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Alberta Securities Commission
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

comments@osc.gov.on.ca and consultation-en-cours@lautorite.qc.ca

Re: Canadian Securities Administrators Consultation Paper 33-404 – Proposals To Enhance the Obligations of Advisers, Dealers, and Representatives Toward Their Clients

The Portfolio Management Association of Canada (“**PMAC**”), through its Industry, Regulation & Tax Committee, is pleased to have the opportunity to provide comments on the Canadian Securities Administrators’ (“**CSA**”) Consultation Paper 33-404 – Proposals To Enhance the Obligations of Advisers, Dealers, and Representatives Toward Their Clients (the “**Consultation**”). Capitalized terms used in this letter but not defined here have the same meaning given to them in the Consultation.

PMAC thanks the CSA for the work done by its members to draft the Consultation and for the opportunity to participate in various discussions on the very important proposals in this Consultation.

Our response is primarily focused on the implications that the Consultation may have for firms and individuals registered as “portfolio managers” under National Instrument 31-103 – *Registration Requirements and Exemptions* (“**NI 31-103**”), however, we have also commented on certain other matters of significance affecting other registration categories.

Overview

PMAC represents investment management firms registered to do business in Canada as portfolio managers. PMAC members encompass both large and small firms managing total assets in excess of \$1.5 trillion for institutional and private client portfolios¹.

PMAC advocates for the highest standard of unbiased portfolio management in the interest of the investors served by our members. In fact, that is PMAC’s mission statement: advancing standards. For this reason, we are consistently supportive of measures that elevate standards in the industry and improve investor protection.

¹ Many of [PMAC’s members](http://www.portfoliomanagement.org) are also registered as investment fund managers that offer a variety of investment products to institutional investors and private clients. For more information about PMAC and our mandate, please visit our website at: www.portfoliomanagement.org.

PMAC continues to support and champion the efforts of the CSA to identify opportunities to promote investor protection and to improve the registrant regulatory framework. We believe there are several positive amendments proposed in the Consultation that are designed to bolster the client-registrant relationship and to foster investor protection. The integrity of the client-registrant relationship is of crucial importance to confidence in the markets, a healthy Canadian economy and access to investment advice for all Canadians. We also believe that ensuring broad access to investment advice that is provided with the highest levels of integrity and skill is in the best interest of Canadians as a whole.

Our letter is structured under the following main headings that frame our views on the proposed regulatory best interest standard as well as on each of the targeted reforms:

- A. Summary of PMAC's Key Recommendations;
- B. Important Considerations Relating to Portfolio Managers;
- C. Statutory Fiduciary Duty;
- D. Regulatory Best Interest Standard;
- E. Discussion of the Targeted Reforms; and
- F. Concluding Comments

A. SUMMARY OF PMAC'S KEY RECOMMENDATIONS

Statutory Fiduciary Duty

- PMAC supports the introduction of a nationally harmonized statutory fiduciary duty in securities legislation for all registrants managing the investment portfolio of a client through discretionary authority granted by the client.
- In our view, investors in each province and territory who have chosen to have their investments managed on a discretionary basis should have the same protections and remedies afforded to them, regardless of the registration category or regulator of their investment adviser.
- For registered portfolio managers, the proposed statutory fiduciary duty will be of little impact as they are already fiduciaries.
- We recommend that the CSA jurisdictions that will be adopting a statutory fiduciary duty in their securities legislation consider adopting the language in [Subsection 75.2\(2\)](#) of the *Securities Act* (Alberta) for consistency.

Regulatory Best Interest Standard Poses Multiple Risks For Investors Already Afforded the Protection of a Fiduciary Duty

- PMAC believes that a regulatory best interest duty is unnecessary for portfolio managers as a result of the already existing fiduciary duty. The fiduciary duty is the highest standard of conduct as compared to a regulatory best interest standard and has an established history of judicial interpretation and meaning.
- The imposition of both standards of care could create unnecessary confusion and inadvertently introduce a bifurcated standard of care regime.
- A regulatory best interest standard for portfolio managers may have the undesirable and unintended consequence of lowering the applicable standard of care to the detriment of investors, due to the overlap of duties that would be owed by portfolio managers.
- The implementation of a regulatory best interest standard in some Canadian jurisdictions and not others would exacerbate the existing expectations gap that the CSA and the industry seek to address and present the very real threat of regulatory arbitrage.

Regulatory Best Interest Standard for Other Registration Categories

- Although we support raising the duty of care in the investment industry in the interest of investors, we are concerned that the lack of agreement among the CSA with respect to adopting the best interest standard could result in a bifurcated standard of care as well as cause confusion and unnecessary compliance complexity and costs.
- Implementing the regulatory best interest standard in some CSA jurisdictions and not others could result in three, separate standards of care owed by investment advisors to clients across Canada: 1) the fiduciary duty for clients with discretionary accounts; 2) the regulatory best interest standard for clients of registrants regulated by the Ontario Securities Commission and the New Brunswick Securities Commission; and 3) the existing duty to act fairly, honestly and in good faith to clients applicable in all other jurisdictions.
- Despite PMAC's desire for an elevated standard of care across the industry, we do not believe that the complex interplay of these three standards would be in the best interest of Canadian investors.
- We suggest that, in the absence of a national consensus on the part of the CSA regarding a uniform standard of care for dealers and other registrants that are not already currently subject to a fiduciary duty, the focus should be on targeted regulations necessary to protect investors. PMAC urges the CSA to reconsider adopting a nationally harmonized fiduciary standard as a longer-term goal for all registrants providing investment advice.

Tailored, Registrant-Specific Reforms

- The CSA should avoid a one-size-fits-all approach to registrant regulation reform in order to ensure proportionate regulatory obligations that serve the best interest of investors.
- Certain of the targeted reforms are either duplicative or unnecessary for portfolio managers. Portfolio managers conduct their business subject to legal, ethical and professional obligations that are often distinct from other registrants. The conduct of portfolio managers does not raise the investor protection and client-relationship concerns voiced by the CSA as being in need of enhancement.
- Carve-outs for portfolio managers as well as additional guidance would be advisable for several of the proposed targeted reforms. Additional guidance would be useful on other proposed reforms and we believe that such guidance should follow the principles-based approach taken by the CSA to date *vis a vis* registrant regulation.
- We urge the CSA to carefully consider our submissions regarding the necessity, practicality and potential unintended consequences of implementing the targeted reforms across all registration categories without recognizing the high legal and professional standards that are currently in place for portfolio managers and expressly recognizing that these standards fulfill the objectives of the targeted reforms.

KYC & Suitability

- Both KYC and suitability assessments are cornerstones of the client-registrant relationship and PMAC supports the CSA's efforts to codify certain best practices around these crucial elements.
- The type of information proposed to be collected and assessed by registrants raises concerns that registrants do not have the expertise to properly assess such information (e.g.: basic tax position).
- Additionally, we have concerns that the broadened scope of information collected by registrants will have the unintended consequence of exacerbating the expectations gap by causing

investors to believe that they are receiving tax or full suite financial planning advice when this is not the scope of the agreed upon professional relationship.

- The KYC process is already a challenging process with many investors reluctant to divulge full personal financial information on matters such as indebtedness and total investable assets.

