

November 8, 2016

British Columbia Securities Commission  
Alberta Securities Commission  
Financial and Consumer Affairs Authority of Saskatchewan  
The Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
Financial and Consumer Services Commission of New Brunswick  
Registrar of Securities, Prince Edward Island  
Nova Scotia Securities Commission  
Superintendent of Securities Newfoundland and Labrador  
Registrar of Securities, Northwest Territories  
Superintendent of Securities, Yukon Territory  
Registrar of Securities, Nunavut

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Dear Sirs/Mesdames:

**Re: CSA Notice and Request for Comment on Proposed Amendments to NI 31-103, 31-103CP and NI 33-109 and Related Forms**

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The Private Capital Markets Association of Canada (the “PCMA”) is pleased to provide our comments in connection with the Canadian Securities Administrators’ (“CSA”) Proposed Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (“NI 31-103”), Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Obligations* (“31-103CP”), National Instrument 33-109 *Registration Information* (“NI 33-109”) and Related Forms (“Proposed Amendments”) as set out below.

## **What is the PCMA?**

The PCMA is a not-for-profit association founded in 2002 as the national voice of exempt market dealers (“EMDs”), issuers and industry professionals in the private capital markets across Canada.

The PCMA plays a critical role in the private capital markets by:

- assisting its hundreds of dealer and issuer member firms and individual dealing representatives to understand and implement their regulatory responsibilities;
- providing high-quality and in-depth educational opportunities to private capital markets professionals;
- encouraging the highest standards of business conduct amongst its membership across Canada;
- increasing public and industry awareness of private capital markets in Canada;
- being the voice of the private capital markets to securities regulators, government agencies, other industry associations and public capital markets;
- providing valuable services and cost-saving opportunities to its member firms and individual dealing representatives; and
- connecting its members across Canada for business and professional networking.

Additional information about the PCMA is available on our website at [www.pcmacanada.com](http://www.pcmacanada.com).

## **GENERAL COMMENTS**

The PCMA is generally supportive of the Proposed Amendments and the goal to improve investor protection. We do have some questions and comments based on the various business models of our members as set out below in the four tranches as outlined in the Proposed Amendments.

## **SPECIFIC COMMENTS**

### **Custody Amendments**

#### *General Comments*

Generally, EMD client assets are registered in name of the client and the Proposed Amendments state that the custody rules would not apply in these instances. PCMA members may, in addition to their EMD registration, be registered as a portfolio manager or an investment fund manager (“IFM”) or may be exempt from registering as an IFM based on the activity of the issuer. Our comments in this section are from the perspective of EMDs registered in multiple categories or exempt from registration.

#### *Responses to Questions*

***1) We invite specific comment on whether this guidance is sufficiently clear and whether it would be helpful when negotiating contract terms with custodians for investment funds that are not subject to NI 81-102 and NI 41-101. Should there instead be prescribed key terms for custodial arrangements in NI 31-103, similar to the requirements found in NI 81-102 and NI 41-101? In particular, should there be a requirement for such custodial agreements to include a prescribed standard of care and responsibility for loss for the custodian?***

We note that mortgages that invest in real property are exempt from the proposed custody rules. We would appreciate clarification that the custody requirements and the related disclosure requirements would not apply to mortgage investment entities (“MIEs”) where the manager uses its EMD registration to distribute their securities.

If the CSA proceeds with the proposed custody requirements, it would be helpful if there are prescribed key terms for custody arrangement, including a prescribed standard of care and responsibility for loss for the custodian. This would help firms to ensure that qualified custodians agree to these terms in the contract, particularly for smaller firms that do not have the same negotiation power as larger firms.

## **Exempt Market Dealer Amendments**

### *General Comments*

We would like to refer to PCMA’s submission on March 5, 2014 regarding proposed amendments to NI 31-103, NI 33-109, NI 52-107, OSC Rule 35-502 and related forms (the “**2014 Submission**”). In the 2014 Submission, we identify the meaningful and effective way that EMDs currently participate in prospectus offerings. The 2014 Submission can be found at: [http://c.yrmdn.com/sites/www.pcmacanada.com/resource/resmgr/Comment\\_Letters/PCMA\\_-\\_CSA\\_NI\\_31-103\\_comment.pdf](http://c.yrmdn.com/sites/www.pcmacanada.com/resource/resmgr/Comment_Letters/PCMA_-_CSA_NI_31-103_comment.pdf). The 2014 Submission will help the CSA understand the PCMA’s views and rationale regarding the current role and activities of EMDs in the marketplace as some of the changes in the Proposed Amendments are similar to the changes proposed by the CSA on December 5, 2013.

