BLACKROCK®

October 19, 2018

Submitted via electronic filing: comments@osc.gov.on.ca; consultation-en-cours@lautorite.qc.ca

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

Attention:

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, QC H4Z 1G3

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8

Re: Canadian Securities Administrators Notice and Request for Comment – Proposed Amendments to National Instrument 31-101 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and related Companion Policy 31-101CP (together, "NI 31-103") Reforms to Enhance the Client-Registrant Relationship (Client Focused Reforms) ("CFR")

Dear Sirs/Mesdames:

A. About BlackRock

BlackRock Asset Management Canada Limited ("**BlackRock Canada**") is an indirect, wholly-owned subsidiary of BlackRock, Inc. (together with BlackRock Canada, "**BlackRock**" or "**we**") and is registered as a portfolio manager, investment fund manager and exempt market dealer in all jurisdictions of Canada, a commodity trading manager in Ontario, and an adviser under *The Commodity Futures Act* (Manitoba).

BlackRock is one of the world's leading asset management firms. We manage assets on behalf of institutional and individual clients worldwide, across equity, fixed income, liquidity, real estate, alternatives, and multi-asset strategies. As an investment adviser, we embrace our role as a fiduciary to our clients and recognize its importance in protecting investors.

B. General Observations

BlackRock appreciates the opportunity to respond to the CFR. As a general principle, we support initiatives that encourage long-term savings by improving the quality of advice, better aligning the interests of registrants with those of their clients, and broadening the choice of investments and services offered to investors. Regulatory proposals which will elevate the conduct of registrants vis-à-vis their clients and address the investor protection concerns identified by the Canadian Securities Administrators' ("**CSA**") should benefit the wealth management industry overall. In addition to investor protection, the CSA has an additional policy mandate which is to foster fair and efficient capital markets--balancing both policy goals is a delicate and complex task. Our general observation is that elements of the CFR do not strike the proper balance between improving investor protection while fostering the efficient functioning of the capital markets. We are concerned that the magnitude of disruption to current business models which will result from the CFR may negatively impact the competitiveness of the Canadian wealth management industry and ultimately, investor choice.

We note that many of the comments received in the initial iteration of the CFR proposed under CSA Consultation Paper 33-404 – *Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives Toward their Clients* (**"Consultation Paper 33-404"**) were considered and reflected in the CFR. First, we commend the CSA in responding to the concerns raised by various stakeholders in introducing an overarching regulatory best interest standard and instead, incorporating a best interest standard of conduct into the conflicts of interest and suitability reforms. Second, we appreciate that the CSA recognized the difficulty in implementing some of the original proposals as they did not take into account different business models and service offerings[1] and unnecessarily added regulatory burden on registrants. Finally, we recognize that significant work has been done to provide enhanced guidance to registered firms and individuals with respect to the CSA's expectations on the areas being addressed in the CFR.

Increase in regulatory burden

BlackRock remains concerned, however, on a number of fronts with the proposed CFR. The highly perspective nature of the rules and the voluminous guidance in the companion policy will significantly increase the regulatory burden on registered firms and individuals and may act as a barrier to entry for new players in the wealth management space. In addition, the CFR's continued "one-size-fits-all" approach does not properly account for the different types of clients that a registrant is servicing (i.e. retail vs. institutional), and the business model under which the registrant operates (i.e. asset manager vs. dealer; proprietary products vs open architecture). This will result in the inability of firms to scale the operational implementation of the CFR.

[1] For example, introducing a new "institutional client" definition, requiring registered firms to have a reasonable basis for believing a client fully understands the implications and consequences of each conflict of interest that is disclosed, mandating the collection of sufficient information about a client's basic tax position and requiring mixed/non-proprietary firms to engage in "fair and unbiased market investigation, a product comparison and an optimization process".

The broad nature of the changes are too over-arching and will interfere with an efficient, competitive free market in financial services. In particular, as currently drafted, the guidance in the companion policy is highly prescriptive and too heavily focused on the "traditional" retail client relationship. BlackRock respectfully suggests that the CSA may wish to clarify which examples in the companion policy apply when dealing with a retail investor as the bulk of the commentary is largely inappropriate for registrants whose business model is focused on institutional or other sophisticated clients. In addition, we are requesting a non-individual permitted client exemption from certain aspects of the CFR as outlined under our specific comments below.

