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CANADIAN SECURITIES ADMINISTRATORS
AUTORITÉS CANADIENNES EN VALEURS MOBILIÈRES

ROUNDTABLE DISCUSSION RE
CSA CONSULTATION PAPER AND REQUEST FOR COMMENT
33-404

HELD ON: Tuesday, December 6, 2016
HELD AT: Ontario Securities Commission
20th floor, 20 Queen Street West
Toronto, Ontario

MODERATORS:
MONICA KOWAL Vice-Chair
GRANT VINGOE Vice-Chair

1 PANELLISTS:

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Randy Cass	Nest Wealth Asset Management Inc.
Lawrence Haber	Ontario Minister of Finance
Margaret McNee	McMillan LLP
Ursula Menke	Investor Advisory Panel
Peter Moulson	Wealth Management Compliance, CIBC
Ian Russell	Investment Industry Association of Canada
Eric Adelson	Invesco Canada Ltd.
Paul Bourque	Investment Funds Institute of Canada
Rosemary Chan	Scotiabank
Gerry Rocchi	Green Power Action Inc.
Ellen Roseman	FAIR Canada
Prema Tiele	Borden Ladner Gervais LLP

1 --- Upon commencing at 1:02 p.m.

2 MS. KOWAL: A very warm welcome to
3 everyone for coming.

4 My name is Monica Kowal. I'm Vice
5 Chair here at the OSC and we're absolutely
6 delighted to have you with us today for our
7 roundtable on consultation paper 33-404. That's
8 the paper that is proposing enhanced regulatory
9 obligations for registrants.

10 Today we're going to be exploring
11 some of the key themes that have emerged from our
12 preliminary review of the comment letters
13 received.

14 We've organized this discussion along
15 two panels. The first panel that's seated at the
16 table today, right now, is going to deal with the
17 proposed regulatory best interest standard, and
18 the second panel is going to deal with the
19 targeted reforms.

20 The panels represent a range of views
21 and the purpose of the roundtable is to bring
22 together all of our panelists and the range of
23 views and provide an opportunity for the different
24 views to be exchanged in the context of a
25 discussion, and we hope that this discussion will

1 further all of our understanding of the competing
2 considerations that influence the different views.

3 With that, I would like to introduce
4 Maureen Jensen, Chair of the OSC, to make some
5 opening remarks before we begin with the first
6 panel. Maureen.

7 MS. JENSEN: Thank you, Monica, and
8 thank for being here today.

9 So the consultation paper that we're
10 discussing was published on April 28th and the
11 comment period closed on September the 30th.

12 The CSA has received over 120 letters
13 on this topic and we are reviewing them thoroughly
14 and we're doing it together with all of our CSA
15 colleagues.

16 So this roundtable is one of a
17 series. The BC roundtable has already happened
18 and the remainder of the roundtables will be later
19 this week, one in Nova Scotia, one in Quebec and
20 one in Alberta.

21 So the OSC, together with the CSA, is
22 considering a series of targeted reforms which I'm
23 sure all of you have read the paper, including
24 suitability, proficiency, know your client and
25 know your product. And we're also looking at

1 controls on conflicts of interest and then
2 standardizing business titles.

3 We believe these targeted reforms are
4 necessary, that they enhance specific obligations
5 for advisors and dealers that they owe to their
6 client who understandably expect to receive advice
7 that meets their needs and objectives.

8 So these enhancements we believe will
9 assist advisors in that regard and will provide
10 greater understanding for their clients. We'll
11 make every move to ensure that any targeted
12 reforms that the CSA puts in place are harmonized
13 across channels as much as possible.

14 But in my own personal view, I
15 believe the targeted reforms do not go far enough.
16 They are incremental and important but they don't
17 meet the entire goal.

18 The best interest standard of
19 protecting investors is one of the greatest --
20 protecting investors is one of our greatest
21 responsibilities as regulators, and we know the
22 current models are not serving investors in the
23 way they deserve. We feel this is unacceptable.

24 Simply aiming for suitability isn't
25 working. Most clients do not understand the

1 difference between the registration categories and
2 they mistakenly believe they are already receiving
3 recommendations that are in their best interest
4 regardless of how or where the advisor is
5 registered.

6 While many advisors do work in their
7 client's best interest, some do not, and frankly
8 their clients can't tell the difference.

9 We believe suitability is too low a
10 standard. Recommendations must serve the client's
11 best interest above all else and a guiding
12 principle of acting in the client's best interest
13 is the most straightforward way to ensure that
14 client expectations are met, and that is why I
15 think we must move in the direction of the best
16 interest standard.

17 That's a summary of the discussion in
18 the paper, but we need your input on how to move
19 forward, and that's what we're going to discuss
20 today. We know that our proposals would be game
21 changers for the industry. Shifts in culture and
22 ways of doing business are not easy. They take
23 time and they have serious impacts.

24 But in our view, it's essential for
25 fair and efficient capital markets and confidence

1 in these markets to discuss this issue.

2 So it's fair to say that we have all
3 received criticism. I would like to remind you
4 that the proposals we published are the start of
5 the conversation of these very important issues.
6 We realize there will not be a one-size-fits-all
7 solution. We all need to work together to debate,
8 how to enhance the requirements for the benefit of
9 investors. But any changes that we're going to
10 make must be appropriate for Canadian investors
11 and the Canadian marketplace. And that's why your
12 expertise and your experience are so necessary in
13 this process.

14 Today's discussion is vital to the
15 future of this work. Consultation is critically
16 important to find a way forward. So today's
17 roundtable is an opportunity for all of us to have
18 a dialogue on these issues.

19 The agenda includes two panel
20 discussions, the first on proposed best interest
21 standard and the one after this on targeted
22 reforms.

23 We have brought together
24 representatives from investor advocacy
25 organizations, large and small investment firms,

1 industry associations and law firms. The panels
2 reflect a diversity of views, and we're doing this
3 to encourage a meaningful dialogue and a balanced
4 debate. We are looking for practical solutions.
5 The outcome is about better aligning interests of
6 client and advisors.

7 So I know that many of you in this
8 room would agree that an industry that puts the
9 interest of their investors first is an industry
10 that we can have confidence in. That's something
11 that both investors and the industry professionals
12 will benefit from. This roundtable will help us
13 build on the work we have undertaken to date and
14 will move us closer to achieving that goal.

15 Thank you again for attending. Thank
16 you for giving us your time and we are seriously
17 and intently following the discussion. So thank
18 you very much.

19 MS. KOWAL: Thank you, Maureen.

20 A few comments just about our format
21 in terms of how the discussion is going to be
22 proceeding.

23 We've allocated approximately an
24 hour-and-a-half to each of the two panels with a
25 15-minute break in between. I'm going to moderate

1 the first panel and my fellow Vice Chair, Grant
2 Vingoe, is going to moderate the second.

3 For attendees here in the room today
4 we have handed out a white question card, so if
5 you do have a question just write it down and hold
6 it up and the OSC staff member is going to come by
7 and pick it up.

8 For those of you who are
9 participating in the roundtable via the audio
10 webcast, you're able to submit questions on-line.
11 If time permits, the plan is to ask as many of the
12 questions as we can of the panel.

13 In terms of housekeeping, I would
14 like to remind anyone who has not yet turned their
15 phone off, to please turn off their phone. And
16 just a note the roundtable today is being
17 transcribed so we intend to post a full transcript
18 on our website when it is available.

19 We are doing an audio webcast of
20 today's discussion so we hope to have that
21 available on our website as well at a future date.

22 This is a public event, so media is
23 in attendance. Grant and I would like to
24 acknowledge our OSC commissioners who are with us
25 here today, as well as some of our representatives

1 from other members of the CSA.

2 Lastly, I would like to mention that
3 the views expressed of the panelists today reflect
4 their own views and are not necessarily
5 representative of the views of their organization,
6 although some exceptions apply where noted by the
7 individual panelist.

8 Without further delay, I would like
9 to introduce our wonderful roundtable panelists.

10 Let me begin with Randy Cass. Randy
11 Cass is the founder and CEO of Nest Wealth. Prior
12 to Nest Wealth, was it Randy managed quantitative
13 portfolios at Ontario Teachers Pension Plan and
14 institutional assets at Orchard Asset management,
15 and his previous company, First Coverage, won
16 multiple awards as a top startup. Randy has also
17 served as a host on Market Sense for BNN between
18 2012 - 2014.

19 Next to Randy, going clockwise around
20 the table, Lorie Haber is a former senior
21 executive at National Bank and Dundee Wealth and a
22 former securities lawyer. Lorie is currently a
23 member of the expert committee tasked by Ontario
24 Minister of Finance to provide advice and report
25 on the regulation and financial planning and

1 financial advice. Lorie has been a chair, or the
2 chair of the board at Diversified Royalty Corp, a
3 TSX-listed Royalty licenced company, as well as
4 serving as a member of advisory boards of private
5 asset management firms.

6 Next to Lorie is Margaret McNee, a
7 senior partner at McMillan LLP where she practices
8 corporate and securities law in the capital
9 markets group. Margaret has a particular focus on
10 retail structured product and also advises on
11 corporate finance and M&A transactions, along with
12 corporate governance matters and securities
13 registration matters.

14 Next to Margaret is Ursula Menke, who
15 is chair of the OSC's Investor Advisory Panel.
16 Most recently Ursula was commissioner of the
17 Financial Consumer Agency of Canada, also known as
18 the FCAC. As a commissioner of the FCAC Ursula
19 examined matters relating to the federal consumer
20 protection laws and focused on building a
21 competitive marketplace by protecting and
22 informing consumers of financial products and
23 services.

24 Next to her we're delighted to
25 welcome Peter Moulson, vice president Wealth

1 Management Compliance at CIBC who is responsible
2 for providing regulatory advice and independent
3 oversight to CIBC's Canadian wealth management
4 business.

5 Prior to joining CIBC compliance
6 department Peter was a member of CIBC legal
7 department for almost ten years and previously
8 practiced corporate law with a Bay Street firm.

9 Next we have Ian Russell who is the
10 president and CEO of the Investment Industry
11 Association of Canada IIAC, and prior to that Ian
12 was a senior vice president industry relations and
13 representation at the Investment Dealers
14 Association of Canada.

15 In his tenure with both the IIAC and
16 the Investment Dealers Association Ian has
17 participated actively in many committees and
18 working groups involved in regulatory and tax
19 issues related to the securities industry and
20 capital markets more generally in Canada.

21 I would also like to acknowledge Deb
22 Foubert, our director of Compliance and Registrant
23 Regulation who leads the staff team working on
24 these initiatives.

25 And next to me, to keep everything

1 running smoothly is Blair Stransky, manager in our
2 communications and public affairs group.

3 So thank you all for being with us
4 today.

5 We have foregone the step of asking
6 all of our panelists to make opening statements,
7 because I thought we could just jump right into
8 the meat of the matter with all of these
9 introductory remarks. So clearly the OSC has
10 called for a regulatory best interest standard.

11 A number of commentators, to say the
12 least, have said that there is insufficient
13 evidence to demonstrate that a best interest
14 standard is needed and others question whether
15 it's going to address the concerns that we've
16 identified in the client registrant relationship.

17 Others have, in contrast, said if
18 best interest standard is necessary to better
19 align the interests of registrants with their
20 clients, address the regulatory concerns
21 identified by the CSA and advance professionalism
22 in the industry.

23 So let me ask you, what do you think?
24 Do we need a regulatory best interest and what do
25 you expect it to achieve?

1 If I could ask Ursula Menke to kick
2 off the discussion and then I'll pass the
3 discussion over to Lorie.

4 MS. MENKE: Thank you.

5 As a member of the Investor Advisory
6 Panel I would like to explain why the IAP strongly
7 supports the imposition of a best interest
8 standard on all financial planners and advisors.

9 Financial literacy levels are
10 disappointingly low in Canada. Many Canadians do
11 not know how to handle or invest their money.
12 They yet, more than ever, Canadians are expected
13 to ensure that they have adequate retirement
14 savings through their own efforts or through
15 managing their defined contribution pension plans.

16 So some Canadians go to advisors for
17 advice, financial planning, investment or
18 financial advice. And they rely on that advice.
19 Most Canadians believe that advisors are already
20 subject to a best interest standard based perhaps
21 in part on marketing materials that imply the
22 existence of a best interest standard, but only
23 rarely is this the case.

24 Unlike other advice-giving
25 professions, such as lawyers and accountants that

1 owe a fiduciary to their client, most registrants
2 are not subject to a professional standard of
3 care.

4 Registrants are in a conflict of
5 interest with their clients. They are usually
6 paid not by their clients but rather by the
7 producer of the products they sell. The result is
8 that the interests of the registrants are not
9 aligned with the interests of their clients. And
10 as the CSA has noted in the consultation paper,
11 the status quo must change. The imposition of a
12 best interest standard would go a long way to
13 realigning the interests of investors and
14 registrants.

15 There is an abundance of academic
16 research that shows that investors are being
17 harmed by lack of a fiduciary duty or a best
18 interest standard through lower returns. The
19 estimates of the size of the harm varies but it is
20 always considerable, especially when rates of
21 return are as low as they have been for a while.

22 A key cause of lower returns for
23 investors is the prevalence of conflicted
24 compensation that increases the costs of investing
25 to the investor, and according to various research

1 studies, costs are the most dependable predictor
2 of performance.

3 The industry itself recognizes the
4 effect of compensation and inducements on the
5 behaviour of advisors. The existing compensation
6 grids attest to the industry's belief in their
7 effectiveness to promote sales.

8 The grids do not, however, promote
9 the best interests of the investor, and disclosure
10 of conflicted compensation is not a solution to
11 the problem. Research has shown that disclosure
12 can have perverse effects on the behaviour of
13 investors.

