knowledgefirst FINANCIAL
LA PREMIÈRE financièredusavoir

January 6, 2016

VIA EMAIL: Harvey.naglie@ontario.ca

The Cooperative Capital Markets Regulatory System
c/o The Governments of:
British Columbia;
Saskatchewan;
Ontario;
New Brunswick;
Prince Edward Island; and
Canada

Dear Sirs/Mesdames:

Comments on Revised Consultation Draft of the proposed Capital Markets Act and CMRA Regulations

Knowledge First Financial Inc. ("Knowledge First" or "We") is a nationally registered Scholarship Plan Dealer and wholly-owned subsidiary of the Knowledge First Foundation. Knowledge First has been providing peace of mind education savings solutions to Canadians for over 50 years and currently administers over $3.5 billion in education savings for over 287,000 customers, through a national network of over 350 registered Sales Representatives.

Knowledge First appreciates the opportunity to comment on the revised consultation draft of the proposed Capital Markets Act ("CMA") and proposed regulations, dated August 25, 2015, as well as the black-lined version of the CMA published October 20, 2015, which collectively are designed to be administered by the Capital Markets Regulatory Authority ("CMRA"). We have not commented previous drafts of the CMA but in preparing our comments, have reviewed the summary of comments received and ministerial responses on prior drafts and well as other comment letters.

We also recognize that our comments are being submitted past the requested comment date of December 23, 2015 and appreciate the opportunity to nevertheless provide our comments on this important regulatory initiative. Given the significant amount of material published for comment since

Knowledge First Financial Inc. / La Première financière du savoir inc.
50 Burnhamthorpe Rd. W., Suite 1000, Mississauga, Ontario L5B 4A5
Service: 1 800 363-7377 • Fax: 1 800 668-5007 • E-mail: contact@kff.ca • Head Office/Siège social: 1 866 701-7001
www.knowledgefirstfinancial.ca/www.premierefinancieredusavoir.ca

August 2015, we have limited our comments to the CMA itself and certain of the proposed regulations that are specific to us a Scholarship Plan Dealer. We will continue to review the materials in detail in look forward to further opportunities to provide comment on these and future published materials.

Overall Comments

We support the overall goals of the CMA of updating and modernizing current provincial and territorial securities legislation, retaining key components while introducing new elements to promote flexibility within a robust regulatory framework.

However, we do have some concerns with the revised CMA, relating to the extent of powers it grants the CRMA and the Chief Regulator in administering the legislation as well as comments on the proposed regulations.

While Scholarship Plan Dealers only comprise a small portion of the capital markets activity in Canada, we represent a significant portion of the education savings activity. The six registered Scholarship Plan Dealers in Canada administer approximately $13 billion in customer assets and an estimated 1 million Canadian household customers. Knowledge First itself, founded in 1965, currently administers over $3.5 billion in customer assets, representing over 287,000 household customers and over 428,000 student beneficiaries. Our Scholarship Plans have paid out in excess of $3 billion to the benefit of post-secondary students and each year, over 25,000 students attend post-secondary education with the benefit of our Plans.

Further, education savings and particularly the registered educating savings plan ("RESP") industry, has grown significantly since the launch of the Canada Education Savings Grant in 1998, with total RESP assets approaching $45 billion and having grown at an annual compound growth rate of 16.2%. Knowledge First's assets have mirrored this growth rate and today, we account for $1 of every $16 in RESP contributions.

As an industry, Scholarship Plan Dealers have worked closely with the Ontario Securities Commission ("OSC") and other Canadian Securities Administrators ("CSA") member jurisdictions in recent years to continuously harmonize and streamline our prospectus and plan summaries. Recent undertakings received from the CSA now allow Knowledge First and other Scholarship Plan Dealers to invest certain assets of our Plans into equity securities as a further effort to update the original National Policy #15

Knowledge First Financial Inc. / La Première financière du savoir inc.
50 Burnhamthorpe Rd. W., Suite 1000, Mississauga, Ontario L5B 4A5
Service: 1 800 363-7377 • Fax: 1 800 668-5007 • E-mail: contact@kff.ca • Head Office/Siège social: 1 866 701-7001
www.knowledgefirstfinancial.ca/www.premierefinancieredusavoir.ca

("NP15"). All of this is to say that we hope that the CRMA will continue to recognize the importance of Scholarship Plan Dealers in the continued development of the CMA and related regulations. We urge you to contact us to discuss our comments or any other questions you may have on our business or the scholarship plan industry in general.

