September 30, 2016

BY EMAIL

Alberta Securities Commission
Autorité des marché financiers
British Columbia Securities Commission
The Manitoba Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission
Ontario Securities Commission
Financial and Consumers Affairs Authority of Saskatchewan

Robert Blair, (Acting) Secretary
Ontario Securities Commission
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– and –

Me Anne-Marie Beaudoin, secrétaire général
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Dear Sirs/Mesdames:

Re: Canadian Securities Administrators Consultation Paper 33-404 *Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives toward their Clients* – April 28, 2016 (the "Consultation Paper")

The Canadian Advocacy Council[1] for Canadian CFA Institute[2] Societies (the **CAC**) appreciates the opportunity to provide the following general comments on the Consultation Paper and respond to the specific questions referenced below.

As we have previously stated in comment letters, **we generally believe it is important that registrants providing advice to clients abide by a best interest standard and thus strongly support the introduction of the proposed regulatory best interest standard**. As CFA charterholders, we have agreed to uphold our Code of Ethics and Standards of Professional Conduct[3], which requires us to put the interests of our clients ahead of our own. We are also supportive of many of the proposed amendments to National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing*

[1] The CAC represents more than 15,000 Canadian members of the CFA Institute and its 12 Member Societies across Canada. The CAC membership includes portfolio managers, analysts and other investment professionals in Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. See the CAC's website at http://www.cfasociety.org/cac.

[2] CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behavior in investment markets and a respected source of knowledge in the global financial community. The end goal: to create an environment where investors' interests come first, markets function at their best, and economies grow. CFA Institute has more than 135,000 members in 151 countries and territories, including 128,000 CFA charterholders, and 145 member societies. For more information, visit www.cfainstitute.org.

[3] Our Code of Ethics and Standards of Professional Conduct can be found at http://www.cfainstitute.org/ethics/codes/ethics/Pages/index.aspx.

Registrant Obligations that are aimed at clarifying and heightening the obligations of advisers and dealers to their clients.

The CFA Institute and its members have written extensively with respect to the topic of a standard of care. One such article contended that among other benefits, a uniform fiduciary standard of care could serve to enhance investor protection, reduce or eliminate the bias against smaller investors, strengthen existing business models, and provide a net welfare gain to society.[4]

Some of the potential negative implications of a best interest standard, highlighted by those against such a standard (such as the potential widening of the client/advisor expectation gap), are attributable to a number of factors unrelated to the proposed best interest standard itself. These include low market returns, changing client expectations, and Client Relationship Model Phase Two ("CRM2") requirements. Our view is that these issues will continue to impact the industry if Canadian regulators do not proceed with a best interest standard, which would provide a consistent and overarching standard for registrant conduct. This would be particularly true as it relates to the activities of categories of registration that have consistently been the subject of regulatory scrutiny. However, in order for the best interest standard to be most effective, it is important that it be harmonized across all of Canada's securities regulators.

Our position on some of the questions below may differ slightly from one response to another in situations where the advisor is responsible for a client's entire investment portfolio with an ongoing advisory relationship, as compared to where an advisor is responsible for only a portion of the investment portfolio, or where the advisor has only a transactional relationship.

Conflicts of Interest – General obligation

1. *Is [this] general approach to regulating how registrants should respond to conflicts optimal? If not, what alternative approach would you recommend?*

   Yes, the general approach to regulating how registrants should respond to conflicts is optimal. It is important to put investors first and adequate disclosure of conflicts is important to a proper conflict of interest management policy. The best practice is to avoid actual conflicts and the appearance of conflicts of interest, whenever possible.

   An effective regulatory approach would consider fully the balance between providing too much information, which could confuse a client, and providing sufficient information to be specific and clear with respect to the nature and source of the conflict.

   When a registrant discloses conflicts of interest, the registrant must remain unbiased and put the interests of the investor first. If the registrant cannot do so, s/he should refrain from advising the investor and instead recommend that the investor obtain independent advice.

2. *Is the requirement to respond to conflicts "in a manner that prioritizes the interest of the client ahead of the interests of the firm and/or representative" clear enough to provide a meaningful code of conduct? If not, how could the requirement be clarified?*

   The requirement in its current form is as clear as it can be but grey zones requiring professional judgment will undoubtedly remain. Where multiple courses of action could be taken, each of which would put the interest of the client ahead of the interest of the firm, the one that maximizes the interest of the client should be selected. Providing information to the client that supports or justifies decisions may be helpful but should not confuse or otherwise undermine

[4] McMillan, Michael, CFA Institute, "Five Reasons for a Uniform Fiduciary Standard", 23 August 2012.

the client's comprehension of the advisor's recommendation. Disclosure, similar to advice, may have to be tailored to the individual circumstances for ease of comprehension.

3. *Will this requirement present any particular challenges for specific registration categories or business models?*

   While this requirement may present challenges for certain registration categories, as noted above, the priority should be to put the interest of investors first. We note that we expect the challenges to present themselves most obviously for business models of a transactional nature, where it will be particularly important to have clear and plain disclosure where some inherent conflicts may not be entirely avoidable. In situations where a business model or practice requires a difficult conversation so as to clarify how a client's interests are being placed first, we would consider this a positive outcome of enacting the standard.