Proprietary versus Non-Proprietary Product Distinction

- We support improved disclosure of proprietary and non-proprietary products for sectors of the industry which are making product sales and trading recommendations. We would, however, suggest a closer examination of the definition of proprietary product to distinguish between, for example, securities or funds whose sale to a client provide additional financial gain for a company or an advisor versus those that do not. We support further efforts to bring transparency to compensation practices which will better align the interests of investors with those of investment advisors as a practical way of managing potential conflicts of interest.

Titles

- PMAC does not believe there is an issue with titles among registered portfolio managers that requires regulatory intervention. Common titles such as “portfolio manager” or “investment counsellor” are neither misleading nor inflated or in need of reform.
- PMAC supports a more principles-based approach to the regulation of titles and does not feel that the Alternatives proposed in the Consultation would address the issue in a practical way.
- We believe that the CSA’s title reform should instead be principles-based and require that titles used by registrants be: clear, not misleading, limited and distinct based on registration category (as opposed to differentiated based on product shelf).

Investor Outreach and Education

- The targeted reforms, in particular the titling reforms, should be implemented together with a clear, accessible and wide-spread investor education campaign on these issues. This initiative should be led by the CSA in order to bolster the intended outcome of protecting investors and reducing the investor expectation gap.

B. IMPORTANT CONSIDERATIONS RELATING TO PORTFOLIO MANAGERS

Applicability of proposed reforms to portfolio managers

While we commend the general intent articulated in the Consultation, we believe that several of the proposed requirements may be redundant or inapplicable to portfolio managers. From the portfolio manager standpoint, we believe that certain of the targeted reforms are mandating a solution for a sector of the industry where no problem exists.

Specifically, for the reasons set out in the body of this letter, it is our submission that the regulatory best interest standard as well as the targeted reforms proposed for Know Your Product, Proficiency and Titles & Designations should not be applied to portfolio managers. Additionally, while PMAC is generally supportive of the introduction of the targeted reforms pertaining to Conflicts of Interest, Know Your Client, Suitability, Relationship Disclosure and Enhancement of Roles of UDP and CCO, there are certain aspects of these proposed reforms that should not apply to portfolio managers.

Portfolio managers should not be captured by a one size fits all approach to regulatory reform

As opposed to the Consultation's approach of wholesale changes to be implemented across all registration categories, we recommend discrete reforms targeted at certain registrants and certain business models. In particular, a more targeted approach would address the concerns of the CSA set out in Part 5 of the Consultation in a way that the imposition of additional requirements is focused only on those businesses and registrants for whom reforms are most required. We believe the CSA should recognize the high legal and professional standards that are currently in place for portfolio managers and that these standards already fulfill the objectives of the targeted reforms. We are of the opinion that certain of the proposed reforms, for example, the Know Your Client and Suitability reforms, require further clarification and modification in order to be successfully implemented in a way that balances the benefits of the desired outcomes with the potential costs and challenges of implementation.

The CSA has historically adopted tailored requirements that recognize the unique utility and limitations of various business models in the Canadian capital markets. We feel that this approach has been useful and has generally resulted in proportionate regulatory obligations. NI 31-103 sets out distinct registration streams that exist to delineate the roles, qualifications and responsibilities of the various categories of registrants. We are concerned that the proposals in the Consultation would impose a one-size-fits-all approach under NI 31-103.

The blurring of distinctions between registration categories may result in further confusion to investors and undue regulatory burden for certain registrants for whom such additional requirements would be unnecessary in order to protect investors and preserve the integrity of the capital markets. We believe that maintaining a tiered approach in the regulation and expectations of different registrants will assist in ensuring proportionality of regulation as well as access by clients to appropriate models of investment advice. While Parts XIII and XIV of NI 31-103 are generally applicable across all registration categories, the current requirements take a more principles-based approach than the proposed, more prescriptive targeted amendments to these sections. We believe that a principles-based approach allows for greater flexibility to suit the needs of investors and to reflect the realities of various business models. A principles-based approach is also consistent with allowing fiduciaries the discretion to tailor their advice and practices to meet their legal and ethical obligations to clients in accordance with their professional judgement. Principles-based approaches are also more suited to a rapidly changing marketplace where global influences and volatility, technology disruption and market innovation can often outpace regulatory responses. PMAC also believes that prescriptive approaches to regulation may invite technical workarounds while a principles-based approach focuses more on the spirit of the regulation. While we appreciate that the CSA has identified the need to codify aspects of registrant conduct into more prescriptive requirements, we query whether this approach is required or desirable for all registration categories. Specifically, we believe that portfolio managers do not warrant inclusion in all of these amendments, as set out in more detail below.

Critical role of fiduciary duty in shaping portfolio managers' conduct toward clients

Portfolio managers have a fiduciary duty to act with care, honesty and good faith, always in the best interest of their clients. Investment decisions must therefore be independent and free of bias. This results in and justifies the higher level of trust placed on portfolio managers by clients. Additionally, portfolio managers are required to have the highest level of education and relevant experience in the investment industry. Portfolio managers charge fees in a transparent fashion and these fees represent a percentage of the client's investments under management by the registrant.

As a result, many of the conflicts of interest and other investor protection concerns voiced by the CSA in the Consultation are not applicable when clients are dealing with portfolio managers. Moreover, portfolio managers typically manage funds for clients that are more sophisticated than

most retail clients with whom other registrants interact. These sophisticated clients frequently do not wish to receive paperwork to review and additional forms to execute beyond entering into a discretionary arrangement with their portfolio manager by executing an investment management agreement. Fundamental to the discretionary relationship is that the client has deliberately delegated the day-to-day management of the account to the portfolio manager. In fact, in signing such investment management agreements, clients grant discretion to their portfolio managers to perform any and all acts as the portfolio manager may deem necessary for the management of the client's account. While client sophistication does not diminish the importance of investor protection, the fiduciary duty imposed on portfolio managers, coupled with their education, industry experience and the types of clients they tend to advise, suggests that certain of the CSA's investor protection concerns set out in Part 5 of the Consultation are not applicable to investors working with portfolio managers.

PMAC notes, as a timely example, OSC Staff Notice 33-747 – *Annual Summary Report for Dealers, Advisers and Investment Fund Managers* that cites certain compliance deficiencies identified in respect of portfolio managers. By and large, these deficiencies are minor, discrete and separate from the problems identified by the CSA in Part 5 of the Consultation and which we understand the targeted reforms are seeking to address.

The ethical framework and legal obligations surrounding the business of portfolio managers is unique and focused on the best interest of clients. In addition to the fiduciary duty, the majority of PMAC members are signatories of the CFA Institute's Asset Manager Code of Professional Conduct (the "**CFA Code**"). Most individual portfolio managers are also signatories of the [CFA's Code of Ethics & Standards of Professional Conduct](#). The CFA Code requires firms, among other things, to act in a professional and ethical manner at all times; to act for the benefit of clients; to act with independence and objectivity; to act with skill, competence and diligence; communicate with clients in a timely and accurate manner; and to uphold the applicable rules governing capital markets.

