FINANCIAL PLANNING STANDARDS COUNCIL

Response to Proposed Amendments to National Instrument 81-105 (Mutual Fund Sales Practices and Related Consequential Amendments)

INTRODUCTION

Financial Planning Standards Council (FPSC) is pleased to comment on the Canadian Securities Administrators' (CSA) Proposed Amendments to National Instrument 81-105 – *Mutual Fund Sales Practices and Related Consequential Amendments* (the Proposed Amendments).

A professional standards-setting and certification body working in the public interest, FPSC's purpose is to drive value and instill confidence in financial planning. FPSC ensures those it certifies—CERTIFIED FINANCIAL PLANNER® professionals and FPSC Level 1® Certificants in Financial Planning—meet appropriate standards of competence and professionalism through rigorous requirements of education, examination, experience and ethics. There are approximately 19,000 financial planners in Canada who have met, and continue to meet, FPSC's standards.

GENERAL COMMENTS ON THE PROPOSED AMENDMENTS

FPSC welcomes the CSA's continued efforts to strengthen protections for consumers. As detailed in our response to the CSA's last round of consultations on this topic,[1] we fundamentally agree with several of the principles that are inherent in these proposals, including full transparency and disclosure of all fees and services, and disclosure and management of all conflicts of interest in the best interest of the client.

In reviewing the Proposed Amendments, we note that the Ontario government has stated its intent to explore alternative investor protection proposals other than the elimination of the deferred sales charge (DSC) option. We believe it is critical to the consumer interest that a coordinated, national solution be taken, and therefore encourage the CSA to work together with the relevant government(s) and other important stakeholders to explore solutions that can be supported and implemented nationally. We would be pleased to participate in any consultation process further to this.

With respect to the other proposed reform – namely, the proposal to prohibit trailing commission payments by fund organizations to dealers who do not make a suitability determination (i.e. order-execution-only dealers) – we are supportive of this proposal. We agree that investors should not be paying fees for advice they are not receiving. As the CSA notes, there are a variety of alternative fee models which can be used by these dealers which allow for increased transparency and better alignment between the costs paid and the services received.

Finally, regarding the Client Focused Reforms (including specifically the new conflict of interest requirements[2]), which the CSA intends to work in tandem with the Proposed Amendments to address its key consumer protection and market efficiency issues, FPSC has previously commented on these proposals.[3] While several

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[1] FPSC Response to CSA Consultation Paper 81-408 – *Consultation on the Option of Discontinuing Embedded Commissions*

[2] Related to these reforms, FPSC's Standards Panel recently approved amendments to the *Standards of Professional Responsibility for CFP® Professionals and FPSC Level 1 Certificants in Financial Planning.* The amendments establish new obligations for CFP professionals and FPSC Level 1 certificants that are in keeping with the CSA's reforms, including a new "Duty of Loyalty". For more information, please visit: http://fpsc.ca/docs/default-source/FPSC/standards-and-enforcement/standards-of-professional-responsibility-2018.pdf

[3] FPSC Response to CSA Notice and Request for Comment: *Proposed Amendments to National Instrument 31-103 and Companion Policy 31-103CP (Reforms to Enhance the Client-Registrant Relationship)*

modifications are still in order, as outlined in our submission, we are generally supportive of them, and we encourage the CSA to promptly move ahead toward implementation.

ISSUES RAISED IN ANNEX A

There are two issues raised in Annex A we wish to provide brief comment on:

1. *Regulatory Arbitrage*

Notwithstanding our uncertainty over whether and how this proposal will proceed, we share the CSA's concern that elimination of the DSC option could give rise to the risk of regulatory arbitrage to similar non-securities financial products. We note that this risk was also raised by several individuals who responded to our 2017 survey on the topic of embedded commissions.[4]

A level playing field between securities and non-securities financial products is important to achieving the CSA's desired outcomes. If the proposed elimination of the DSC option ultimately moves forward, it will be critical for the CSA to work together with other financial services regulators to monitor for evidence of arbitrage, and for those other regulators to take remedial action, as appropriate.

2. *Use of Plain Language Terminology*

FPSC welcomes the CSA's efforts to improve consumer understanding of fees by consulting on the use of plain language terminology to describe "trailing commissions". While we defer to other commenters as to what the most effective alternatives to "trailing commission" might look like, we encourage the CSA to engage in consumer testing in this area to ensure efficacy. We further encourage the CSA to explore other areas within the industry where plain language terminology could be adopted for the benefit of consumers.

CONCLUSION

FPSC would like to thank the CSA for the opportunity to provide comment. We look forward to the next steps in this process, including the CSA's anticipated in-person consultations. We further look forward to reviewing the Ontario government's proposals in this area and to participating in any corresponding consultation process.

[4] This survey was used to help inform our response to CSA Consultation Paper 81-408. For complete information on this survey, please see our submission: FPSC Response to CSA Consultation Paper 81-408 – *Consultation on the Option of Discontinuing Embedded Commissions*