Know Your Client

4. *Do all registrants currently have the proficiency to understand their client's basic tax position? Would requiring collection of this information raise any issues or challenges for registrants or clients?*

   As a general rule, registrants dealing with taxable investors should have the ability to understand their client's basic tax position and the impact of taxes on a recommended investment strategy or a product's expected rate of return. For example, it is important to understand a private client's tax bracket in order to determine if the client can benefit from certain flow through products or if it is more appropriate to recommend a deposit in a registered plan. As part of the know-your-product rules, it would be important for the registrant to understand the type of cash flows that will be generated by the investment product (e.g. income vs. capital gains) and their respective tax treatments. It would be helpful for the CSA to provide clear guidance on the term "basic tax position" so that all registrants more clearly understand the type of information that should be collected across different client situations and types of registrant-client relationships. In cases where products and/or strategies are substantially affected by tax considerations (e.g. flow through shares), a presumably higher standard of tax knowledge is required to ensure clients meet their investment objectives and that the product is being recommended and sold appropriately.

   Specific tax advice, however, should be left to tax professionals, as every client will be in a different tax position, which can change frequently.

5. *Should the CSA also codify the specific form of the document, or new account application form, that is used to collect the prescribed KYC content?*

   A principles based approach to the form of this document is preferred to a prescribed format, though a sample or template likely would establish best practices and a content threshold. Such a template would assist in setting out minimum regulatory expectations and ensuring that guidance is not misinterpreted. The template could also be updated over time to reflect changing expectations and in response to future regulatory change.

6. *Should the KYC form also be signed by the representative's supervisor?*

   We are unclear with respect to the purpose of obtaining a supervisor's signature on the KYC form, and whether the signature would simply acknowledge receipt or imply a secondary check and/or approval of the information collected on the form on the part of the supervisor. The former would not add any investor protection measures, but the latter would be duplicative,

likely lack substance in practice, and be a step away from technological advances that are supplanting the need for signatures in the client onboarding process. The KYC form should only be signed by the client and the representative, not the representative's supervisor. It may not be reasonable to expect that a supervisor with less familiarity with the client and without the benefit of participating in client meetings and discussions would be able to assess the KYC form's content and propriety. Requiring a third party to sign the form may also undermine the client's trust and have the unintended consequence of reducing accountability for the document, which ultimately must rest with representative.

Know Your Product – Representative

7. *Is this general approach to regulating how representatives should meet their KYP obligation optimal? If not, what alternative approach would you recommend?*

   It is important in most cases for representatives to review third party materials on a product, and not rely solely on marketing materials prepared by the manufacturer of the product.

   In order to avoid KYP challenges, the continuing education of representatives should be a continued priority for regulators. One issue with respect to continuing education relates to the lack of cohesion between the regulatory continuing education requirements and various professional continuing education requirements, which should be specifically addressed and harmonized.

Know Your Product – Firm

8. *The intended outcome of the requirement for mixed/non-proprietary firms to engage in a market investigation and product comparison is to ensure the range of products offered by firms that present themselves as offering more than proprietary products is representative of a broad range of products suitable for their client base. Do you agree or disagree with this intended outcome? Please provide an explanation.*

   We have some concerns about the pragmatism of the requirement for any firm to engage in a widespread market investigation and product comparison. For example, there is a vast array of mutual funds offered in Canada, and the implication that unless a representative (or their firm) considered all such available products in existence that they would not be able to conclude their product is in a client's best interest is not practical. This is particularly true of products affected by survivorship bias and which may include strategies that are only "trendy" in the marketplace for short periods of time. KYP investigations and decision-making should ideally be based on a set of pre-determined criteria by which products can be evaluated, rather than relying on the product universe itself to set the criteria.

   To the extent a market comparison would be required, we disagree with the intended outcome to the extent that it places additional requirements on mixed/non-proprietary firms relative to their proprietary firm competitors. In advantaging firms with proprietary products over those with mixed/non-proprietary offerings (by not requiring what could be a costly and time-consuming market investigation/product comparison process) it may have the unintended consequence of encouraging some of today's mixed/non-proprietary firms to become proprietary-only, and create their own shelf of products which may be sub-optimal relative to their existing products, further congesting the marketplace, delivering potentially poorer results to investors at a higher cost, and adding to client confusion.

9. *Do you think that requiring mixed/non-proprietary firms to select the products they offer in the manner described will contributed to this outcome? If not, why not?*

   It is implicit in reasonable portfolio management advice that the available universe of investment products offered by a firm to their clients is representative of the market. Firms with proprietary products should be held to a similar standard to the extent that their manufactured product compares unfavorably to other products in the marketplace on any reasonable basis.

10. *Are there other policy approaches that might better achieve this outcome?*

    Drawing a distinction between proprietary and non-proprietary offerings may be less effective than simply expecting all firms to compare their own products to the existing product universe otherwise available in the marketplace. Enhancing disclosure regarding available comparable products and a client's options in the marketplace may suffice to inform the client of the merits or considerations of a particular product relative to the available alternatives.