Focus on Costs

BlackRock is also concerned with the general conclusion that the CSA appears to make that the CFR will shift investor assets to lower cost products because it is in the client's best interest. The problem with this thesis is that, while the cost of advice is an important consideration, it should never be the only consideration in making an investment decision. In our view, the CFR places a disproportionate emphasis on cost as the key factor in choosing an investment product or service while seeming to overlook other critical client needs and objectives that registrants may identify, for example, investment objectives, liquidity and risk tolerance[2]. Cost consideration is by far the easiest investment factor to substantiate compared to other (more subjective) investment considerations and it will inevitably be overly-focused on by both registrants seeking to demonstrate compliance under the CFR and by regulators during compliance reviews, which may not lead to investment decisions that are in the client's best interest.

We can think of a couple of examples to illustrate this. Many institutional clients (i.e. registered pension plans or financial institutions) operate in highly regulated environments and are subject to specific legal/regulatory obligations with respect to their investments and the oversight of service providers. An investment in a pooled fund may be the most cost effective option for these clients at first blush. However, a managed account is likely the more suitable choice for these types of clients given the flexibility that such accounts offer to tailor the investment strategy to the client's specific legal or regulatory requirements and to negotiate bespoke reporting and other services that will assist the client with meeting its own ongoing regulatory obligations. This flexibility and customization, however, comes at an additional cost.

In another scenario, BlackRock Canada may determine through its know-your-client process that it would be suitable and in the client's best interest to include real return bonds in the client's portfolio. The client has also advised us that it will need to make regular payments, from the assets invested with BlackRock Canada, to participants in its employee benefit plan. While an investment in a pooled fund may provide the lowest cost investment option, we know that limited liquidity could impact the client's ability to access its assets to meet its payment obligations when needed. Therefore, an exchange-traded fund, while more costly, may be the more suitable option in light of the client's specific liquidity requirements.

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[2] For example, the guidance set out in the companion policy on page 191 of (2018), 41 OSCB (Supp-1) sets out "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 lowest cost security available to the client...".

We respectfully submit that, instead of emphasizing cost, the best interest standard should instead promote investor choice and allow registrants to work with their clients to select tailored solutions that best meet the overall needs of their client in order to maximize their investment outcomes and are provided at a cost that the client is willing to pay in order to obtain the investment products and services desired. BlackRock also believes that the best interest standard also permits a registrant to exercise judgement in the selection of products.

We strongly believe that the CFR must strike the right balance between protecting the interests of investors, enhancing the conduct of registrants vis-à-vis their clients and promoting efficiency and choice in the capital markets.

Our specific feedback on certain requirements of the CFR is set out below. All capitalized terms used in this letter but not defined herein have the same meaning given to them in the CFR.

C. BlackRock's Comments on the Proposed CFR

1) Conflicts of Interest – Part 13: Division 2

While BlackRock is generally supportive of enhanced provisions with respect to the management of conflicts of interest, we are concerned that the CFR is overly broad in scope and too prescriptive in nature. We believe the operational burden of complying with the CFR, and being able to meaningfully demonstrate compliance through appropriate documentation and disclosure, will be significant. The impact of these changes may be particularly acute to registered advisers who must already abide by a common law fiduciary duty and where the firm is also registered as an investment fund manager, subject to a statutory standard of care. The new requirements may translate merely to more "paperwork" in documenting that an adviser has complied with its fiduciary duty. This form over substance result does not address the CSA's key investor protection concerns around effectively managing conflicts of interest and may cause many operational inefficiencies without a corresponding investor benefit.

Rather than focusing on material conflicts or other enumerated conflicts of interest of particular concern, the CFR proposals create a presumption that every conflict of interest, regardless of materiality, must be rebutted through procedures and documentation and be disclosed to clients.