14 The reality is that many investors do
15 not understand the impact that the conflict has on
16 their returns in the long term. Investors need to
17 have registrants that work for them so that they
18 can improve the returns on their investments.
19 Investors need the protection that a well-enforced
20 best interest standard will give them. Asymmetry
21 of knowledge, effects of the conflict of interest
22 that exist in the present system and the flag that
23 disclosure does not provide adequate protection
24 for investors are three key reasons why it is
25 imperative that investors get the protection that

1 best interest standard will afford them.

2 MS. KOWAL: Thank you, Ursula.

3 Lorie, you've been giving a lot of
4 thought to this topic. Certainly in your work
5 with the expert panel, minister of finance, what
6 do you think?

7 MR. HABER: Sure. Thanks, Monica.

8 So first of all, I would note that
9 although I come from the industry, that's my
10 background, I carry no grief for the industry in
11 the discussion. I'm independent and I've done
12 some independent work with the expert committee in
13 the last year-and-a-half.

14 The other thing I'd note at the
15 outset is I've had good relations with my
16 financial advisors and I have no axe to grind.

17 I wanted to start with context
18 because there's context for all of this and I
19 think it's important.

20 The industry has changed and evolved
21 over the last about 30 years, principally because
22 the architecture of the industry has changed and
23 because of regulatory changes. What used to be
24 separate businesses in the industries and banking
25 and investment banking and brokerage and

1 distribution and mutual funds and retail brokerage
2 and so on, started to converge. And because of
3 the convergence of ownership and structure, a
4 number of things happened, one of which is
5 conflicts which previously didn't exist or were
6 minor, became prevalent and exist and manifested
7 as a result of structures and complicated
8 ownership and inter-relationships.

9 What also happened during the past
10 30 years or so, because I date it back to the late
11 eighties, the early nineties when convergence
12 started to occur, is that the portrayal of a
13 salesperson changed. It changed from a
14 salesperson to an advisor. It changed from
15 transactional type of a relationship to a more
16 wholistic, longer term relationship and it was,
17 and continues to be, prevalent in the languaging
18 and the imaging and the marketing and the
19 portrayal of advisors and of the relationships
20 generally in the industry by salespeople, by firms
21 and by regulators.

22 So we've seen an evolution over a
23 generation from this relationship from a
24 salesperson engaging in transactions to a
25 financial advisor engaging in relationship, and

1 yet the securities regulatory fabric hasn't kept
2 pace with that. And by and large, although it's
3 buttressed in a number of ways, it is still
4 focused, and in my view, too much focused on the
5 transactional and the trade nature of the
6 relationship and not enough on the holistic
7 relationship.

8 So what's happened because of that is
9 what commentators have called an expectations gap
10 where the consciousness of the investor is that
11 they are dealing with somebody who is their
12 trusted financial advisor who has a duty to them,
13 who has a best interest duty to them, but the
14 legal requirements haven't kept pace.

15 And evidence of that. There is a
16 research project out there by the Brondesbury
17 Group and what they tell us is that seven out of
18 10 -- 70 percent of investors believe that their
19 advisors have a legal best interest duty to them.
20 That's the belief.

21 And so you have this expectations
22 gap, you have what I would call misplaced trust
23 and you have confusion between and among clients
24 and advisors about what the obligations are, and I
25 don't see that as a particularly good thing.

1 Then the question is what do you do
2 about it. And there is a fork in the road and
3 it's articulated in an interesting way in the CSA
4 consultation paper. One is to clarify and
5 articulate the duty of care that advisors owe to
6 their clients, to close the gap by articulating
7 the duty, raising the standard if you will --
8 although I don't think it has be to raised nearly
9 as much as some commentators think to close that
10 gap.

11 The other is to lower expectations of
12 investors, to re-educate investors, to manage
13 their expectations down and to get them back to
14 understanding that their advisor really is a
15 salesperson, not their advisor; that they don't
16 have a duty of care to them that's akin to a
17 professional duty of care.

18 I'd want to set this up just as the
19 inflection point, but I think the reality is this
20 genie is out of the bottle. We've had 25 or
21 30 years of these trends, this evolution. I think
22 going backwards it would be the wrong way to go.

23 I think that starting to close the
24 gap, starting the process of professionalizing or
25 furthering the process of professionalizing

1 advisors and the relationship of advisors with
2 their clients is the way to go, and so that's what
3 I'm going to encourage.

4 MS. KOWAL: Thanks, Lorie.

5 Ian, you've given a lot of thought
6 also to this topic. You've heard what Ursula and
7 Lorie Haber are saying. What are your thoughts on
8 the question?

9 MR. RUSSELL: First of all, I want to
10 congratulate you, the CSA, for putting on this
11 panel session. I think it's certainly timely and
12 I think drilling deep into these concepts, which
13 are quite complicated, is very worthwhile and I
14 think we'll get the right policy mix coming out of
15 it.

16 I guess to Lorie's first part. I
17 guess I am here representing the industry but I'm
18 also -- I represent the industry but I also
19 represent the collective work that the industry
20 has done with its regulators in building what I
21 think is a pretty sound rule book. It's not a
22 perfect rule book, and I'd be the first to admit
23 it and I'll make some points about that in a
24 minute.

25 I do think that -- while Lorie talks

1 about conflicts becoming increasingly important
2 there's -- of the structural changes that happened
3 in the financial sector that's true, but the
4 age-old conflict has always been there. The
5 conflict -- in fact, you can argue it was even
6 worse several years ago when the whole business
7 was predicated on transactional accounts and the
8 recommendation for an investment earning a fee.
9 So it was a very straight conflict that was there.

10 That clearly is something that has
11 been recognized and built into the rule book.
12 Accounts have evolved into discretionary accounts,
13 fee-based accounts, and while some aspects of the
14 conflict may have been mitigated, it does raise
15 other problems. So these rule books are in a
16 constant state of change.

17 And I think we're at a pivotal point,
18 but I would take some issue with Lorie in that I
19 don't see it starkly as, are we going to raise the
20 standard of the industry or are we going to drag
21 down the expectations of the client on the other
22 side. That's not the position the industry has
23 nor is it one that is demonstrated in the past.

24 Clearly, it's to raise the
25 professional standard to meet and deal with the

1 responsibility it has for its clients.

2 The real question is to ensure that
3 we build appropriate rules and a proper framework
4 to properly discharge that responsibility.

5 So in putting some of this together I
6 think one of the questions that is asked is,
7 what's the objective of the best interest standard
8 or what is the objective of -- why are we moving
9 towards it and do we need it.

10 What we can agree on, I think, both
11 the industry and the regulator, is that we want
12 the best outcomes for our clients. And so yes, we
13 want a best standard of professional
14 responsibility to the client.

15 But I think to a company this best
16 interest standard -- and this gets to the heart of
17 I think what's really important here, which is:
18 What does it mean. How do you discharge your
19 responsibilities of an advisor in an appropriate
20 way to meet the best interest standard.

21 And we haven't, I don't think,
22 focused on that or talked sufficiently about what
23 that means. I think the closest -- and I would
24 agree with Maureen, it's not just about
25 suitability roles. And that may not necessarily

1 simply be the package of targeted reforms. It may
2 in fact go beyond that.

3 I think the best thing that I've seen
4 that would lead us to the objectives that we want
5 is the AMF's sound commercial practices, a document
6 that came out in 2003 that talked about a whole
7 range of responsibilities. It's a set of broad
8 principles, it's a set of rules, that if followed
9 in the terminology used at the AMF, it's really
10 fair treatment of an advisor, but you could take
11 that and almost apply it to being in the best
12 interest of a client.

13 Why this is so important is for a
14 number of reasons. One, for the industry to
15 function properly, to serve clients properly, you
16 need to define what these expected
17 responsibilities really are so that the advisors
18 have the safe harbour in the sense that for claims
19 that come from a client, that as long as an
20 advisor is discharging his responsibilities along
21 the lines of a defined set of rules and
22 responsibilities, then he's in a sense protected.
23 There is a safe harbour in that.

24 It also enables firms to improve the
25 practices of their advisors and improve culture

1 and conduct within the firm itself. It's very
2 critical, and this is why you can't just talk
3 about best interest standard outside the context
4 of what we mean by it, or the responsibilities,
5 because compliance is a very important part of
6 this.

7 We have to know -- regulators have to
8 know what these responsibilities are to ensure
9 that the advisors are actually meeting the best
10 interest, best outcome of the client. So again,
11 having them defined gives that guide to a
12 regulator. And finally for a client to have
13 sufficient confidence in the marketplace and also
14 to put a check on his advisor to know what is
15 expected of the advisor in discharging
16 responsibilities.

17 So I haven't seen much about all of
18 that and I do think that that's a very important
19 component of this whole discussion and debate
20 about best interest.

21 MS. KOWAL: We're going to come back
22 to that topic a little more in the roundtable on
23 what does it mean.

24 But first I would like to ask Randy
25 to jump in on this discussion. What do you think?

1 MR. CASS: Sure. So thank you to the
2 OSC for putting this on. I guess I'm here to
3 represent the new emergence of fintech and the
4 vanguard of things like robo advisors and
5 digital advisors, but I've been in this industry
6 for almost 20 years now and so I will say a couple
7 things.

8 The statements I'm about to make
9 absolutely reflect Nest Wealth as an
10 organization's, statements as well and what we
11 believe in.

12 The statements I'm about to make are
13 not some tech wiz kid startup stepping into the
14 industry over the last 24 months saying, this is
15 how things have to be. These are informed by
16 times working at the Ontario Teachers Pension
17 Plan, at TDSI, managing institutional money. So
18 these are I think well-informed opinions, and they
19 are only opinions, but I'll say we are 100 percent
20 without any hesitation in favour of a best
21 interest standard being overlaid on this industry,
22 and I think the industry's desire to fight, avoid,
23 parse out exact meaning of that is something that
24 will only come back to haunt us.

25 If no other reason exists -- and the

1 simple reason that the industry portrays
2 themselves as caretakers and advisors to the
3 general public and the general public believes we
4 are and two-thirds of people will make financial
5 decisions on nothing else -- then the advice, a
6 verbal statement of the advisor that they are
7 entrusting their life savings, if nothing else --
8 for the same reason I tell my young son to live up
9 to his potential last night when he was going to
10 school this morning -- it's just about the
11 industry living up to its potential.

12 It's about the industry saying that
13 we will hold ourselves accountable to the exact
14 same reasons that you have decided to entrust your
15 money to us.

16 And I will say -- while Ian might
17 disagree with that, I think Lorie's statement this
18 is a fork in the road where the industry has to
19 publically either disavow the responsibility that
20 the public thinks we have or raise themselves up
21 to a level where we meet that level of
22 responsibility is bang on.

23 I mean, to think of how ridiculous
24 this conversation can be at times -- the OSC
25 should just put something in place and give every

1 firm that doesn't want to abide by it the ability
2 to put a stamp on their firm that says 'We do not
3 act in our client's best interests.' And I mean,
4 simply see overnight what that does to the market
5 share and the perception of the services being
6 offered.

7 This is a principle-based stance, and
8 I'm reminded of -- I think it's Winston
9 Churchill's comment -- you can always trust the
10 Americans to make the right choice after they have
11 exhausted all other choices, right?

12 We are there as an industry. We have
13 tried suitability, we have tried disclosure, we
14 have tried building rule books that can prop open
15 heavy safe bank vault doors, and no matter what we
16 try there is a way around it for an industry that
17 is built on incredibly smart, aggressive,
18 intelligent people that have a focus on the bottom
19 line.

20 The beauty -- and we'll talk about
21 this as you mentioned in the next question -- the
22 beauty of a principle-based approach. There is no
23 way around principles. We can nitpick over how
24 this can be decided and what is in the best
25 interest, but the first two things it clearly does

1 is rule out bad apples right away and rule out
2 things that are entirely not in the best interest
3 of the consumer.

4 And I can tell you as a firm
5 consistently sees statements of people moving
6 their accounts over to Nest Wealth, the number of
7 people that still have portfolios newly formed
8 with deferred sales charges 5, 6 percent in
9 3-and-a-half percent products when a passive ETF
10 would sustain them just fine, is astonishing.

11 This is not a strategy or stance or a
12 principle-based approach that we have to take just
13 to get rid of bad apples in the industry. This is
14 something we have to take to live up to exact
15 expectations that we want the marketplace to
16 believe and hold us to.

17 MS. KOWAL: Thanks, Randy.

18 I would like now to turn to one of
19 the challenges that has been highlighted in the
20 comment letters, and that's a concern that a
21 number of commenters have expressed that a
22 regulatory best interest standard is too rigid,
23 that it is incompatible with certain business
24 models that exist today and incompatible with the
25 restrictions that are placed on certain

1 registration categories today.

2 Others have submitted that
3 flexibility is inherent in the standard and there
4 is enough flexibility in a single standard of best
5 interest to apply across business models and
6 registration categories.

7 So to kick off this discussion, Peter
8 Moulson. Peter, what do you think of this
9 concern?

10 MR. MOULSON: I'm not an advocate.
11 I'm not an industry representative. I work in the
12 trenches in the compliance department where we
13 have to operationalize these high level
14 principles, and with all due respect to Randy and
15 others, this is where the rubber hits the road.

16 How does a firm run its business with
17 a best interest standard applying?

18 And so I look at a number of our
19 lines of business at CIBC and other financial
20 institutions, and I'll highlight some of the
21 challenges.

22 I look first at the order execution
23 only, or the discount brokerage channel where
24 there is no suitability obligation today,
25 essentially clients can open accounts and --

1 identify them from a KYC standpoint and make sure
2 they are not laundering money. They can invest to
3 their heart's content. I'm not sure how one
4 applies a best interest standard in that model.

