June 7, 2018

By Email

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

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Re: IAP Response to CSA Staff Notice 61-303 and Request for Comment - Soliciting Dealer Arrangements

I am writing on behalf of the Investor Advisory Panel (IAP), an initiative by the Ontario Securities Commission (OSC) to enable investor concerns and voices to be represented in its rule and policy making process. We welcome the opportunity to respond to CSA Staff Notice 61-303 and Request for Comment – Soliciting Dealer Arrangements (“the Notice”).

Soliciting dealer arrangements are common in Canada, where bidders will often pay fees to dealers that incentivize securityholders to vote when security holder approval is required, or to tender securities connected to a merger or takeover bid. In some cases, soliciting dealer arrangements are used in contested director elections – a company will pay to incentivize dealers to advise their securityholder clients to vote in favour of management's director nominees. While the fees for soliciting dealers vary, in some cases they are contingent upon "success", meaning that they are payable only when a securityholder votes in a particular way.

As Canadian Securities Administrators (CSA) staff point out in this Notice, soliciting dealer arrangements at times may serve beneficial or necessary purposes. However, the IAP sees no circumstance in which the use of a "success fee" can be justified as necessary or beneficial for retail investors.

Success fees are offered for the sole purpose of incenting dealers and advisors to use their influence over clients in a manner intended to sway shareholder votes for the fee payer's benefit or toward the fee payer's objective. This practice gives rise to an obvious conflict of interest. Moreover, success fees, by design, shift advisors from a position of objectivity to one of partisanship, thereby degrading the value and benefit of their advice for investors.

It bears noting that rules relating to suitability do not address this problem. Suitability obligations apply only to recommendations for the purchase, sale, exchange or holding of a security.[1] Dealers and advisors are not subject to a regulatory requirement to ensure their voting recommendations are suitable for clients.

Nor can it be said that an adequate regulatory safeguard exists in the duty to advise "fairly, honestly and in good faith"[2]. That phrase, despite the breadth of its wording, has proved largely ineffective as a source of investor protection.

We do not believe conflicts of interest generated by success fees can be mitigated or managed. In particular, dealers and advisors cannot effectively advise their clients about the impact of those conflicts because success fees, by their very nature, disrupt and degrade the advisory relationship.

In the IAP's view it is imperative, in the context of soliciting dealer relationships, that success fees be banned. We urge the CSA to do so immediately.

Yours truly,

"Letty Dewar"

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Letty Dewar
Chair, Investor Advisory Panel

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[1] See section 13.3 of NI 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and IIROC Dealer Member Rule 1300.1(p) and (q).

[2] See section 2.1 of OSC Rule 31-505 *Conditions of Registration* and equivalent provisions in other provinces and territories.