PMAC understands the CSA's general concerns about the expectations gap where investors may incorrectly assume that registrants must always provide advice that is in the investor's best interest as well as concerns about registrants' compliance with both the letter and spirit of NI 31-103. However, these concerns are very minor in the context of a portfolio manager-client relationship. Clients of portfolio managers are not subject to the power imbalance that may exist between retail clients and other categories of registrants.

There are practical considerations surrounding the various costs that portfolio managers would incur – and the effects these would have on their clients – if portfolio managers were to be required to adopt these prescriptive reforms. The impact of initial implementation and on-going compliance costs in the form of systems development, operational updates, human capital, training, legal, insurance, consultant and additional litigation costs, among others, should not be dismissed when considering whether the services provided by portfolio managers to investors would be materially improved by adopting the targeted reforms and the regulatory best interest standard.

Our members have expressed certain specific concerns regarding the interpretation and possible implementation of elements of the targeted reforms set out in the Consultation. We have set out our thoughts on each of the 9 targeted reforms as well as on the proposed regulatory best interest standard below. Where applicable, we have also identified the specific consultation questions to which we are responding under each targeted reform heading.

C. STATUTORY FIDUCIARY DUTY FOR DISCRETIONARY ACCOUNTS

PMAC consistently advocates for measures that improve investor protection and that harmonize the requirements of such measures across Canada for the benefit of all investors. PMAC strongly

supports the introduction of a statutory fiduciary duty in provincial securities legislation where it does not already exist for registrants whose clients grant them discretionary authority. This amendment will be of little impact to PMAC's members, as they are already fiduciaries; however, we feel that it is essential to investor protection that all clients who choose to have their investments managed on a discretionary basis are afforded the same protections and remedies, regardless of where they reside in Canada. Please also refer to our further discussion under Section E – Discussion of the Targeted Reforms – Subsection 9 Statutory Standard of Conduct on page 20 of this letter.

D. REGULATORY BEST INTEREST STANDARD

PMAC's Position on an Elevated Standard of Care for Registrants

In [our 2013 submission](#) on the topic, PMAC supported the implementation of a national statutory fiduciary duty that would apply equally to all advisers and dealers that provide investment advice. While we are very supportive of measures that elevate standards for the benefit of investors, at this time, PMAC is of the view that the imposition of the proposed regulatory best interest standard would not achieve the CSA's policy outcomes, nor would it improve investor protection for clients of portfolio managers. We note that the CSA did not agree with our recommendation for a nationally harmonized fiduciary duty for all registrants.

PMAC's position on the proposed regulatory best interest standard is informed by a number of factors. The first is a strong concern that the imposition of a regulatory best interest standard will conflict with the fiduciary duty owed by portfolio managers to their clients and that this could lower the overall standard for portfolio managers to the detriment of investors and the industry. We also believe that these separate standards, together with the jurisdictionally fragmented nature of the proposed best interest duty, will result in unnecessary confusion while creating a complex and bifurcated standard of care regime.

Portfolio managers already owe a fiduciary duty to their clients under common law² as well as under statutory provisions in certain provinces. Accordingly, portfolio managers conduct their businesses pursuant to this higher standard – a standard that is principles-based and which has a long and developed history of jurisprudence surrounding its meaning and application. PMAC supports higher levels of investor protection and believes that all persons providing investment advice to clients, regardless of that client's level of sophistication, should be subject to a high standard of care. As such, the initial appeal of implementing the targeted reforms alongside the imposition of a regulatory best interest standard is understandable. We also recognize the desire for a governing principle underpinning the conduct of all registrants in the context of the rapidly changing landscape of our global and national capital markets where performance returns may not be easy to achieve and the increasingly innovative and disruptive role that financial services technology plays in our markets.

However, in spite of the initial visceral appeal of a best interest standard, PMAC believes that the regulatory landscape in 2016 has changed and that the potential impact of certain amendments facing the industry means that it would be advisable to carefully assess the effect these changes will have and whether the CSA still believes that an overarching regulatory best interest standard – one that is expressly stated to not be a fiduciary duty – is necessary to address investor protection concerns for clients of portfolio managers.

The Fiduciary Duty is the Highest Standard of Care and Does Not Warrant Interference

The Consultation does not set out the specifics of how the regulatory best interest standard would differ in scope and application from the fiduciary duty. The Consultation states that the BIS

² Where the client has a discretionary account.

Consulting Jurisdictions do not view the best interest standard as automatically establishing a fiduciary duty³. We have serious concerns surrounding how the courts and the CSA members that adopt this standard would interpret a concept that borrows the notion of acting in the client's "best interest" while expressly stating that the regulatory best interest be different from and more specific than the existing fiduciary duty. In the absence of clarity as to how the regulatory best interest standard would interact with the existing obligations of registrants who owe a fiduciary duty to clients, we believe that there is a great risk of confusion and, critically, a risk of blurring and lowering the existing standard of care to meet the new, more specific and less onerous threshold. Introducing such uncertainty into the standard of care would be contrary to the best interest of investors.

We believe that the proposed regulatory best interest standard does not adequately differentiate between the various types of duties that certain registrants are subject to, nor does it account for how investors would appropriately seek redress for wrongs, depending on the standard of care imposed on the specific category of registrant. Current judicial interpretations regarding the fiduciary duty owed by portfolio managers will not apply to the regulatory best interest standard and there will be resultant uncertainty as to the way in which the new standard will be enforced and what remedies will be available to clients of portfolio managers. Indeed, the CSA has noted that the fiduciary duty remedies are potentially too harsh for all instances of registrant misconduct⁴ under the regulatory best interest standard. If the CSA were to adopt the regulatory best interest standard, the interpretation of the words "in the best interest of clients" in this new standard may impact, confuse or dilute the interpretation of this concept where it denotes a fiduciary standard at common law and in territorial and provincial securities acts. Additionally, case law on the fiduciary duty accounts for the facts of each specific client-registrant relationship in a nuanced fashion that a universally applicable regulatory best interest standard is unlikely to achieve. Absent much greater clarity on how these legal and regulatory principles would interact in judicial or regulatory proceedings suggests that the implementation of a regulatory best interest standard would be premature and likely contrary to the best interests of investors.

The contours of a fiduciary duty are highly contextual and fact-specific and there is established legal precedent with respect to the interpretation and application of this duty. The question of where the line is crossed between of a breach of the regulatory best interest standard and a breach of fiduciary duty will be a difficult one to draw and one that we do not believe needs to be drawn. PMAC does not support measures that stand to water down the fiduciary duty or that would necessitate the establishment of a new, parallel yet slightly divergent legal regime to interpret and enforce the regulatory best interest standard when an effective and more onerous standard is already in place.

Fragmentation and Lack of Harmonization

PMAC has concerns about the jurisdictional fragmentation, increased investor confusion and potential regulatory arbitrage that may occur in the event that a regulatory best interest standard is introduced in only some Canadian jurisdictions. PMAC strongly advocates for harmonized regulation of securities matters for the protection of all Canadian investors, regardless of their province or territory of residence. We also believe that harmonization is essential to the efficient functioning of the capital markets, especially in this particular regard. The implementation of a regulatory best interest standard in a fragmented manner would lead to increased investor confusion – exacerbating the existing expectations gap that the CSA and the industry seek to address – as well as the very real threat of regulatory arbitrage.