11. *Will this requirement raise challenges for firms in general or for specific registration categories or business models? If so, please describe the challenges.*

    This requirement will raise challenges for firms that cover a niche segment of the market who will likely need to extensively change their practices under the proposed requirement. As an alternative, a third firm category could exist for proprietary offerings that are product-specific or target areas of the broader investment product universe that are lightly populated by available and truly comparable alternative products. Availability of information on comparable investment products should also not be taken for granted, especially in those product areas where public disclosure is limited such as in the exempt market product universe.

12. *Will this requirement cause any unintended consequences? For example, could this requirement result in firms offering fewer products? Could it result in firms offering more products?*

    Please see response to Question 8.

13. *Could these requirements create incentives for firms to stop offering non-proprietary products so that they can fit the definition of proprietary firm?*

    The proposed requirements may benefit firms that offer only a proprietary set of products by potentially absolving them of some of the responsibilities that a firm offering a mixed/non-proprietary set of products might face in recommending products that it does not manufacture. Negative consequences could result from the proposed requirements because these proprietary products may be inferior to alternative and comparable products that already exist in the broader marketplace. Depending on the desired intent, enhancing the product comparison process (as proposed in Question 14) or at a minimum, requiring additional disclosure of a potential conflict a firm's registrants may have in recommending their own branded products, may enhance client understanding.

14. *Should proprietary firms be required to engage in a market investigation and product comparison process or to offer non-proprietary products?*

    If a firm provides portfolio management advice, the sponsor/manufacturer of the product should not impact the advice that is provided. All firms that provide portfolio management advice should be required to engage in a market investigation of comparable products regardless of the labelling attached to their offering.

There may be particular challenges faced by firms or their representatives with a narrow scope of product offerings. For example, if a fund salesperson cannot manage a segregated portfolio, they may not be in a position to credibly determine that their products are always superior to less expensive comparable products. The representative in this situation is restricted to the offerings on their "shelf".

Availability of information on comparable products (especially in the exempt market) should not be taken for granted, as limited disclosure may make product comparison challenging.

Rather than require all proprietary firms to offer non-proprietary products in all cases, additional client disclosure as to the inherent conflicts of recommending product that is also manufactured by the registrant firm is likely the best remedy.

15. *Do you think that categorizing product lists as either proprietary and mixed/non- proprietary is an optimal distinction amongst firm types? Should there be other characteristics that differentiate firms that should be identified or taken into account in the requirements relating to product list development?*

    An additional layer of disaggregation amongst firms risks further complications for retail clients in what is already a confused landscape of service providers. We believe that drawing a distinction based on proprietary/non-proprietary firm types may be unnecessary if, instead, disclosure is made of the additional layer of conflict that exists when a firm manufactures/sponsors and advisors recommend their own shelf of products rather than functioning as an independent assessor of non-proprietary products. As an alternative, a third category could exist for proprietary offerings that are product specific.

Suitability

16. *Do you agree with the requirement to consider other basic financial strategies?*

    Yes. A number of financial strategies are available to clients and a securities transaction is not always the most optimal approach to improve their financial situation. Debt changes the risk profile of the client (i.e. ability to take risk). A total portfolio approach should consider each client's broader financial situation, all types of leverage, and concentration of exposures.

17. *Will there be challenges in complying with the requirement to ensure that a purchase, sale, hold or exchange of a product is the "most likely" to achieve the client's investment needs and objectives?*

    Reasonable judgment and proper documentation as to the inputs of a decision should suffice to quickly determine a suitable vs. unsuitable investment decision and the resulting client portfolio.

18. *Should there be more specific requirements around what makes an investment "suitable"?*

    A principles based approach should be used. Suitability is based on the KYC process and the resultant investment policy statement. In this context, principles are more appropriate as a basis for decision making. Additional guidance would be helpful to minimize dispersion amongst practitioners around an area that could benefit from a more uniform approach. The current IIROC framework of risk-weighted KYC procedures makes it practically difficult to interpret and align investments. The question of whether a holdings-based or returns-based approach should be used to ensure security specific suitability across different client situations should be

addressed. A prospective template to illustrate the broader concept of suitability would, however, be helpful for all market participants along with additional guidance.

19. *Will the requirement to perform a suitability assessment when accepting an instruction to hold a security raise any challenges for registrants?*

    Investment decisions should address the impact on the portfolio as a whole, and all client instructions regardless of type should be fully documented. This could be automated for small transactions that do not significantly change the exposure of the portfolio.

20. *Will the requirement to perform a suitability analysis at least once every 12 months raise challenges for specific registrant categories or business models? For example, a client may only have a transactional relationship with a firm. In such cases, what would be a reasonable approach to determining whether a firm should perform ongoing suitability assessments?*

    An annual suitability assessment is a reasonable requirement for those registrants with an ongoing advisory relationship with a client. Given that most clients in such relationships pay fees on an ongoing basis, it is reasonable to expect that an advisor would consider the suitability of the investments a client holds at least once annually. Suitability assessments could be waived for transactional or execution-only relationships and when advice is not otherwise given.

21. *Should clients receive a copy of the representative's analysis regarding the client's target rate of return and his or her investment needs and objectives?*

    Whether or not a client should receive a copy of the analysis should be considered on a case by case basis and after applying professional judgment. Clients should be able to request such analytical information, but there should not be a requirement to provide it. If a client requires and can understand the analysis, then the information could be useful and beneficial to them. The provision of such analysis could serve to demonstrate advisor engagement, increase investor education and facilitate an understanding of the process.

