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February 28, 2024

Private Capital Markets Association of Canada
Suite 5700, First Canadian Place
100 King Street West, Toronto, ON, M5X 1C7

Attention: PCMA Executive Committee

Dear Executive Committee Members,

Re: Insurance Broker Perspectives on the Proposed Amendments

You have asked us to discuss certain insurance considerations involving the proposed amendments by the Canadian Securities Administrators (the “**CSA**”) to the complaint handling provisions of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, as well as proposed changes to Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (the “**Proposed Amendments**”).

We consent to the Private Capital Markets Association of Canada including this letter as an attachment to its response letter to the Proposed Amendments.

Purves Redmond

Purves Redmond Limited (“**PRL**”) is a leading independent insurance advisory and brokerage firm, established in 1959 and headquartered in Toronto, Canada, with offices in Vancouver, Calgary, Toronto, and Montreal. PRL's national presence and global reach allow us to provide clients with exceptional service, connecting them with industry experts, insurers, and solutions while maintaining a genuine, honest, and transparent approach. PRL has extensive experience in servicing licensed professional service providers including, financial advisors, exempt market dealers, life agents, insurance brokers, lawyers, accountants and architects & engineers.

Though we have had discussions with underwriters of major insurance companies in Canada regarding the Proposed Amendments, our comments are those of our firm only.

OSC Insurance Cost Analysis

We have reviewed Annex E of the Proposed Amendments. We reproduce the relevant section, ‘*Potential Higher Insurance Costs*’, below for ease of reference (the **OSC Insurance Cost Analysis**).

“Potential Higher Insurance Costs”

Sections 12.3 to 12.5 of NI 31-103 require all firms to maintain bonding or insurance that contains certain specific clauses and coverage as outlined in Appendix A – Bonding and Insurance Clauses of NI 31-103 (Appendix A). Under Appendix A, firms must obtain insurance that contains a “fidelity clause” that insures against any loss through dishonest or fraudulent act of employees and a “forgery or



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alterations clause” that insures against any loss through forgery or alteration of any cheques, drafts, promissory notes or other written orders or directions to pay sums in money, excluding securities.

Generally, the firms more likely to be impacted by an increase to their insurance costs would be firms that have refused to follow OBSI’s recommendation or have settled complaints at an amount lower than what OBSI recommended. Between 2018 and 2022, out of 844 cases that ended with monetary compensation, 42 cases (approximately 5%) involving 24 firms settled below OBSI recommendations. We do not have the required data to estimate the potential impact on those firms’ insurance costs because of variables specific to each firm. We note, however, that large and medium sized firms accounted for approximately 86% of low settlement cases.”

Although the OSC Insurance Cost Analysis references fidelity coverage, there is no mention of errors and omission (“E&O”) insurance. Generally, E&O insurance provides defence and indemnification for ‘wrongful acts’ in providing, or failing to provide, professional services, all as defined by the policy, where the claim falls within the insuring agreement and all terms and conditions of the policy. E&O insurance would ordinarily be the applicable type of insurance that could respond to a potential claim in connection with a complaint, assuming it was covered, and not fidelity coverage.

Broad Definition of a Complaint

The Proposed Amendments define a “**complaint**” as an “*expression of dissatisfaction by a client that (a) relates to a trading or advising activity of a registered firm or a representative of the firm...*”. This broad definition of a complaint, coupled with binding decision-making powers, pose challenges to properly underwriting as an insurance risk. Insurance does not provide coverage for all expressions of dissatisfaction by a complainant. An expression of dissatisfaction by a client may not be sufficient to trigger coverage under an E&O insurance policy. Moreover, the broad definition of a complaint and the uncertainty of whether a matter is a single complaint or two or more complaints, each subject to a maximum limit of \$350,000, raises additional concerns about the ability of insurers to provide coverage, if at all. Without clarity on the insurability of matters referred to in this new binding dispute resolution process, significant uncertainty exists regarding the ability of financial advisors and dealers to secure appropriate insurance coverage.

Insurer Control Over Defence & Settlement Process

Generally, a condition of defence and/or indemnification under an E&O policy is that insurers have control of the defence and settlement process. Under the Proposed Amendments, the identified ombudservice would have the authority to issue a final and binding award to a complainant of up to \$350,000, with no right of appeal. It is unclear what, if any, role insurers could have in this new independent dispute resolution service. The shift to a binding investment ombudservice regime may remove or impede insurer management of claims. That would change the underwriting risk profile, and potentially impact not just the pricing but also the availability and/or scope of E&O coverage.

Claims Volumes

The Proposed Amendments note that this, “*will likely increase the monetary compensation paid to complainants*”. It further notes that, “*providing an identified ombudservice with the authority to make binding decisions would foreseeably improve access to fair and final monetary redress to investors at no cost to them.*”



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This increased access to monetary redress, without any cost to complainants, may result in more complaints, especially when the threshold of what constitutes a complaint is low. Higher claims volumes, defence costs and quantum of awards may impact the availability, scope and pricing of insurance coverage for registrants. Higher claims volume can result in higher insurance premiums, changes in policy coverage and the possibility of no coverage for certain insureds.

Loss Calculation Methodology for Private Market Investments

We have not seen a detailed loss calculation methodology for private market investments. We understand the Ombudsman for Banking Services and Investments has such a methodology for public market investments. Transparency about how losses would be calculated would be important underwriting information for determining insurance coverage availability and pricing.

Suggestion for a Working Group

The PCMA has asked if we would be willing to be part of an industry working group to discuss the E&O insurance implications if the Proposed Amendments are enacted. We would be pleased to assist in such matters and note that certain E&O underwriters have also expressed an interest to assist in this endeavour.

We trust these considerations regarding the potential impact on the availability, scope, and pricing of insurance assist with the assessment of, and potential feedback on the Proposed Amendments. We would be pleased to participate in a call with the PCMA and members of the CSA who wish to discuss such matters further.

Best Regards,

Rob Hanson, CFA
Eastern Region FINEX Leader