The lack of consensus among members of the CSA on whether to introduce a regulatory best interest standard is informative and concerning. PMAC agrees with the position expressed by the BCSC that the adoption of a "broad, sweeping and vague best interest standard will create

³ (2016), 39 OSCB 3965

⁴ *Ibid.*

uncertainty for registrants⁵. As stated above, PMAC also shares the fears of the Jurisdictions with Concerns that a best interest standard would result in uncertainty as to how CSA members and the courts will interpret the new standard⁶ and that, in the absence of a clear standard for registrants to follow and regulators and courts to enforce, it is not evident that the standard would, in fact, improve outcomes for investors⁷.

As a result, while we are supportive of higher standards and a nationally harmonized fiduciary duty for discretionary accounts, a regulatory best interest standard that is jurisdictionally fractured and that would apply to registrants already subject to a fiduciary duty would not resolve the concerns expressed by the CSA.

Without further harmonization, clarification and interpretation, there would be a high risk of confusion as to the content of the duty and the appropriate remedies which would threaten to elevate complexity and legal risks, as well as compliance costs, in a way that is not ultimately beneficial to investors.

Regulatory Best Interest Standard for Other Registration Categories

PMAC supports measures that are designed to improve standards in the investment industry for the benefit of investors. However, since the proposed regulatory best interest standard could result in a confusing and non-uniformly applicable standard of care across Canada, we have reservations about supporting the implementation of the best interest standard for dealers or other registration categories that are not already subject to a fiduciary duty.

As currently proposed in the Consultation, we believe that the best interest standard could, in effect, result in three disparate standards of care for investors, depending on the category of registrant they retain and on that registrant's principal regulator:

1. There would be a fiduciary duty for clients of advisors with discretionary accounts;
2. A regulatory best interest duty for clients of advisors in Ontario and New Brunswick; and
3. The existing duty to act fairly, honestly and in good faith to clients in the remaining jurisdictions.

These fragmented duties, two of which will apply differently across the country, are likely insufficient to meaningfully address the CSA's investor protection concerns and will only serve to heighten cost and complexity and to exacerbate investors' expectations gap.

Despite PMAC's desire for an elevated standard of care across the industry, we believe that the complex interplay of these three standards would not be in the best interest of Canadian investors. Instead, we suggest that, in the absence of a national consensus on the part of the CSA regarding a uniform standard of care for registrants that are not already currently subject to a fiduciary duty, we believe that the CSA should focus on targeted reforms necessary to address investor protection concerns. We also urge the CSA to revisit the idea of a nationally harmonized statutory fiduciary duty applicable to all registrants providing investment advice as a longer-term goal.

E. DISCUSSION OF TARGETED REFORMS

1. Conflicts of Interest

Question 1 – Is this general approach to regulating how registrants should respond to conflicts optimal?

⁵ (2016), 39 OSCB 3969

⁶ (2016), 39 OSCB 3969-70

⁷ (2016), 39 OSCB 3970

Overall, PMAC is supportive of amendments that would introduce a requirement for firms and representatives to manage and respond to each identified conflict of interest in a manner that puts the interest of the client ahead of the interests of the firm and/or representative. We believe that clear and well-crafted disclosure can be an effective tool to mitigate certain conflicts of interest for clients of portfolio managers.

Question 2 – Is the requirement to respond to conflicts “in a manner that prioritizes the interest of the client ahead of the interests of the firm and/or representative” clear enough to provide a meaningful code of conduct?

We believe that more guidance is required with respect to what the CSA considers to constitute the prioritization of the client’s interest. Portfolio managers already have a fiduciary duty to act in the best interest of clients. We believe that specific guidance regarding the CSA’s expectations on this point would create a useful benchmark. As with all subjective requirements, the more principles-based guidance that can be provided, the more industry participants will be able to meet the expectations of regulators.

We believe that further clarity is also necessary with respect to the requirements set out in Appendix A - *Disclosing Conflicts of Interest*. Namely, what evidence does the CSA expect registrants to produce in support of the requirement that:

After receiving client consent, the firm and representative must also be able to demonstrate that the transaction or the course of action undertaken prioritizes the interests of the client ahead of the interests of the firm and representative and complies with the registrant’s other duties to the client.⁸

This subjective assessment will likely be challenging to test and therefore onerous to document, absent explicit additional guidance from the CSA.

Question 3 - Will this requirement present any particular challenges for specific registration categories or business models?

For registrants with discretionary authority over a client’s account, we believe that the requirement to obtain informed and specific consent before a transaction is entered into or prior to a course of action being undertaken⁹ is both unworkable and unnecessary as a result of the nature of the discretionary relationship. Clients execute investment management agreements that delegate the day-to-day management and decisions with respect to the client’s account to the portfolio manager and, embedded in the portfolio manager’s duty to make the necessary decisions and take the necessary action is the primacy of the client’s interest. We believe that disclosure regarding the way in which portfolio managers identify and respond to conflicts of interest properly belongs in the relationship disclosure document and that such disclosure should be sufficient on its own.

Question 46 – Is this definition of “institutional client” appropriate for its proposed use in the Companion Policy? and Question 47 – Could institutional clients be defined as, or be replaced by, the concept of non-individual permitted clients?

We do not believe that another definition and category of sophisticated investor - “institutional client” - should be adopted. PMAC members feel that the \$100 million asset threshold in this proposed definition is arbitrary and very high in the context of the Canadian market. We are of the view that the introduction of yet another such category among the multiple definitions and monetary thresholds denoting various sophisticated client categories does not benefit investors or registrants. The existing definition of “permitted client” should be relied upon. PMAC also believes

⁸ (2016), 39 OSCB 3978

⁹ *Ibid.*

that individual permitted clients are sufficiently sophisticated to also warrant a carve-out from these requirements, not just non-individual permitted clients.

Additional Comments

Portfolio managers are generally not exposed to the same types of conflicts of interest as other registrants due to the nature of their business and the overarching fiduciary duty that informs their conduct toward clients. Many portfolio managers have established pooled funds that serve as collective investment vehicles that lower costs to clients and provide efficient access to investments that clients who would not meet the firms' minimum threshold may not have otherwise had. Portfolio managers' fees are generally based on the amount of a client's assets under management as opposed to any specific commissions or fee incentives for the registrant to invest the client's money in one way or another.

The requirement that "firms and representatives must have a reasonable basis for concluding that a client fully understands the implications and consequences of the conflict that is disclosed"¹⁰ may be too subjective and, as a result, problematic to regulate. PMAC believes that the CSA should instead focus regulation on registrants' disclosure, explicit record-keeping requirements and conduct and/or omissions to avoid a requirement evidencing "client understanding" which will be unworkable. We believe that the expectation, as currently articulated, may lead registrants to develop onerous processes in the hopes of documenting a client's understanding for the benefit of protecting the firm, without evidence of a corresponding benefit to clients of portfolio managers. Should the CSA persist with this requirement, registrants will benefit from additional guidance or specific evidentiary expectations from the CSA in order to have confidence that they can satisfy any such new requirements.

