charged with establishing and updating compliance procedures as well as managing compliance reporting and monitoring, it is difficult to determine how certain portfolio manager and investment fund manager CCO proficiency requirements are directly connected to these duties. It may be more beneficial to review the requirements with an emphasis placed strictly upon organizational conduct oversight.

6. Insurance Requirements

We believe that the current insurance requirements contained within the proposed Instrument would benefit by being less prescriptive and more principles-based. Currently, the regulations prescribe very specific types, amounts and contents of insurance policies registered firms are required to have. However, the degree of specificity in the proposed Instrument may require firms to have insurance coverage that is not commercially available or that may become unavailable at some point in the future. We believe that the proposed Instrument should instead contain an insurance principle based on adequate coverage and include a series of guidelines to avoid the possibility of prescribing coverage that insurers may withdraw from offering or that they may not even offer at all.

7. Registration Categories

Similar to what was expressed in our original submission, we are concerned that the registration categories lack a sufficient degree of clarity. Although the distinctions between the registration categories are probably clear for the most common place operations and arrangements, these distinctions begin to break down and become vague for some of the more unique business models in the industry. We would appreciate it if the sections of the Companion Policy dealing with the categorizations were expanded to provide greater detail regarding the registration categories in order to limit the potential for confusion and ambiguity in terms of how they are intended to apply to unique arrangements and business models.

8. Know Your Client

Aspects of the know-your-client ("KYC") requirements are of continuing concern to us despite the overall improvements in the redraft of the proposed Instrument. As stated in our original submission, registrants are required to ascertain the client's "reputation" in certain circumstances. The information that would be gathered under this requirement is of an entirely subjective nature, making it appear unnecessary or inappropriate. Given that the proposed Instrument does not provide guidance in terms of what is to be done once this unsubstantiated information has been collected, in the very least, we would appreciate further clarification regarding its purpose.

We also believe that there are more general, outstanding concerns with the proposed Instrument's KYC provisions. To begin, much of the KYC requirements are duplicative and likely unnecessary given the efforts that have been made with anti-money laundering regulations. What is more, SROs already require their member firms to satisfy KYC requirements that have been developed to suit the specific products they regulate. Unless there is believed to be a gap in current SRO obligations, it seems more appropriate to provide an exemption for SRO regulated registrants in this area as opposed to imposing the generic KYC requirements contained in the proposed Instrument.

9. Record Keeping

The record-keeping provisions in the proposed Instrument represent another area that would likely lead to duplicative requirements for SRO members. For example, the Mutual Fund Dealers Association's ("MFDA") Rule Number 5 provides their members with a series of detailed obligations regarding the retention of records. These provisions described the type of records that are required to be kept and also address the method and duration of retention that the MFDA expects of its members. Due to the overlap with existing SRO rules, we believe that it would be beneficial for the CSA to consider providing an SRO exemption to the record-keeping requirements in order to avoid unnecessary burdens that would result in duplicative obligations.

In addition to the potential for overlap, we are concerned that the sub-sections to the record-keeping division in the proposed Instrument may be overly prescriptive. The amount of information the CSA intends to be retained, especial in terms of "relationship records", may be so excessive that it will likely overburden registered firms and regulators alike and limit the effectiveness of the provisions. In addition, the proposed Instrument does not seem to adequately address the operational and administrative issues that will result from these relationship records requirements. It is not readily clear if the intention is to require registered firms and individuals to print each and every "non-activity record" email received from a client in order to ensure that it finds its way into the client file. If this is the case, the cost and environmental concerns that would arise from such a requirement would likely outweigh its benefits. The alternative of storing all of these types emails electronically creates other difficulties since it is unclear how regulars expect registered firms to extract privately addressed emails from a representative who leaves the firm within the seven-year period that relationship records are expected to be retained.

10. Account Activity Reporting

We believe that the exemption provided to investment fund managers in section 5.17(a) does not necessarily advance the interests of the client or the industry. Clearly, the fundamental policy concern of this division is ensuring that clients receive timely and complete information regarding their investment transactions and performance. What is not clear is the advantage of establishing this as essentially the sole responsibility of registered dealers. Although section 5.21 provides a limited exemption where dealers are not required to provide written confirmation of trades in a security of mutual funds in instances where the investment fund manager has done so, the Division has been structured in such a way to establish account activity reporting as the dealer's responsibility. Since the client's interests would not be affected. We believe that determining the responsible party should be left as a commercial decision instead of a regulatory concern.