Specific Comments

Capital Markets Act

Please note that all section references are derived from the black-lined version of the CAM published October 20, 2015, illustrating changes made from the initial version of the CMA first published in 2014.

1. **Definitions of "professional company" and "PC representatives"**

   We acknowledge and support the inclusion of these definitions in the proposed CMA as the first step towards allowing registered Dealing Representatives to incorporate and potentially receive sales commissions and other forms of compensation in a corporation that the Dealing Representative would control. We believe that there is a unique difference between the activities of Dealing Representatives, which are properly regulated by provincial and territorial securities legislation and related national instruments, rules, and national and local policies, and the receipt of compensation for such activities. To us, this difference has always allowed a Dealing Representative to receive sales commissions and other forms of compensation in a corporation, without this specific activity automatically triggering the need for the corporation to be registered itself under securities legislation. We recognize past arguments of certain stakeholders claiming Dealing Representatives who receive commission and compensation in a corporation would somehow be able to "hide behind" the veil of the corporation, insulating and protecting them' from regulatory and legal liability. We discount these arguments however, on the basis that the individual Dealing Representative continues to remain accountable to securities regulators by virtue of their status as individual registrants. Further, by requiring the Dealing Representative to both control the corporation's ownership and serve as director to the corporation, regulators or other parties seeking redress from a Dealing Representative will be able to "look through" the corporation in obtaining such redress.

Knowledge First Financial Inc. / La Première financière du savoir inc.
50 Burnhamthorpe Rd. W., Suite 1000, Mississauga, Ontario L5B 4A5
Service: 1 800 363-7377 • Fax: 1 800 668-5007 • E-mail: contact@kff.ca • Head Office/Siège social: 1 866 701-7001
www.knowledgefirstfinancial.ca/www.premierefinancieredusavoir.ca

We also note that the Mutual Fund Dealers Association ("MFDA"), after much review and member consultation, has allowed its Approved Persons, who are Dealing Representatives, to direct payments in respect of business conducted by an Approved Person on behalf of the Member to an unregistered corporation, subject to conditions, for over five years now.

The importance of this proposal cannot be overstated. Many other professions already allow their members to direct compensation and business payments to professional corporations and have done so for many years. For Dealing Representatives, the primary benefits of receiving compensation and business payments to a corporation are the ability to structure and manage the income tax affairs of the Dealing Representative's business in a more efficient and effective manner and to reduce the costs and efficiencies of operating a successful financial services business by utilizing a corporation to receive revenues, incur expenses, contract on behalf of and generally separate the administrative actions and burdens of the business from the professional services provided by its Dealing Representative shareholder(s)/director(s).

This is especially important when considering other financial services professionals in Canada, such as Life Insurance Agents are and have been able to for many years, direct compensation and business payments to corporations. The importance of maintaining a level playing field in this regard is essential to ensure the long-term competitiveness of the securities distribution industry, especially as life insurance and other financial services products continue to be regulated outside of the securities regulatory framework.

We recognize that the definitions are only a starting point for developing the regulatory framework to implement this concept, including the related regulations that will be required. In that regard, we note paragraph 2 of section 202 of the proposed CMA requires a 'Council of Ministers' (as defined in the CMA) to request that regulations be drafted for this concept. However, we question the need for this given the extent to which this issue has already been studied (for over 20 years now) and the fact that the CSA has already allowed the MFDA to allow its Approved Persons to direct payments in respect of business conducted to an unregistered corporation for over five years now.

We welcome the opportunity to discuss this important issue with you further as you continue to develop a framework for its implementation.

