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October 19, 2018

Delivered by 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
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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

CI Investments Inc. ("**CI**") appreciates the opportunity to provide comments to the Canadian Securities Administrators (the "**CSA**") with respect to the consultation on the Proposed Amendments to National Instrument 31-103 ("**NI 31-103**") and Companion Policy 31-103CP ("**Companion Policy**" and, all together, known as the "**Client Focused Reforms**" or "**Consultation Paper**"), published on June 21, 2018.

CI is one of Canada's largest independent investment fund managers and is registered as an Investment Fund Manager, Exempt Market Dealer, Portfolio Manager and a Commodity Pool Trader, with assets under management in excess of $136 billion. CI is a wholly owned subsidiary of CI Financial Corp. ("**CIX**"), a diversified wealth management firm whose principal business is the management, marketing, distribution and administration of mutual funds, segregated funds, exchange-traded funds, structured products and other fee-earning investment products for Canadian investors. CIX also carries on asset management business in Australia and New Zealand through its subsidiary, Grant Samuel Funds

Management Pty Limited. In addition to asset management, CIX carries on asset administration business through its subsidiary Assante Wealth Management (Canada) Ltd. ("**Assante**"). As at September 30, 2018, Assante, through its subsidiaries and affiliates, administered approximately $44 billion in mutual funds, stocks, bonds, GIC's, insurance products and other investments for its clients. Accordingly, we believe we are well positioned to comment on the Client Focused Reforms and the effects we expect they will have on investors, the mutual fund industry and the capital markets more broadly.

CI is a member of the Portfolio Managers Association of Canada ("**PMAC**") and we have actively participated in PMAC's Working Group on the Consultation Paper. We acknowledge and support PMAC's submission to the CSA relating to this consultation as we believe their comments to be considered and detailed responses to the issues resulting from the Consultation Paper. As a result, we have chosen not to duplicate PMAC's comments on individual sections of NI 31-103 but have outlined our general concerns with the Client Focused Reforms.

Initial Comments

As detailed in our response to CSA Consultation Paper 33-404, CI shares the focus of the CSA on investor protection and we remain supportive of the need for appropriate rules in this critical area of securities regulation. However, we continue to believe that many of the CSA's investor protection concerns can be effectively resolved by consistently enforcing existing CSA and SRO rules. Dealing effectively with the very small percentage of "bad actors" in the industry who violate securities laws is preferable to imposing broad-based, sweeping reforms that affect all registration categories and impose regulations that will significantly impact investor experience and outcomes and will transform how dealers and registrants manage business relationships without proven investor benefits.

As noted above, the CSA has taken a broad-brush approach to address specific concerns in that the proposed rules would affect all registered firms and registrants equally as if they all offered the same services. We do not believe this is an appropriate way to address specific investor protection issues. Amending regulations in a more tailored manner would recognize the inherent differences in business models that exist in the industry to address a wide array of investor objectives. Tailored regulations would distinguish between the proficiency requirements of different registration categories, especially with respect to the enhanced proficiency and fiduciary obligations of Portfolio Managers. Further, a tailored regulatory approach would recognize the different needs of clients and allow for investor choice as to the level of engagement with a registrant. A young adult who is just starting their career and is looking to open a TSFA or RSP account has very different needs than a high net worth individual who is better served by a Portfolio Manager and yet the broad-based Client Focused Reforms do not adequately differentiate or provide for these different client needs.

A tailored approach to the introduction of the Client Focused Reforms would also recognize that sophisticated clients are sufficiently protected by existing regulations and by the elevated duty of care required of Portfolio Managers as fiduciaries. As such, CI submits that the carve-outs contemplated in CSA Consultation Paper 33-404 – *Proposals to Enhance the Obligations of Advisors, Dealers and Representatives Toward Their Clients*, but not carried over into this consultation, be included in the Client Focused Reforms. Specifically, non-individual permitted clients, including their managed accounts should be exempt from the Know Your Client ("**KYC**") and Suitability rules as the obligations contemplated in these rules are not required to service these sophisticated clients.