We believe this could result in a significant increase in regulatory burden that outweighs the incremental investor protection benefits for some—but not all—clients. We also believe that the CSA's proposed conflicts of interest framework differs in material respects from the approach of the Securities and Exchange Commission's (**"SEC"**), particularly when viewed from the perspective of registered advisers. We ask the CSA to consider the SEC's framework in managing conflicts as it is more principles-based and provides flexible guidance through an interpretation rather than through prescriptive rules[3].

[3] See discussion on pages 15 to 19 in Securities and Exchange Commission Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers; Request for Comment on Enhancing Investment Adviser Regulation.

Defining a "conflict of interest"

We are concerned that there is no definition of a "conflict of interest" in NI 31-103, that there is no materiality qualifier for the application of the proposed rules, and that the rule is forward-looking in terms of including all "reasonably foreseeable conflicts". Together, this renders the rule overly broad and does not strike the right balance between investor protection and the functioning of fair and efficient capital markets. At a minimum, a materiality threshold should be inserted in the CFR. The qualifier currently exists in NI 31-103 and is the typical standard for considering conflicts of interest in other global jurisdictions.

BlackRock encourages the CSA to consider whether elements of the conflicts framework established under National Instrument 81-107 – *Independent Review Committee* (**"NI 81-107"**) could be adapted for purposes of NI 31-103. For example, in NI 81-107, there is a clear definition of a "conflict of interest matter". Not all conflicts of interest are subject to the instrument, as NI 81-107 clearly carves out (i) inconsequential matters through the "reasonable person" test in the "conflict of interest matter" definition; and (ii) conflicts of interest at the service provider level generally[4]. NI 81-107 also includes guidance that the CSA do not consider a manager's organization of an investment fund (such as the initial setting of fees or the initial choice of service providers) to be subject to review by the independent review committee, unless those decisions give rise to a conflict of interest concerning the manager's obligations to existing funds[5].

Timely Identification

Given the current breadth of the conflict of interest formulation under the CFR, BlackRock believes it will be very difficult to comply with the requirement that all conflicts of interest, including reasonably foreseeable conflicts, be identified in a timely way, particularly in a global firm where information is not always broadly distributed (sometimes for regulatory reasons). We are concerned that the "reasonably foreseeable" requirement is forward-looking and could be subject to hindsight application.

Again, we feel the CSA is taking a different approach from NI 81-107, where the "conflict of interest matter" definition includes a situation where a reasonable person would consider the manager or an entity related to the manager *to have an interest* that may conflict with the manager's ability to act in the best interests of the fund. The manager is then able to discharge its obligations if, *before taking any action* in the matter, the manager determines the action it proposes to take and then refers the matter and its proposed action to the independent review committee for its review. The manager is not in breach under NI 81-107 for failure to identify a conflict of interest it may have in the future in a timely way if it does not constitute a conflict of interest matter, or if the manager has not taken any action with respect to that conflict of interest matter.

The CSA should consider clarifying its guidance in the companion policy to mirror the requirements of NI 81-107. In meeting the CSA's expectation that registered firms and individuals must "on an ongoing basis, take proactive steps to anticipate reasonably foreseeable

[4] See Commentary 2 and 3 under section 1.2 of NI 81-107.

[5] See Commentary 5 under section 8.2 of NI 81-107.

conflicts" and in "a timely way", the CSA should not only define "conflict of interest" as previously suggested but also incorporate an acknowledgement that if the registrant does not take any action with respect to the conflict identified, then it has discharged its obligations under the CFR.

Additionally, because many registered advisers are also registered as investment fund managers (BlackRock is one of them), these firms will have two different conflicts regimes to navigate depending on which registration category they are acting under. Some of the requirements are duplicative but the CFR also introduces new conflicts-related requirements, which in some cases are more burdensome than what is required with respect to addressing conflicts of interest in the context of retail investment funds. This is inconsistent with the initiatives recently announced by the Investment Funds and Structured Products branch to reduce regulatory burden to foster fair, efficient capital markets.