Knowledge First Financial Inc. / La Première financière du savoir inc.
50 Burnhamthorpe Rd. W., Suite 1000, Mississauga, Ontario L5B 4A5
Service: 1 800 363-7377 • Fax: 1 800 668-5007 • E-mail: contact@kff.ca • Head Office/Siège social: 1 866 701-7001
www.knowledgefirstfinancial.ca/www.premierefinancieredusavoir.ca

2. **Section 55 – Duty to Client**

We are concerned that "other such standards as may be prescribed", the addition made to this section in the black-lined version of October 20, 2015, provides the CRMA with the ability to impose fiduciary duty or best interest standard requirement to registrants without having a separate, specific requirement for this in the legislation. We note that the CSA has been considering the concept of fiduciary duty or best interest standard for some time and most recently announced it was conducting further study after receiving numerous comments on the subject. We also note that other capital markets regulators, including the Securities & Exchange Commission in the United States, have not yet finalized their position on this important issue.

On that basis, we encourage the CRMA to remove the phrase "other such standards as may be prescribed" from the proposed CMA and instead continue to work with registrants, regulators and other stakeholders to resolve the issue of whether a fiduciary duty or best interest standard is right for the Canadian securities industry.

3. **Section 70 – Unfair Practice**

We are concerned that this section sets out prohibited actions based on broad, general statements that describe sales practices conduct, which may be difficult to define or defend against. Such actions as "putting unreasonable pressure on another person" or "taking advantage of another person who is unable...to reasonably protect his or her own interest because of...ignorance...or other inability to understand the character, nature or language of any matter..." sound reasonable upon first glance but we believe are potentially problematic to define and administer. This is especially true when considered in combination with the standard of section 55 of the proposed CMA to act fairly, honestly and in good faith.

We recognize the need to specify the type of acceptable sales practices and sales conduct that a registrant should engage in. However, we would suggest that standards for such practices and conduct be instead drafted outside of the CMA and regulation, in a rule or policy that can include examples and further guidance on interpreting and understanding the standards. This will allow the standards to be developed, implemented and most importantly maintained outside of the framework for amending the actual legislation. Such standards and related guidance can then be updated as often as necessary, with the input of all stakeholders.

Knowledge First Financial Inc. / La Première financière du savoir inc.
50 Burnhamthorpe Rd. W., Suite 1000, Mississauga, Ontario L5B 4A5
Service: 1 800 363-7377 • Fax: 1 800 668-5007 • E-mail: contact@kff.ca • Head Office/Siège social: 1 866 701-7001
www.knowledgefirstfinancial.ca/www.premierefinancieredusavoir.ca

4. **Section 77 – No Reprisal by Employer**

We support the provisions of this section in protecting employees provide or propose to provide information to the employer, securities regulator or self-regulatory agency that the employer reasonably believes is contrary to capital markets law. However, given that the OSC is currently receiving comments on its proposed whistleblower policy that includes similar provisions, we encourage the CRMA to review the results of the commentary process on that policy before finalizing this section.

5. **Section 88(1) - Cease Trade Order – non-compliance (securities)**

We are concerned with the ability of the Chief Regulator to issue a cease trade order ("CTO") without an opportunity to be heard for the act of failing to file a required record or filing a record that is not complete. While we recognize the need for the Chief Regulator to enforce the filing requirements of legislation, we believe this section grants the Chief Regulator sweeping and broad powers that can be used in any instance of late or improper filing including such filings resulting from an inadvertent, administrative oversight.

We instead suggest that the right to be heard or at least to make representations before the Chief Regulator be included in this section to allow filers to provide reasons for late or improper filings, before deciding on whether or not to issue a CTO.

6. **Part 11 – Administration and Enforcement**

We have concerns with a number of sections in this part that all relate, in one form or another, to the broad and sweeping powers granted to the Chief Regulator and staff. While we appreciate the need for the Chief Regulator to have powers to act promptly and decisively to protect investors and the capital markets in general, we believe certain sections in this part could result in situations where regulatory staff may be exercising powers beyond what is required or potentially what they are trained to do.