We believe that the proposed requirement to disclose all outside business activities of the firm and applicable representatives is neither necessary nor desirable and that this would instead create additional investor confusion. The existing requirement to report all outside business activities under National Instrument 33-109 – *Registration Information* ("**NI 33-109**") and the requirement to manage and address all conflicts arising out of such outside business activities (as further discussed in CSA Staff Notice 31-326 – *Outside Business Activities*) already requires disclosure to the CSA of these activities and sets out a comprehensive regulatory framework with respect to firms' responsibilities in this regard. We feel that the existing framework on this matter is already onerous and that the scope of activities that are required to be disclosed to the CSA is, at times, overly broad. As a result, we believe that additional disclosure of outside business activities directly to clients would even more onerous to registrants and confusing to clients. Should the CSA feel strongly that outside business activities are posing a risk to investors, we believe that specific, principles-based amendments to NI 33-109 that allow for a firm's CCO to make a reasoned determination as to whether a registrant's outside activities constitute reportable outside business activities would be the most effective and practical method for addressing such concerns.

We query what "periodic testing of the firm's conflicts management framework" would entail and would appreciate guidance from the CSA in respect of how such testing might work. PMAC believes that the existence of the policies and requirements articulated in the targeted reforms ought to be sufficient to ensure a robust system of effective conflict identification, reporting and response.

2. Know Your Client

PMAC supports certain of the amendments to the know your client ("**KYC**") obligations to ensure registrants gather appropriate information. PMAC members take these obligations very seriously and have adopted several best practices designed to arrive at a sophisticated understanding of their clients to enable the discharge of their fiduciary obligations.

¹⁰ (2016), 29 OSCB 3957

While PMAC agrees that the codification of certain KYC best practices may benefit investors, we have concerns about the scope of certain of the proposed amendments in this area. We believe that KYC and suitability obligations that extend beyond securities-related strategies, such as collecting clients' basic tax information, may do a disservice to clients by misleading them into thinking that registrants are providing full financial planning services and tax advice when this is not the case.

Additionally, PMAC's members have concerns about codifying a requirement to fully update KYC information at least annually. While in certain circumstances it may be appropriate for portfolio managers to do an annual and full renewal of KYC information, to legislate an annual requirement will not benefit investors who are already owed a fiduciary duty. Registrants require flexibility as to how they evidence their professional judgment and discharge their fiduciary duty towards clients. Annual, full KYC updates are unnecessary in many cases and will serve to frustrate investors. Additionally, annual KYC updates are not a sufficient or appropriate substitution for proper and open lines of communication between a portfolio manager and her client, nor are they a substitute for the ongoing KYC update and suitability analysis that portfolio managers conduct each time they make an investment decision for a client.

Question 4 – Do all registrants currently have the proficiency to understand their client's basic tax position? Would requiring collection of this information raise any issues or challenges for registrants or clients?

Of primary concern in the proposed KYC changes is the amendment that would require firms and representatives to take reasonable steps to obtain information about their clients' basic tax position¹¹. While the CSA does acknowledge that most registrants are not engaged in tax planning services, this does not alleviate the very serious reservations voiced by our members on this proposal. Other than very high level questions as to whether clients have a registered retirement account, *et cetera*, which we understand are already asked by portfolio managers, registrants should not be expected to have the proficiency to understand clients' basic tax positions. Imposing an obligation to do so would do a disservice to clients and present many challenges for registrants.

Ascertaining a client's tax position requires a complex, technical factual analysis and a great deal of expertise that not all registrants, let alone portfolio managers, may reasonably have. Furthermore, portfolio managers may have clients with foreign or very complex tax considerations and, especially for such clients, the expectation that registrants understand basic tax position is neither reasonable nor advisable.

Not only would a requirement such as this present the risk of additional liability for all registrants, it would increase the time and cost required to perform KYC obligations in a way that is not of ultimate benefit to the investor. The imposition of this obligation is more likely to exacerbate the expectations gap between investors and their advisors. Tax specialists are engaged by clients for valid and specific reasons and it would be unfair to both registrants and investors to imply that a registrant can perform a tax analysis to a level of sophistication that would supplant the advice that ought to be provided by a tax advisor. If the CSA were to impose such a requirement, we believe that the parameters around the requirement - as well as the limitation of a registrant's obligations in this respect - ought to be very clearly codified. For example, what would be the registrant's obligation and liability in respect of collecting or updating KYC information in the face of a change in tax law? Additionally, we have received feedback from our members that many clients will be wary of having to share tax information and that imposing a requirement on registrants to collect such information may not be supported by investors in general.

¹¹ (2016), 39, OSCB 3982

We believe that it is far preferable to require registrants to ask clients whether they have a tax advisor with whom the registrant should be consulting and to ensure that investors know that they are not receiving any tax advice from their portfolio managers, unless expressly otherwise stated.

Question 5 – Should the CSA also codify the specific form of the document, or new account application form, that is used to collect the prescribed KYC content?

Further to our comment above about maintaining a principles-based approach to regulation, we do not believe that a standardized KYC form would be in the best interest of investors. A standardized form would not, in our view, be practical or allow for firms to tailor their approach to KYC based on their individual philosophies and business models in an efficient and appropriate manner. However, there may be value in the CSA expanding on the general list of information required to be collected in connection with KYC in subsection 13.2 of NI 31-103. This codification of certain of the proposed elements in *Appendix B – Description of Potential Guidance – Know Your Client* –should, of course, be subject to the comments received as a result of the Consultation, including PMAC’s comments herein. This expanded list of required KYC information would satisfy the CSA that registrants are turning their minds to the collection and assessment of certain types of information while still allowing firms to tailor or enhance their KYC approach to best satisfy this fundamental obligation.

Question 6 – Should the KYC form also be signed by the representative’s supervisor?

We do not believe that such a requirement is necessary in the context of portfolio managers. If the CSA is seeking to implement this step to ensure the completeness or quality of the information collected in the KYC process, we do not believe this concern arises in the context of information collected by portfolio managers. Additionally, we believe that the requirement for a supervisor to review and sign the KYC form would not be the best use of this person’s expertise and, in many cases, the supervisor may not be comfortable providing sign-off without having also met with the client. This threatens to create an unnecessary and duplicative process that is unlikely to be of utility to investors nor to impact the quality of information gathered on KYC forms.

Additional Comments

Certain of the proposed amendments to the KYC process, such as the requirement to collect information about liabilities and indebtedness, may encroach on what clients - especially high net worth clients - feel is private information that is not required in order for a portfolio manager to appropriately manage a portion of the client’s wealth. We reiterate the concern that such measures would, in fact, widen the expectations gap if investors believe that the collection of such information by their advisors implies that they are receiving financial planning services or tax advice where they are not.