5 I also look at the mutual fund
6 dealers that a number of the banks operate, all of
7 which sell proprietary mutual funds only, and I'm
8 concerned about how we would operationalize a best
9 interest standard in that model where we sell
10 exclusively our own funds. You know, is it in the
11 client's best interest for us to sell you the CIBC
12 Canadian equity fund? Should we not be canvassing
13 the broad range of Canadian equity funds and the
14 mutual funds if that's what you are interested in?
15 How do we meet that standard in that operating
16 model?

17 We don't offer scholarship plan
18 dealers, but I look at that as another unique
19 scenario where we have registrants operating at a
20 very defined narrow model were offering RESPs
21 essentially to their clients and, again, how does
22 one apply what's in the best interest of the
23 client if you are only selling RESPs?

24 I also -- I mean, I appreciate the
25 objectives of the best interest standard and I'm

1 just commenting now on how it's difficult to
2 operationalize in the current environment in which
3 we're operating.

4 The bulk of our advisors who are
5 compensated largely through commissions, I also
6 feel that that would be a very challenging model
7 to operate in a best interest standard world.
8 Obviously fee-based accounts where they are based
9 solely on assets management, but no discretion, or
10 discretionary models would alleviate those
11 concerns.

12 But there are a significant number of
13 advisors who are recommending securities to
14 clients. Clients obviously are the ones that make
15 the final decision as to whether or not to invest
16 in those securities, but to the extent there are
17 embedded commissions and other compensation
18 arrangements associated with those products, it
19 makes it difficult for firms and advisors to meet
20 the best interest standard.

21 Then I also look on the advisory
22 platform that we offer. There are clients who
23 simply want access to IPOs or are interested in
24 option strategies, and these are high risk --
25 frequently high risk securities and products that

1 we can sell. You know, again, how do we meet the
2 best interest standard in that scenario? An IPO,
3 a security can be suitable, but is it always been
4 in the client's best interest. And I just look at
5 how these present challenges to firms and to
6 compliance departments because at the end of the
7 day compliance's mandate is to ensure that there
8 are appropriate policies and procedures in place
9 and that we monitor against those policies and
10 procedures to keep the firm safe from a regulatory
11 and litigation perspective, and I look at each one
12 of those business models as having challenges with
13 a best interest standard.

14 MS. KOWAL: Thanks Peter.

15 Lorie and then Margaret.

16 MR. HABER: So a few things. The
17 first is I think there were three broad categories
18 that can be taken off the table so they don't
19 create unnecessary noise in what we're talking
20 about, which is primarily about the relationship
21 with retail clients.

22 The first -- and this is something we
23 addressed at our expert committee as well. The
24 first is professional portfolio managers who are
25 already licensed under the statute and also have a

1 at the margin. It doesn't have to be at the core,
2 and I would think that referral arrangements and
3 share of wallet considerations will go a long way
4 to addressing that. So let me give you a concrete
5 example.

6 If somebody is only licenced to sell
7 illiquid exempt market product, I'm not sure how
8 they get past know your client and suitability to
9 deciding that they can serve a hundred percent of
10 their client's wallet with only those products. I
11 would have thought before you get to best
12 interest, know your client or suitability would
13 tell you you would have to give up a substantial
14 share of the client's wallet to others by way of
15 referral arrangement or otherwise to serve their
16 interest, and that's whether or not you have a
17 best interest standard.

18 Similarly, if you have a closed
19 architecture firm that only provides your own
20 proprietary products and all of your products
21 across the whole portfolio spectrum are fourth
22 quartile, I don't know how you get past know your
23 client and suitability anyway. But the answer
24 there is serve your clients with your first or
25 second quartile funds and refer your clients out

1 for your third and fourth quartile funds.

2 I could see a case being made for why
3 you would fall short of suitability today. You
4 would fall short of best interest. But you should
5 fall short of best interest.

6 The other point is that it's not --
7 respectfully, it's not the role of regulators to
8 protect business models or structures. Regulators
9 have a dual statutory mandate and nothing has to
10 do with the status quo of the industry. So I'm
11 quite confident actually that the industry will
12 adapt and innovate, and through referral
13 arrangements and other mechanisms will find a way
14 not to go out of business to adjust and adapt
15 their business, but I don't think that's a good
16 reason for not moving forward with this
17 initiative.

18 MS. KOWAL: Thanks Lorie.

19 Margaret, I would like to get into
20 this discussion. What do you think?

21 MS. MCNEE: Thank you, Monica.

22 What I would like to do is pick up on
23 some of your introductory comments, Lorie, when
24 you talked about them because -- retail investors
25 and the segments that you thought should be

1 outside the best interest standard. And I agree
2 with you completely, but in the paper that was
3 circulated it's not clear that that's a subset of
4 the best interest standard.

5 So I appreciate that you're
6 advocating for it and I think I would entirely
7 agree with that.

8 You mentioned one of the sectors,
9 which would be institutional clients, and I think
10 that's an interesting area to think about. The
11 very sophisticated end of the market. And, Lorie,
12 you mentioned some of the terminology. We already
13 have a concept we call permitted client which is
14 used to identify institutions and very high net
15 worth individuals.

16 You know, as well in this paper there
17 is the introduction of a definition of
18 institutional clients in the commentary, and that
19 may be something you talk about in the targeted
20 reforms in the second panel.

21 But I think that's an area of focus
22 because not all institutions are created equally.
23 You know, you can think of a smaller pension plan
24 even with the asset test that doesn't have
25 sophistication in all areas of investing, whereas

1 obviously the large pension plans are really
2 covering the waterfront and are innovators in
3 terms of asset classes, and clearly, in my
4 opinion, should be in a position to give a waiver,
5 the same way a permitted client can give a waiver
6 of the suitability requirements.

7 I also think -- and we'll probably
8 get into this a little more in the other
9 discussion -- that the benefit of a principle-base
10 approach is that it does allow the flexibility to
11 adapt to different models.

12 I'm probably going to date myself
13 horribly, and I'm looking around the table, some
14 of the others are in the same category as this.

15 We all exist -- some of us existed at
16 a time before discount brokers. And there will be
17 -- and certainly before fintech, Randy -- there
18 will be other categories that we're not imagining
19 today that people will find interesting and
20 helpful, and I think a principles-based approach
21 can give that flexibility because I think it has
22 to evolve over time and it has to be interpreted
23 in the circumstances that are appropriate.

24 MS. KOWAL: I think you're
25 transitioning us to our next topic. Ursula --

1 MS. MENKE: I have a question more
2 than anything else.

3 I'm a little unclear on -- everybody
4 talks about the lack of clarity of the best
5 interest standard on the one hand, but on the
6 other hand -- and the difficulty in potentially
7 administering that. I can relate to concerns like
8 that. But we do have presently discretionary
9 accounts, and discretionary accounts are subject
10 to a fiduciary duty, as I understand it right now.

11 So why -- if we have the model
12 already why is it so difficult to take the
13 existing model and apply it to a best interest
14 standard?

15 MR. MOULSON: Is that for me?

16 MS. MENKE: I guess so.

17 MR. MOULSON: You're right. That is
18 an outcome. I think the impact would be that
19 clients may not wish to pay the fees associated
20 with that level of service because today they are
21 indirectly, through the embedded compensation,
22 paying those fees which they will soon see on
23 their statements come January with the CRM-2
24 coming into effect.

25 But I think the concern -- their

1 asset level may not be sufficient for them to
2 consider the value of that service.

3 MS. MENKE: Let's take away the pay
4 side. I was focusing very much on the issue of,
5 we have a model already, it is in place, and yet
6 people are saying that it's hard -- we can't
7 understand what it means in the context of best
8 interest, and that's what I'm grappling with.

9 MS. KOWAL: Ursula, that is a
10 question I would like to put to the entire panel.

11 MS. MENKE: Sorry.

12 MS. KOWAL: No, no. You are on the
13 list here to answer the question.

14 MR. CASS: I will just jump in on
15 something else Peter mentioned and, with all
16 respect, I'm actually a lawyer as well, although
17 --

18 MS. KOWAL: You dropped it from your
19 bio.

20 MR. CASS: I think the Law Society
21 dropped me before I dropped it. Yeah, I dropped
22 it from my bio.

23 So let me just suggest a couple
24 things from that context.

25 One -- and, Peter, these are just

1 responses to the comments you put out there.

2 I refuse to accept that the way
3 forward for any industry is to think of what's the
4 regulatory environment in which we will be sued
5 the least. Because there's more aspirational
6 things we can do as an industry to move forward.

7 And two. If your bank or any other
8 financial institution -- and Lorie mentioned this
9 and just I think it's important enough to put out
10 there again -- is going back and wrestling in a
11 war room that they have current business practices
12 that in no way, shape or form can satisfy a best
13 interest standard for the client.

14 Then perhaps the issue isn't a best
15 interest standard but perhaps the issue is a
16 current business practice. And if those business
17 practices begin to get weeded out because of an
18 overarching principle like this, then I think it's
19 doing exactly what it's supposed to be doing.

20 MR. RUSSELL: I wouldn't disagree
21 with you on that. I think that -- but one derives
22 from the other, it seems to me. And that's why I
23 was saying, Randy, that principles are fine but
24 you need to put some meat on the bones, if only
25 for guidance to advisors, to ensure that they can

1 carry out or are aware of getting guidance on how
2 to carry out those responsibilities and do a
3 better job.

4 And secondly, Peter also has made a
5 good point about guarding against either
6 regulatory risk, again with the interpretation of
7 the principle by the regulator or litigation.

8 The other point that I wanted to make
9 -- and you're quite right. I mean, we have
10 massive rule books and in some way we tend to
11 think more in terms of the context of specific
12 rules, and by the way I think some of the problems
13 you're encountering with some of the clients
14 coming over to your firm relate -- those problems
15 wouldn't occur if we get certain rules in place.
16 Eliminating embedded commissions, for example, a
17 number of things like that, or embedded fees.

18 But the point I did want to make here
19 is that we do have in the industry a very broad
20 principle that we work under which is a duty of
21 care and dealing honestly, fairly and in good
22 faith.

23 Now, before anybody says anything
24 that's there as a broad principle which some have
25 argued is virtually --

1 MS. KOWAL: Too vague?

2 MR. RUSSELL: The question really is,
3 have we given it enough focus both in terms of as
4 a principle and adhering to it, and have the
5 regulators given enough focus to it in enforcing
6 what really lies behind that principle.

7 MS. KOWAL: I would like to unbundle
8 that comment a little more and come back to the
9 overall topic of vagueness that we've heard from
10 commentators who point to uncertainty and
11 vagueness in the standard and express the concern
12 that there's not enough clarity, and this is what
13 you had -- to provide sufficient guidance on
14 interpretation and that also challenges that your
15 highlighting, Peter, in terms of how do you
16 operationalize it.

17 Ursula raised a fair question. If
18 some sectors of the industry can operationalize a
19 best interest standard why can those learnings not
20 be brought to the market more generally.

21 So, Margaret, if I could ask you to
22 kick off this discussion or continue this
23 discussion with the background of your legal
24 career.

25 MS. MCNEE: I think it is right to

1 say it's a continuation of this discussion, and
2 I'm quite sympathetic to the practical and
3 operational considerations which both Peter and
4 Ian can bring out.

5 But one of the things that occurred
6 to me when you hear this request for greater
7 certainty is sometimes if you articulate, you
8 know, a well-defined black and white standard, it
9 can work very well. You know whether you've met
10 it when you read the words, but also you can have,
11 in many instances, the effect of coming within the
12 prescription and yet not having conduct that's
13 offensive or inappropriate. So you don't give
14 yourself that ability to interpret.

15 And I think for this kind of issue
16 about the best ways to serve the client a
17 principle does give flexibility, which we've
18 already talked about, that can be very useful not
19 only to the investors but I think to the industry
20 because I think you have to bring to a certain
21 extent some common sense approach to how to
22 interpret a standard, you know, the context. You
23 are not going to have a fixed standard that is for
24 all times, and we've already mentioned the
25 changing environment. You are going to have new

1 models, you are going to have new situations. And
2 I think that's important.

3 The other very practical thing I
4 would note, which perhaps isn't the most helpful
5 on day one, is that, you know, more guidance will
6 become available. I mean, this is a paper that
7 was put out for comment. There will be a rule,
8 there will be a companion policy. Over time one
9 would expect there would be staff interpretations
10 and there will also be decisions that will give
11 some guidance.

12 Now, I appreciate, Peter, when you
13 are setting up systems you are going to find that
14 very cold comfort on day one, and I understand
15 that. I do understand that. But I think that it
16 is a more flexible standard that could serve
17 everyone in many cases better than a prescriptive
18 standard.

19 One of the areas, Monica, you asked
20 me to comment on is kind of the legal environment,
21 because I know many industry participants are
22 worried about litigation risk and what do you do
23 in a circumstance where you don't have a very
24 clear, you know, box that you can check whether
25 you're inside or out.

1 I guess what I would emphasize in
2 this case is -- you know, the best interest
3 standard is not going to give every investor a
4 direct claim, or what the lawyers would call a
5 cause of action. This is a regulatory conduct
6 standard which is intended to be enforced by the
7 regulators.

8 Having regard -- I'm looking over at
9 Maureen on this -- to the fact that you have
10 priorities and budgets. You know, not every
11 instance among minor transgression is going to be
12 pursued. I would expect it's somewhat the same as
13 today, that the egregious examples, you know, will
14 be pursued where it's a clear case that the
15 investors' interests have not been protected or
16 not taken into account appropriately.