Significant Unintended Consequences

While we recognize that the CSA has removed some of the more over-reaching obligations contemplated in prior consultations, we believe the Client Focused Reforms and the Companion Policy in particular, are overly prescriptive and in many instances, would result in significant unintended consequences for investors and the capital markets.

1. Reduced Investor Choice
   The KYP rules impose new obligations on registered firms and registrants which will significantly change current business practices, increasing business risk and compliance costs. The initial and ongoing product due diligence and monitoring process proposed for registered firms is extensive and, for business models that offer securities listed on the TSX or other exchanges, the proposed due diligence process will be nearly impossible to implement. Requiring registered firms to compare the products on their shelf to similar products in the market and to monitor products for changes in performance, client outcomes, and costs will be a major challenge, especially for dealers that offer broad-based services and investment options to their clients. Likewise, the KYP obligations of registrants to know, at a general level, the entire product shelf will be an overwhelming requirement for advisors affiliated with non-proprietary dealers such as Assante, which has an approved product shelf of over 17,000 funds and more than 40,000 FundSERV codes as well as the ability to recommend global equity securities and debt instruments. To comply with these extensive KYP rules, registered firms will need to make a significant investment in technology and personnel to automate the process of assessing and monitoring products, and to provide notifications to registrants should a security in a clients' account exceed a threshold and/or to identify similar products to the security on the firm's shelf or in a client account. Additionally, it is unclear how a dealer with a broad and open selection of approved securities for clients could possibly satisfy the new product training requirements proposed given the volume of securities noted above.

   To mitigate against non-compliance with the requirements and to manage business risk, including reducing operating costs, many registered firms will reduce the number of approved products available for recommendation to their clients. This reduction in available investment securities will result in reduced choice for investors. Further, it is likely the approved investments of registered firms with similar business models will all gravitate to the same types of products, if not the same products, as the same set of criteria will be used to evaluate products. This commoditization of products limits investors' options and leads to less diversification in client portfolios.

   The reduction in the number of approved securities by registered firms will also negatively impact fund managers as product distribution options for fund managers are reduced. Products from smaller fund managers may be disproportionally impacted by the reduction in approved products as these fund managers may not be able to provide the product support services, such as product training materials, that a dealer will likely require for a product to be approved for recommendation by its representatives. Investors will be left with a smaller number of product options from which to achieve their investment objectives.

   We do not believe the benefits derived from the proposed KYP regulations outweigh the harm caused to investors by the unintended outcome of reduced choice.

2. Advice Gap
   The Client Focused Reforms introduce many new regulations and significantly change existing rules. These changes include: the expansion of Know Your Client ("**KYC**") data collection and maintenance obligations; new KYP product comparison, ongoing monitoring and product training

requirements for registered firms and registrants; the requirement to complete a suitability determination, that puts a client's interests first, at a portfolio level instead of on a trade-by-trade basis; the requirement to identify, document and catalogue how all conflicts of interest are resolved in the best interest of the client; and the requirement to provide new, publicly available information to potential clients. Also, the Client Focused Reforms significantly add to the number and type of books and records required to be maintained and will require new compliance oversight processes and systems. In short, the Client Focused Reforms introduce significant change across virtually all aspects of a registered firm's business. As a result, registered firms will incur significant one-time capital costs and significantly higher annual operating costs. In this regard, we disagree with the conclusions in Annex E, Ontario's Regulatory Impact Analysis which we believe materially underestimates the ongoing costs of the Client Focused Reforms. Specifically, we disagree with the following statement regarding on-going costs:

"We anticipate that the proposed amendments will impose significant one-time, transition costs as registrants evaluate, adapt and implement new compliance processes and controls for their particular business model. We anticipate that the proposed amendments will impose only marginally higher on-going costs of compliance as the compliance processes and controls likely to be implemented to address one area of proposed reform are likely to address other reform areas as well."[1]

The Regulatory Impact Analysis does not provide data to support this conclusion and we are unaware of any industry consultation completed to make this assertion.

CI's affiliated company Assante completed a high-level cost impact analysis as part of the CSA's 2016 Targeted Reforms consultation and Assante estimated that for every dollar spent on initial implementation of processes and systems, there would be a corresponding increase of approximately $0.43 in annual operating costs. We recognize that there are differences between the Targeted Reforms and the Client Focused Reforms, however, we believe the proposals are sufficiently similar to conclude that there will be substantial increases in operating costs and not "marginally higher" costs as the Regulatory Impact Analysis suggests.