22. *Will the requirement to perform a suitability review for a recommendation not to purchase, sell, hold or exchange a security be problematic for registrants?*

    A decision not to purchase, sell, hold or exchange a security can be a prudent investment decision and such decisions should be documented, although a suitability recommendation to "hold" or particularly not "hold" a security could be problematic on an individual security level. However, it could potentially be accomplished on an asset class basis (e.g. underweight or overweight emerging market securities). A requirement to have more frequent suitability assessments will assist in these determinations. Presumably, this view would often result in a recommendation not to unnecessarily alter the majority of a client's holdings in a well-managed account.

    One issue with a requirement to perform a suitability review for a recommendation not to purchase is that it may require an advisor to express an opinion on a security that is not within their area of expertise – there are many thousands of securities and it may not be reasonable to expect an advisor to advise against investing in every security that the investor does not currently own. Please see our response to Question 19 above.

Relationship Disclosure

23. *Do you agree with the proposed disclosure required for firms registered in restricted categories of registration? Why or why not?*

    This proposed disclosure seems to be a fair requirement considering advisors in these categories often do not have the full knowledge necessary to advise a client regarding their full financial situation or needs.

24. *Do you agree with the proposed disclosure required for firms that offer only proprietary products? Why or why not?*

    Yes. Please see response to Question 23.

25. *Is the proposed disclosure for restricted registration categories workable for all categories identified?*

    We are of the view that the proposed disclosure is workable for all categories identified.

26. *Should there be similar disclosure for investment dealers or portfolio managers?*

    There should be similar disclosure for investment dealers and portfolio managers in comparable situations because harmonization is of utmost importance, especially since the disclosure is part of placing the interests of investors first.

27. *Would additional guidance about how to make disclosure about the relationship easier to understand for clients be helpful?*

    Additional guidance on relationship disclosures would be helpful. As an example, in extreme situations, the disclosure may have to be as clear as "we may not offer the best product for your individual circumstances".

Proficiency

28. *To what extent should the CSA explicitly heighten the proficiency requirements set out under Canadian securities legislation?*

    The CSA should greatly heighten the proficiency requirements set out under Canadian securities legislation, especially where understanding the entirety of a client's financial needs and goals is involved. Advisors should have a solid understanding of the universe of products available for investment and be able to assess whether a product is an appropriate selection in light of relevant risk factors and portfolio optimization goals.

29. *Should any heightening of the proficiency requirements for representatives be accompanied by a heightening of the proficiency requirements for CCOs and UDPs?*

    Given the importance of the CCO and UDP roles in creating and maintaining a "culture of compliance", a heightening of the proficiency requirements would be a welcome development.

Titles

30. *Will more strictly regulating titles raise any issues or challenges for registrants or clients?*

    A stricter approach to regulating titles could assist investors in understanding the roles and responsibilities of the registrants with whom they deal.

    In general, we are of the view that if an individual who provides advice is client-facing, their title should clearly inform clients about their registration status and duty of care, and not necessarily their seniority status at the firm. There are however, certain situations where a title change may not be required, and while reducing client confusion remains a laudable goal, more flexibility should be provided for titles than what is in the current proposal.

    For example, we have some reservations regarding the applicability of the proposals to firms that do not employ large numbers of "Senior Vice Presidents" or "Retirement Advice Experts". Smaller registrant firms (non-SRO members) who have individuals with the traditional title of "Portfolio Manager" and who manage portfolios of securities on a discretionary basis would reasonably resist being told to change their title to the unfamiliar "Advising Representative".

    Further, there would be problems in reconciling the title conflict of a person who is dually registered as an Advising and Dealing Representative, as is the case in many registrant firms. In addition, if an officer of a company, properly appointed by the company's board, such as a CEO or CIO is also registered in a category under NI 31-103, it may be awkward to require them to label themselves as a "Salesperson" if they are only registered as a Dealing Representative.

31. *Do you prefer any of the proposed alternatives or do you have another suggestion, other than the status quo, to address the concern with client confusion around representatives' roles and responsibilities?*

    As an alternative, titles could be further aligned with the applicable registration categories as is considered under Alternative 3 of the proposal, along with practical allowable title alternatives such as "Portfolio Manager" in place of Advising Representative. While there may currently be client confusion, we note that the proposed conflict of interest and relationship disclosure requirements should mitigate a number of these issues. The most impactful change to address representatives' roles and responsibilities would be the adoption of an over-arching regulatory best interest standard as proposed.

32. *Should there be additional guidance regarding the use of titles by representatives who are "dually licensed" (or equivalent)?*

    Whether or not additional guidance is required would depend on the actions/roles of the individual representative. In particular, representatives should be prohibited from using a title for their insurance activities that suggests additional qualifications than what would be permitted under securities laws.

Designations

33. *Should we regulate the use of specific designations or create a requirement for firms to review and validate the designations used by their representatives?*

    Most professional organizations and bodies that accredit members who hold themselves out to the public by means of a designation already undertake efforts to ensure their designation is being used appropriately.

    It is a reasonable expectation that firms review and validate the designations used by their representatives, using sound professional judgment. However, it would be difficult for regulators to pre-determine permitted designations.