17 And obviously disputes can go up the
18 chain and there is a possibility of the dispute
19 getting up into the courts where you're going to
20 have a significant level of deference to the
21 expert -- the experts at the securities
22 regulators.

23 So I think there are a number of
24 protections in the system, notwithstanding you
25 don't have on day one a very crisp list of conduct

1 that you can either say you've met or did not
2 meet; in other words, you have an idea as opposed
3 to a list.

4 And I think those should be some of
5 the things that would give the industry more
6 ability to work with this type of standard.

7 And there are some very clear
8 cases -- like you brought out, the conflicts in
9 compensation -- which probably those clear cases
10 nobody is going to argue about so we can take
11 those off the table. I do anticipate there will
12 be more subtle situations.

13 One of things I would like to say is,
14 you know, directors and officers of a corporation
15 are held to a standard of acting in the best
16 interest of the corporation. It is, albeit, a
17 fiduciary standard which is even higher.

18 And yes, there are many instances
19 that are litigated but there are many instances
20 where people understand what that means, about
21 putting the interest of the corporation before any
22 personal interest which is not only compensation
23 but it's whether there is an opportunity that you
24 could pursue yourself or through the corporation.

25 And in that -- it's a personal

1 reaction but I think that sometimes it's an
2 overreaction to say the industry can't interpret
3 this in a constructive way, or in a way that is
4 also helpful to the industry.

5 MS. KOWAL: So, Peter, I'm going to
6 bring the question back to you on why is this so
7 hard to operationalize given that, as I said, the
8 industry's able to do it in other sectors?

9 MR. MOULSON: Fair question. I'm
10 just commenting on the implications of the best
11 interest standard. I'm not saying I'm for or
12 against it, so I'm just putting out to everyone
13 these are the challenges one faces when you're in
14 the compliance chair.

15 So I look at it as practically how do
16 we address it.

17 I think that best interest standard
18 is different than a suitability standard, and all
19 of our firms today operate on -- other than in the
20 portfolio management context -- on a suitability
21 standard. We have policies, procedures, training,
22 systems, compliance oversight, all based on a
23 suitability standard.

24 To change that -- and I think there
25 is an appreciable difference. Margaret, I

1 appreciate your comments, but I think having dealt
2 with the OBSI and other civil litigators before, I
3 don't know if it's a clear black and white test as
4 to whether some conduct is going to meet that
5 standard or not, and I think to mitigate risk and
6 that's -- repeat it again -- that's what I look
7 at, how do we mitigate the risk of operating in a
8 best interest standard world.

9 And I think I could foresee a
10 scenario where we would offer order execution only
11 if -- I agree with Lorie, if we can eliminate the
12 best interest standard applying to that channel,
13 or either a fully advisory or exclusively
14 fee-based model where you can eliminate the
15 conflicts largely around compensation, which I
16 think are at root of the concerns that most people
17 have and why the best interest standard is being
18 put forward as a solution, that would be, I think,
19 the only practical way to address the
20 uncertainties around operating in a best interest
21 standard world where we have advisors being paid
22 based on commission and to mitigate the risks
23 sufficiently.

24 So that would be the approach I would
25 like to advocate.

1 MS. KOWAL: Lorie, I think everyone
2 has commented on this question. Do you want to
3 jump in it?

4 MR. HABER: Sure. Just me weigh in
5 on a couple and then just make a technical point.

6 So in terms of operational
7 uncertainty, legal vagueness and clarity I guess I
8 would say a couple of things.

9 One is that judgment is going to be
10 required, and that's part of what it means to be
11 professional and to professionalize an industry.
12 And just as advisors and branch managers and firms
13 today have to apply judgment when they're dealing
14 with portfolio construction and other things
15 related to an advisor's portfolio, so judgment
16 will have to be applied to best interest. It's
17 not formulaic. It's not formulaic today.

18 So to a certain extent -- and I don't
19 mean to be glib about this, but there was a U.S.
20 Supreme Court judge years ago commenting on the
21 issue of pornography and he said 'I can't define
22 it but I know it when I see it'.

23 And I could say having worked in the
24 industry for 30 years when an advisor or a firm
25 isn't acting in their client's best interest I

1 know it when I see it, and so does the firm and so
2 does the advisor. I don't think it's that
3 complicated. I don't think we're talking about
4 parsing people going over the line at the margin,
5 whether it's you should have been 50 percent
6 instead of 48 percent in equities and a little bit
7 more in fixed income.

8 That's not what we're talking about.
9 Those aren't the kinds of cases that are going to
10 form complaints. Those are not the kinds of cases
11 that are going to engage courts and regulators for
12 the most part. The other issue is
13 operationalizing all of this.

14 And, Peter, to your point -- and the
15 pre-supposition, and I don't want to put words in
16 your mouth but this is -- today under know your
17 client everything is clear and certain.

18 And I'm just looking at some of the
19 existing rules and regulations.

20 IIROC requires its members to address
21 conflicts by considering the best interest of the
22 client, acting consistent with the best interest
23 of the client. MFDA says you have to exercise
24 responsible business judgment influenced only by
25 best interest of the client, and Advocis' Code of

1 Professional Conduct, says priorities in client's
2 interest.

3 So it seems to me today we're already
4 not only in the best interest universe but how are
5 you operationalize --

6 MS. KOWAL: Tough one.

7 MR. HABER: How are you doing that
8 today? You have to operate in that environment
9 today. So either those are true statements and
10 legally binding obligations or they're just words.
11 And if they are legally binding obligations you
12 should already be there.

13 I think the short answer is judgment
14 is required by firms, by advisors, by branch
15 managers, and I think with a little bit of fine
16 tuning everybody can get there.

17 The other technical point is that
18 there has been for a couple years now a conflation
19 of the idea of best interest standards with the
20 idea of fiduciary duty.

21 Fiduciary duty is a very specific
22 concept in law. It requires trust. It requires
23 reliance. It's very fact specific.

24 Best interest standard does not equal
25 fiduciary duty. There's no reason in the world

1 why regulators have to imply or include a
2 fiduciary duty in a context of a best interest
3 standard. It can stand on its own.

4 MS. KOWAL: Peter, I heard a reply.

5 MR. MOULSON: In terms of the
6 suitability standard, I think it's -- I wouldn't
7 say it's easy but there are certainly markers
8 around whether a transaction is suitable. We risk
9 rate securities and so as a practical matter,
10 knowing the client's KYC and the security being
11 recommended, we can give a pretty good assessment
12 as to whether that is a suitable investment for
13 the client.

14 I think the challenges with the best
15 interest standard, as I understand it -- you now
16 have to take into account more factors than simply
17 the risk rating of that security and the clients
18 circumstances. You need to look at the cost --
19 well, the cost -- careful here -- the costs are
20 certainly part of the suitability determination.

21 The concern I have from reading the
22 proposal is that there's going to be
23 after-the-fact second guessing around recommending
24 a security that may have higher costs associated
25 with it than a lower cost security.

1 There is a fair amount of second
2 guessing that goes on today, and I think you can
3 always defend yourself when you're making a
4 recommendation that in the universe of -- I'll go
5 back to Canadian equity mutual funds that we can
6 offer you, and I'm not talking about
7 proprietary only channel that offers every
8 product, I'm talking about the channel that offers
9 every product. You can I think defend yourself
10 against suitability.

11 MR. HABER: What I would say to that
12 is yes, there will be some second guessing. And I
13 think just like the industry has managed over time
14 with the help of regulators and courts to sort out
15 where the suitability test falls on second
16 guessing and portfolio construction with a little
17 bit of effort and a little bit of adjustment,
18 everybody will get quickly to what best interest
19 standard means and what falls on what side of the
20 line. I don't think it's too daunting.

21 MS. KOWAL: So let's do a deeper dive
22 into this topic on what's the potential impact of
23 a best interest standard and the potential cost.

24 So we've heard from commentators that
25 there are concerns about reduction in access to

1 services, reduction in the choice of investment
2 products and, Peter, you've raised this as well
3 impacts on the affordability of advisor's
4 services.

5 So they're concerns also around the
6 more cautious advice being offered because of the
7 litigation risk perception, and also concerns that
8 investors of modest means simply are going to be
9 deprived of investment advice that they believe
10 they receive today.

11 So this is commonly referred to
12 advice gap concern.

13 Ursula, can you share with us your
14 thoughts on whether an advice gap is likely to
15 occur in Canada -- best interest standard is
16 introduced.

17 MS. MENKE: Gee, I don't have a
18 crystal ball. I do have some views on this,
19 however.

20 In 2016, just this year, the CSA
21 conducted a study and found that only 56 percent
22 of Canadian investors work with a financial
23 advisor. So almost half of investors go it alone.

24 There are probably many reasons for
25 that. We know that most dealers require a minimum

1 dollar amount of investable assets before they
2 will open an account. Such a policy makes it hard
3 for small investors to get the advice they need
4 and are looking for.

5 Other investors may not be willing to
6 pay the price of the -- the high cost of advice.
7 There may be questions about the quality of the
8 advice, given the present conflicted nature.
9 Concerns have been expressed by some about the
10 nature of the advice that is available from a
11 registrant. In some cases, heavy case loads
12 preclude personalized advice that investors need.

13 Whatever the cost, the study seems to
14 point to an existing advice gap, if you want to
15 call it that. There are certainly limitations on
16 the availability of advice.

17 When the UK changed its compensation
18 regime, concerns about the availability of advice
19 are expressed by some. There were transitional
20 issues related to increased proficiency standards,
21 and no longer seeking advice may have been a good
22 decision in some circumstances.

23 But whatever the dislocation may have
24 been, it was short term.

25 In a December 2015 comment letter

1 from the UK's financial services consumer panel on
2 the topic of financial advice market the
3 chairperson, Sue Louis, noted that, "We have not
4 seen any evidence to show the existence of a gap
5 in the supply of professional advice."

6 And I believe it because she's my
7 counterpart.

8 We have already seen the introduction
9 of robo advisors with the emergence -- we have
10 already seen introduction of robo advisors as a
11 new avenue of advice. There is no reason to think
12 that other new avenues will not open up, given the
13 growth of fintech. These will go a long way to
14 allay any concerns about access to advice.

15 With respect to product offerings. I
16 am in no position to predict what may happen.
17 However, the market continues to introduce new and
18 complex products.

19 It is hard to imagine that the market
20 will stop innovating. Clearly, with the
21 introduction of a best interest standard there
22 will be an adjustment period. Some products may
23 need to be modified in some way and some products
24 may just not be in the best interest of any
25 advisor will disappear. But most products are

1 designed to meet certain needs and those needs
2 will remain.

3 So there is no reason to think the
4 product offerings will become more restrictive.

5 MS. KOWAL: Thank you, Ursula.

6 Randy, can you jump in on this topic?

7 MR. CASS: Sure. Let me throw my
8 fintech hat on this one, because I think that's
9 probably one of the most important trends.

10 Margaret and Lorie have both
11 commented on how much things have changed over the
12 last 25, 30 years in this industry.

13 I would say the acceleration of
14 change over the last two to five years in this
15 industry has dwarfed anything we've ever seen
16 before in the States. We've seen advice fees that
17 stuck, traditionally stuck around 100 to 125 basis
18 points, in some cases get compressed to zero when
19 Schwab rolls out a digital advisor.

20 In the States we've seen automated
21 advice platforms move from 95 basis points when
22 they emerged three or four year ago down to 15
23 basis points in the case of Betterment right now.

24 In Canada we've seen similar trends.
25 In Canada we see the ability to get sophisticated

1 full diversified portfolios put together for \$20 a
2 month all the way down to nothing, right?

3 So the notion that an advice gap
4 exists anywhere right now is something that might
5 have been a reality five to ten years ago but is
6 no longer a reality. Innovation technology, smart
7 entrepreneurs abhor a vacuum and financial
8 services existed as an industry that was
9 relatively untouched by disruption for multiple
10 decades, and the fact it's now caught within the
11 cross hairs of the emergence of technology at the
12 crossroads of products like ETF and products like
13 cloud-based solutions, means that any gap that
14 exists will be filled by a viable solution for
15 investors of all ranges of wealth and in any
16 geographic region.

17 I think what this industry tries to
18 call an advice gap is all too often perhaps a
19 demand gap. It's not that there's a lack of
20 supply of products that exist. It's that regions
21 that have seen alienated demographics within a
22 population have undergone recently price changes
23 to make what they were changing for financial
24 advice vastly more transparent.

25 In the UK 87 percent of people

1 thought the financial advice they were getting was
2 free. When they turned around and made that
3 incredibly transparent, there was a whole block of
4 the population that all of a sudden was without
5 financial advice. But doing so, not because
6 alternatives didn't exist but they didn't feel the
7 demand existed in their household to pay what was
8 the going rate transparently for financial advice.

9 Maybe not the wisest choice. All
10 sorts of studies indicate that advisory services
11 do help people, but it's not that supply doesn't
12 exist. It is solely that at the market rates that
13 existed in the marketplace, once they were made
14 transparent demand backed off. And that is not
15 something we can use as an excuse to not evolve
16 this industry.

17 MS. KOWAL: Ian and then Peter, other
18 comments?

19 MR. RUSSELL: I, first of all,
20 endorse exactly what Randy is saying, is that I
21 think we've seen such evolution in the financial
22 sector with conventional institutions and fintech
23 companies that -- I think we've got every
24 confidence that there won't be an advice gap.

25 To come back to the topic we're

1 speaking about, I guess the concern in terms of
2 businesses -- the conventional dealer business
3 being affected by best interest standard. That I
4 think again turns on what I had said at the
5 beginning, is that the industry has to have in
6 place proper, and firms, policies and procedures
7 to address what would be identified as managing
8 conflicts.