The costs associated with increased regulation will be primarily borne by registered firms, registrants and to some degree, these costs will be passed along to investors. We believe these increased costs will result in increased consolidation amongst registered firms as smaller firms will not be able to afford the increased costs and large firms will be motivated to increase scale to defray the costs over larger businesses. To remain profitable, registrants will focus on higher net worth clients. Both of these outcomes, increased consolidation and a move by registrants to serve larger clients, will result in an advice gap as investors with lower amounts to invest will not have access to an advisor. These individuals are often the ones that would benefit the most from advice.

3. Barrier to New Products

Subsection 13.2.1(1)(a)(iii) requires a registered firm to understand how a security compares to similar securities available in the market. Registered firms will reasonably interpret this requirement to mean that an analysis of the competitiveness of the product must be understood before the product is made available on the firm's product shelf. A key performance metric used in this analysis will be the historical

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[1] CSA Notice and Request for Comment, Reforms to Enhance the Client-Registrant Relationship (Client Focused Reforms), 2018, at 252

performance of the product. As previously discussed, registered firms will look to reduce risk and costs associated with the obligation to compare products by restricting the number of products on their shelf. Registered firms will be less willing to accept new, innovative products because there is no performance history and no comparable products. Without reasonable distribution options, fund managers will not be incented to develop and launch innovative products, thereby negatively impacting investors and the capital markets. CI submits that subsection 13.2.1(1)(a)(iii) be deleted so that registered firms are not required to compare products as part of their KYP obligations.

Focus on Cost

CI is concerned that the CSA has overemphasized the importance of product cost both when registered firms conduct their KYP analysis to determine if a product should be made available to clients and when a registrant completes their suitability determination for a client. We agree that product cost is an important factor in the decision-making process, but it is just one factor among many and all factors need to be considered together when a registered firm conducts an assessment of the product to satisfy KYP obligations and when a registrant makes a suitability determination for a client.

The Companion Policy related to suitability 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 lowest cost security available to the client in the circumstances that meets the requirements of subsection 13.3(1).*"[2]

We are concerned that the CSA is emphasizing cost over other factors, such as product structure and product risk, when determining suitability by requiring registrants to develop a business case for recommending a product that is not the lowest cost option. The CSA has not articulated how they will determine if the recommendation of a higher cost product is reasonable. Is the support and service a fund company provides a registrant a reasonable basis for the determination? We are also concerned if the CSA uses past performance of lower cost products to question why a higher priced product was recommended. Chasing returns by focusing on past performance has been demonstrated to result in negative outcomes for investors and further exacerbates an undue emphasis on short term results as one or three-year product performance measures are used to judge product suitability when a longer term view is often more appropriate when the investors objective is saving for an event that may be well into the future.

The KYP section of the Regulatory Impact Analysis (Annex E) says that, "*The proposed amendments to the KYP requirements in subsection 13.2.1(1) both codify longstanding guidance and also overlay a more formal product approval and monitoring requirement for firms. We anticipate that these changes are likely to help address investor concern 3 conflicts of interest as the more formal approval and monitoring requirements must include a conflicts analysis which puts added responsibility on the firm to justify what is on their product shelf. Similarly, we anticipate that the creation of an approval, monitoring and reassessment process would allow for better subsequent oversight and effective enforcement helping to address concern 5, that clients are not getting outcomes that the regulatory system is designed to give them.*

Over time, we anticipate that these new requirements will result in improvements including a higher provision of lower cost, better performing securities to clients."[3]

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[2] Ibid, at 191

[3] Ibid, at 254

Presumably, the reference to "better performing" means there will be "better outcomes". Regardless, we do not agree that a lower cost product necessarily results in better investor outcomes. This statement will only be true if the two products are identical in every way except for product cost. In reality, investment outcomes will be different as there can be subtle differences even between investment funds from the same asset class.

