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VIA EMAIL

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Re: Proposed Guidance on Know-your-client and Suitability Determination for Retail Clients (the “Proposed Guidance”)

The Canadian Advocacy Council of CFA Societies Canada¹ (the “CAC”) appreciates the opportunity to provide the following comments on the Proposed Guidance. We are supportive of IIROC’s intent to provide clarity to the industry, and particularly the recognition that not all business models are the same and thus the Proposed Guidance cannot be implemented with a “one-size-fits all” mindset. Our comments below include suggestions to explicitly list additional items that dealers should focus on when gathering the necessary KYC information to properly make a suitability determination.

We understand that the Proposed Guidance is intended to be uniform in all material respects with the amendments made to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (“NI 31-103”) to implement the Client Focused Reforms (“CFR”s). We are of the view that provisions relating to the gathering of KYC information should not be subject to any degree of ambiguity. Better KYC information leads to improved investment recommendations, which itself is likely to lead to fewer issues regarding suitability and thus enhancement of the advisor-client relationship in aggregate.

As part of the KYC information that dealers must collect, section 2.03.01 of the Proposed Guidance outlines details that should be obtained about a client’s personal circumstances. While an individual client’s date of birth and family situation are mentioned as examples, the Proposed Guidance does not specifically contain a reference to the number of dependents (other than with respect to a determination of risk capacity) and potential vulnerabilities (other than with respect to ensuring extra care is

¹ The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 19,000 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 over 173,000 CFA Charterholders worldwide in over 160 markets. CFA Institute has nine offices worldwide and there are 161 local member societies. For more information, visit www.cfainstitute.org.

taken to explain the KYC process). We believe these items should be considered “essential facts” to be obtained for each client.

Section 2.03.01 of the Proposed Guidance also references the requirement to gather information on a client’s “employment status and occupation”. While the mention is consistent with NI 31-103, it may be helpful to indicate that the description should be as specific and informative as possible. For example, simply recording “Retired” as the occupation of a client should not be sufficiently informative, and thus the former occupation should also be described. This expanded guidance would be consistent with FINTRAC recordkeeping requirements as it relates to an account holder’s business or occupation. When subject to a FINTRAC audit, the title of “consultant” is often deemed insufficient, and should be more descriptive (i.e., construction engineer consultant).²

With respect to gathering information on a client’s financial circumstances, the Proposed Guidance and NI 31-103 refer to the inclusion of information about a client’s net worth. It is noted that net worth includes the client’s assets and liabilities, some of which may be maintained outside of the dealer. It could be helpful if a definition of net financial assets was also included, in order to have more consistent application of this determination across dealers and ensure regulatory expectations are met. For example, in National Instrument 45-106 *Prospectus Exemptions*, “financial assets” are defined as (a) cash, (b) securities, or (c) a contract of insurance, a deposit or an evidence of a deposit that is not a security for the purposes of securities legislation. If a similar definition were utilized in the Proposed Guidance, dealers would consistently use the same type of assets in their net worth determinations. It may be possible to further refine such a definition to ensure that all financial assets (and not just liquid assets) are considered, and appropriately characterized and documented according to their liquidity.

The Proposed Guidance notes that dealers must gather certain essential facts about their clients to meet other regulatory obligations, including AML obligations. While not the focus of the Proposed Guidance, we believe it would be helpful for dealers to include a short reference in the footnote reminding them of other obligations to gather information during the KYC process for tax purposes, such as information needed to satisfy FATCA and CRS reporting requirements.

There are specific circumstances under which a dealer must update KYC information to ensure it is kept current and supports a suitability determination. Section 2.11.02 of the Proposed Guidance suggests that dealers must make reasonable enquiries to determine if there has been a significant change to the information, including with respect to a client’s risk profile, investment time horizon, investment needs and objectives, or any other change that could reasonably significantly impact the client’s net worth or income. We believe it would be useful for individual representatives if the illustrative list were expanded to include the full list that will be set out in Section 13.2 of NI 31-103. For example, the Proposed Guidance does not include a reference to personal circumstances or financial circumstances, a significant change which is quite likely to impact a suitability determination and should therefore demand a KYC information update. For example, if there is a new investment goal such as university tuition payments, or a new dependent, it could significantly change the client’s investment

² [Record keeping requirements for departments and agents of the Crown \(fintrac-canafe.gc.ca\)](http://www.fintrac-canafe.gc.ca)

circumstances. As another example, a health-related change could impact a vulnerable investor determination. Issues that could arise due to external events such as the pandemic (if it is a cause of significant financial losses or gains in an account because of market volatility) should also be included in the discussion as examples under which KYC information should be updated.

We understand that registered dealers cannot meet their suitability obligations without also complying with their product due diligence and KYP obligations, which are the subject of separate IIROC guidance. We wish to note that dealers would benefit from additional direction on how to meet these KYP obligations, particularly as it relates to how they are expected to monitor the entire equities and fixed income universe. While current guidance suggests looking at circumstances that impact price, we note that almost anything can impact the price of those securities. Dealers are also struggling with monitoring guaranteed products and exactly how much information and documentation is expected to be prepared to support the suitability determination. Additional guidance and examples are required for account type suitability, and the enhanced suitability requirement to consider a reasonable range of alternatives.

With respect to account type suitability, we expect some dealers may not be as familiar with this requirement, and guidance is required to help firms and their representatives establish a better understanding of regulatory expectations. As an example, for a typical buy and hold investor client with a limited need for active management, would dealers be expected to recommend an account for that client that holds managed sub-accounts, charging quarterly fees based on assets under management?

In addition, the expectations for awareness of alternative investment products, and an explanation of how a review of such products will result in having satisfied the requirement to place the clients' interest first is badly needed. Additional direction is particularly important here as the proposed updates to NI 31-103CP do not provide much information with respect to the required comparisons. As an example, if a dealing representative compared ten alternative balanced funds, and the registrant recommended the worst one from a cost perspective, would the representative be able to indicate that they've considered alternatives and are compliant with the new requirements?

The Proposed Guidance acknowledges that there may be several options a registered individual may take when recommending securities or services that can meet the criteria for a suitability determination, but that they must choose one that puts the client's interest first. Section 3.02.04 of the Proposed Guidance explicitly states that registered individuals must "consider a range of alternative recommendations or decisions available to them through the Dealer when making a suitability determination". We know similar language is also contained in the amendments to Section 13.3 of NI 31-103. However, unlike factors such as the cost of the securities, liquidity and concentration factors, we remain unclear how reviewing a reasonable range of alternative actions helps a registrant put the client's interest first if the dealer has already made a reasonable determination that the particular security or service is both suitable and puts the client's interest first ahead of their own interest and any other competing consideration.



We encourage IIROC to continue to contribute to the CSA's frequently asked questions (FAQ) publication, and to publish its own questions and answers frequently as regulatory expectations and market practices on implementing the CFRs evolve.

Concluding Remarks

We strongly support efforts to allow dealers to tailor their own policies for the CFR requirements in light of their business models and the type of services provided to their clients. We believe that the Proposed Guidance would benefit from additional specificity regarding the KYC information to be collected as it relates to the suitability determination, as it currently may have the unintended result of encouraging the gathering of client information simply as a compliance exercise.

We thank you for the opportunity to provide these comments and would be happy to address any questions you may have. 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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