Conflicts of interest that must be avoided

Under proposed section 13.4.4, the CSA lists conflicts of interest that must be avoided. BlackRock questions whether subsection 13.4.4(2) is too broad and may inadvertently prohibit advisers from seeding their own funds (particularly if they are not prospectus qualified). We also request the CSA consider a specific exemption for any securities lending activities undertaken by an adviser so it is clear that this type of activity is not prohibited.

Disclosure obligations

For years, disclosure has been the bedrock of our securities law framework in Canada. Yet with the CFR, the CSA seems to be taking a very inconsistent approach with respect to the utility and purpose of disclosure. On the one hand, the disclosure obligations of registered firms proposed under section 13.4.5 of the CFR have been significantly expanded to include disclosure of all conflicts of interest that a reasonable client would want to be informed about. However, on the other hand, section 13.4.5(5) expressly states that disclosure alone is no longer a valid method to address a conflict of interest in the best interest of the client. We respectfully disagree with this conclusion, particularly when a registered firm is servicing sophisticated clients and strongly believe this is one area where recognition of different business models serving different types of clients is warranted.

With respect to disclosure, BlackRock urges the CSA to consider the differing needs of retail versus institutional clients. As set out in our submission on Consultation Paper 33-404, we believe that disclosure can be an appropriate tool to respond to conflicts of interest between registered firms and their sophisticated clients. This is because many of the investor protection concerns raised by the CSA such as information and financial literacy asymmetry are less prevalent or not present at all when dealing with institutional clients. For institutional clients, as long as the disclosure is effective (i.e. clear, specific and not merely "boiler plate"), it can be sufficient to mitigate the conflict and the client is in a position to make an informed decision based on the information provided. In other words, if the disclosure is full and fair regarding the material conflict of interest that could affect the adviser-client relationship and sufficiently specific, it should be up to the institutional client whether to provide its informed consent to continue with the relationship or to terminate.

In the retail context, the increased disclosure obligations around conflicts of interest will result in reams of additional information being provided while the actual relevant content may become meaningless or buried. It is common knowledge that retail investors do not read disclosure or at least, do not read all of it, and requiring registrants to provide even more information may result

in disclosure fatigue. Given that the enhanced conflicts of interest regime now requires registered firms to address conflicts in the best interest of the client, we query the actual benefit of this additional disclosure requirement. The CSA should consider how to streamline existing disclosure obligations to make them more effective rather than adding to the volume of disclosures, similar to the work currently being undertaken by the SEC in proposing a comprehensive and complementary "layered" disclosure regime[6].

For both institutional and retail clients, the CSA's approach that disclosure alone is not sufficient to control a conflict of interest situation particularly if it has been addressed in the best interest of the client actually creates a higher conduct standard than a fiduciary duty at common law. This cannot be the intended result and would be very concerning if the common law duty is now being expanded beyond what has been established by years of case law.

Increased compliance burden

Finally, the compliance burden that will be placed on registered firms to demonstrate adequate processes and documentation with respect to these new conflict of interest requirements will be substantial. For small to medium-sized firms in particular, this may result in firms ceasing or scaling back operations, or decreasing their investment offerings, thereby reducing investor choice. There will also be an unlevel playing field vis-à-vis non-securities regulated firms which could result in regulatory arbitrage in some cases. There may also be compliance costs passed on to clients through increases in fees, or firms making the decision to focus on higher net worth clients given the increase costs of servicing clients with smaller investable assets.

BlackRock believes that if an adviser has satisfied its fiduciary duty, many of the obligations required under the conflicts of interest provision would have been carefully considered and investor protection concerns taken into account. Without acknowledging this, certain advisers may change investment practices in a way that may negatively impact a client's investment outcomes. For example, disclosure about the use of affiliated products should not be presumed to be insufficient to address the conflict that exists because advisers could potentially exclude proprietary products from their strategies, potentially to the detriment of investors. In most cases, in meeting its fiduciary obligation, affiliated products are researched and analyzed by the adviser before making the decision to include them in a strategy and concerns about conflicts would already be considered before proceeding.