3. Know Your Product

A general comment on the know your product (“**KYP**”) proposals that informs our interpretation of Appendices C and D is that portfolios are not product lists: they are investments. While a dealing representative may sell products, portfolio managers do not sell products, they create investment solutions for clients using various investments. Portfolio managers do not have product shelves in the same way that other registrants do. Many portfolio managers have pooled investment vehicles designed to implement a certain investment strategy. Pooled funds are beneficial as they allow smaller investors to have access to investments they may not have otherwise had as well as help reduce trading costs as transactional costs are shared by all investors in the pooled fund. Additionally, certain portfolio managers may have a universe of securities that they invest clients in based on the firm’s unique expertise, focus or sector, but both from a practical and a philosophical view, portfolio managers do not deal in “products” in the way that other registrants might. This is a fundamental difference in the services that portfolio managers provide to investors as opposed to those provided by dealers and other registrants. As such, we believe that the KYP proposals for

both firms and representatives do not apply to portfolio managers in the same way that they may to other registrant categories.

We also are unclear as to the benefits that will be derived by investors from disclosure of product lists and are unclear that such additional disclosure will assist clients in understanding and identifying conflicts or in understanding the client's relationship with the firm.

The distinction of whether a firm is proprietary or mixed/non-proprietary may not always be the most useful categorization, though we appreciate the CSA's intent to promote a more objective process in product selection resulting in more "open" product shelves.

We strongly believe that fulsome disclosure at the time of account opening of what a portfolio manager does, the fees charged and on what basis, and the expertise, focus and independence of such portfolio manager would negate the need for an annual review of products and for portfolio managers to undertake the selection of securities (including those in managed account pooled funds) in this particular way. We also believe that the conflicts of interest disclosure obligations would cover any situation in which a portfolio manager issues securities.

PMAC suggests that, instead of a focus on the process related to canvassing proprietary versus non-proprietary product offerings, a more practical and impactful effort may be to require firms and representatives to better demonstrate the alignment of client interests with the compensation and incentives in performance management systems as a result of offering proprietary products. We believe that looking at those proprietary products that provide additional financial gain for a firm or representatives through their sale, versus those that do not (such as certain pooled funds), may help remove bias and be a more targeted and practical way to address the conflict of interest concerns inherent in certain proprietary offerings.

A focus on certain types of propriety products and better alignment of client interests and compensation with respect to such products may eliminate the need for an onerous and in-depth canvass and disclosure of the types of products on a firm's "shelf". This change may be sufficient to increase investor protection and achieve the CSA's intentions in a direct fashion as well as be more impactful on the universe of products made available to investors.

We also note that many portfolio managers use in-house pooled funds. We believe that the proposed definition of "managed account pooled funds" in *Appendix D – Description of Potential Guidance – Know Your Product – Firm* requires some modification to ensure that all such pooled funds are excluded from the definition of "proprietary product". For ease of reference, the proposed definition in the Consultation reads as follows:

"managed account pooled fund" means, in respect of a firm providing discretionary advice to managed account clients, a proprietary investment fund managed by the firm that allows the firm to provide model portfolio or related advisory services to its clients if all of the following apply:

- (a) The portfolio of securities of the pooled fund are selected using the process set out for a mixed/non-proprietary product list;
- (b) The firm qualifies, or could qualify, for the exemption set out in Section 8.6 of NI 31-103; and
- (c) There are no fees, charges or commissions payable by the client with respect to the pooled fund.

Subsection (c) of the proposed definition should be revised to clarify that, other than a client's fees based on assets under management payable by the client, the firm does not receive additional financial gain by purchasing the pooled fund for a client's portfolio. Such funds should therefore qualify as a "managed account pooled fund" and be excluded from the definition of "proprietary

product". Pooled funds are more efficient and convenient investment vehicles for investors and, as a result of the way that fees are charged at the account level and without any embedded compensation such as trailers, these funds do not carry any corresponding conflict of interest or monetary benefit for the individual portfolio manager or firm.

Alternatively, we believe that exempt market dealers ("**EMDs**") that are also portfolio managers and distribute managed pooled funds should be exempt from the requirement to analyze proprietary versus mixed/non-proprietary products. Most portfolio managers use their EMD registration for distribution of their pooled funds and this exemption would carve portfolio managers out of a new requirement that is not necessary from either a practical or a policy perspective.

Question 9 – Do you think that requiring mixed/non-proprietary firms to select the products that they offer in the manner described will contribute to [ensuring a range of products that is representative of a broad range of products suitable for clients]?

We share the general concerns that we understand others in the investment industry will be voicing with respect to the potential unintended consequences of the proposed amendments to the KYP process. Of specific concern is the requirement to undertake a fair and unbiased investigation of market products that the firm is registered to advise or trade in in order to satisfy itself it has a range of products that will most likely meet the investment needs and objectives of its clients based on its client profiles¹². This requirement may have the unintended result of giving proprietary firms a competitive advantage over mixed or non-proprietary firms who will need to undertake a much more onerous comparative investigation. This would result in decreased competition and investor choice – a result that is not in the best interest of investors or the Canadian capital markets. Additionally, we feel that this assessment by firms with mixed or non-proprietary products poses several challenges for portfolio managers that may not result in any benefit to investors.

If the CSA were to adopt this requirement, additional guidance would be helpful about the CSA's expectations of how firms should document a determination that an investment is most likely to meet clients' needs and objectives.

Question 11 – Will this requirement raise challenges for firms in general or for specific registration categories or business models? If so, please describe the challenges.

As stated above, PMAC members believe that this requirement will require an onerous and annual survey for portfolio managers that do not have a "shelf" in the same way that other registrants have. We urge the CSA to carefully consider the imposition of regulations that are onerous without a clear link to improved outcomes for investors, especially for clients of portfolio managers.

Question 12 – Will this requirement cause any unintended consequences? For example, could this requirement result in firms offering fewer products? Could it result in firms offering more products?

PMAC members believe that the imposition of this requirement could ultimately drive firms that currently fall within the "mixed/non-proprietary" category to shift into a strictly proprietary model in order to avoid the onerous annual requirement to conduct the market investigation, product comparison and product list optimization. Such a shift would reduce the number of products offered and, ultimately, limit client choice. Additionally, we project that smaller firms would be disproportionately impacted since the proposed requirement would implicitly favour large, vertically integrated distribution models.

¹² (2016), 39, OSCB 3986

Investors would not be adversely impacted by portfolio managers being exempt from this requirement as portfolio managers already have a fiduciary duty with respect to their clients and take KYC, KYP and suitability analyses very seriously.

4. Suitability

As with the proposals enhancing KYC and KYP obligations, we support the underlying rationale and believe that a properly undertaken suitability analysis is a cornerstone of professional investment advice in the client's best interest. We generally agree with the CSA that a holistic approach to suitability analyses is critical to making decisions that further clients' investment goals. That having been said, by virtue of the discretionary nature of a portfolio manager's relationship with her client and the investment policy statement between client and advisor, the portfolio manager is perpetually undergoing a suitability analysis with respect to investments for her client. The suitability obligation is on-going and of paramount importance to the portfolio manager's discharge of her fiduciary duty toward the client and should not be subject to specific and prescriptive requirements.

Question 16 – Do you agree with the requirement to consider other basic financial strategies?

