avisowealth

October 19, 2018

Submitted via email

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Attention:

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor, Box 55
Toronto, Ontario M5H 3S8
comments@osc.gov.on.ca

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, Square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, Québec H4Z 1G3
consultation-en-cours@lautorite.qc.ca

Dear Sirs and Mesdames:

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

Aviso Wealth Inc. ("Aviso Wealth") appreciates the opportunity to provide comments to the Canadian Securities Administrators (the "CSA") with respect to the Proposed Amendments to National Instrument 31-103 ("NI 31-103") and Companion Policy 31-103CP ("31-103CP" or "Companion Policy") (together, the "Reforms").

Aviso Wealth is an integrated wealth management company which includes an IIROC dealer, an MFDA dealer, an Investment Fund Manager, and an insurance agency. Within our IIROC dealer we provide face to face advice through our credit union partners, on-line suitability-exempt trading, digital or "robo" advice, and custody and correspondent business. Aviso Wealth is owned 50% by Desjardins and 50% by the Provincial Credit Union Centrals and The CUMIS Group Limited (Co-operators Life Insurance Company).

General

Aviso Wealth appreciates the work that the CSA has done thus far, including the outreach and roundtable events held in order to obtain comments and feedback on the Reforms. We know that this work has been significant and many individuals have invested much time and effort to get us to the point we are at today. As the wealth management provider to the credit union system in Canada, we are supportive of regulatory initiatives that support our goal of providing meaningful and engaging member experience for our credit union partners and their members across the wealth continuum.

From our perspective, the Reforms represent sweeping changes and while that may bolster some areas of investor protection, we also see that existing businesses and the corresponding practices will change significantly. We have chosen to comment on three significant themes we have identified within the Reforms. First, we would like to comment on the issue of increased cost as a result of these Reforms. Secondly, we would like to raise certain terms and requirements that we believe cause an unnecessary burden with low return to the investor. Lastly, we will comment on the difference between the Proposed Amendments and the Companion Policy. We have outlined further details below.

1. Additional Costs and Time

The Reforms will increase the costs of opening accounts, offering advice, supporting Advisors, maintaining and trading in accounts. The most significant areas that will increase these costs are as follows:

- Changes to the KYC rule will require changes to all related forms including, but not limited to, the new account opening documents and account update forms;
- Changes to the KYC rule will require changes to all automated questionnaires and processes that connect to a client's KYC information;
- Changes to KYC and suitability rules will require changes to all compliance supervision systems, policies and procedures;
- Changes to firm level Know Your Product ("KYP") rules will require significant resources for the due diligence process, both leading up to the time the rule takes effect and on an ongoing basis;
- Changes to the Conflict of Interest ("COI") rule will require a review to identify all conflicts of interest, not just material ones;
- Changes to the COI rule will increase disclosure requirements and potentially delay the process for client transactions depending on the nature of the COI;
- Changes to the Suitability rule will require changes to internal processes, systems, and updating programs;
- Changes to the Suitability rule will require more prescribed time frames for the updating of accounts; and
- A Duty to Provide Information will require resources to update and maintain this new disclosure requirement.

All of these items represent direct and indirect costs to the industry and to our clients. An analysis should be conducted to confirm the cost and corresponding increased benefit for the client. We must be careful to not simply increase costs for industry participants (and as a result fees to clients) with no tangible benefit to the end user. The analysis should include a review of all the changes that are disclosure related and that should be added to an overall review of the efficacy of disclosures to our clients (i.e. new 31-103 disclosures + CRM + Point of Sale, etc.).

Further Definition and / or Understanding

Best Interest Standard

In the CSA's paper it was clearly stated that there would be no "best interest standard". However, the terminology "best interest of the client" or "client's best interest" is found in many places throughout the Reforms. We do not argue against the idea that we must take care of our clients, however, as we naturally are acting in our client's interest, we do not believe it needs to be stated throughout the document. In particular, as the term has not been defined in the Reforms it may create confusion and additional friction against the good work that is currently being done by our Advisors. This concept comes up in the Reforms in particular in the Suitability and Conflicts of Interest sections.

If it is decided to keep this terminology in the Reforms, we would ask that you explain the difference between the Suitability requirements and the “best interest of the client”. Is this a formula such as: KYC + KYP = Suitability; Suitability + (Managing) COI = Best Interest?

Either way, this is a very important term that must be clearly defined and understood in order that the industry can respond and prepare accordingly. We also believe that it is crucial that it be expressly stated that this terminology does not equate to a fiduciary standard, which we saw in previous regulatory consultations on this topic.

Referral Fees

There are new requirements that will prohibit the payment of referral fees from a registrant to a non-registered person. We suggest that you remove the restriction on firms that pay a referral fee to non-registrants. We understand that there may have been instances of actors banned from the industry who continue to receive referrals, however we do not support punishing the entire industry for the transgressions of a few. It is important to note that there are a number of legitimate and appropriate reasons for the payment of referral fees, such as ensuring a client is recommended to the right channel for the appropriate products and services. These referral programs may include recommending clients to lawyers, financial planners, on-line advice, and accountants.

Conflicts of Interest

In the conflict of interest rule the materiality standard has now been removed. The current IIROC and MFDA rules both include a materiality standard. It is unclear to us how this new standard will increase investor protection. If the conflict is not material, we do not see how it would adversely impact an investor as it would not cause a registrant to be unduly influenced by the conflict. If the conflict is not material and does not adversely impact the investor, the implementation of the rule as stated will require a lot of additional work that will not further protect the client.

We support the principles behind the IIROC and MFDA rules. Both SROs have rules in place to address material conflicts of interest and these rules appear to be well functioning. If there are specific non-material conflicts of interest that the CSA is trying to address, it would be helpful to understand what they are so we can respond to them accordingly.