2) Know your product – section 13.2.1

BlackRock generally supports the introduction of a more explicit know your product (**"KYP"**) requirement in NI 31-103 in order to enhance the level of understanding of the CSA's expectations with respect to fulfilling a registered firm's KYP obligation. We appreciate the fact that the CSA has addressed the industry's concerns regarding the bifurcation of firms to proprietary and mixed/non-proprietary models with respect to the original KYP proposals in Consultation Paper 33-404 and in particular the specific requirement for mixed/non-proprietary firms to engage in a market investigation, product comparison and optimization process in order to rationalize their product shelf. However, we continue to believe that the revised KYP

[6] The SEC is proposing that investment advisers and broker-dealers use a "layered" disclosure regime that would disclose certain information in summary form and other information in more detail.

obligations should be more principles-based. Our specific concerns with the KYP provisions under the CFR are detailed below.

Institutional clients (or non-individual permitted clients) exemption

BlackRock requests that the CSA introduce an exemption for institutional clients from the KYP requirements in the CFR. This was originally contemplated in Consultation Paper 33-404 but no explanation or rationale was provided as to why the exemption was not carried forward. We appreciate that a new definition of "institutional client" was not introduced but we remain supportive of an institutional client exemption using a non-individual permitted client concept consistent with the approach in other securities law contexts, including certain existing requirements under NI 31-103[7]. In addition, there was recently an acknowledgement by the CSA that managed accounts of sophisticated clients should be exempt from certain proposed business conduct requirements in respect of OTC derivatives.

It is unclear to BlackRock what additional investor protection will be afforded to sophisticated investors by the new and extensive KYP obligations, particularly those that have managed accounts with registered advisers who already owe a fiduciary duty. The regulatory burden imposed is disproportionate in this case. Institutional permitted clients often have in-house expertise or the resources to engage external consultants to conduct extensive due diligence on products offered by registered firms in order to satisfy themselves of all relevant product suitability considerations. Often, the initial and ongoing product due diligence process is highly customized based on the institutional client's needs, including risk and return profiles. We see minimal benefit by imposing prescriptive KYP requirements on registered firms that deal with institutional clients while the unintended consequences may include the negative impact these rules would have on the competitiveness of Canadian registered firms versus international asset managers in the institutional market.

Exemption for firms offering only proprietary products

It is not appropriate to impose the KYP requirement for registered advisers and their representatives if they are also the investment fund manager of proprietary products and operate solely as a proprietary firm. For instance, BlackRock believes that using proprietary pooled funds as the means by which as an investment solution for managed accounts is implemented is very different from a dealer firm deciding which products are permitted on its product shelf. Any potential conflict in the first scenario can be addressed through the obligations set out in NI 31-103, namely via relevant disclosure and the consent of the client. Not only is a registered adviser subject to a fiduciary obligation but as a registered investment fund manager, the firm is also subject to a statutory standard of care in certain provinces.

In choosing to operate as a proprietary firm, market forces will inform how the firm chooses to remain competitive and one of the ways is to ensure that its products perform well against its competitors and are priced in line with similar options. These considerations are taken into account at the product development stage and are continuously monitored. As a result, BlackRock believes the prescriptive nature of the KYP obligations unnecessarily adds to the regulatory burden already faced by proprietary firms. We strongly advocate that the CSA consider an exemption in situations where advisers operate proprietary pooled funds for use in managed accounts.

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[7] For example, the dispute resolution requirements under subsection 13.16 of NI 31-103.

Comparison to similar securities in the market

Subparagraph 13.2.1(1)(a)(iii) requires registered firms to compare a security to similar securities available in the market before making the security available to clients. This requirement is problematic in a number of respects. First, it will be extremely challenging for firms to comply with this requirement because it is too vague and too broad to be interpreted consistently. For example, how should the industry interpret "similar"? Are all equity securities similar or only those that are in the same industry, sector and traded in the same market? Are mutual funds similar to ETFs? The CSA should clarify that security-to-security comparisons is not what is intended and that a risk-based approach would be an acceptable approach in complying with this KYP requirement. For example, more complex products would warrant a more granular and detailed KYP review when comparing to other similar products. There would be little to no value-add if registered firms and their representatives must compare an index fund against all other similar index funds available in the market. As well, the CSA should define "market" in a more specific manner (i.e. local, Canadian or global).