Knowledge First Financial Inc. / La Première financière du savoir inc.
50 Burnhamthorpe Rd. W., Suite 1000, Mississauga, Ontario L5B 4A5
Service: 1 800 363-7377 • Fax: 1 800 668-5007 • E-mail: contact@kff.ca • Head Office/Siège social: 1 866 701-7001
www.knowledgefirstfinancial.ca/www.premierefinancieredusavoir.ca

We understand that other commenters have raised similar issues and thus encourage the CRMA to review the sections in this part carefully to ensure the right balance is achieved between enforceability of the legislation and protection of rights and liberties of market participants.

Some of the specific concerns we have are set out below:

a. **Section 105** – the requirement for the owner or person in charge of a business place or dwelling-house and every person who is in the place, must give all assistance that is reasonably required to enable the designated reviewer or authorized person to complete his or her review or investigation. We are concerned that this requirement infringes on the rights of individuals who may not have anything to do with the matter under review or investigation and are not otherwise subject to securities legislation. This is of particular significance in the case of a designated reviewer who may not be conducting an enforcement activity that would require such a high degree of third party cooperation. We would instead suggest that if the designated reviewer or authorized investigator is having difficulty in obtaining cooperation for their activity, they should instead seek a warrant issued by a judge that would give enforceable powers that would be specific to and issued under independent authority.

b. **Section 108** – the ability of a designated reviewer or authorized investigator to enter on and pass through private property to gain entry to a business place or dwelling-house, without liability and without a warrant (unless a dwelling-house).

   With respect to passing through private property, we are concerned that individuals, businesses or corporations, who may have nothing to do with the matter at hand, are required to cede to a reviewer or investigator without recourse of liability for such actions. "Pass through private property" could mean anything; any means and without regard to the property itself or its users. We note that in the case of a dwelling-house, a warrant is required for such an action. To protect the rights of individuals who may not be subject to the CMA, we strongly encourage the requirement for a warrant for accessing a business place as well. Further, we suggest that only a judge and not a justice be allowed to issue such warrants to ensure the warrant is issued under the highest possible standard.

Knowledge First Financial Inc. / La Première financière du savoir inc.
50 Burnhamthorpe Rd. W., Suite 1000, Mississauga, Ontario L5B 4A5
Service: 1 800 363-7377 • Fax: 1 800 668-5007 • E-mail: contact@kff.ca • Head Office/Siège social: 1 866 701-7001
www.knowledgefirstfinancial.ca/www.premierefinancieredusavoir.ca

c. **Section 109** – the ability of a designated reviewer or authorized investigator to use as much force as is reasonably necessary to enter a business place or dwelling-house when executing a warrant issued under section 107. We are concerned that such a power may not be required in the actions of a designated reviewer, who, in comparison to an authorized investigator, may not be conducting enforcement activity or such activity commensurate with the need to use such force. We are also concerned with the lack of clarity for applying the standard in a situation, for example, when a reviewer or investigator arrives at a business place or dwelling-house and no one answers immediately answers the door. In addition for clarity, we would seek reassurance that such reviewers and investigators will be trained in both the very limited situations (in our view) when such force would be required and the types of force that could be applied.

d. **Section 113(1)** – the ability of employees or agents of a person (other than an individual) to be found guilty of an offence and upon conviction, be held liable to the penalties provided for the offence, whether or not the person has been prosecuted or convicted. We are concerned with extending liability to employees or agents who may not have had anything to do with the offence or for reasons they could not control, "permitted or acquiesced in the commission of the offence". We understand that employees and agents may be involved in the commission of serious offences. However, very often it is either under the direction of or at least with the complicity of more senior individuals, such as officers and directors. We believe these powers are too broad and far-reaching without some form of specific protection afforded to employees or agents who either attempt to report such matters or were otherwise too afraid or intimidated by their environment to report such matters.

