Canadian Compliance & Regulatory Law

October 19, 2018 ***via electronic mail***

Attn:
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

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

Re: Canadian Securities Administrators Notice and Request for Comment: Proposed Amendments to National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations.* Reforms to Enhance the Client-Registrant Relationship (the 'Client Focused Reforms')

I very much welcome the opportunity to comment on the Client Focused Reforms as proposed by the CSA.

I will state, at the outset, that I have read numerous submissions that do an excellent job of a fully comprehensive and detailed analysis of impacts and suggestions and I am deferring to these excellent submissions, most notably the Portfolio Management Association of Canada's submission, which I endorse, particularly regarding referral arrangements.

Our firm specializes in providing regulatory compliance guidance and support to predominately portfolio management firms from Ontario to Vancouver Island. We are very proud to support the firms that we do. They are singularly focused on providing the best results for their clients. Their methods may vary, but their conviction level is always very high. I once had a client state to me about investment styles: 'you know what, if you stick to your knitting, you are probably going to do a good job for your client'. The majority of PM firms in this country do an excellent job for their clients, regardless if they are passive, active, value or asset allocators. The bottom line is that they are fiduciaries and they take their obligations VERY seriously. And if canvassed, I am certain that the on-the-ground regulators in this country would agree: they sleep well with the knowledge that 95% of the PM firms they are responsible for are working hard, and in the best interests of their clients.

The most wonderful aspect of our practice in supporting these firms is that they are actually incredibly risk adverse, are predominantly CFA charterholders[1] (or CIM holders who take their fiduciary obligations VERY seriously) so we, as a compliance support firm, really don't have the fundamental risk of a firm doing something really bad.

As a result, we spend the majority of our time 'fine tuning' the regulatory requirements for our firms in meeting their obligations under National Instrument 31-103, and a few other regulatory instruments[2]. We do this for a living and it is exhausting trying to keep up with all that is being put forward. And for our firms we support, this is a daunting exercise to just *keep current*.

Since NI 31-103 came forward in 2009, with much, much industry consultation in advance (NI 31-103 actually encompasses a better part of my career) the pace of regulatory initiative and change has been like a freight train with no brakes. Think of the Polar Express movie, when the train is on the ice. And the analogy holds: as the ice beneath is also breaking here. And the other part of the Polar Express analogy is also important: 'Do you believe?'

I no longer believe that this train needs to continue at the unabated pace it has been on for the past 10 plus years. And I say this in consideration of the portfolio management space we predominately operate in. The portfolio management space is occupied by professionals who exercise their fiduciary requirements in the best interests of their clients. And the ice beneath is breaking, which is the delivery of independent financial advice to Canadians.

To enact detailed prescriptive requirements is an affront to the professional services portfolio managers provide to their clients and the obligations they hold dearly and take very seriously in fulfilling their fiduciary obligations to their clients.

If a regulator wants to enact further regulation, it needs to address a harm. I respectfully state that the CSA has not demonstrated the harm that needs to be addressed for portfolio managers.

This is what I know:

- Portfolio managers take their fiduciary obligations very seriously; as a result, if they screw up, they make their clients whole.
- The OBSI annual report has the portfolio management space as a mere footnote due to the lack of matters referred to OBSI compared to the balance of the transaction-based industry.

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[1] Fewer than 1 in 5 candidates becomes a CFA charterholder. It takes an average of over 1,000 hours of rigorous study, along with four years of professional experience, to earn the distinction of being called a Chartered Financial Analyst® and all charterholders are required to annually attest to the CFA Institute Code of Ethics and Standards of Professional Conduct. https://www.cfainstitute.org/en/about/employers/hire

