FAIR | Canadian Foundation *for* Advancement *of* Investor Rights
Fondation canadienne *pour* l'avancement *des* droits *des* investisseurs

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Re: MDA Bulletin 0843-P Client Focused Reforms

FAIR Canada is pleased to provide comments on the proposed amendments to MFDA regulatory instruments designed to conform with the October 3, 2019, Client-Focused Reform (CFR) amendments adopted by the Canadian Securities Administrators (CSA). The CSA CFR amendments are set out in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and its related Companion Policy (NI 31-103).

FAIR Canada is a national, independent charitable organization dedicated to being a catalyst for advancing investors' rights in Canada. As a voice of the Canadian investor and financial consumer, FAIR Canada promotes its mission through outreach and education on public policy issues, policy submissions to government and regulators, and proactive identification of emerging issues and other initiatives.[1]

1. Set a High Bar

FAIR Canada has long advocated the need to introduce a best interest standard in Canada. It is unfortunate that statutory regulators, the SROs, and industry today appear content with a

[1] Visit www.faircanada.ca for more information.

standard that permits a product to be recommended merely on the basis that it is "suitable" for a client, as opposed to requiring that the recommendation be in the client's best interest. The difference is significant.

While we appreciate the Client-Focused Reforms introduce welcomed changes intended to bridge this difference, we urge those tasked with protecting investors to continue to push and challenge the industry to deliver services that serve their clients' best interests. This outcome would promote the public interest and help foster fairer and more efficient capital markets. We also call upon the industry to take a leadership role in this regard. Our capital markets would be better and stronger for it, and public confidence in them would be higher.

As noted by the MFDA, the CSA's CFR amendments only establish minimum standards. The MFDA and its members are free to (and should) set rules and adopt practices that exceed the NI 31-103 standards. In amending regulatory instruments or transforming industry practices, we urge the MFDA and its members to consider that investors place a great deal of reliance on and trust in them. As a result, the industry should strive for "best in class" solutions to the agency problem inherent in the client-registrant relationship. Concerning its rules, we encourage the MFDA to go beyond regulatory minimums established by the CSA and find ways to promote even better outcomes for investors, particularly retail investors.

Finally, we note that many of the CFR requirements are qualified by "reasonableness." For example, a representative is to make “reasonable efforts”, “take reasonable steps” or act within a “reasonable time.” We assume this qualifier is to provide flexibility to the industry in applying the CFR requirements to diverse business models and contexts.

Considering this, FAIR Canada believes it will be critically important that industry, the MFDA and statutory regulators set a high bar for what is considered "reasonable." For regulators, this will also require robust and ongoing monitoring of how the industry is implementing the new requirements in practice. It will also need timely additional guidance of regulatory expectations around problematic practices and decisive enforcement action against those that fall short. Otherwise, the CFR amendments will not achieve two of their core objectives to:

1. change conduct requirements to align the interests of securities advisers, dealers, and representatives (registrant) better with the interests of their clients, and

2. improve outcomes for clients.

As noted, the CFR amendments contain many welcomed changes that, in our view, should enhance the client-registrant relationship when fully implemented. Set out below are additional recommendations that would further improve the relationship and better serve investors, particularly retail investors.

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2. Expand the Trigger for a Suitability Determination

We believe that clients are better served by registrants who routinely monitor their clients' investments and carry out a review after a significant change occurs in market conditions, the sector, or security. This monitoring is what most retail clients expect is currently being done, so it is vital that the regulatory requirements and industry practice address any gaps in expectations.

In this regard, we note that the obligation in Rule 2.2.6(2) to carry out a suitability determination based on certain triggering events does not include significant changes in market conditions or the sector.

We believe that MFDA members should reassess suitability after market downturns to ensure the investments remain suitable. If a registrant comes to the view that it is no longer suitable, then consistent with Rule 2.2.6(2.1), he or she should be required to reach out to the client to discuss options. We do not see any reasonable justification for not requiring registrants to review suitability when there are significant changes in market conditions generally or a particular sector of the market.

To the extent that significant changes in the market or sector are trigger events requiring a suitability determination, then we would also call on the MFDA to include disclosure to this effect in account opening information provided to the client. Again, given that most retail investors assume this is currently being done, this point must also be emphasized as part of the client's discussion when opening an account.

3. Emphasize the Impact of Fees to Clients

Rule 2.2.7(1)(l) states that the registrant shall provide written disclosure to a client that, among other thing, "generally explains" how management and other on-going fees, operating charges or transaction charges will impact a client's investment returns over time.

We agree this should be disclosed in writing to the client. However, we do not believe this requirement should be satisfied simply by providing the written disclosure; it is simply too important. In our view, the issue of fees should figure prominently in any discussion with the client at the time of the account opening or investment decision.

4. Monitor KYP Obligations for Negative Outcomes

Under MFDA Rule 2.2.5, a registrant cannot purchase, sell, or recommend an investment for a client unless it has been approved by the dealer after having conducted required product due diligence. We strongly urge the MFDA to monitor the KYP processes implemented by dealers to ensure that their product shelves do not become overly restricted to proprietary

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or higher-cost products as an unintended consequence of Rule 2.2.5.

FAIR Canada thanks you for the opportunity to provide our comments and views. Please be advised that we intend to make our comments public by posting them on the FAIR Canada website. I would be pleased to discuss our comments should you have questions or require further explanation of our views on these matters. Please contact me at JP.Bureaud@FAIRCanada.ca. Thank you.

Sincerely,

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Executive Director
FAIR Canada