Second, the majority of privately offered funds do not make information publicly available so it would be impracticable for firms to compare "similar securities" without having access to relevant information. The guidance in the companion policy disallows adding a security to the firm's product shelf based solely on third party research or information. It is unrealistic for the CSA to expect every firm to have in-house research expertise and conduct its own internal analysis on each security in addition to relying on available analyst research reports. The cost of this would be prohibitive for many smaller firms. Furthermore, there is minimal risk from a policy perspective in permitting registrants to rely solely on an issuer's offering documents, particularly if that is all that is publicly available or accessible. In the retail funds context, there is a robust disclosure framework that must be followed and these regulatory requirements also allow for consistent comparison of specific features between like funds (i.e. by mandating the use of form requirements). The CSA could also include an obligation that a registrant must take positive steps to satisfy itself should any documents produced by an issuer and relied upon seem incomplete or do not appear to satisfy the "full, true and plain" disclosure test.

Third, the guidance in the companion policy that the CSA expects registered firms to analyze, as part of the KYP process, how a particular security can be used as part of an investment strategy, *including how it could fit with other securities in the client's portfolio* is completely unrealistic in the many cases where firms do not have transparency into a client's holdings outside of the firm. We can ask but many clients, particularly sophisticated clients, will not disclose such information.

Finally, we are concerned that by imposing the requirement to "compare similar securities in the market", investment product innovation will be discouraged as the market will naturally favour homogenous products that offer a "safe harbour" under this unduly onerous obligation.

Training and compliance requirements

Section 3.4.1 of the CFR imposes a new requirement on registered firms to provide training to their registered individuals related to, among other things, the firm's product shelf. An exemption from this requirement for advising and associate advising representatives is warranted given the proficiency requirements required to be registered and ongoing obligations to maintain one's Chartered Financial Analyst designation. In addition, if the registered individual complies with the new KYP obligation under subsection 13.2.1(3) to understand the

securities available to clients, the training requirement is redundant. We also note that the enhanced training requirement coupled with the new KYP obligations on all products made available by the firm may lead to firms limiting their products in order to effectively manage the compliance cost and risk associated with these new requirements, which would not ultimately be the best outcome for investors.

3) Know your client and suitability determination – sections 13.2 and 13.3

We understand that the lack of compliance with the know your client (**"KYC"**) and suitability requirements currently articulated in NI 31-103 is a common and recurring deficiency with respect to the conduct of registered firms and that the CSA would like to address this problem with enhancements to these obligations in the CFR. BlackRock agrees that certain improvements should be made. However, we strongly believe that although the enhanced KYC and suitability requirements proposed in the CFR may be appropriate in some retail investor contexts, they do not sufficiently account for the diverse range of registrant business models and potential investor types. As a result, many of the proposed measures risk increasing costs and regulatory burden for registered firms without a corresponding benefit outside of the retail client context.

Institutional clients (or non-individual permitted clients) exemption

Institutional clients are highly knowledgeable participants in the capital markets. Many have internal investment experts and other advisors (i.e. lawyers, accountants, investment consultants) assisting them in making investment decisions. Most conduct initial and ongoing due diligence of their advisers and deliberately choose to retain several firms to hedge against any single service provider risk. It is unclear what benefit institutional investors will receive from the enhanced KYC and suitability obligations being proposed. From a practical perspective, it is also unlikely that an institutional client would be willing to provide a registrant with the scope of information it needs to comply with all of the guidance set out in the companion policy.