    If specific designations are mandated, there should be a clear, low to no cost designation accreditation process by regulatory bodies to ensure a level playing field among incumbent and emerging professional bodies.

Role of UDP and CCO

34. *Are these proposed clarifying reforms consistent with typical current UDP and CCO practices? If not, please explain.*

    While the proposals should be consistent with current practices, the additional clarifications are helpful.

Statutory Duty when Client Grants Discretionary Authority

35. *Is there any reason not to introduce a statutory fiduciary duty on these terms?*

    We see no compelling reason not to introduce a statutory fiduciary duty on these terms. There does not appear to be a practical conflict between the statutory fiduciary duty and the duty already required for persons providing discretionary advice.

    Our view is that those clients that provide discretionary authority to an advisor should bind that advisor to a fiduciary standard of care.

Part 8 – Proposed Framework for a Regulatory Best Interest Standard

36. *Please indicate whether a regulatory best interest standard would be required or beneficial, over and above the proposed targeted reforms, to address the identified regulatory concerns.*

    An overarching standard upon which clients can rely is essential given the quickly-changing world of financial services and advice. While reforms are often responsive, or reactive to perceived gaps in registrant duties and standards, the regulatory best interest standard is inherently a forward-looking "umbrella" standard against which new models of advice and registrant conduct in emerging areas can be measured. This is important for recipients of advice, clients, and the integrity of the industry as it innovates in the future.

    Specific rules yield specific avoidances, whereas an overarching standard encourages the adoption of changes to business models in order to adapt to the new standard.

37. *Please indicate whether you agree or disagree with any of the points raised in support of, or against, the introduction of a regulatory best interest standard and explain why.*

We agree somewhat with the concern that certain conflicts will still be permitted, but this will be mitigated by the requirement that conflicts be fully disclosed, and the best interest standard further encumbers upon registrants that conflict disclosure must be done in an effective way to ensure investors fully understand all implications.

With respect to the argument that advisors may not be willing to service smaller clients, we note that in practice, the exclusion of clients with smaller assets already occurs, for a variety of reasons. In many ways, the best interest standard brings to smaller clients the same standard of care some larger clients already access, and allows for newer advice delivery models to develop under a stable regulatory regime with a clear standard guiding the advisory relationship with the client.

We take issue with the dissenting view that a regulatory best interest standard will create "more reliance/trust" on the part of investors. In reality, the trust on the part of clients is already there without the requisite professionalization of the advice provided and without the standard required.

The argument regarding a watering down of the fiduciary standard is not a concern as it is a distinct standard, and will continue to be interpreted by the courts and apply only to the relationship between discretionary investment managers and their clients. These inherently high-trust relationships should have a higher standard of care than the many other types of registrant-client relationships that exist in the securities industry, and we do not believe the two standards will conflict in practice. If the standard is implemented, additional guidance could develop over time as the standard is tested in practice.

One concern related to imposing a regulatory best interest standard is the impact that it could have on the ability of registrants to provide tailored advice, provide a broad range of products, or avoid excessive compliance costs. An American study compared two types of jurisdictions, those with a best interest standard and those without, and concluded that a best interest standard has no negative impact upon any of those items.[5] The same study showed that the number of registered representatives within states does not vary significantly among states with different fiduciary regulations. We believe that a stable and harmonized regulatory regime with clear obligations for registrants will allow new advice delivery models and compliance solutions to proliferate.

38. *Please indicate whether there are any other key arguments in support of, or against, the introduction of a regulatory best interest standard that have not been identified above.*

Regulatory change creates uncertainty, especially with respect to its application by regulators, the courts and in enforcement. This should not necessarily impede its adoption however, as, in particular, regulatory frameworks must change and evolve in the face of overwhelming evidence of a misalignment of client expectations and advisor duties.

Our strongly held view is that the proposed regulatory best interest standard cannot possibly lead to lower standards of care and conduct. In particular, a mandatory best interest standard is of greatest benefit to those clients that are today the least able to differentiate between applicable standards of advice in the securities industry.

[5] McMillan at p.3.

Part 9 Questions – Impact on Investors, Registrants and Capital Markets

39. *What impact would the introduction of the proposed targeted reforms and/or a regulatory best interest standard have on compliance costs for registrants?*

Compliance costs are currently implicit as a cost of doing business in the securities industry and will continue as such going forward. Making those costs explicit does not change the total amount of the costs. As noted in the reply provided to Question 37, some research has indicated that compliance costs are not impacted in jurisdictions that implement a best interest standard.

We further believe that after the period of initial introduction and adjustment there is nothing in the proposed reforms or in a regulatory best interest standard that would structurally move registrants' compliance costs higher for most registrants. While the proposed reforms and a regulatory best interest standard may impact the profitability and attractiveness of certain investment products, we think ensuing product and service innovations would most likely be to the net benefit of investors.

40. *What impact would the introduction of the proposed targeted reforms and/or a regulatory best interest standard have on outcomes for investors?*

The impact of both the proposed reforms and a proposed regulatory best interest standard would close the expectations gap between investor expectations and delivery of advice standards. Such an impact would undoubtedly result in increased likelihood of clients achieving the outcomes that they desire and reasonably expect.