9 For example, what came up earlier --
10 and Lorie made good point -- is we already have a
11 best interest standard in terms of managing
12 conflicts of interest in -- this is the IIROC
13 rule.

14 So your question was, well, we
15 already have it, how are we dealing with it. And
16 Peter and I would respond to that by saying as
17 that is introduced, either through industry forum
18 or individual firms, we've got to have policies
19 and procedures in place at the firm that provide
20 that kind of defence in the event that there is an
21 allegation that somehow there was a conflict. So
22 we've got to address that.

23 I think in introducing the best
24 interest standard in a broad context I think it's
25 going to take some time, first of all, in

1 developing the principles and developing the
2 policies and procedures and getting some
3 experience here in terms of precedent, because I
4 think the point again I think was one that Lorie
5 made, is that these things tend to work themselves
6 out between the regulators and between firms and
7 between clients. The egregious claims will be
8 addressed or will be so obvious, but they will be
9 a bit of a working through some of this stuff.

10 MS. KOWAL: Peter, can I ask you to
11 talk about the costs that regulatory best interest
12 standard would expose and impose on market
13 participants, because that is a consideration that
14 we haven't touched on entirely in the discussion
15 so far.

16 How significant are the cost
17 considerations and what are the key drivers in
18 your experience of cost?

19 MR. MOULSON: I think in conjunction
20 with cost analysis, we've done both the targeted
21 reforms and the best interest standard, what the
22 implications would be, hypothetically, because
23 obviously nothing is in place yet.

24 But I touched on earlier the systems
25 that firms all have to try and mitigate the risk.

1 And I think there would just be requirement, as a
2 practical matter, if we were going to continue to
3 operate the advisory channel in the best interest
4 standard world, we would have to do a very
5 thorough job in assessing the securities that we
6 would make available on our shelf. So we would
7 have to spend a fair amount of diligence today on
8 ensuring that what we made available to our
9 advisors to recommend to their clients satisfied
10 the best interest standard from a product design
11 and a fee structure perspective, and then we would
12 have to continue to refresh that list today, as
13 opposed to the open architecture that a lot of
14 firms have where the client expresses a desire for
15 a product, we'll source that product and if it's
16 suitable, we will sell that client that product.

17 So we would try and manage the risks
18 of the broad shelf of products and manage it in a
19 way that we could mitigate our risk, and then we
20 would have to probably enhance some training both
21 for the front line sales folks as well as the
22 compliance department who would be assessing the
23 meeting of that best interest standard as part of
24 their daily surveillance and on-site examination
25 process.

1 A lot of us are implementing systems
2 today to try and meet the suitability standard in
3 terms of -- trying to automate as much as possible
4 what has been for a lot of firms a very manual
5 exercise. It's not as efficient obviously when
6 you have thousands of advisors and hundreds of
7 thousands of trades to be scanning blotters to
8 determine whether there are trades that don't meet
9 the suitability standard.

10 So to an extent we can automate that,
11 and that's no small expense for firms with legacy
12 systems and needing technology. So there would be
13 costs associated with that as well.

14 So I think those are kind of the high
15 level costs that I foresee if we were operating in
16 a best interest standard environment.

17 MS. KOWAL: Thanks, Peter.

18 As regulators, we also of course take
19 into account what do we perceive is the cost of
20 the status quo. So in terms of opportunity costs
21 to investors for having a suitability standard as
22 opposed to a best interest standard is another
23 cost consideration that we reflect on.

24 Before we turn to questions from the
25 audience, I would like to just go around the table

1 and ask everyone if they have concluding a comment
2 or observation on the discussion so far that they
3 haven't shared yet, to make it now as I said,
4 before we turn to questions.

5 Randy.

6 MR. CASS: I would say that it's
7 actually never been a better time to be an
8 investor, period, in Canada, in the States,
9 globally around the world.

10 Tools, tricks, information
11 asymmetries are breaking down, transparency is
12 being overlaid onto the industry. The notion that
13 sophisticated wealth management is now accessible.
14 It's not something you need half a million or a
15 million dollars to have access to is a phenomenal
16 democratization and populist movement within
17 financial services itself.

18 That being said, a lot of -- I did a
19 debate last week, the OSC had a hack-a-thon and
20 they have a debate of four us there to talk about
21 things, and the resolution on the table was,
22 should regulatory bodies treat startups
23 differently than incumbents.

24 And the truth is we are getting into
25 such unchartered areas right now that the

1 conflicts that exist between protecting the end
2 investor and yet supporting innovation to find
3 solutions that work, is something I don't really
4 envy that the regulatory bodies have to do.

5 But they have a choice right now.
6 They can take broad, sweeping principled stances
7 that, as we have said, I might not know what's in
8 your best interest but I absolutely know what's
9 not in your best interest and start there and
10 evolve those standards as we move down the road.

11 Or we can be in a multiyear horizon
12 consistently falling further and further behind
13 where the industry is moving, because I can tell
14 you there are things we and our peers are working
15 on right now that is in no regulatory guidebook,
16 and to try and origami them into fitting into
17 something that works right now is tough.

18 And if I -- look, if an entire
19 medical profession can get by with 'do no harm'
20 there no way on earth that this industry can't get
21 by with the concept in the back of our head that
22 we have to put the best interest of our clients
23 first. And if that's the last thought we have
24 before we do anything in this industry but the
25 regulatory body decided it was time, I'm a hundred

1 percent fine with that.

2 MS. KOWAL: Lorie?

3 MR. HABER: Thanks, Monica.

4 So I would make two final points.

5 One on the issue of costs.

6 I actually think that there is a quid
7 pro quo here. I think costs for the industry
8 would go down, not up, with the best interest
9 standard because compliance and supervision could
10 be simplified once you move to a principles-based
11 approach and I think a quid pro quo from the
12 industry -- from the regulator to the industry
13 would be to reduce the red tape burden on the
14 industry with the industry picking up the
15 corresponding obligation to ensure these
16 obligations are met.

17 So other than applications of some
18 judgment and an educative function, I think this
19 is actually a good thing for the industry and the
20 costs would could go down.

21 On the issue of the industry itself,
22 I guess what I would say is that not only is this
23 way overdue but I would encourage the industry to
24 embrace it, not to resist it; that this is on some
25 level needlessly alienating your customers and

1 clients on some level needlessly reducing investor
2 confidence.

3 As the industry wants to move and
4 portray itself and image itself and message itself
5 as a professional and professionalized industry,
6 it should be embracing this.

7 MS. KOWAL: Margaret?

8 MS. MCNEE: I was just thinking about
9 what you said, Peter, when you were addressing the
10 costs of having to look at the products that were
11 offered. And I was very pleased that you
12 presented that in a very measured way because I
13 have heard some people talking about the best
14 interest say what this will drive is simply low
15 cost, passive products. And I don't think that's
16 the necessary conclusion.

17 I think from the discussion that
18 we've had today about the innovation in the
19 industry and the need to respond to it, you know,
20 there will be instances where low cost, passive
21 product may well be the best thing to recommend,
22 but there may be other circumstances where
23 something very tailored which has a higher cost is
24 going to be in the best interest of the client.

25 So I think that there are lots of

1 opportunities if you have a principles-based
2 approach for the standard to be interpreted and
3 evolve to meet some of those demands.

4 MS. KOWAL: Ursula?

5 MS. MENKE: From an investor
6 perspective, I think that investors need advisors,
7 and investors need advisors who work for them. So
8 the imposition of an overarching best interest
9 standard is really what is -- it would be in the
10 best interest of both investors and registrants
11 because it brings them together. It realigns the
12 relationship in such a way that they are both
13 working for the same thing.

14 The best interest standard will also
15 have another effect, as far as I'm concerned,
16 apart from helping investors hopefully get better
17 results, it will also help support increased
18 professionalization of the advisors and the
19 advisory function, which I really think is an
20 important step in the right direction. Most
21 importantly, it will result in a hopefully more
22 trusting relationship between advisor and
23 investor, and that's got to be a good thing.

24 MS. KOWAL: Peter?

25 MR. MOULSON: Thanks again for

1 inviting me to the panel. I can bring a dose of
2 practical reality to the life of compliance.

3 I would say that -- I beg to differ.
4 I think a principle-based rule creates more
5 supervisory and compliance challenges, just from
6 being in the weeds I think that creates -- which
7 is not a reason not to proceed. I just wanted to
8 make a point that it creates I think more
9 challenges, but that's obviously something that
10 the regulators and industry can consider.

11 But I also want to refute the notion
12 that the advisors we have today do not want to
13 work in the client's best interest. I think what
14 I've tried to highlight is some of the practical
15 implications of a best interest standard and how
16 it would affect registrants currently operating in
17 several models today.

18 I think those should be borne in mind
19 before we launch a best interest standard
20 approach.

21 I also want to touch on a point that
22 hasn't really been made that here so far, but
23 Ontario and New Brunswick are strong advocates of
24 the best interest standard. B.C. is a strong
25 opponent. I think when you operate a firm

1 nationally it would be a real challenge to manage
2 your business lines in a fragmented regulatory
3 world where we've best interest standards in a
4 couple of provinces but not in others. So I would
5 encourage the regulators to proceed to ensure that
6 it's harmonized.

7 I would also make the point there are
8 a number targeted reforms which we will discuss in
9 the next panel which we think will go a long way
10 to addressing many of the concerns that the best
11 interest standard is designed to address the -- my
12 firm and my view that we attempt to make
13 legislative changes through those targeted reforms
14 before best interest standard, because that I
15 think would obviate the need for a...

16 MS. KOWAL: Thanks, Peter.

17 Ian.

18 MR. RUSSELL: I think I started my
19 remarks by talking about a best interest standard
20 is really an amalgam of principles -- agreed-upon
21 principles and rules that will lead to the best
22 outcome of the client. And we've moved a great
23 deal along that way, particularly in the key area
24 here, which is the compensation area and the
25 conflict related to that and the need to discharge

1 that in the best interest of the client.

2 So that is there. That is an
3 obligation already in place for advisors, and the
4 way the industry is going to have to adapt to
5 those rules and to principles that Peter has
6 mentioned is -- there's going to be a notice on
7 firms to develop the right policies and procedures
8 to discharge those responsibilities that fall
9 under the principles and the rules.

10 And I think that if we keep an eye on
11 the development of those rules, and the targeted
12 reforms are a very positive step I think. It's a
13 lot of work to be done in making sure they're
14 practical and cost effective. But if we get there
15 on that, I think when you take all that together
16 -- and I agree where we are now is not certainly a
17 best interest standard, but by combining the
18 targeted reforms, and there may be some additional
19 areas that have to be put in place, I think we are
20 virtually there, whether we call it the best
21 outcomes or the best interest standard, and there
22 will be obligations certainly on individual firms
23 and the industry to meet those many
24 responsibilities, and I think we'll be better off
25 for it. So it's really a question of the process

1 going forward I think.

2 MS. KOWAL: Thanks, Ian.

3 So we do have quite a few comments
4 and questions from the audience, and I'm going to
5 just sequence them a bit -- first one, pick up on
6 your closing comment.

7 How will the OSC support
8 implementation of the best interest standard and
9 help advisors understand what is expected in the
10 circumstances?

11 I think this is going to the theme of
12 how can the best interest standard, how can there
13 be sufficient guidance to articulate to advisors
14 and dealers what standard of conduct is required?

15 So this is something we talked about
16 before. Ian, what are your thoughts on the type
17 of guidance that you find, or your members would
18 find helpful for regulators?

19 MR. RUSSELL: Again, I think it's
20 focusing on the array of, let's say the best
21 principles in areas such as -- I think a good
22 starting point, Monica, is the -- come back to the
23 sound commercial practices that the AMF has put in
24 place. That's dealing with everything from fair
25 treatment of a client to managing conflicts, and

1 two points on that.

2 First of all, I think at least in
3 theory that's in place and in Quebec and our
4 members are following that. Again, a good place
5 to start. We would I think have to build on that
6 and flush the details out.

7 MS. KOWAL: Through another
8 consultation process. Maybe another roundtable
9 just on guidance.

10 MR. RUSSELL: Two points. First of
11 all, principles are principles, and we want this
12 thing to work with all business models. So
13 there's always going to be a responsibility left
14 to the client, left to the firm.

15 But I think that the OSC can provide
16 some -- in fact, the targeted reforms provide some
17 pretty good guidance in terms of where you're
18 going in terms of the broad rules. And then firms
19 will have to put in place procedures to comply
20 with those.

21 MS. KOWAL: Thanks, Ian.

22 The next question goes to the
23 interaction of the best interest proposal with
24 other regulatory niches. We touched on the
25 targeted reforms in this discussion already, but

1 there's an upcoming consultation paper expected
2 shortly from the CSA consulting on an option to
3 eliminate or discontinue embedded commissions.

4 And Ursula, and maybe Lorie, you
5 touched on earlier the conflict inherent in
6 embedded compensation that investors don't know
7 that they are paying.

8 If the embedded compensation
9 structure were eliminated, would that be enough to
10 eliminate conflicts from investors' perspective
11 and is a best interest standard still required in
12 your view.

13 MS. MENKE: Yes, I think the best
14 interest standard is still required. I think a
15 part of the issue around the best interest, a
16 large part of it perhaps, is actually conflicted
17 compensation because I think the studies that
18 we've seen, clearly the compensation drives a lot
19 of the behaviour. There's nothing new about that
20 concept. That kind of compensation drives
21 behaviour. And I think it does, has been
22 demonstrated to do in this area.

23 It's more than just about
24 compensation. It is about acting in the best
25 interest of the client.

1 And we start with a client often that
2 really doesn't know too much about investing. And
3 if you start from that perspective, then clearly
4 there's more to it than just conflicted
5 compensation. There is the whole advice, the best
6 approach.

