



October 19, 2018

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

Submitted via email: [comments@osc.gov.on.ca](mailto:comments@osc.gov.on.ca); [consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)

**Re: CSA Notice and Request For Comment - Proposed Amendments to National Instrument 31-103 and Companion Policy 31-103CP - Reforms to Enhance the Client-Registrant Relationship**

Dear Sirs and Mesdames,

CIBC welcomes the opportunity to comment on the Canadian Securities Administrators' notice and request for comment relating to proposed amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and the accompanying Companion Policy 31-103CP (the **Client Focused Reforms**). CIBC subsidiaries are engaged in all aspects of the provision of financial services and advice to clients, from advising clients, to providing dealer and portfolio management services, to offering mutual funds and other financial products. Several of CIBC's lines of business will be directly impacted by the Client Focused Reforms.

CIBC supports the Client Focused Reforms and its goals of enhancing investor protection and improving outcomes for clients. CIBC has participated in working groups established by the Investment Industry Association of Canada (IIAC), the Portfolio Management Association of Canada (PMAC), the Canadian Bankers Association (CBA) and the Investment Funds Institute of Canada (IFIC) to study the Client Focused Reforms. We share many of the comments and concerns raised in the IIAC, PMAC, CBA and IFIC responses with respect to unintended costs

and consequences arising from, and additional guidance required before implementing, the Client Focused Reforms. Significant resources have gone into preparing the industry responses and CIBC encourages the CSA to consider the detailed comments and issues raised in those letters before proceeding with the implementation of the Client Focused Reforms.

In our response, we will only focus on, what are in our view, a few of the more significant issues raised in the Client Focused Reforms that may not be fully addressed in the industry group comment letters or those that may specifically impact integrated financial institutions such as CIBC. As a general comment, we are hopeful that the CSA will consider making the next version of the draft legislation less prescriptive while more explicitly granting greater flexibility in applying regulatory requirements to different business models. CIBC is in a position of being able to view the Client Focused Reforms from the perspective of a broad number of different businesses within the financial advice and investment industry, including Investment Industry Regulatory Organization of Canada (IIROC) and Mutual Fund Dealers Association (MFDA) registrants providing full service and proprietary product offerings, investment fund managers and order execution only investment dealers. Allowing for more flexibility in applying the Client Focused Reforms will help to mitigate some of the potential risks identified in the IIAC, PMAC, CBA and IFIC comment letters and will help to ensure that all clients can obtain the financial services that are most individually appropriate given their objectives, service requirements, willingness and ability to pay, and level of sophistication.

### **Conflicts of Interest**

In their current form, the Client Focused Reforms will require that all registrants must identify and manage in the best interest of the client, **all** conflicts of interest – removing the existing materiality standard. In our view, this requirement will prove extremely difficult and costly to implement, with little if any improvement in client outcomes. It will prove nearly impossible for fully integrated firms to identify, disclose and address every non-material conflict. Furthermore, even aside from the cost and complexity involved, if a conflict is not material, we are of the view that its disclosure risks confusing clients as to its importance and may also cause clients to ignore other disclosures being brought to the client's attention that actually are material to the client.

This new requirement would also significantly expand existing self-regulatory organization (SRO) requirements that directly address this issue. The current IIROC rules, for example, require that clients be informed of how advisers and dealers are compensated and that material conflicts must be addressed in a fair, equitable and transparent manner and consistent with the best interests of the client. On an enterprise-wide basis, CIBC maintains detailed policies, procedures, and controls that are designed to help identify and effectively manage material conflicts of interest. We expect that all integrated financial institutions have similar policies, procedures, and controls in place. CIBC is of the view that the materiality standard contained in the current rules adequately protects investors and as such CIBC strongly urges the CSA to reconsider this approach and maintain the materiality standard with respect to applying conflict of interest rules.

### **Referral Fees to Non-Registrants**

The Client Focused Reforms impose a new requirement prohibiting referral fees from being paid to non-registrants. This new requirement will cause unintended negative consequences for clients of integrated financial institutions like CIBC, which are made up of several subsidiaries, some registrants and some not, that offer different types of financial services.