Businesses, registrants, and related industries will adapt to a changing environment as they have in other jurisdictions. While the hardships for registrants argued are theoretical and temporary, the benefits for investors are practical and permanent.

41. *What challenges and opportunities could registrants face in operationalizing:*

(i) proposed targeted reforms?

The imposition of a new regulatory best interest standard would help guide the industry in implementing the proposed targeted reforms, in that if the proposed reforms and necessary business changes are considered against a best interest standard backdrop, a clearer standard would exist for future innovation and resultant product/investor solutions. Specific additional guidance where noted in our responses would be helpful in operationalizing the proposed targeted reforms.

(ii) a regulatory best interest standard?

Registrant education is both a challenge and an opportunity to increase the professionalization of the industry. This change will not practically be a large one for a number of investment advisers, although changes to compensation models might result. We would encourage regulators and SRO's to organize numerous education and dialogue sessions for registrants to assist in preparing for this change of standard, and to promote practical and reasonable representative business responses to the challenges that this standard will present to the industry in the short term. We would further encourage collaborative efforts between regulators, SRO's, and registrants in finding practical responses on an ongoing basis (more frequently than existing guidance releases) to the specific business challenges that application of the new standard will present.

42. *How might the proposals impact existing business models? If significant impact is predicted, will other (new or preexisting) business models gain more prominence?*

    In terms of impact, we think a likely outcome is that advice will no longer be perceived as simply a "sales tool", but will be a valued good in and of itself. Ideally, changes to the regulatory standards surrounding the provision of financial advice combined with new financial technologies and advice delivery models will help limit the advice gap being formed by disappearing defined benefit pension plans.

    Certain existing business models are generally challenged by the trend of regulatory proposals such as CRM2 and generally increased disclosure, and not uniquely as a result of these proposals.

    The provision of financial advice is an important professional service which is needed by the investor marketplace, and should be compensated fairly when appropriately delivered.

43. *Do the proposals go far enough in enhancing the obligations of dealers, advisers and their representatives toward their clients?*

    We believe that these specific proposals, in combination with other proposed and pending regulatory changes being considered (and specifically the proposed regulatory best interest standard), are net-positive for the industry and for investors. **Any number of targeted reforms in combination will not be as effective in enhancing the obligations of registrants via a principled and overarching regulatory best interest standard**. We question the need for further extensive consultations where proposals such as these have already improved investor outcomes in other jurisdictions, and have allowed industry to move on towards innovation in investment products and advice delivery under a new regulatory regime.

Description of Potential Guidance – Conflicts of Interest

Disclosing Conflicts of Interest

44. *Is it appropriate that disclosure by firms be the primary tool to respond to a conflict of interest between such firms and their institutional clients?*

    Yes, it is appropriate that disclosure be the primary tool in these circumstances where conflicts cannot be avoided. Institutional clients often have the means to hire/employ professionals, independent consultants and advisors to interpret the meaning of disclosed conflicts.

45. *Are there other specific situations that should be identified where disclosure could be used as the primary tool by firms in responding to certain conflicts of interests?*

    We are not aware of any other such specific situations, and broadly think the guidance provided is helpful in laying out an overall framework.

Institutional Clients

46. *Is this definition of "institutional client" appropriate for its proposed use in the Companion Policy? For example: (i) where financial thresholds are referenced, is $100 million an appropriate threshold?; (ii) is the differential treatment of institutional clients articulated in the Companion Policy appropriate?; and (iii) does the introduction of the "institutional client" concept, and associated differential treatment, create excessive complexity in the application*

and enforcement of the conflicts provisions under securities legislation? If not, please explain and, if applicable, provide alternative formulations.

The criteria should flow from the level of investing knowledge (or access to such knowledge) rather than from a firm monetary threshold. If the definition of an "institutional client" is to be accepted, the monetary threshold could potentially be lowered if the client has adequate access to external consultants and/or advisors.

Given that the "Permitted Client" concept already exists and is based on assets, and that the concept of a "Non-Individual Permitted Client" already exists in various rules with specific guidance and requirements, it is difficult in our assessment to identify and justify a need for a new client category that significantly complicates the client identification and onboarding process. Simply having $95 million more in liquid financial assets will not in many cases mean that client is more sophisticated or knowledgeable in investment matters. Both a "Permitted Client" and an "Institutional Client" should have access to similar professional advice, and there is no certainty as to whether a person or entity with $5 million of financial assets requires more or less regulatory protection relative to someone with significantly more assets.

47. *Could institutional clients be defined as, or be replaced by, the concept of non-individual permitted clients?*

Harmonizing the proposed requirements with the concept of a Non-Individual Permitted Client would be welcomed; although the advisor should always be cognizant of the knowledge level of the investor across all client relationships. All clients should be provided with a clear explanation of the nature, reasons and outcomes of any conflicts of interest. Again, we question the need for an additional client category given the availability of current categories that could be appropriate given the objectives cited.

Sales Practices

48. *Are there other specific examples of sales practices that should be included in the list of sales practices above?*

We are of the view that performance bonuses should be included, as timing of such payment could be problematic. In addition, many new issuance practices can create a number of conflict of interest issues.