Portfolio managers have an obligation to consider various facets of a client's financial situation in order to discharge their fiduciary duty in the conduct of a proper suitability analysis. Importantly, however, portfolio managers are often distinguished from one another through their respective areas of expertise or niche approach to investing. As a result, clients of portfolio managers understand that firms specialize in certain securities or strategies. Given this context, we question whether certain elements of this expanded suitability analysis are appropriate. For example, the requirement to investigate the basic financial strategies that clients could use to meet their investment needs and objectives given their financial circumstances and risk profile – such as paying down high interest debt or directing cash into a savings account¹³ – may limit clients' ability to choose when, how and where to invest their capital. While the financial planning policy rationale is laudable, in practice, for clients of a discretionary adviser who are already owed a fiduciary duty, such a requirement may result in a paternalistic approach to access to investing. Additionally, such a requirement may pose challenges in terms of whether clients will be willing to share the details of their indebtedness and overall financial circumstances. Overly prescriptive requirements could result in obstacles to open dialogue that may be counterproductive to improving the investor-registrant relationship. Additionally, as mentioned with respect to the KYC proposals, we have concerns that the proposed expanded scope of the suitability assessment may incorrectly lead clients to believe that they are receiving a full suite of financial planning services when they are not.

Additional Comments

Clients of portfolio managers are different in many ways than those of other registrants, especially in the context of a suitability analysis. Portfolio managers' fiduciary duty and discretionary authority over a client's account lend a different nature to the suitability process in that portfolio managers do not generally receive buy or sell instructions from clients. As such, a number of the triggers set out in *Appendix E – Description of Potential Guidance - Suitability* for when a registrant should conduct a suitability analysis¹⁴ may not materialize or may be impractical and unnecessary. Additionally, registrants do not typically receive instructions to hold securities and, as such, this trigger may not be required.

A number of the discussions about the impact of costs of products on the end result of a suitability analysis in these proposed amendments do not apply to portfolio managers for whom fees are paid

¹³ (2016), 39, OSCB 3989

¹⁴ (2016), 39, OSCB 3991

as a percentage based on the size of the client's account and who do not charge other types of fees or commissions that would impact the suitability analysis.

As a further matter, the requirement to conduct a new suitability analysis upon the occurrence of a "significant market event affecting capital markets to which the client is exposed"¹⁵ may require further clarity. For example, Brexit would most likely be categorized as a significant market event affecting capital markets, however, a regulatory requirement for a suitability analysis after the Brexit vote would have raised challenges in terms of a timely review for each and every exposed client and what actions ought to be taken as a result of such a market event. In the case of Brexit, to continue the example, most advisors would not have changed a client's portfolio as the market impact had already been felt. A requirement to conduct a new, full suitability analysis after a significant market event may not lead to different outcomes for clients, but the fiduciary duty and expertise of portfolio managers serves to guard against the ill effects of market events through the careful selection of suitable investments, combined with suitable action to manage exposure to destabilizing events, as needed.

In connection with this observation, it is possible that some of the CSA's concerns surrounding the KYP and suitability process may be addressed by hosting registrant outreach programs that coach registrants on engaging clients and asking questions that solicit the type of feedback required for registrants to assess suitability and to know their client. Education for clients and registrants to help clients articulate their investment needs and objectives could also be a targeted way to directly improve investor engagement and financial literacy. Initiatives such as these could go a long way to improving the understanding between registrants and their clients and to give clients the terminology and knowledge to have more meaningful interactions with their advisors. This is part of a greater investor education component that could ameliorate the advisor-investor relationship, facilitate open dialogue and improve investors' understanding of the role of their advisors in an empowering and cost-effective way.

5. Relationship Disclosure

PMAC is generally supportive of improved relationship disclosure by registrants to their clients. We believe that certain amendments could be made to Section 14.2 – Relationship Disclosure Information in NI 31-103 in a more targeted fashion for those registrants and/or business models that raise concerns for the CSA in terms of ensuring that clients understand the breadth and nature of the firm's product list. As fiduciaries, portfolio managers are never relieved of their duty to their client, regardless of the extent to which a client understands the information in the relationship disclosure.

We do not believe that all of *Appendix F – Description of Potential Guidance – Relationship Disclosure* is necessarily required, nor appropriate for, clients of portfolio managers since portfolio managers have a unique and distinct relationship with investors and offer services that do not lend themselves to the types of conflicts we believe the CSA seeks to address in the enhanced relationship disclosure about proprietary or mixed/non-proprietary shelves.

With respect to the *General Nature of Relationship*¹⁶ disclosure in Appendix F of the Consultation, PMAC's members are required as a part of the investment policy statement and of their general KYC and suitability obligations to understand, among other things, the client's liquidity needs. We do not believe that disclosure of illiquidity and the risks associated therewith is useful or appropriate for portfolio managers in the relationship disclosure document.

We note that in Part 7 of the Consultation – Proposed Framework for the Proposed Targeted Reforms, a carve-out is contemplated for the restricted registration category disclosure

¹⁵ *Ibid.*

¹⁶ (2016), 39, OSCB 3992

requirement when dealing with institutional clients¹⁷ but that such a carve-out is not in Appendix F as currently drafted¹⁸. We would appreciate confirmation that the CSA intends that this disclosure need not be provided when a firm is dealing with a sophisticated client (please also see our response in respect of Question 46 above).

PMAC believes that the CSA should give additional consideration to and provide guidance about how it expects registrants to document their “reasonable basis for concluding that a client fully understands the implications and consequences for the client of the content [of the relationship disclosure] being disclosed.”¹⁹ As noted in the Conflicts of Interest section above, PMAC urges the CSA to focus regulation on registrants’ disclosure, explicit record-keeping requirements and conduct and/or omissions, and feels that a requirement with respect to evidencing client understanding is likely to be unworkable. We believe that the currently articulated expectation may lead to registrants having to develop onerous and costly processes in the hopes of documenting this understanding without a corresponding benefit to investors. Additional guidance or specific evidentiary requirements in this respect would be of assistance and lead to more practical results. For this particular requirement, we wonder whether the CSA would be willing to accept and/or prepare a standard form certificate of client acknowledgment that could be relied on by registrants to evidence such understanding, recognizing that a portfolio manager is not relieved of her fiduciary duty, regardless of the extent of her client’s understanding of the relationship disclosure.

Question 26 – Should there be similar disclosure for investment dealers or portfolio managers?

We do not believe that disclosure similar to that proposed for the Restricted Registration Category Disclosure is required for portfolio managers. We believe that the discretionary nature of the relationship between portfolio managers and their clients means that the type of disclosure contemplated in the Restricted Registration Category Disclosure would and should already be covered by the more general relationship disclosure document.

Question 27 – Would additional guidance about how to make disclosure about the relationship easier to understand for clients be helpful?

We are unclear as to what the CSA means in the proposed requirement that: “Firms must provide a description of the actual nature of the client-registrant relationship in easy-to-understand terms”²⁰ [emphasis added]. Is the CSA’s concern that existing relationship disclosure is not accurately representing the registrant’s relationship with or obligations to clients?

6. Proficiency

While we are generally supportive of measures that would bolster the proficiency of registrants, especially as relates to the knowledge required to comply with the proposed targeted reforms in the Consultation, we believe that further clarity is required regarding whether this elevated proficiency would apply to all categories of registrants and, if so, whether there would be tiered levels of proficiency required, as is currently the case under Part 3 of NI 31-103.

