

January 18, 2021

VIA EMAIL

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and

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Dear Sirs/Mesdames:

Re: Proposed Amendments to MFDA Regulatory Instruments to conform to requirements under the Client Focused Reforms (CFR) Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103)* (collectively, the “Proposed Amendments”)

The Canadian Advocacy Council of CFA Societies Canada¹ (the “CAC”) appreciates the opportunity to provide the following comments on the Proposed Amendments.

We understand that the Proposed Amendments are intended to make the MFDA regulatory instruments conform to the CFR amendments under NI 31-103, having regard

¹ The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 18,000 Canadian CFA Charterholders. The council includes investment professionals across Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. Visit www.cfacanada.org to access the advocacy work of the CAC.

CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors’ interests come first, markets function at their best, and economies grow. There are more than 166,698 CFA Charterholders worldwide in 161 markets. CFA Institute has nine offices worldwide and there are 160 local member societies. For more information, visit www.cfainstitute.org.

to the existing member business models and current MFDA requirements. We support publishing the proposed rules specific to dealers and their business models. In the absence of the best interest standard, we also support the CSA's new core requirement for registrants to put their clients' interests first when making a suitability determination.

We note that the CSA has been publishing frequently asked questions (FAQs) and would encourage staff at the MFDA to remain involved in the CFR implementation and supplement the FAQs with MFDA specific information as required. If MFDA dealer specific implementation questions are raised, the MFDA should also group those questions and publish its own set of FAQs to assist members and provide additional clarity and guidance.

With respect to providing regulatory clarity, we understand that there remains some confusion in the industry, specifically with respect to the know-your-product ("KYP") requirements in draft Rule 2.2.5 and the expectations on the dealer member and individual approved persons themselves, some of which may be answered by the draft amendments to MSN-0048 Know-Your-Product. An example of expectations that may still require further clarification surrounds the framework and level of diligence expected for investment products. The draft amendments to the notice suggests that less extensive formal review may be required for less complex and less risky investment products, such as "conventional mutual funds". Dealers may instead require more specific obligations to be set out with a suggested classification framework to ensure consistency among dealers and reduce the regulatory burden that would otherwise accompany this responsibility being placed on each individual member firm and approved person.

The KYP notice indicates that product due diligence can vary in part based on a dealer's business model, but many dealers have a very similar business model, and thus that factor is ambiguous and may leave interpretation of the requirements entirely up to each dealer as a very onerous task.

We appreciate that draft Rule 2.2.6 will require members and approved persons to consider a reasonable range of alternative actions available to the approved person through the member at the time a suitability determination is made, and that the MFDA is working on amendments to guidance set out under MSN-0069 regarding suitability. The MFDA may wish to consider including supplementary supporting language explaining how a consideration of alternative results will lead to a recommendation that puts clients' interests first. As CFA charterholders, we believe the process of comparing alternatives products will help an approved person avoid heuristic biases and make a more informed decision about the cost, risk and return characteristics of the products. Such an explanation may assist dealers to better understand the new requirements (for example, understanding their responsibility when choosing one global balanced fund over available alternatives).

The July 2020 consultation report issued in Ontario by the Capital Markets Modernization Taskforce asked questions relating to distribution of investment products to investors through bank owned shelf distribution channels and whether access to products from independent product manufacturers are restricted. At the time of the report, the Taskforce was recommending that closed product shelves/proprietary only shelves should not be permitted in this channel, and that independent products should have to be placed on their shelves if requested by an independent manufacturer unless the dealer has reasonably determined that a particular product is not suitable for their clients. We are of the view that the current KYP requirements should be permitted to take hold before initiating any potential rules for shelf access. We note however, that additional and more specific KYP guidance provided at this time may help pre-empt unintended consequences if in future additional rules are instead added with the purpose of narrowing the issues for dealers from a KYP perspective.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at cac@cfacanada.org on this or any other issue in future.

(Signed) *The Canadian Advocacy Council of
CFA Societies Canada*

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