### *Responses to Questions*

**2) If you are an adviser that is also registered as an exempt market dealer, are you currently using your dealer registration to distribute securities of reporting issuers, either to managed accounts or to other client accounts? If so, please indicate the types of securities (i.e., securities of investment funds or non-investment funds, whether listed or otherwise).**

PCMA members that are registered as an EMD and an adviser may distribute securities of reporting issuers to managed accounts and/or to exempt market client accounts (“**non-managed accounts**”) for those clients who meet the conditions for relying on a prospectus exemption. These securities include, and may not be limited to, prospectus and prospectus exempt investment funds and private equity funds.

**3) Will advisers use the proposed section 8.6 to distribute prospectus-qualified securities of investment funds, including mutual funds, directly? Are the conditions of this exemption appropriate? If not, why not?**

The PCMA cannot comment on the impact of this Proposed Amendment for advisers who are not also registered as an EMD. It is a customary and usual practice for firms registered as a portfolio manager, IFM and an EMD to use its EMD registration to distribute its own products, including prospectus-qualified investment funds in non-managed accounts. The dealer registration exemption in NI 31-103 section 8.6 is not available if the firm is registered as an

EMD. We would like to clarify that the proposed amendment is not meant to stop this customary and usual practice.

## **Client Relationship Model-Phase 2 Amendments**

### *General Comments*

The PCMA is supportive of improving reporting to clients. It is also aware that material changes have been made to systems to be able to meet the reporting requirements in the Client Relationship Model-Phase 2 (“CRM2”) as previously published. We ask that the CSA be mindful of the amount of money and resources that have already been spent by registrant firms on complying with CRM2 and how the Proposed Amendments that relate to CRM2 may require additional money as resources and these costs are ultimately paid by the investor through higher fees and therefore lower returns.

### *Responses to Questions*

***4) Non-cash incentives. The report does not extend to non-cash incentives that may be paid to the dealer or advisor and its representatives, such as promotions or other employment benefits, for sales of certain products. We are considering ways of making clients aware of these kinds of incentives. We invite specific comments on the potential usefulness of adding a new requirement that, where a firm or its representatives received or may receive incentives not captured by the existing provisions, the annual report must specifically list all additional sales incentives and must include prescribed text to the following effect: “In addition to the payments specified in this report, [the firm] or its representatives may also receive other sales incentives related to the securities that you have purchased through us. These incentives can influence representatives to recommend one investment over another”.***

The PCMA is not aware of any current systems that are used for client reporting that also track non-cash incentives. This Proposed Amendment would require additional money and resources on systems-build to be able to track this information. Generally, offering documents include disclosure regarding the types of compensation an issuer may provide to sellers. The PCMA does not see the benefit to clients outweighing the cost of implementing this requirement.

***5) Embedded fee disclosure. The report does not extend to the ongoing costs of owning securities with embedded fees paid to issuers, such as mutual fund management fees. We are considering ways of making clients more aware of such fees. We invite specific comment on the potential usefulness of adding a general notification in the annual report that would remind clients invested in mutual funds, or other securities with embedded fees about the following:***

- ***management fees are paid to the issuer, whether or not the dealer or advisor receives any trailing commissions or other payments tied to those fees, and***
- ***these fees may reduce the client’s investment returns.***

The PCMA notes that embedded fees are generally disclosed in the issuer’s offering documents and EMD dealing representatives also have a requirement to discuss fees associated with

investments with their clients to ensure the client understands the total costs of their investment. The Proposed Amendments would require additional money and resources to update the client reporting. Any additional text may increase the length of the report and subsequently the cost of the client reporting. The PCMA does not see the benefit to clients outweighing the cost of implementing this requirement.

## **Housekeeping Amendments**

### *General Comments*

The PCMA is generally supportive of the Proposed Amendments as they relate to the housekeeping amendments.

## **CLOSING REMARKS**

The preceding remarks express the PCMA's comments on the Consultation Paper. The PCMA would ask that the CSA move forward with prudence along a principles-based regulatory track taking into account the broad diversity of registrants and the unique and valuable role that EMDs play in the Canadian marketplace.

\* \* \* \*

We thank you for considering our submissions and we would be pleased to respond to any questions or meet with you to discuss our comments.

Yours truly,

## **COMMENT COMMITTEE MEMBERS**

*"David Gilkes"*

David Gilkes  
Vice Chair and Co-Chair of the Compliance  
Network

*"Brian Koscak"*

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## **PCMA EXECUTIVE**

*"Doug Bedard"*

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