CIBC respectfully submits that the policy rationale behind this prohibition is not present where the referring entity is an affiliate of the registrant to which the client is being referred. CIBC requests that the CSA consider providing a specific exemption for affiliates of the registrant receiving the referral. Such an exemption would facilitate the ability of integrated financial institutions to continue to seamlessly address client needs with the most appropriate service offering for a particular client.

## **Know Your Product**

CIBC supports the codification of specific know your product (KYP) requirements. In our view it is appropriate to expect registrants to take reasonable steps to understand the essential elements of the securities they are selling and advising on. However, explicitly allowing the bundling of similar types of securities and the tailoring of KYP processes to these bundled categories when applying these new KYP requirements, would encourage the efficient allocation of resources and discourage the potential narrowing of the product shelf in order to effectively adhere to the proposed KYP requirements. We respectfully submit that the Client Focused Reforms are not sufficiently clear as to how flexible registrants can be when applying the general KYP principles to different business models and types of securities. Lack of flexibility in this regard may, in our view, result in a narrower product shelf and ultimately less consumer choice as firms seek to implement effective controls to address the KYP requirements.

Dealers that only offer proprietary products should receive a full exemption from the requirement in section 13.2.1(a)(iii) of the Client Focused Reforms (comparison of product shelf to similar non-proprietary products generally available) so long as the dealer is required to provide full and clear disclosure to the client that it only offers proprietary products and the implications to the client of only offering proprietary products. So long as a client clearly understands that a firm only offers proprietary products there would not appear to be any benefit to engaging in a process to compare how proprietary products compare to similar products offered by third parties. Additionally, the CSA should consider exempting registrants from the KYP requirements in section 13.2.1 when dealing with permitted clients on the same basis that an exemption is provided for suitability and certain KYC requirements. In both situations, CIBC is of the view that clear disclosure is sufficient to allow the client to determine whether the services being offered are appropriate for their needs.

Finally, we request that the CSA consider providing an exemption from the KYP requirements in situations where securities are transferred in from another registrant. Requiring strict compliance with the KYP requirements for securities that are transferred in will delay client account opening processes unnecessarily and impose a significant burden on dealers to implement procedures to monitor and assess products that are not on the firm's shelf with no clear benefit to clients who would already beneficially own the securities at issue. We suggest that the CSA exempt firms from the KYP requirement to allow clients to continue to hold such securities but not add to their holdings (other than by way of reinvested distributions).

## **Exemptions for Order Execution Only Dealers**

It is not clear how section 13.2(2)(c) (requirement to identify needs and objectives, financial circumstances, etc.) and section 13.3 (suitability determination requirements) of the Client Focused Reforms would apply to order execution only (OEO) dealers. In our view, these obligations are inconsistent with a "no advice" business model and such firms should be

exempt from these requirements. Our expectation is that the dovetailing IIROC rules will clarify that these do not apply to OEO dealers but we also are of the view that specific exemption language should be included in NI 31-103.

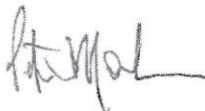
### **Transition period**

The Client Focused Reforms currently contemplate a two-year transition period for many requirements. Given the broad scope of the Client Focused Reforms, the impact it will have on both frontline and supervisory processes and procedures, and CIBC's recent past experience with implementing regulatory initiatives with significant operational changes such as CRM2, we recommend a uniform three-year transition period beginning only after the corresponding amendments to IIROC and MFDA requirements are finalized. This extended transition timeline will be especially critical if existing client accounts are not grandfathered.

### **Conclusion**

CIBC supports the CSA's continuing efforts to foster fair and efficient capital markets, and provide investors with protection from fraudulent and unfair practices. CIBC appreciates the opportunity to comment on the Client Focused Reforms and looks forward to participating in further consultations relating to the issues raised therein.

Yours truly,



Peter Moulson  
Vice President, Wealth Management Compliance  
Canadian Imperial Bank of Commerce