As portfolio managers, PMAC members are required to have met rigorous education and experience criteria under Sections 3.11 to 3.13 of NI 31-103, as applicable. PMAC believes in the value of industry-specific education as well as in the benefits that well informed professionals can relay to their clients to help them achieve their investment objectives. Portfolio managers are, however, already required to have attained high levels of education (including having earned designations that themselves require ongoing proficiency requirements, such as the CFA or CIM designation)

¹⁷ (2016), 39, OSCB 3962

¹⁸ (2016), 39, OSCB 3992-3

¹⁹ (2016), 39, OSCB 3993

²⁰ (2016), 39, OSCB 3992

and industry-related experience and, as such, we do not believe that any increase in portfolio managers' proficiency is required to address the CSA's investor protection concerns.

Question 29 – Should any heightening of the proficiency requirements for representatives be accompanied by a heightening of the proficiency requirements for CCOs and UDPs?

We also believe that, in order to minimize the disruptive impact of any increased proficiency requirements that may be imposed for other registration categories, there should be a fair transition period built into these new requirements to ensure that each firm can dedicate the time and resources to having each registrant and, if applicable, the CCO, meet the new proficiency requirements. In the case of CCOs, there may need to be a longer transition period or grandfathering of existing proficiencies so as not to deprive a firm of a CCO as a result of these regulatory changes. That having been said, the CCO of a portfolio manager is already required to meet a very rigorous standard of education, accreditation and experience under Section 3.13 of NI 31-103. CCOs of portfolio managers may already be lawyers, accountants or CFAs, all of which already require ongoing proficiency requirements. We support continuing education requirements for both CCOs and UDPs.

We support well-defined and reasonable continuing education requirements for registrants. The reality of rapidly changing capital markets, types of securities, investment concerns and technology considerations means that ongoing education will likely benefit registrants and their investors in elevating their understanding of a dynamic industry. We believe that set and reasonable requirements for such education should be codified and believe that the CSA should provide - or arrange to provide through suitable industry organizations or education providers - accessible, national and low-cost education seminars to allow registrants to obtain the necessary ongoing education proficiency requirements.

Additional Comments

Connected to a desire for enhanced proficiency and support for ongoing education requirements, however, is the practical reality that firms are struggling to recruit appropriately qualified registrants to service clients. A growing number of aging investors and the desirability of promoting access to quality investment advice for as many investors as possible points to the delicate and challenging balance between maintaining and elevating standards while, at the same time, generating and recruiting suitable registrants to provide these services. We urge the CSA to continue to strive for ways to ensure that registration requirements, specifically, requirements in respect of industry specific expertise, are tailored to reflect the current realities of how firms do business and to adopt more flexible approaches towards industry-related experience requirements for registration, where appropriate. PMAC continues to advocate for reforms that allow for qualified candidates to be considered for registration as advising representatives and as associate advising representatives where the applicant's experience is appropriate for the particular role that he or she will have at the firm.

7. Titles and Designations

PMAC generally agrees with the need to reduce investor confusion caused by the use of a multiplicity of titles whose ultimate meaning is unclear. That having been said, we do not believe that the titles used by portfolio managers create confusion and we do not believe they warrant a regulatory intervention. Our understanding is that most portfolio managers use either "portfolio manager" or "investment counsellor" and that these titles are straightforward and accurate.

While PMAC believes that a reform with respect to the use of certain client-facing titles is a simple and direct way to clarify the roles and differences between categories of registrants and to help address the expectations gap identified by the CSA, we do not believe that the Alternatives presented in the Consultation are the best way to address the issue.

Our members emphasized the importance of any such reform being implemented in a principles-based way that requires titles to be clear, limited and distinct by registration category (as opposed to differentiated based on product shelf) and not misleading.

Our members felt that the proposed alternatives were too prescriptive; that the term “securities” is too narrow to reflect the broad range of available investments and that the proposed titles were too long and not intuitive to investors in terms of delineating the types of services provided by each registrant.

We also believe that any title reform should take place in tandem with a clear, accessible and wide-spread investor education campaign so that the very real changes and costs that registrants will incur to comply with new titling requirements achieve the intended outcome of protecting investors.

With respect to *Appendix G – Description of Potential Guidance – Designations*, PMAC believes this reform to be current best practice and that it is an appropriate codification of such best practice to avoid the use of misleading designations.

8. Role of UDP and CCO

PMAC generally supports the proposed clarification of the roles of the UDP and CCO under sections 5.1 and 5.2 of NI 31-103. Our members are cognizant of the importance of setting the appropriate tone at the top and support the codification of these best practices surrounding the UDP and CCO’s roles. We do believe that some details around the proposed amendment to Section 11.1 – *Compliance System* of NI 31-103 in connection with the enhanced responsibilities of the UDP and CCO are necessary in order to properly understand the scope of the impact these proposed amendments may have on the establishment and monitoring of compliance systems.

9. Statutory Standard of Conduct

PMAC supports measures that elevate standards, protect investors and that harmonize obligations across each Canadian jurisdiction. As such, we support the introduction of the statutory fiduciary duty in provincial securities legislation where it does not already exist for registrants whose clients grant them discretionary authority. For PMAC Members, the proposed statutory fiduciary duty will be of little impact as they are already fiduciaries. However, we strongly believe that a harmonized fiduciary duty framework across Canada for all discretionary managed accounts is in the best interest of investors. In our view, investors in each province and territory should have the same protections and remedies afforded to them when they have entered into a discretionary relationship, regardless of where they reside in our country. Harmonizing the protections available to investors is of tantamount importance in harmonizing regulations that apply to registrants. To this end, we encourage the provinces and territories that will be incorporating the statutory fiduciary duty for discretionary accounts into their securities acts to adopt the same language found in Subsection 75.2(2) of the [Securities Act \(Alberta\)](#) to ensure consistency.

F. Concluding Comments

We would like to thank the CSA for all of the work, thought and outreach that has gone into developing and publishing this Consultation. We believe that together we can strengthen the relationship between clients and registrants.

We do urge the CSA to consider the many ways in which portfolio managers as individuals and firms differ from other registrants and to keep this fundamental distinction in mind when determining whether and how to implement the targeted reforms. Portfolio managers are already subject to a fiduciary duty of care, have achieved the highest level of education and proficiency in the industry and tend to deal with more sophisticated clients than other categories of registrants.

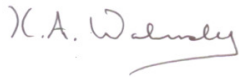
Many of the targeted reforms would be redundant, confusing, impractical or unnecessary when viewed through the realities of the legal duties and business practices of portfolio managers. While our members are always striving to improve their relationship with and financial success for clients, the implementation of several of the targeted reforms threaten to heighten cost and complexity without benefitting investors who are already very well served by their portfolio managers.

Moreover, to promote the very best interest of investors and to reduce unneeded confusion and cost, we firmly believe that portfolio managers should continue to only be subject to the one, highest standard of care: the fiduciary duty.

PMAC is committed to advancing standards for the benefit of investors and we commend the CSA for its efforts in this respect. We understand that the CSA will be holding outreach sessions in the fall of 2016 to discuss the comments received as a result of this Consultation and we would be delighted to speak with you further about the remarks in our letter.

Sincerely,

PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA



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