The Role of the Companion Policy
The Companion Policy is very prescriptive and is drafted in such a way that can be interpreted as having the force of law as it goes beyond guidance and interpretation to include expectations that certain actions will be taken. There is also concern that SRO audits of registered firms and registrants will be conducted based on the details in the Companion Policy, rather than based on the National Instrument.

We submit that the Companion Policy be modified to reflect the fact that it is intended to provide guidance only and that there are acceptable alternative methods of complying with the National Instrument.

Referral Arrangements
CI is concerned that the proposed referral arrangement framework detailed in the Consultation Paper will result in outcomes that are not aligned with the interests of investors. We also believe that the CSA has not adequately defined the underlying investor protection concerns which require the significant changes contemplated in the Consultation Paper. Further, we do not believe that the CSA has adequately consulted with the investing public or with the industry to understand the value of referral arrangements for investors.

CI believes that the limitations on referral fee payments, as proposed in subsection 13.8.1, are significant changes affecting many business models and business arrangements. As proposed, these changes may negatively impact long-term outcomes for investors as the restrictions may result in investors changing strategies or providers every three years and investors may not settle with an advisor who can better meet their needs. In both cases the investor may be worse off and would not have benefited in any way from the restrictions on referral fee arrangements.

Suitability and Client's Interest First
Revisions made to section 13.3 *Suitability determination* in the Consultation Paper are extensive and we are concerned that the obligations may be impossible to achieve and it may be impossible to demonstrate compliance with the rule.

Subsection 13.3(1)(a)(i) to (vii) provide specific actions that must be considered when completing a suitability determination, however, subsection 13.3(1)(a)(viii) indicates that a registrant must take into consideration "*any other factor that is relevant under the circumstances*"[4]. Subsection 13.3(1(b) then requires a registrant to determine that "*the action puts the client's interest first*"[5]. Further, the Companion Policy indicates that; "*The client's interests, as distinguished from those of the registrant, are at the core of the obligations under section 13.3. The fact that a recommendation or decision is determined by the registrant, on a reasonable basis, to be suitable for a client pursuant to paragraph 13.3(1)(a) will*

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[4] Ibid, at 21
[5] Ibid, at 21

therefore not be considered to be enough to meet this obligation; the registrant must also determine that the action puts the client's interests first pursuant to paragraph 13.3(1)(b)."[6]

Suitability recommendations must also consider any other relevant factor, which appears to be a "catch-all" requirement that gives little guidance as to how advisors will fulfill their obligations. The recommendation must also put the client's interest first, which is a term that lacks specificity in the Companion Policy. Is the concept of "put the client's interest first" the same as a "Best Interest" obligation and if so, why has the CSA used different terminology for the same proposed standard?

In addition to requesting clarification on how a registrant demonstrates that they have put the client's interest first, we submit that subsection 13.3(1)(a)(viii) be deleted and a safe harbour provision be included in subsection 13.3(1) so that if a registrant satisfies the obligations set out in the balance of the rule, they are deemed to have provided a recommendation that is suitable.

Insufficient Transition Period
The Consultation Paper provides different transition periods for the implementation of the proposed reforms, commencing on the effective date of the rule. As discussed above, we believe the rules, as currently proposed, will have significant negative consequences on investor experience and outcomes and it is uncertain as to whether registrants will have the capacity to undertake the proposed review processes and information gathering.

If the CSA elects to proceed with the proposals regardless of these concerns, it should be evident that the rule changes are extensive and will require a significant investment in technology by registered firms to automate the required processes and to maintain the books and records required to demonstrate compliance with the rules. Developing and implementing new technology and modifying legacy systems is a time-consuming process and must include significant time allocated to testing to confirm system performance. In addition, industry service providers have indicated that system builds will not commence until after the final rules are published and any development must conform to established product development cycles. Given these and other challenges with the implementation of the Client Focused Reforms (e.g. new training obligations by registered firms and the development of a conflicts management systems) we do not believe the proposed transition period is sufficient. CI submits that the transition period be no less than three years from the date the SROs publish their uniform rules.

CI appreciates the opportunity to provide our input to this initiative, and as always, we are available to discuss these comments if there are questions.

Yours truly,

Sheila A. Murray
President, CI Investments Inc.
President, CI Financial Corp.

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[6] Ibid, at 188