7 I mean, one of the things -- when
8 you're talking about best interest one of the
9 examples I like to use is you have this issue of
10 people who have lots of debt. Should they really
11 be investing at all or should they be trying to
12 pay off their debt? That is -- it's not a
13 question you can answer off the top just like that
14 as a matter of principle. That is very much a
15 question of best interest not necessarily related
16 to conflicted compensation.

17 So conflicted compensation in my view
18 is a very big deal. I really believe he who pays
19 the piper calls the tune. So that is a big issue.
20 But there are also other issues.

21 MS. KOWAL: Thanks, Ursula.

22 The next question drills down on this
23 topic around that conflicts can also arise in
24 fee-based models and that the elimination of
25 embedded compensation and a shift from commissions

1 to fee-based models does not eliminate conflicts,
2 for example, where fees are charged for assets
3 under management. These advisors can be
4 conflicted in terms of trying to acquire more
5 assets irrespective of what's in the client's
6 interest, for example paying off high interest
7 rate consumer -- or credit card debt rather.

8 So it's similarly with advice that
9 investors receive to leverage. You know, we've
10 all heard about the circumstances in which
11 homeowners or seniors are being counselled to take
12 out loans on their homes to increase their
13 investment portfolio in their retirement.

14 So is there an opportunity for these
15 kinds of conflicts to be managed with the best
16 interest standard? Is there a need for these
17 kinds of conflicts?

18 MS. MENKE: Clearly I think a lot of
19 those conflicts can be managed through a best
20 interest standard. I mean, I agree with everybody
21 who says it's not necessarily the easiest thing in
22 the world to define. I mean, look at fiduciary
23 duty. It has not been clearly defined. There are
24 kind of negatives, if you will, around it to some
25 extent. And that's a bit of it. But there will

1 always be conflicts. It's a question of how
2 significant they are, and some of them are more
3 significant than others.

4 Clearly because compensation drives
5 behaviour so much, it's got to be one of the more
6 significant conflicts. But any time -- you go to
7 a doctor, there's a conflict of interest there.
8 They're a service provider and they are sometimes
9 interested in providing you more services than you
10 want or than you may be need. So they're
11 everywhere.

12 We cannot get rid of all conflicts of
13 interest. That's not the way to think about it,
14 but it's trying to ensure that there is a somewhat
15 more reasonable balance.

16 MS. KOWAL: Thanks, Ursula.

17 A number of questions have also been
18 raised around the prospect of harmonization or
19 disharmonization in terms of the different
20 positions that were expressed by members of the
21 CSA in the consultation paper.

22 And at this point obviously we're in
23 a consultation phase, but there are no options
24 that are off the table in terms of how regulators
25 are going proceed.

1 So the next phase is certainly going
2 to be careful consideration by our staff, I'm
3 looking at Deb, and all commissioners of the
4 comments received and discussions with our
5 colleagues across the CSA is going to be take a
6 little bit of time to have a good discussion
7 around those comments.

8 But I would like to get the thoughts
9 of the panel on whether a best interest standard
10 makes sense, if not all of the members of the CSA
11 are participating in the rule proposal. What kind
12 of considerations do you think CSA members should
13 take into account if there's not a consensus on
14 the way forward.

15 MR. CASS: I think waiting for
16 consensus amongst such disparate parties before
17 there is any decision made on something like this
18 is just going to be a recipe in frustration. If
19 that's the way forward, my guess is you're going
20 to end up with some middle-of-the-ground
21 compromise that gets watered down and no one is
22 completely happy with.

23 I respond to what Peter said earlier
24 about how hard it is to run a national business if
25 you have different regulatory requirements.

1 That's a reality of where we've existed in Canada
2 since forever, right. It might not be one day,
3 but it is right now.

4 I mean, the interpretation of that in
5 my eyes is a rise in (inaudible) boats. And you
6 play up to the highest level and clients that live
7 in regulatory requirements that don't have that as
8 the expectation benefit from those that do.

9 You will hear slippery slope
10 arguments continuously. Regulatory arbitrage is
11 one of them. But if we move in one and not the
12 others you'll have a whole bunch of companies
13 setting up in B.C., but only operate in B.C. and
14 it's like the wild west out there. Actually, that
15 is always B.C. -- but I don't think that helped.

16 But being fair, and the reality that
17 some bad players will look to make that their
18 advantage, the truth is -- I mean, progress is
19 always someone stepping out in front and if the
20 OSC is willing to be that party, I say waiting is
21 just an exercise in futility.

22 MS. KOWAL: Lorie?

23 MR. HABER: Sure. So we live in a
24 fractured regulatory environment. We have
25 fracture by province, by jurisdiction. We have

1 huge swaths of the financial industry, like
2 insurance and mortgages, that are also financial
3 products that aren't under the auspices of
4 securities regulations, so it's not like we're
5 living in this harmonized state of nature that
6 this would be the one crack. The window is
7 already cracked.

8 I would say if you could achieve
9 harmony on this issue that would be a great thing,
10 but it's not necessary and I would encourage those
11 provinces that are prepared to do it, to go it
12 alone if they have to.

13 MS. KOWAL: The next question pivots
14 from the risk of geographic fragmentation to the
15 cross-sectoral fragmentation and expresses concern
16 that this discussion has been focused solely on
17 the investment industry without discussing the
18 broader role of financial advice for Ontarians,
19 and are we going to be content with an improved
20 transaction-based regulatory industry or do we
21 have a responsibility to move to a more holistic
22 industry where all financial aspects of a client
23 are considered.

24 So whether it's debt management, tax
25 planning and so on, I believe a discussion,

1 industry changes and context of the transactional
2 environment isn't doing enough to address these
3 concerns.

4 So I think might be a preview, Lorie,
5 of where your report might be going. So do you
6 want to just have a quick comment on what your
7 interim report is --

8 MR. HABER: Yeah. I mean
9 generically, I guess. There are inherent
10 limitations on jurisdiction of securities
11 regulators which can't include those other
12 provinces and it's the jurisdictional ambit of the
13 provinces, and in some cases federal government,
14 to address those financial products and those
15 industries that are outside the scope of
16 jurisdiction. And all I would say is I would
17 encourage coordination between and among all
18 levels of government and agencies to make this as
19 a universal initiative if it can be.

20 MS. KOWAL: The next question goes to
21 enforcement and how does -- so, Margaret, I'm
22 looking at you.

23 What is the test for a best interest
24 standard if your client was in an enforcement
25 proceeding and being challenged on whether their

1 conduct was consistent with the obligations to act
2 in a client's best interest, or if you were an
3 adjudicator having to think about that question?

4 Any advice to the OSC on what kind of
5 guidance we can be providing to market
6 participants on the test, you know, thinking of
7 your comments about directors and officers being
8 subject to an obligation to act in the best
9 interest of the corporation? How is that test
10 shaped in other environments that might be helpful
11 in articulating expectations in the securities
12 regulatory realm?

13 MS. MCNEE: Well, I think that is
14 right, Monica, that there is other guidance out
15 there in terms of best interest. And maybe just
16 briefly to respond in a very high level.

17 We've certainly highlighted the
18 compensation conflicts, which are kind of
19 straightforward, or other opportunities. Those
20 are factors that have been taken into account in
21 other circumstances.

22 One of the issues that was brought
23 out, this best interest regulatory standard, is
24 not a fiduciary duty so there won't be some of the
25 distractions in terms of foreseeability and

1 damages, that I think it might be a more
2 straightforward analysis of the conduct and
3 whether or not -- maybe I should go back one step.

4 I think probably one of the real keys
5 will be examining the conflict of interest and in
6 whose -- to whose benefit this advice or
7 transaction was directed.

8 MS. KOWAL: I think that's helpful.

9 Two quick questions. I'll put both
10 of them at the same time since I think we only
11 have time for one and I'll let people decide which
12 one they wish to speak to.

13 What's the difference between the
14 existing requirement to act honestly, fairly and
15 in good faith? What's the difference between that
16 requirement and obligation to act in the client's
17 best interest? So that's one question.

18 And the other is, what are we going
19 to do about financial literacy?

20 Ian, I'm going to ask you. Pick one.

21 MR. RUSSELL: Well, I would probably
22 pick the first one. That's a good question, what
23 is exactly the difference between the two, because
24 is dealing fairly and honestly equivalent to best
25 interest.

1 And I guess the only way I can answer
2 that is to say that we probably have to look at
3 these broad principles in a little more of a
4 granular way to identify what's really missing.
5 That's a question that I've had for a long time.
6 And I think it comes back to the enforcement
7 question as well, that we need to work perhaps
8 with a self-regulator, and that's happening on the
9 conflicts area right now, which is getting some
10 direction from the regulator in terms of what
11 constitutes managing the conflict within a firm.
12 And I think that provides the kind of safe
13 harbour, the confidence that a firm has in terms
14 of meeting the rules.

15 So I think we need to do that in
16 various aspects of the business. It also came up
17 in question -- some firms, and quite rightly, may
18 want to offer transaction accounts and not offer
19 discretionary accounts, and whatever line of
20 business they have they are going to have to
21 develop mechanisms to meet those broad principles
22 at the top, whether it's dealing honestly, fairly,
23 what does that mean, managing conflicts obviously
24 and how do you do that.

25 So there's a fair amount of work that

1 has to be done in there. I probably haven't
2 answered that particular question of best
3 interest.

4 MS. KOWAL: We're taking it away.
5 We'll be back -- Ursula?

6 MS. MENKE: I was just going to say,
7 rather than answer that question that way, I think
8 what I would say is that so far I can say
9 honestly, fairly and in good faith hasn't
10 demonstrated itself to be a best interest
11 standard, and I think what we're talking about is
12 what should the standard of behaviour be and we're
13 defining it right now. We're talking about in the
14 best interest of the client. And that I think
15 rather than worry about how many angels dance on
16 the head of a pin and trying to figure out what
17 those words mean, because we haven't put much
18 meaning to them up till now, let's focus on 'in
19 the best interest of the client' because that has
20 a lot more meaning to a lot of people. At least
21 that puts a clear direction in terms of what the
22 decision-making should be.

23 MS. KOWAL: Brings it in sharper
24 focus.

25 MS. MENKE: Yes.

1 MR. CASS: I will just hit that
2 financial literacy question for a second.

3 So two or three things I would
4 suggest.

5 One. We need to stop thinking
6 financial literacy is a crutch that's going to
7 resolve this because there have been many academic
8 studies that show people who have complete
9 financial literacy don't end up any better
10 financially than those that have complete
11 ignorance of the topic. So that's number one.

12 We can put as much as we want into
13 re-evaluating financial literacy as a curriculum
14 and what we need to teach, but don't expect that
15 to be a solution as to how people end up with
16 wealth or not at the end of a life.

17 The second thing would be, whatever
18 we do I think we need to desperately simplify the
19 notion of financial literacy.

20 I don't know exactly how my body
21 works and I've never gone to med school and no one
22 has ever said I need to get medically literate,
23 but I know that if I exercise and eat healthy I'm
24 probably doing good things. And if we could
25 figure out what's the one or two points we want to

1 get across and just focus on that, I think that
2 gets us 90 percent of the way to the message.

3 Then the final thing is, I would urge
4 the OSC and other provincial regulatory bodies to
5 work with the TDSB and the other education boards
6 around Ontario and across this country and get
7 financial literacy into the schools at somewhere
8 early.

9 My kid is learning all sorts of stuff
10 in school and not one thing of it is helping him
11 make his allowance last from one week to the next.
12 So get them while they are young with basic
13 principles that they carry through the rest of
14 their lives, but recognize that no matter what we
15 do this industry will still be the one that people
16 rely on to achieve what they want to achieve.

17 MS. KOWAL: I would like to, on
18 behalf of the OSC and all of our attendees, thank
19 all of the panelists for very rich and
20 enlightening discussion of the competing
21 considerations at play in terms of whether we need
22 a best interest standard and what the best way to
23 go about implementing one would be, and I'm
24 certainly hearing a commitment to continuing to
25 increase the professionalism of our industry and

1 certainly a view that there is some challenges
2 that we need to think through in terms of the
3 guidance that would be required to make this
4 effective as an initiative. So thank you very
5 much for all of your comments and contributions.

6 So we're going to take a 15-minute
7 break and we will be resume at 3 o'clock.

8 --- Recess taken at 2:47 p.m.

9 --- Upon resuming at 3:02 p.m.

10 MR. VINGOE: So we're about going to
11 begin the second panel on the targeted reforms and
12 their potential impact on investors.

13 So remember that the overarching
14 regulatory best interest standard and the targeted
15 reforms are meant to work together. They weren't
16 actually intended as alternatives, so the targeted
17 reforms have specific content that we'll delve
18 into and address.

19 So I'll begin actually by talking
20 about our panel.

21 So beginning actually over on my
22 left. Eric Adelson is head of Legal Canada for
23 Invesco Limited functioning as the general counsel
24 for Invesco Canada, Invesco's Canadian subsidiary.
25 In this capacity he's responsible for all legal

1 affairs for Invesco in Canada.

2 Prior to joining Invesco Eric was
3 vice president and general counsel at McKenzie
4 Financial Corporation after a legal career in
5 private practice.

6 And then going around the table we
7 have Paul Bourque. Paul is the president and CEO
8 of the Investment Fund Institute of Canada, IFIC.
9 Most recently he held the position of executive
10 director of the British Columbia Securities
11 Commission.

12 Prior to that Paul was an associate
13 partner with Deloitte and has held senior
14 positions with a number of securities regulators
15 and law enforcement agencies.

16 We then have Rosemary Chan. She
17 joined Scotiabank in February 2014 and is the
18 senior vice president compliance, Canadian Bank --
19 for Canada banking, which includes global wealth
20 management.