It would appear that the concern of the client and the regulator would be that this information is being provided, and not by whom it is being provided. As a result, registered firms that are party to a transaction and account should be able to determine amongst themselves who is the most appropriate to do so. There are many instances where placing the onus of account activity reporting and its resulting costs squarely on dealers servicing smaller accounts would result in those dealers reconsidering the benefits of catering to Canada's modest investors and possibly lead to the establishing minimum investment amounts. Such a costly situation could, of course, marginalize the lower- to middle-income investors. As a result, it seems that it would be more appropriate to allow for an "either/or" scenario where registered firms, including investment fund managers, could determine and clearly identify the party responsible for account activity reporting. This flexibility in determining responsibility for providing information to clients would reflect similar allowances that have been made regarding the provision of referral arrangement disclosures. As opposed to designating an exempted category, section 6.11.3 of the Companion Policy states that parties to a referral arrangement are allowed to determine in their written agreement which one will provide the disclosures to referred clients. We ask that a similar provision be extended to account activity reporting to avoid the possibility of regulations prescribing responsibilities and exemptions that may not be appropriate for all scenarios.

In terms of more specific issues regarding account activity reporting, it is not readily clear why clients have not been accorded more authority in determining the frequency of the delivery of statements of account and portfolio. Clients are left with only two options from which to choose, every three months or every month, despite the fact that they may prefer an alternative frequency or the "access-equals-delivery" model we described in our original submission. In many instances, clients can access this information directly from the fund company at their own convenience, making its delivery at least once every three months unnecessary for such clients.

In addition, account activity reporting is typically an area that SROs address and regulate. As a result, exempting SRO members from only the confirmation of trade requirements and not the other aspects of account activity reporting is somewhat surprising. We would appreciate it if the CSA could either extend this exemption to all areas of account activity reporting that are covered by SRO rules or expand the Companion Policy to assist registrants in understand the gaps that have been identified in current regulations.

11. Complaint Handling

This division represents another instance in which the proposed Instrument seeks to regulate areas of operation that already falls under SRO oversight. For example, in addition to MFDA Policy No. 3, which provides a more refined definition of complaints than that found in the proposed Instrument, MFDA Policy No. 6 and MFDA Rule 1.2.5 represent an extensive regulatory framework that governs the recording and reporting of complaints. The proposed Instrument has not identified areas that are not currently addressed by these existing regulations or how those contained in the proposed Instrument could represent an improvement. As a result, we would appreciate it if the

CSA would consider extending an exemption to members of SROs that provide sufficient oversight of complaint handling.

In addition, we are also concerned that the definition of reportable complaints contained in the proposed Instrument is overly broad. Unlike the definition adopted by the MFDA, the proposed Instrument does not differentiate between material and immaterial reproaches as well as satisfactorily resolved or unresolved complaints. By not including these distinctions, the requirements will lead to a large increase in the amount of information being reported, most of which will be regarding insignificant complaints or those that have already been resolved to the client's satisfaction on a routine basis. In our opinion, it appears that these reporting requirements will likely prove to be excessive and the biannual submissions will likely inundate regulators with details of every reproach against a registered firm and unnecessarily overburden the system of supervision.

12. Referral Arrangement

Since there are existing MFDA rules and guidelines that govern referral arrangements and ensure proper consumer protection in this area, the absence of an SRO exemption for mutual dealers to the division of the proposed Instrument that addresses referral arrangements is somewhat surprising. In order to avoid duplication or regulatory inefficiencies, exemptions should be extended to areas of regulation that currently fall under the accepted framework of SRO oversight. Unless the CSA is of the opinion that the regulation of referral arrangements should no longer be regulated by SROs, we believe that it is only practical for SRO members to be granted an exemption from these provisions.

In closing, PFSL appreciates having the opportunity to submit comments in response to the redraft of NI 31-103. We commend the CSA for taking the initial step toward harmonization as well as for many of the improvements that have been made to the proposed Instrument through the redraft. We would like to thank the CSA for taking the time to consider our opinions and concerns and look forward to taking part in other meaningful dialogues between the financial services industry and the CSA as the voice of Canada's middle-income investors.

Yours truly,

John A. Adams, CA
Chief Executive Officer
(original signed)