7. **Section 141 – Rescission of Purchase – scholarship plan**

As one of six registered Scholarship Plan Dealers in Canada, we are very mindful of this section and concerned with how it is drafted from two perspectives. First, the requirement under 141(2) to refund to the purchaser or subscriber all amounts received in the event of purchase rescission or subscription termination. Second, the continued 60-day period under 141(3) for refundability of sales charges and fees or purchase rescission or subscription termination.

Knowledge First Financial Inc. / La Première financière du savoir inc.
50 Burnhamthorpe Rd. W., Suite 1000, Mississauga, Ontario L5B 4A5
Service: 1 800 363-7377 • Fax: 1 800 668-5007 • E-mail: contact@kff.ca • Head Office/Siège social: 1 866 701-7001
www.knowledgefirstfinancial.ca/www.premierefinancieredusavoir.ca

For the refund of all amounts under 141(2), we are concerned with the ability to honor this given that in certain cases, amounts received from subscribers may be invested in equity markets prior to rescission or termination, leading to a situation where the amount returned at rescission or termination may be less that what was received. Alternatively, if we choose to not invest amounts received from a purchaser or subscriber into the equity markets, we would potentially disadvantage that person by not exposing their amounts to potential market gains. We would instead suggest that that purchasers or subscribers be entitled to receive a return on rescission or termination of the amounts provided, which are valued at market rates at the time rescission or termination.

For the 60-day period for refunding of sales charges and fees in connection with a rescission or termination, we note that this period was established many years ago and is no longer consistent with other securities. Further, since its creation, the CSA has made tremendous strides in streamlining, harmonizing and clarifying the scholarship plan prospectus, plan summary and disclosure regime, providing subscribers with clear and concise information on the nature of their plan. This eliminates the need for a lengthy 60-day period. We encourage you to shorten this period to something more consistent with other securities.

8. **Exclusions from the CMA**

We note that in the draft regulations, the CRMA is not proposing to carry forward under the CMA the requirements of NP15. If this decision is the first step towards modernizing the elements of NP15, we fully support this initiative. However, we did not note any proposed legislation or regulation addressing this.

Presently Knowledge First and other Scholarship Plan Dealers are bound by the requirements of NP15, in particular in respect to the types of investments we can hold in our Plans. In 2013 and 2015, we received permission by way of an undertaking to start investing certain of our Plan assets into equity securities. This represented a significant modernization to the investment restrictions of NP15 and is an essential element of our business going forward. We did not see where these undertakings would be carried forward under the CMA or its regulations. Nor did we see any sections addressing Plan investments in general.

Knowledge First Financial Inc. / La Première financière du savoir inc.
50 Burnhamthorpe Rd. W., Suite 1000, Mississauga, Ontario L5B 4A5
Service: 1 800 363-7377 • Fax: 1 800 668-5007 • E-mail: contact@kff.ca • Head Office/Siège social: 1 866 701-7001
www.knowledgefirstfinancial.ca/www.premierefinancieredusavoir.ca

knowledgefirst FINANCIAL
LA PREMIÈRE financièredusavoir

We urge you to take the opportunity to replace NP15 with more current elements for our Plan investments, including the ability to continue to invest our Plan assets in equity securities.

As this point is unique to Knowledge First and other Scholarship Plan Dealers, we would be pleased to consult with you in developing this guidance.

We thank you once again for this opportunity to comment on these important proposals and welcome any questions you may have on our comments.

Sincerely,
KNOWLEDGE FIRST FINANCIAL INC.

Darrell Bartlett, CPA, CA, CIA
Chief Compliance Officer

cc: R. George Hopkinson
President & Chief Executive Officer

Knowledge First Financial Inc. / La Première financière du savoir inc.
50 Burnhamthorpe Rd. W., Suite 1000, Mississauga, Ontario L5B 4A5
Service: 1 800 363-7377 • Fax: 1 800 668-5007 • E-mail: contact@kff.ca • Head Office/Siège social: 1 866 701-7001
www.knowledgefirstfinancial.ca/www.premierefinancieredusavoir.ca