21 Prior to joining Scotiabank Rosemary
22 was senior vice president and general counsel of
23 IIROC for ten years. Rosemary has extensive
24 industry experience at two other financial
25 institutions and she practiced securities law at

1 is a partner of Borden Ladner Gervais LLP
2 practicing corporate and commercial law with an
3 emphasis on securities law and mergers and
4 acquisitions.

5 She's advised foreign and domestic
6 investment advisors, investment fund managers, and
7 dealers with respect to carrying on business in
8 Canada. Prema was just appointed to her third
9 term as a member of the OSC's Registrant Advisory
10 Committee.

11 So we have a great panel to address
12 the targeted reforms.

13 We're going to operate slightly
14 differently than the earlier panel. It's going to
15 be the same structure of questions and lead
16 discussants for each one with commentary. We're
17 also going to begin with short introductory
18 statements to basically know where each panelist
19 is coming from with respect to the targeted
20 reforms.

21 So I think we'll do this again,
22 starting with Eric.

23 MR. ADELSON: Thanks, Mr. Registrar.

24 So as the Vice Chair said, I'm with
25 Invesco. We're a global asset manager operating

1 in almost every part of the world, and we are
2 independent in the sense that we don't own
3 distribution and we aren't owned by a global
4 financial institution. And we like that because
5 we think that helps us focus on the best interest
6 of our investors without any distractions.

7 Fundamentally we believe that when
8 distribution and manufacturing are combined
9 there's inherent conflicts of interest that cannot
10 always be overcome. And inevitably our concern is
11 client's interest gets sacrificed along that
12 chain, and for reason we defend our independence
13 rather fiercely.

14 What we find as a global company is
15 that Canada is quite different from many of the
16 markets on which we operate because of the
17 excessive amount of integration between
18 distributors and manufacturers. We're also a
19 little surprised that so few people seem to see
20 anything wrong with that in Canada, whereas
21 elsewhere in the world people do have a problem
22 with that.

23 Our view is that conflicts that
24 relate to priority fund distribution is an issue
25 only where a dealer claims to operate on the

1 principles of open architecture.

2 So, for example, Investors Group,
3 which is a captive distribution proprietary fund
4 company, we don't actually have an issue with that
5 model because we think that -- you know, they're
6 upfront with what they do, you want to go to
7 Investors Group, you buy their funds, that's all
8 you get.

9 It's where a dealership claims to be
10 open architecture that's really where we think the
11 problems arise.

12 We think there's a lack of
13 enforcement of NI 81-105 and we combine that with
14 the natural human tendency towards greed, we
15 believe that there are so many incentives and
16 practices that misalign the advisor's interest
17 with those of the client in the so-called mixed
18 open architecture channel that the conflicts can't
19 be overcome.

20 Lastly, we believe investors should
21 have choice and real choice in the relationship
22 that they want with the quote "dealing
23 representative", or whatever title you want to
24 apply.

25 Our central concern lives with the

1 targeted reforms on the issue, and that the CSA
2 appears to have proposed at worst a model where
3 all retail investors must obtain full financial
4 planning advice in order to invest in the capital
5 markets, and at a best model where they can opt
6 out of that and receive no advice at all. So sort
7 of a binary option.

8 We believe the range of choice in
9 relationship is directly tied into the range of
10 compensation options and we believe it's a
11 fundamental mistake to separate those two issues,
12 and when we talk about conflicts later on I'll try
13 to bring those together.

14 MR. VINGOE: Paul?

15 MR. BOURQUE: Thank you for inviting
16 me. I'm going say a few things that I really
17 believe in. I've changed places from time to
18 time, back and forth and nothing I say today is
19 different than what I would have said a year ago,
20 but I believe and I am starting at a certain place
21 because I think it leads -- I think it leads
22 inevitably to an important point.

23 Investor protection and fostering
24 efficient and effective capital markets are not an
25 ends themselves. They are means to an end, and

1 the end that we're all trying to achieve is to
2 provide investment opportunities for Canada.
3 That's the high level goal that all governments
4 are trying to achieve through their regulatory
5 agents, and a well-functioning capital market
6 gives investors a wide choice of financial
7 products and services appropriate to their needs
8 at competitive prices.

9 There's little regulators can do, I
10 believe, to foster competition, but there's much
11 regulators could do to hinder competition. And it
12 is for that reason that the unintended
13 consequences of any new regulatory proposal have
14 to be identified and understood to ensure that the
15 cost of the rule -- and this is really my point --
16 the cost of the rule is proportioned to the harm
17 it seeks to address.

18 In assessing the impact of the
19 current reforms that are being proposed, be it the
20 statutory best interest standard rule or the
21 target of reforms or the proposed ban on embedded
22 commissions, or consultation on that anyway, it's
23 critical that the CSA to consider unintended
24 consequences through a broad lens. That has to
25 include, firstly, the value advice in building

1 retirement savings and avoiding common investment
2 errors, and the research currently shows that
3 investors do much better building wealth with
4 advice.

5 I think the CSA has to consider
6 whether the recently implemented reforms under
7 CRM-2 have achieved their objectives or not, and
8 whether or not they have mitigated some of the
9 harms that have been identified in the current
10 consultation paper 33-404.

11 It seems clear the CRM-2 is at a
12 minimum accelerating trends that are already under
13 way to mitigating some of those harms.

14 And finally, whether the market is
15 addressing the harms that have been identified in
16 the consultation paper.

17 So is the market moving in the
18 direction that the regulators want it to go in
19 without the necessity of imposing new rules.

20 So, you know, things like moving to
21 fee-based accounts, pay direct, we know that's
22 under way and it's accelerating. Lower prices for
23 investment products. We know the prices are going
24 down, passive and active investment products
25 moving to more consistent trailer fees.

1 So these are market movements that I
2 think, in order to avoid unintended consequences,
3 regulators should keep in mind.

4 Finally, the regulatory regime is
5 built on the assumption of voluntary compliance by
6 registered dealers and advisors. There's an
7 assumption that they -- most will try to comply.
8 That's true in the registered world, not in the
9 unregistered world.

10 But at the end of the day the
11 industry will do their best to implement whatever
12 rules that are approved by the CSA, obviously,
13 because we live with that assumption. But the
14 industry, I think, is entitled to expect a couple
15 of things from the regulators.

16 One, the cost of the rules have to be
17 proportionate to the harms they seek to address;
18 two, the rules should be clear and enforceable;
19 and three, the rules should be harmonized across
20 the CSA.

21 MR. VINGOE: Thank you.

22 Rosa?

23 MS. CHAN: I think the regulators and
24 the industry are aligned. We want to see our
25 clients achieve their financial goals. The

1 dialogue is about how best to get there.

2 When I look at the regulatory reforms
3 I do it from -- through the lens of two
4 objectives. One is how do we acknowledge the
5 value of advice that Paul referred to, how to
6 ensure that investors continue to be able to
7 access quality advice and financial services at a
8 reasonable cost and how do we ensure that the wide
9 variety are available to the investing public.

10 I think that we can do more as an
11 industry. I think that CRM-2 and point of sale, I
12 think they are significant regulatory reform that
13 go further than just transparency and having
14 upfront costs available for investors to make
15 informed decisions.

16 But regulating advice, moving from a
17 regulatory framework around trades, is something
18 that can be the subject of regulatory reform.

19 As an industry we want to embrace
20 these changes. We're a resilient industry and we
21 will innovate and we will rise up to the challenge
22 of new regulation. But we are well intentioned in
23 that we do want not just consistency that
24 regulatory reform will bring to the industry, but
25 clarity and certainty for us to manage not just

1 litigation risk that the previous panel talked
2 about, but reputation risk, brand risk and what
3 people called trust in the industry.

4 So when I view these regulatory
5 reforms it's from the client's perspective. What
6 are the outcomes that are going to enable clients
7 to continue to have choice, to continue to have
8 access to quality advice. And I think that if
9 there are gaps to be addressed, I think regulation
10 should address them head on and not at the edges
11 where we're not going to achieve the real
12 objective.

13 MR. VINGOE: Thank you.

14 Gerry?

15 MR. ROCCHI: Thank you.

16 I think similar to what Paul
17 mentioned, we've seen this the industry from a
18 number of angles. I have as well over the years
19 from trying to educate advisors on how iShares
20 could be used in their client portfolios and being
21 told that the advisors own them in their own
22 portfolios but would never recommend them to their
23 clients, to being a director of a UK-based asset
24 manager after embedded commissions were banned and
25 where active management continue to sell in the UK

1 in that marketplace.

2 What I noticed is that -- and I think
3 it plays well to the concept of most likely in
4 some of the targeted performances. If you are
5 trying to come up with a most likely outcome for
6 investors which -- all trying to do, people will
7 always allocate towards -- and including a healthy
8 amount of investment risk in those portfolios.

9 You know, after we've addressed some
10 of the conflicts of interest, including on
11 compensation, those choices of risk will not be
12 tainted by conflicted compensation models but they
13 will be chosen risk, and I think we'll have
14 healthier, more likely, portfolios going forward.

15 I think most of the targeted reforms
16 I see are through that lens. Are they going to
17 help the industry move towards providing useful
18 outcomes to investors or will they hinder that
19 process.

20 MR. VINGOE: Thank you.

21 Ellen?

22 MS. ROSEMAN: So as a journalist who
23 writes often about where businesses go wrong, I
24 get a lot of stories from people who find
25 themselves on the outs with the companies that

1 they are involved with, and what I can see with
2 many of the financial consumers, I like to call
3 them rather than investors because many of them
4 are forced into buying investment products because
5 they don't have the pension plans or they need to
6 provide for their own retirement, is that they
7 don't really understand the forces at play in the
8 industry.

9 And we've talked about embedded
10 compensation. Ursula Menke said before me that we
11 want to see an end to embedded compensation. But
12 as well, a lot of what I see is this emphasis by
13 the firms that employ the salespeople on asset
14 gathering. And it's very important for them to
15 continually increase their assets in order to keep
16 their jobs, and that leads to sometimes too much
17 pressure on people. You see it a lot at RSP
18 season where not only is there advice to borrow
19 but there's often somebody from the financial
20 institution right there able to write up the
21 paperwork right away.

22 We see that often, the customer
23 doesn't recognize the structural conflicts leading
24 to the advice and they are putting out the line of
25 credit on their house, buying high cost mutual

1 funds, not understanding that if they have never
2 invested before and the funds go down they are
3 still paying interest on these loans, and not
4 being through a protracted downturn, as often
5 happens, they are going to panic.

6 So we would like at FAIR Canada, and
7 also reflecting my own advice and information that
8 I get from the clients, to see a very strong
9 emphasis on getting rid of the conflicted models
10 of compensation that exist so we can align the
11 client's interest with the advisor's interest.

12 And unless that happens, I don't see that targeted
13 reforms as an alternative will go very far, and
14 even the best interest standard. We have to make
15 sure that there is no hidden agenda of costs.

16 And the last point I want to make is
17 that disclosure is often not a very good way of
18 reaching the average Canadian because they don't
19 read it, they don't understand. The research
20 shows when given information about disclosure
21 clients often trust the advisor more and see that
22 as a good thing, which is not necessarily good if
23 they are disclosing conflicts.

24 So for all those reasons, we want to
25 make sure that the client's interests are truly

1 aligned and that we just don't try and manage
2 conflicts, we eliminate conflicts.

3 MR. VINGOE: Thank you.

4 Prema?

5 MS. THIELE: Thank you very much.

6 First off I want to say that the
7 CSA's efforts to even get together these sorts of
8 forums across the country is something I really
9 appreciate, and I know that this is a very
10 difficult consultation paper with a lot of
11 different viewpoints at stake, and I think you
12 have a very difficult role in listening to what
13 people have even said today and across the country
14 as you traverse and go through these roundtables
15 in balancing what you are trying to accomplish and
16 still try to foster capital markets.

17 When I think of the targeted reforms
18 I must think of the recent release of Fantastic
19 Beasts, because certainly there are a lot of
20 fantastic beasts that Prema would like to talk
21 about.

22 Although I don't disagree with the
23 underlying regulatory principles, I don't think
24 many of us do -- I don't even think I disagree
25 with the concept of targeting reforms, but I must

1 say I do have concerns with -- and I know we're
2 going to talk about this, but some of the
3 one-size-fits-all responses that are being
4 suggested here.

5 And to support and echo a little bit
6 about what Peter said earlier, I, too, feel there
7 are practical challenges in implementing some of
8 the proposals within existing business models.

9 In whatever reforms -- and there will
10 be some that are implemented -- the one if I had a
11 Christmas wish, that the lines between trading and
12 advising, which I see personally as one of the two
13 backbones of our current regulatory structure,
14 must not be blurred. And in my view we have to
15 tread with caution in holding registrants to
16 standards they simply cannot meet and that go
17 toward blurring those lines between trading and
18 advising which have been held and are the basis of
19 at least one pillar under all securities laws.

20 I do also echo Paul's comments in
21 terms of CRM-2. It was a massive initiative that
22 is just in its infancy still in terms of how did
23 we all do with this. Did I get it right in what I
24 said to clients about what your expectations are.
25 I don't think we're there yet.

1 So I do also on my Christmas wish
2 list, you know, hope that these proposals are
3 taken into account after we have a period of time
4 to see how we've done on CRM-2.

5 And lastly on my wish list is that we
6 don't proceed with the targeted reforms unless we
7 have a harmonized national consensus, because I do
8 think that that is something -- and I heard the
9 panelists this morning. I, too, have practiced a
10 fairly long time and I know that what the success
11 of 31-103 which was in my lifetime one of the
12 greatest achievements you've had -- it's a very,
13 very large piece of legislation and I think its
14 greatest success was that it almost, for the most
15 vast majority of all the major topics, had
16 national harmonization, and I think that's an
17 important factor to consider here.

