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January 25, 2021

Submitted Via Email

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Market Regulation
Ontario Securities Commission
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Toronto, Ontario M5H 3S8
marketregulation@osc.gov.on.ca

Dear Sirs and Mesdames:

Re: Client Focused Reforms – Proposed Rule Amendments

TD Waterhouse Canada Inc. (TDW) is pleased to provide comments in response to IIROC's Rules Notice 20-0238 *Client Focused Reforms – Proposed Rule Amendments for Public Comment*, dated November 19, 2020 (the Proposed Conforming Rules). We support the regulators' efforts to improve the client-registrant relationship under the Client Focused Reforms (CFRs) and appreciate IIROC's efforts to harmonize the Proposed Conforming Rules with the CFR rules of the Canadian Securities Administrators (CSA), while taking into consideration the business models of its Dealer Members.

TDW agrees with the comments on the Proposed Conforming Rules submitted by the Investment Industry Association of Canada (IIAC), in its letter dated January 22, 2020. However, we think it is important to draw particular attention to the concerns raised by that letter with respect to the following:

- Use of the term "Dealer Member" under the account appropriateness requirement in clause 3211(1)(i), and under the suitability determination requirement in clauses 3402(3)(i) and 3403(4)(i).

- Use of the term "investment portfolio" under the relationship disclosure requirement in clause 3216(5)(ii)(d)(III), and under the suitability determination requirement in clause 3402(4).

- The ongoing account suitability determination for Order Execution Only (OEO) dealers under clauses 3402(3)(i) and 3402(4)(i).

Under the Account Appropriateness and Suitability Determination requirements, the term "Dealer Member" should be removed and replaced with "account"

According to the Notice, the purpose of the changes to the account appropriateness requirement and the addition of the account suitability requirement is to improve clarity and maintain consistency with the CSA's CFR rules. However, the wording in clauses 3211(1)(i), 3402(3)(i), and 3403(4)(i), which require the Dealer Member to determine whether it is appropriate or suitable for the person to be a client of the Dealer Member, can be interpreted more broadly than the CSA's CFR rules, which require that the registrant determine that the account is suitable for the client.

The proposed wording of clauses 3211(1)(i), 3402(3)(i), and 3403(4)(i), leaves open an interpretation (which goes beyond the CSA's CFR rules) that the Dealer Member must determine that it is in the best interests of the client to be a client of the Dealer Member as opposed to a client of another firm. For firms like TDW, which operate multiple lines of business within the same entity that are distinctly branded and have distinct product and service offerings, the proposed language creates ambiguity in expectations for

determining suitability.

Accordingly, we recommend that the language in these clauses be revised in order to: (i) clarify that the appropriateness or suitability obligation relates to the account, and not the Dealer Member, and (ii) align with the account appropriateness requirement under the current draft of the Plain Language Rules, which requires a determination that the "account is appropriate for the person".

We also seek confirmation that, despite the language in 3211(1)(i), IIROC's expectations for determining account appropriateness for OEO firms is as set out in IIROC Notice 18-0076 *Guidance on Order Execution Only Services and Activities*.

Under the Relationship Disclosure and Suitability Determination requirements, the term "investment portfolio" should be amended to include a reference to the client's account

Use of the term "investment portfolio" under the relationship disclosure requirement in clause 3216(5)(ii)(d)(III), and under the suitability determination requirement in clause 3402(4), could be interpreted as requiring Dealer Members to take into consideration the client's investments across all their accounts at the firm. This could be read as including: (i) holdings in a related OEO channel, where the advisory channel and the OEO channel are within the same Dealer Member; and (ii) accounts in more than one line of business within a Dealer Member, which are distinctly branded, have distinct product and service offerings and are operated independently.

Use of the term "investment portfolio" potentially extends Dealer Members' suitability obligation beyond the CSA's CFR rules which require an "account level" suitability determination and, under the Companion Policy guidance, which includes an expectation of multiple account suitability for purposes of concentration and liquidity. For clarity and alignment to the CSA's CFR rules, we recommend that the language in clauses 3216(5)(ii)(d)(III) and 3402(4) be amended to make reference to the account, specifically the "investment portfolio *within the client's account*".

While the requirement for 3402(4) should clarify it is an account level suitability determination, we believe the current flexibility provided to Dealer Members to choose to conduct suitability determinations on a multiple account basis with a client's agreement should be maintained as outlined in Guidance Note 12-0109. Maintaining this flexibility is particularly important for clients that expect their advisors to look across accounts where those accounts have been "householded".

In its Notice, IIROC notes that it is working on guidance that will provide further clarity on the enhanced know-your-client and suitability requirements. The CSA guidance on these requirements was published December 18, 2020 in the form of responses to Frequently Asked Questions. It is critical that the IIROC guidance align with the CFR Implementation Committee response to question 44 of the December 18 guidance. In particular, it is important that: (i) an assessment of suitability for an advisory account would not have to take into account, for concentration and liquidity purposes, holdings in a related OEO channel, and (ii) it is acknowledged that it may be appropriate for a registered firm to use professional judgement in order to make a decision at the registered firm level that concentration and liquidity do not have to be assessed across client accounts in its different operating divisions.

OEO dealers should be exempt from the ongoing account suitability determination for OEO dealers

As indicated in the Notice, Dealer Members have a number of unique account types, client types and service arrangements, and the exemptions under the Proposed Conforming Rules are intended to "provide exemptions to Dealers from certain core regulatory obligations to reflect these unique circumstances." While the unique circumstances of OEO dealers are reflected in several of the exemptions under the Proposed Conforming Rules, the unique circumstances of OEO dealers should be reflected by extending an exemption from the entirety of the ongoing account suitability requirements in clauses 3402(3)(i) and 3403(4)(i).

An exemption from account suitability requirements is entirely consistent with a dealer's responsibility for an account appropriateness determination. As stated in IIROC Guidance Note 18-0076 *Guidance on Order Execution Only Services and Activities*, IIROC's regulatory requirements are designed to ensure that an OEO firm's clients make their own investment decisions, without receiving any recommendations or

suitability assessment from the OEO firm. IIROC's Notice states that "the exemptions available for account suitability obligation track the account appropriateness requirement." However, it should be noted that a suitability determination is distinct from an account appropriateness determination. A suitability determination is based on the know-your-client information collected under clauses 3202(1)(iii) and 3209(4), from which OEO dealers are exempt. By contrast, an OEO dealer's account appropriateness determination (as set in IIROC Notice 18-0076) involves only the dealer being mindful of "red flags" (such as, for example, a person having difficulty completing the OEO account forms online or seeking advice). Given the purpose of OEO accounts, and the client's preferences, it would not be appropriate for OEO dealers to conduct suitability determinations beyond the account appropriateness requirement which is conducted prior to account opening.

A timely response on IIROC's position regarding these and other proposed changes to the requirements is critical, as businesses require sufficient time to respond with appropriate operational, technology and process changes to support implementation within the prescribed timelines.

Thank you for the opportunity to provide our views and recommendations regarding the Proposed Conforming Rules. Should you require any further information please do not hesitate to contact us.

Sincerely,

Leo Salom,
Group Head, Wealth Management
and TD Insurance