49. *Are specific prohibitions and limitations on sales practices, such as those found in NI 81-105, appropriate for products outside of the mutual fund context? Is guidance in this area sufficient?*

Since conflicts of interests will exist in any event and in most relationships to varying degrees, we believe guidance should be sufficient.

50. *Are limitations on the use of sales practices more relevant to the distribution of certain types of products, such as pooled investment vehicles, or should they be considered more generally for all types of products?*

We believe additional guidance on sales practices should be considered for all types of products; a conflict of interest is a conflict of interest, regardless of the type of product. We think that special consideration and guidance around proprietary products is appropriate.

51. *Are there other requirements that should be imposed to limit sales practices currently used to incentivize representatives to sell certain products?*

    The onus of understanding the impact of specific sales practices should be on the firm and advisor. It would be incredibly difficult to predict all new sales practices under a rules-based framework. We think that the disclosures contemplated under CRM2 and further proposed/contemplated regulatory action on acceptable compensation mechanisms are generally steps in the right direction towards regulating sales incentives and practices.

52. *What type of disclosure should be required for sales practices involving the distribution of securities that are not those of a publicly offered mutual fund, which are already subject to specific disclosure requirements*?

    Disclosure of fees for bundled products should be very clear and generally comparable to that available under CRM2. One must always employ professional judgment on conflict of interest matters involving charges, incentives, and implicit costs inside a product, and resolve in favor of the client's interest and more fulsome disclosure.

53. *Should further guidance be provided regarding specific sales practices and how they should be evaluated in light of a registrant's general duties to his/her/its clients? If so, please provide detailed examples.*

    Please see responses to Questions 50-52 above. Where specific sales practices or incentives of concern are identified in specific circumstances, general guidance to respond to the situation should be considered where needed and provided to all registrants.

Description of Potential Guidance – Know Your Client

54. *To what extent should the KYC obligation require registrants to collect tax information about the client? For example, what role should basic tax strategies have in respect of the suitability analysis conducted by registrants in respect of their clients?*

    Registrants should have the ability and obligation to inquire about and understand the basic tax position of taxable clients and the impact of taxes on a recommended investment strategy or product's expected rate of return. Where tax planning may be a particularly important factor in investment decision making (i.e. flow-through shares, borrowing to invest, etc.), advisors should be required to collect and understand additional tax information so as to ensure a complete financial picture and appropriate suitability for the product or strategy recommended.

    Registrants should not be expected to collect detailed tax information in all cases, but the information they collect should be appropriate to the client, the recommended product/strategy, and considered at a sufficient depth to be useful in terms of a suitability determination. Specific examples of useful information include client entity type/income treatments, tax loss carry-forwards, non-capital loss carry forwards, and income levels/tax brackets.

    Requiring only a cursory understanding of a client's tax position may lead to negative outcomes in certain circumstances. In cases where the tax circumstances of a client are complex, the advisor should direct the client to obtain advice from a tax professional.

    Additional guidance from the CSA in this area would be helpful for representative situations with different types of products, clients, and advisor-client relationships.

See answer to Question 4 above for related comments.

55. *To what extent should a representative be allowed to open a new client account or move forward with a securities transaction if he or she is missing some or all of the client's KYC information? Should there be certain minimum elements of the KYC information that must be provided by the client without which a representative cannot open an account or process a securities transaction?*

    In all cases the specific representative must be satisfied that the KYC determination collected is sufficient to have made a suitability determination to appropriately move forward. Regulatory guidance as to specific minimum acceptable elements to proceed with an account opening or securities transaction in certain limited or expedient circumstances would be helpful to registrants when dealing with unusual client or transactional circumstances.

56. *Should additional guidance be provided in respect of risk profiles?*

    Yes, additional guidance would be helpful. A clear distinction between willingness and ability to take risk is specifically needed. Examples demonstrating how to reconcile goal-oriented outcomes with risk and return characteristics would also be useful. A distinction between risk and complexity might also be appropriate. We have previously made our concerns known as to the gaps in the existing investment funds risk rating framework.

57. *Are there circumstances where it may be appropriate for a representative to collect less detailed KYC information? If so, should there be additional guidance about whether more or less detailed KYC information may need to be collected, depending on the context?*

    Collection of a less detailed KYC information may be appropriate for certain specific situations either on the part of a client or a particular type of transaction/product, though this should not in any way sidestep or reduce the obligation of the registrant to the client. See response to Question 55. Existing differentiated KYC requirements for permitted clients where suitability is waived are appropriate, though more guidance might be helpful to registrants for specific situations. The same would apply to the proposed institutional investor categorization (or Non-Individual Permitted clients).

Description of Potential Guidance – Know Your Product – Firm

58. *Should we explicitly allow firms that do not have a product list to create a product review procedure instead of a shelf or would it be preferable to require such firms to create a product list?*

    We do not see any harm in allowing a product review procedure to be flexible to different types of business models, although we note that proper firm oversight of such a procedure should be established, and when properly implemented would seem to be the more labour intensive approach of the two options.

59. *Would additional guidance with respect to conducting a "fair and unbiased market investigation" be helpful or appreciated? If so, please provide any substantive suggestions you have in this regard.*

    Such an investigation ought to be straight forward for any portfolio manager. Having a well thought out process that prioritizes the benefits to the client ought to be sufficient. However, what this constitutes in the eyes of regulators and guidance to that effect would be helpful to registrants in implementing this new area of proposed regulation.