For the same reasons articulated in our comments regarding the new KYP obligations, BlackRock is requesting that the CSA provide an exemption from the enhanced KYC and suitability requirements when a registered firm is providing services to sophisticated institutional clients. We recognize that an exemption for permitted clients has been proposed; however, we view the exemption as too narrow. In particular, we believe the exemption should be extended to include situations where a registered adviser is providing services to a non-individual permitted client through a managed account. When providing such services, a portfolio manager is subject to a fiduciary duty, which includes, among other things, an ongoing requirement to ensure that all investment decisions made on behalf of the managed account are done so in the best interest of the client. In such situations, the proposed requirement that a suitability determination to be made in the best interest of the client is duplicative of an adviser's fiduciary duty and, given the prescriptive steps set out in the CFR, will unnecessarily impose significant additional supervisory and recordkeeping requirements on advisers, particularly if the firm focuses on serving institutional clients. The suitability assessment in the context of a managed account is an ongoing and iterative process undertaken by an adviser in the discharge of its fiduciary duty.

Issues related to the KYC obligation

Paragraph 13.2(4.1)(a) requires a review of KYC information previously collected at specified intervals. It is unclear whether the intention is that a "review" extends to revisiting the information with the client in order to confirm and/or update. If this is the intention, then this requirement is inconsistent with subsection 13.2(4), which only requires a registrant to take "reasonable steps" to keep KYC information current. Similarly, paragraph 13.2(4.1)(b) states that a registrant "must update" KYC information in certain circumstances. This is also inconsistent with the "reasonable steps" requirement in subsection 13.2(4).

The potential challenge with the proposed timing requirements included in the KYC obligations is that, although a registered firm may have procedures in place to routinely carry out a KYC refresh, some clients (especially institutional clients in our experience) may refuse to reply despite multiple follow up attempts. The CSA should acknowledge in the companion policy that if a registrant follows its procedures and makes reasonable efforts to routinely confirm and/or update KYC, this is sufficient to meet the obligations imposed in the CFR.

Another issue we see is the proposed requirement under subparagraph 13.2(4.1)(a)(i) that indicates a registrant must review KYC information if it knows or "reasonably ought to know" of a significant change in the client's information. Absent additional guidance, the latter standard is extremely vague and will be difficult to comply with. For example, if an organizational change within an institutional client is publicly reported, a registrant reasonably ought to know. However, in the digital era when an abundance of information can be almost immediately obtained on any number of topics, how far does this obligation extend? BlackRock does not believe that it would be in the best interest of the client for registrants to invest a significant amount of time engaging in ongoing research on their clients to ensure that they learn, in a timely manner, of any events and changes that a reasonable person ought to know about. Instead, we strongly believe that this time should be spent focusing on more value-add matters such as managing products or providing clients with timely and relevant information. The KYC obligation should be revised to better reflect the reality that registrants must, in the vast majority of cases, rely on clients to notify them of any changes and that this is typically a contractual obligation on the client under investment management agreements.

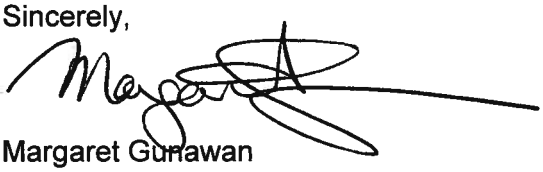
Issues related to the suitability obligation

Subsection 13.3(1) will require that a suitability determination be made only before making a recommendation of securities to a client but also *before taking any action for a client*. The companion policy lists various situations where this requirement applies. BlackRock is of the view that this suitability determination seems excessive for the types of actions that could be taken by a portfolio manager for a managed account and in particular, when it is the managed account of a non-individual permitted client. The exemption we request for non-individual permitted clients would address this concern while preserving the investor protection benefits it is intended to provide to retail clients. Perhaps an alternative, more balanced approach for the CSA to consider would be to have the requirement apply only in respect of specific types of investment related actions such as before investing in derivatives, using significant leverage, borrowing to invest or investing in illiquid securities. This risk-based approach would improve the investor protection goal of closing the expectations gap while balancing the need to support the efficient functioning of the industry.

D. Conclusion

BlackRock appreciates the opportunity to provide input on this important regulatory initiative and would be pleased to make appropriate representatives available to discuss any of these comments with you.

Sincerely,



Margaret Gunawan
Chief Compliance Officer and Secretary, BlackRock Asset Management Canada Limited