

UPDATE - SECURITIES REGULATORS PUBLISH REFORMS TO ENHANCE CLIENT-REGISTRANT RELATIONSHIP

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On October 3, 2019, the Canadian Securities Administrators (the “**CSA**”) issued a Notice of Amendments (the “**Amendments**”) to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and its companion policy (together, “**NI 31-103**”).

In a notice dated April 16, 2020, the CSA extended the timeline for implementation of the Amendments as a result of the COVID-19 pandemic. The effective date for the Amendments relating to conflicts of interest is June 30, 2021. The effective date for the remaining Amendments, including the provisions relating to relationship disclosure information is December 31, 2021.

The Amendments seek to better align the interests of securities advisers, dealers and representatives (“**registrants**”) with the interests of their clients, and at their core, focus on client interests.

The following is a summary of certain of the key amendments to NI 31-103:

- **Know Your Client (“KYC”)**: The Amendments expand the list of information that a registrant must collect from a prospective client in order to meet its suitability determination obligations including with respect to: personal circumstances, investment knowledge, risk profile and investment time horizon. A registrant must review the information collected: (i) every 12 months for managed accounts; (ii) within 12 months before making a trade or trade recommendation, for an exempt market dealer registrant; or (iii) every 36 months in all other cases. Finally, a registrant must take reasonable steps to keep the client’s information current, and must update the information if the registrant becomes aware of a significant change.
- **Know Your Product (“KYP”)**: The Amendments add a new section providing for KYP obligations, which require that a registrant has sufficient knowledge of the securities it buys and sells, or recommends to its client in order to ensure the proposed trade is suitable for the client. A registered firm must take reasonable steps to ensure that any securities made available to its clients are: (i) assessed with regard to the securities’ features, structure, risks, and initial and ongoing costs; (ii) approved to be made available

to clients; and (iii) monitored for significant changes.

- **Suitability Determination:** The Amendments enhance the suitability determination obligations such that, before opening a client account or making any investment action for or recommendation to a client, a registrant must determine on a reasonable basis whether the action is suitable for the client, putting the client's interest before all else. In determining whether the action is suitable for a client, a registrant must consider the following factors: (i) KYC information; (ii) KYP obligations; (iii) the impact of the action on the client's account; (iv) the impact on the costs of the client's return on investment; and (v) available alternatives.
- A registrant must review a client's account when there is a change to a client's information, or to the securities in a client's account that may render the KYC information or KYP obligations unfulfilled.
- The KYP and suitability determination obligations provided in the Amendments do not apply to a registered dealer where directed by a registered adviser acting for the client.
- **Waivers:** The Amendments provide a new exemption from certain KYC and suitability obligations, circumstances in which certain clients have requested in writing, that the registrant not make suitability determinations for the client's account.
- **Conflicts of Interest:** The Amendments enhance the existing rules by requiring registered firms to identify existing and reasonably foreseeable conflicts of interests between a client and the firm, or any individual acting on the firm's behalf, and to address all material conflicts in the best interest of the client or avoid material conflicts that cannot be so addressed. Registered firms must disclose material conflicts prior to opening a client account, or in a timely manner if they are identified later. The conflicts of interest provisions are not applicable to public investment funds.
- **Misleading Communications:** The Amendments also add a requirement that a registrant must not hold itself out in any manner that could reasonably be expected to deceive or mislead any person or company as to the proficiency and experience of the registrant, the person's relationship with the registrant, and the products or services sold by the registrant. This includes maintaining an accurate title and designation.
- **Relationship Disclosure Information ("RDI"):** The Amendments enhance the list of information that must be delivered to a client pursuant to the registrant's RDI obligations. Among other requirements, a registrant must provide a general description of the products and services that will be offered to a client, as well as a general description of any limits on the products or services such as use of proprietary products. A registrant must also provide a general explanation of the potential impact of operating charges, transaction charges, investment fund management expense fees, and any other ongoing fees.

Taking a long-term view, the CSA remains interested in other potential reforms, including, implementation of a statutory fiduciary duty applicable to advisers exercising discretionary authority; clarification of the role of

ultimate designated persons and chief compliance officers; modification of titles and designations; and revisiting the provisions relating to publicly available information.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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