60. *Would labels other than "proprietary product list" and "mixed/non-proprietary product list" be more effective? If so, please provide suggestions.*

    We believe than an explanation and understanding of the comparable investable product universe, how that universe is defined, and what if any conflicts are present in various types of these products and specific comparable products, is more important than the labels used for a given firm's list. Flexibility should also be allowed to address registrant firms/business models that only deal in niche products or specific market segments with few comparable products and little/no publicly available data on said comparable products.

61. *Is the expectation that firms complete a market investigation, product comparison or product list optimization in a manner that is "most likely to meet the investment needs and objectives of its clients based on its client profiles" reasonable? If not, please explain your concern.*

    Yes, we think the expectation is broadly reasonable. However, guidance on what is considered appropriate given representative client profiles would certainly be helpful to registrants.

Description of Potential Guidance – Suitability

62. *What, if any, unintended consequences could result from setting an expectation in the context of the suitability obligation that registrants must identify products both that are suitable and that are the most likely to achieve the investment needs and objectives of the client? If unintended consequences exist, do the benefits of this proposal outweigh such consequences?*

    Registrants may not have the internal resources (e.g. personnel) to ensure in all cases that a particular product is the most likely of the entire investment product universe to achieve both the investment needs and objectives of the client, and obtaining such resources could be costly. Reasonable actions and documented processes towards these ends in the client's interests are reasonable to require of registrants. This, however, is likely an intentional consequence of raising the suitability standard and achieves the desirable consequence of ensuring suitability and putting the client's interest first in a reasonable way.

    Crowding and return chasing behaviours are also some of the many risks applicable to all client relationships. However, reasonable portfolio management and advisor guidance ought to mitigate such risks in effective advisor-client relationships. The benefits of the enhanced suitability obligation outweigh the costs.

63. *Should we provide further guidance on the suitability requirement in connection with ongoing decisions to hold a position?*

    Additional guidance with respect to regulatory expectations surrounding the suitability and related documentation of holding a position as compared to taking action would be helpful. Suitability requirements should be reviewed periodically (prior to any rebalancing) and no less than annually.

64. *Should we provide further guidance on the frequency of the suitability analysis in connection with those registrant business models that may be based on one-time transactions? For example, when should a person or entity in such a relationship no longer be a client of the registrant for purposes of this ongoing obligation to conduct suitability reviews of the client's account?*

    Yes, additional guidance would be helpful. We agree that in general, an assessment should occur no less than on an annual basis in an ongoing registrant-client relationship, but also after any significant changes to the client's financial situation such as a change in return objective, assets, risk tolerance, and other constraints.

    For business models based on one-time transactions, further guidance as to what constitutes an ongoing relationship and where ongoing suitability applies would be helpful. At a minimum, suitability analysis and related information collection should be updated before a further transaction in securities. An update might also be warranted in other specific circumstances upon receiving client instructions relating to a non-action.

Description of Potential Guidance – Proposed Regulatory Best Interest Standard

65. *Should the Standard of Care apply to unregistered firms (e.g., international advisers and international dealers) that are not required to be registered by reason of a statutory or discretionary exemption from registration, unless the Standard of Care is expressly waived by the regulator?*

    The standard of care should apply to all providers of financial advice, especially where dealing with retail clients, unless it has been specifically waived by a regulator. Waivers might be granted, for example, for truly execution-only transactions.

66. *Do you believe that the Standard of Care is inconsistent with any current element of securities legislation? If so, please explain.*

    We are not aware of any specific inconsistencies. We reject the notion that theoretical future inconsistencies between a statutory fiduciary standard applicable to certain registrants is necessarily in conflict with a regulatory best interest standard, and that this notion is a valid reason to reject an increase in the standard applicable to most investment advice in Canada, affecting the investment outcomes of most Canadians. While we acknowledge that there may be inconsistencies in future application of the two standards, we would urge regulators to reconcile these to the extent possible in application, and would point out that the investing public's interests are best served through increased standards of care that are widely applicable.

67. *Do you agree that the Standard of Care should not apply to the underwriting activity and corporate finance advisory services described above? If not, please explain.*

    We agree, but see our response to Question 68.

68. *Do you think this expectation is appropriate when the level of sophistication of the firm and its clients is similar, such as when firms deal with institutional clients?*

    There may be room for a different application of the standard for certain institutional clients and those Non-Individual Permitted Clients (see earlier responses) that have waived suitability and also have access to sophisticated advice, either internally or through the use of independent advisors. The expectation of legal interpretation in favor of clients where multiple

interpretations exist may be problematic in practice, and no allowance for "opting-out" for certain types of transaction-only relationships between entities of comparable sophistication would also be problematic. Disclosure is likely the best remedy rather than a dictated course of action where multiple valid legal interpretations exist with varying degrees of favorability to a client's interest in these limited circumstances where a client and the registrant are on similar footing in terms of resources and sophistication.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have or to meet with you to discuss these and related issues in greater detail. We appreciate the time you are taking to consider our points of view. Please feel free to contact us at chair@cfaadvocacy.ca on this or any other issue in future.

(Signed) *Michael Thom*

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