[2] NI 33-109; NI 45-106; NI 24-101; NI 63-102; NI 81-101 and NI 81-102; NI 81-105; NI 81-107; every single one of FINTRAC's unlimited and never ending guidelines, every single province's Privacy laws in addition to Federal Privacy laws and, oh yeah, need to get those Privacy Breach policies in place; Anti-Spam laws (under the CRTC guidelines), IIROC Rules as we deal with custodians and third party brokers, MFDA rules if any dealings with MFDA firms, suggested guidance but no rules on Cyber Security, Seniors and Vulnerable Persons, Business Continuity, maybe have to get every registrant registered under new Derivatives legislation (can't wait to have those discussions with long-registered PMs)…and I am sure I am missing a number of mission critical requirements. Oh I forgot Whistleblower and Access to Workplace for Ontario. And I am sure a few more…

- The complaint, regulatory and litigation history with PM firms is scant and limited (admittedly the occasional screw-ups and mis-steps can be BIG, but you deal with the outliers as outliers as they are mostly crooks or close to crooks; don't lump them together with the majority. This is how other professions operate).

We go through a process with our client groups where we will discuss 'what do you view as the top five risks to your firm?' The top two or three answers are inevitably about 'regulatory risk'. And it is regulatory risk about *tripping over a prescribed rule* that has nothing to do with the work they do for their clients and their clients' investments. And more notably, the answer NOT in the top five is 'portfolio risk' or 'investment loss risk' or the overall management of client portfolios.

A very sad commentary on all of this is a comment I routinely get back from 20 plus year experienced PMs who have <u>really</u> examined these 'reforms', in their totality (along with the progressively increasing regulatory burden of the past 10 years). Most of them state that with the risks that these reforms pose in being able to meet the obligations to be conferred upon them, if starting out in this industry today, they would choose a different path. They would not become portfolio managers. If that is not an indictment of what these proposed reforms are, *in their totality*, I don't know what is.

My further very truly sad observation is this: this strikes me more and more that it is not about protecting the public, as it relates to portfolio managers. In my view, there is an aspect of this which is a turf war where the CSA wants as much of the ground as possible as it relates to the investing public. They are acting as any good corporation would do. Expand your reach and reliance in a monopoly. Our regulators are very important to provide oversight to those who provide advice and more importantly, the transaction-based representatives. We respect this. And appreciate the importance of this. However, a balance, between what is needed (which would be the current status quo – or less) and what is proposed, is what is required.

I have grave concerns about the ability of small, independent firms to be able to compete with the existing bank and conglomerate complexes. Do the banks and large firms care about these proposals? They can implement systems to comply with these requirements as they have, relatively speaking, unlimited resources. The more of a burden on independent firms, the harder it is for them to be profitable and compete.

How is the small town or independent registrant supposed to compete with these resources? Additionally, the concentration of assets being managed by large institutions creates systematic risk that on a macro level I do not believe has been adequately considered.

There has to be this realization and understanding: Financial services in this country are delivered as a result of trusted personal relationships. This is a foundation of the delivery of Canadian financial advice in this country. The client focused reform proposals (particularly as it relates to referral arrangements) ignore how financial advice (which includes financial planning and other professional services) is provided in this country.

And another very important point: in the portfolio management space, the referral (or more accurately, shared services) arrangements have de-risked the provision of financial services considerably, just as mutual funds have largely done in the retail sector. In general , portfolio managers, either through a mutual fund, or in the discretionary management of an account, are the professionals we want to be making investment decisions. This is a good thing. And a very significant *existing* benefit.

The basic tenet of any new regulation is always this: There needs to be a problem and the proposed regulation has to demonstrate that its benefits outweigh the costs. I respectfully submit that the CSA has to better make their case that these latest reforms are required in the portfolio management space to address existing harms or potential harms to investors, which do not (mostly) exist. If a carve out is required for transaction-based firms that are not already SRO-regulated, so be it. But let us not let the Client Focused Reforms, as proposed for portfolio managers, be the equivalent of looking for a cure where there is no disease.

We appreciate the opportunity to be heard and to be able to make this submission.

Respectfully yours,

Canadian Compliance & Regulatory Law

Don Campbell

Per: Donald I Campbell
Securities, Compliance and Regulatory Counsel