Proprietary Products

As an integrated firm we are concerned with the positioning by the CSA of proprietary products and conflicts of interest. This positioning raises concern for us as it seems to suggest that these products are somehow problematic or a concern for the dealer and their clients. A dealer’s desire to sell proprietary products should not be subject to so many conditions that it becomes overly burdensome for a firm to sell their own product. We agree that the client must be advised of the conflict, the product must be suitable, and the Know Your Product requirements must be met. These fundamental tenants of an Advisor’s role will still continue to ensure that the client is receiving appropriate advice. However, we do not agree that the firm must do significantly more than what is being done today, in order to recommend the product to their clients.

The sale of proprietary products is a legitimate business model. We do not believe that regulation should be imposing higher standards or further requirements above and beyond what is currently in place for such products.

Know Your Product

The KYP rules appear flexible, however, the Companion Policy is quite prescriptive. Based on our reading of the Companion Policy, it appears that we will be required to do a security-by-security review to meet this standard. This is an almost impossible task for smaller dealers and even for larger dealers this work will require a large number of staff just to complete the initial review. In order to stay on top of these reviews, it will also require significant resources to meet the obligation. We would like to conduct these reviews on a bundled basis. We also believe that firms must be able to perform the due diligence based on their business model and not based on the prescribed items in the Companion Policy. This means that the reviews would be done based on types of securities such as mutual funds. If bundling reviews is acceptable, we would ask that the CSA make this clear in the final version of the rule.

As stated, we expect that the proposed KYP obligations will result in many dealers closing their shelves, as they will be unable to manage and monitor all of the products that exist today.

Product Cost

As it relates to suitability, the Companion Policy states that "unless a registrant has a reasonable basis for determining that a higher cost security will be better for a client, we expect the registrant to trade, or recommend, the lower cost security available to the client that meets the circumstances of subsection 13.3(1)." Section 13.3(1) is the suitability section of the rule. We agree that cost is a factor in determining whether a product is suitable for a client, however we do not believe it should be over-emphasized or identified as the primary factor.

There are other important factors, such as risk and investment objectives of the product, time horizon, liquidity, currency exposure, ESG, manager, and ease of purchase and redemption. All of these factors will work together in the Advisor's determination of a product's suitability for their client. We understand that the CSA has felt that cost has previously been underrepresented in KYP assessments. However, we believe that if it is now overrepresented, it may cause firms to pick products solely based on cost, which we do not believe was the CSA's intended outcome for this part of the Reforms.

Legacy Products

We would like to understand further how we would operationalize the KYP product shelf. In particular, once we have reviewed and selected the optimal product offering for our clients, how do we deal with all of the legacy products that will still remain in the client accounts? Do we still need to perform the same KYP as with all the other "endorsed" products on our shelf? If so, this would still require the firm to continue to apply significant resources to the product shelf, both the endorsed one and the unendorsed one. We would suggest that firms be permitted to leave any legacy or transferred in positions for the Advisor to monitor on an individual basis.

Managed Accounts

We did not see in the rules or the Companion Policy any mention of managed accounts and the KYP requirements for firms and Advisors. We believe it is not required as the underlying securities are being reviewed and managed by the Portfolio Manager. The Advisor will have an understanding of the managed product but does not get into the due diligence details on the underlying securities. We believe it would be difficult to manage this process and because the PM makes their own decisions, we have less control over those products. We ask that you clarify this point in the rules in order to ensure we have a clear understanding.

Know Your Client – Financial circumstances

The rule requires that Advisors collect information relating to a client's financial profile. This is a normal course question and very important when determining the suitability of a product. However, the Companion Policy relating to this section suggests that Advisors obtain detail on *all* types of the client's assets and liabilities both within the firm, outside the firm, and held at other types of institutions (bank, trust). This may cause concern for clients who do not wish to share this information. From a practical perspective, will Advisors be required to track outside assets when assessing suitability on an ongoing basis?

Know Your Client - Investment objectives

The previous requirement was to obtain a client's investment objectives. The new rule requires that the Advisor collect information about a client's needs and objectives. The Companion Policy adds much further detail that the Advisor must obtain from the client on their financial "goals" and that it is to be done in a "meaningful way". Our industry is moving towards the automation of client interaction, account opening and advice. We are concerned that the concept of a more "meaningful way" appears to be focused on a traditional face to face advice channel. As we move towards more on-line advice and non-face to face channels, we must be able to rely on technologically and digitally-enabled ways to capture a client's KYC overall. We would like to confirm that we can continue to rely on these forms of KYC capture channels and still be in compliance with these principles.

2. Rule vs. Companion Policy

The Companion Policy is a very detailed and extensive document. There are many places where it goes much further than the rule and it is therefore unclear what exactly our obligation is.

For example, under the KYC section (13.2) the obligation or standard that the Advisor's must meet is not clear. Under the rule it states "A registrant must take reasonable steps to ensure it has sufficient information regarding all of the following (client's personal circumstances)." While the Companion Policy states that the Advisor must "thoroughly understand the client" or have a "meaningful interaction with the client", and "may need to ask different questions". The Companion Policy seems to introduce a different and higher standard than the rule itself.

We suggest that the CSA clarify that the Companion Policy is simply guidance or suggested practice, and that each firm may determine what is required to ensure compliance with the principles underlying the rule. We would like to see this clearly identified in the Companion Policy so there is no confusion, and that firms will not be audited to the information contained in the Companion Policy.

We appreciate the opportunity to comment on these Reforms. If you should have any questions on this letter please do not hesitate to contact us.

Yours truly,

Aviso Wealth Inc.

Bill Packham

Bill Packham,
President & CEO

cc: Alexandra Williams, CCO, CRO