18 MR. VINGOE: Thank you.

19 So picking up on your comment about
20 the issue of one-size-fits-all, one of the themes
21 in the comment letters that's been fairly
22 consistent is that we not take too rigid an
23 approach and that there could be, or should be a
24 more flexible approach in the development of the
25 targeted reforms and particularly in the areas KYC

1 and suitability. Some commentators asked us to
2 recognize the nuances and differences between
3 different business models.

4 On the other hand, we have a strong
5 interest in creating a common baseline experience
6 for clients when they deal with registrants
7 regardless of the channel.

8 So one aspect of the question, the
9 issue on KYC and suitability, is whether it's
10 possible to maintain a level of consistency but
11 still build in some flexibility.

12 The second aspect of it that I'll ask
13 you to address the -- that was referred to in the
14 earlier panel as well, is the most likely concept
15 which in the product selection suitability --
16 element of suitability in the proposal calls for a
17 standard of selection most likely to achieve the
18 client's investment needs and objectives.

19 And in that regard, some
20 commentators, and I think some of you, your
21 remarks have alluded to this, there's a fear that
22 people will go to the most conservative choices.
23 They will actually reduce choice.

24 Gerry, on the other hand, thought
25 that that would be the opposite, that a most

1 likely standard would only appropriately include a
2 certain amount of risk in the portfolio selection.

3 So this is a very broad setting of
4 the table for discussion, and I would turn this
5 over first to Rosemary to start us out.

6 MS. CHAN: I had an overall comment
7 to the targeted reform that the Commission should
8 regulate the process that contributes to positive
9 client outcomes and not necessarily try to
10 regulate the investment outcome itself.

11 In terms of KYC, I'll address that
12 point first.

13 KYC is a process. It's not a form.
14 And admittedly it's more than the three or four
15 boxes that are in our account opening
16 documentation now. Most advisors have deep
17 discussions with their clients, and it's part of
18 this client discovery that lends itself as the
19 basis and foundation of discharging their
20 suitability obligation.

21 So there are areas in terms of how do
22 we codify these best practices that are geared
23 towards the services that that client is
24 expecting, is paying for, and the dealers are
25 obliged to deliver.

1 So I don't believe that KYC should be
2 mandated. I believe that the elements of KYC can
3 be further discussed, and there should be some
4 more consistency in terms of terminology,
5 particularly in the discussion about risk, that
6 more can be done. But it's not a form that should
7 be mandated because we should only be asking for
8 information that we need in order to provide the
9 service for the client.

10 In terms of advice, and we talked
11 about -- I talked earlier about regulation of
12 advice. The standard that's articulated in the
13 targeted reforms that refers to aspects of
14 financial planning, financial strategy. Not all
15 clients are going to get that type of advice.

16 There are clients with different
17 stages in the evolution of their financial needs
18 and at different stages of their savings. They
19 should pay for the service that the dealer is
20 going to deliver. And so in terms of what those
21 services are, it should be -- the rationale behind
22 the regulation should be -- must be made clear
23 what the client is going to get from the dealer,
24 what they're paying for and how the dealer is
25 going to deliver on that service.

1 In terms of -- we talked earlier
2 about the trend towards fee-based accounts. I
3 don't think that that is ultimately a solution.
4 Fee-based accounts will address transparency and
5 disclosure about what clients are paying for. But
6 we still need to address the heart of the client
7 discussion. What are you getting in return for
8 this money and what is the advisor relationship
9 during the course of the account servicing.

10 In some ways fee-based accounts,
11 because clients are paying monthly based on AUA,
12 is this an ongoing relationship. Are you getting
13 ongoing advice or are you not. I think that
14 client discussion and the clarity still needs to
15 be worked through.

16 And then lastly the targeted reforms
17 talk about this analysis by the firms as well as
18 comparisons. It doesn't recognize that there are
19 many products and services.

20 The hallmark of our industry has been
21 about innovation, and there's lots of choice now
22 as to those products. It's always been left up to
23 the firm to decide in that universe what
24 securities are we going to follow and within that
25 universe that list which is well-engrained in

1 terms of our current KYP obligation.

2 There's a recognition in the retail
3 brokerage industry that there is -- that advisors
4 can choose from that subset what to follow
5 depending on their client needs.

6 I'm concerned the regulatory reforms
7 have concepts that are well-engrained in portfolio
8 management where it's the firm view, it's the firm
9 list, and it's what's permissible or not
10 permissible within the context of the firm, as
11 opposed to recognizing the advisor is an
12 investment professional. If there is proficiency
13 issues, those should be addressed directly.

14 MR. VINGOE: Prema, what is your view
15 on these two aspects of KYC and suitability?

16 MS. THIELE: So two things. First on
17 the question of consistency across the client
18 experience.

19 I don't disagree that there can be
20 elements of consistency, and there should be. I
21 mean, KYC is no question, it's a cornerstone for
22 any appropriate advice being given, and I think we
23 can agree that there are certain proposals under
24 the targeted reforms and suggestions that I think
25 folks can agree.

1 For instance, personally I agree with
2 the concept that firms and representatives should
3 be taking a portfolio approach to suitability.
4 And I agree that risk rating of a specific
5 security is only one input into this whole
6 analysis.

7 But when I looked at the prescription
8 in some of the appendices and you couple that with
9 the targeted reforms for KYP, I guess my concern
10 in reading it was what -- is the CSA trying to
11 achieve, in essence, a requirement that all
12 dealers of any category, or advisors, have to have
13 some sort of financial plan in place for their
14 clients.

15 That's where I see the reforms being
16 -- implementation challenges being -- coming to
17 the surface.

18 For a smaller investor who just wants
19 to invest and make an annual contribution to their
20 RRSP or just wants to put their child in an RESP
21 or if you are in the exempt markets and you want
22 to make an investment into a private equity fund,
23 those are three different propositions.

24 So this gets to what I was saying
25 earlier about this one-size-fits-all approach in

1 the targeted reforms, and I think starting there
2 and answering the second question about this most
3 likely concept going to result in low cost, lot
4 risk products.

5 I think the issue here to me is very
6 simply, something's got to give. I think that
7 there is a possibility that the numbers and types
8 of clients that firms will take on will be
9 challenged simply because the amount of
10 administrative procedures and costs that are
11 associated with some of the prescriptive
12 procedures to enable Peter and his compliance
13 group to be able to satisfy themselves that they
14 have met the standards in here, I think there's an
15 administrative burden there that's going to lead
16 to a compliance risk, and at some point economic
17 sense is going to kick in no matter what we want
18 to do and if the account size is too small, the
19 client doesn't have sufficient money to invest,
20 then I think we know what the outcome is going to
21 be.

22 MR. VINGOE: Thanks.

23 Gerry, again, I found your comment
24 interesting about most likely having the opposite
25 result, someone in a professionalized environment

1 actually taking a portfolio construction approach
2 that would be balanced and not just to fall to a
3 limited range of products, and I hope you could
4 address that.

5 MR. ROCCHI: Thank you, Grant. I
6 think that's absolutely true.

7 First, I do think it only makes sense
8 in a portfolio context, and I think what we've
9 seen is firms and advisors, especially in places
10 where they have evolved different compensation
11 models, must offer competitive portfolios, and
12 those will always involve an allocation to invest
13 and risk, and won't hunker down in low risk, or
14 always in low cost products.

15 I think when combined with the best
16 interest standard, or something similar to it,
17 that you eventually land on, it actually frees the
18 advisor to choose from sometimes higher cost
19 products because that higher cost is not tied up
20 in advisor compensation.

21 A good example of where -- how views
22 of investment risk have changed is this whole
23 notion of what do people do -- people talked about
24 investment for retirement. What do people do post
25 retirement and in de-cumulation.

1 Ten years ago I think the perceived
2 wisdom was very much about adopting a low risk
3 portfolio in that stage, but the advances that
4 we've made -- and you hear a lot about it probably
5 more outside Canada than here where I think we
6 still talk about regulation -- is to move to
7 de-cumulation models, or taking reasonable amounts
8 of investment risk in a very thoughtful way. And
9 I think that people have needed to do that in
10 other countries to be competitive to attract
11 clients. I think that's what will happen here.

12 MR. VINGOE: Thank you.

13 Well, the next area I wanted to
14 explore, which is in fact related, deals with the
15 requirements and the proposals regarding product
16 shelf generally, and we obviously distinguish
17 between proprietary shelves and non-proprietary
18 mixed shelves.

19 Again, some of the commentators have
20 felt that because of training, the know your
21 product requirements, that there could also -- and
22 the detailed requirements about if you were going
23 to have a mixed non-proprietary shelf testing the
24 market, it actually might also have the reverse
25 effect of reducing choice, taking things off the

1 shelf, a system -- having firms acknowledge that
2 their proprietary and systematizing their
3 compliance processes around a narrower range of
4 products, so it's really continuing that theme.

5 But I wanted to challenge you to
6 suggest ways in which the targeted reforms could
7 be modified to minimize that unintended
8 consequence, if you perceive it to be a real one
9 on firm's product offerings as a result of the
10 shelf requirements, and I think I would start out
11 with Paul.

12 MR. BOURQUE: Thanks, Grant.

13 Again, I'm going to start at a high
14 level and try to come back down to the deck.

15 But it seems to me in -- and it came
16 up in last panel -- that the best interest
17 standard and the targeted reforms are not
18 alternatives. But if you think about regulatory
19 structure, actually they are.

20 Because while we're all in favour of
21 principles and principled-based rules,
22 description of the 'what', typically in a
23 principle-based regime you leave it up to the firm
24 to decide the 'how', the prescriptive rule.

25 You know, it seems to me that that

1 would be the way to go, having an overarching
2 guiding principle along with prescriptive rules
3 kind of takes it out of the hands of the firm to
4 figure out how they are going to accomplish the
5 outcome that the best interest standard is
6 describing.

7 But in terms of the target reforms,
8 there are some things I think that could be done
9 that would assist implementation.

10 The requirement that every
11 representative fully understand all the products
12 offered is going to be problematic to say the
13 least. We currently have about approximately 3200
14 mutual funds and over 3,000 list of stocks and
15 yesterday we have 455 ETFs.

16 It's hard to imagine a firm that's
17 doing an exploration or an analysis of a
18 reasonable range of products that's going to
19 choose from that group, and to expect every
20 advisor to be fully conversant with all of them is
21 not practical and I think the firms need some
22 advance on how they will determine if the client
23 fully understands some of the suitability rules,
24 some of the suitability advice around conflicts.

25 The most likely to achieve is a

1 standard I have never heard of before. Maybe I
2 haven't looked wide and far. But it is an
3 interesting standard because it suggests there is
4 one, there's one answer. The most likely. That's
5 what it suggests to me. And that is going to be
6 problematic as well because when the client comes
7 forward five or ten years after the fact and says,
8 you know what, I don't think that was the most
9 likely. It might have been one of a likely group
10 of products but it wasn't most likely, who is
11 going to adjudicate that and how will the
12 enforcement staff be trained to deal with that,
13 because they have to, if that is to remain in the
14 rule because an unenforced rule is not a rule. It
15 doesn't really have any effect.

16 So what I would say is as the regime
17 is done for the advisory groups for mutual funds,
18 the investment advisory committee, they are
19 provided with the safe harbour. They have a best
20 interest standard to meet and they're given a due
21 diligence defence. And I would recommend that the
22 commissions look carefully at allowing firms to
23 take advantage a due diligence approach so that
24 they could, say five or ten years after the fact,
25 say you know what, it looks like it didn't turn

1 out very well but we did everything reasonably
2 foreseeable to try and make sure we didn't end up
3 here but we ended up here anyway. So I think a
4 due diligence approach would be very helpful for
5 implementing these reforms.

6 One last thing, and it's
7 interesting -- it came up in the previous
8 discussion. Trying to achieve the same treatment,
9 and I always thought what we're trying to achieve
10 is the same level of investor protection. And
11 when we start talking about client experience that
12 has a bit of a whiff of marketing to me, and I'm
13 not sure I know what it means.

14 So I think what we're trying to
15 achieve is the same level or the same degree of
16 investor protection, but I don't think we'll ever
17 achieve, I don't think all clients are ever going
18 to be treated the same or have the same experience
19 because a lot of that is really up to the
20 marketplace to decide how they are going to deal
21 with clients.

22 So anyway, I've spoken enough.

23 MR. VINGOE: Well, you know, I guess
24 the other approach of what could be a substitute
25 for due diligence would be policies and procedures

1 approach. If they are sound and yield an outcome
2 it might have a certain degree of -- potentially
3 of protection vis-a-vis the regulator.

4 Eric?

5 MR. ADELSON: Thanks.

6 So I'm going to talk a bit about a
7 couple of ideas we have to modify the proposal.
8 But before I get there I think it's important to
9 point out that we were critical about this in our
10 letter. I know others were as well.

11 It wasn't always clear in the
12 consultation what need particular reforms were
13 trying to address. And so it's interesting that
14 you start the KYC part by saying that it's bad
15 having a common baseline experience for clients
16 when they go into a registrant.

17 Arguably, I think it's less clear
18 what the purpose of the KYP firm requirements
19 were, given that there already are KYP
20 requirements around firms from the SROs and the
21 like, and firms generally act in accordance with
22 that.

23 So -- and one of the criticisms many
24 of us have is that the reforms will end up
25 limiting the shelf really at the expense of

1 independent fund managers.

2 The reason for that obviously is
3 there's a whole laundry list of hoops that the
4 dealer has to jump through to offer third party
5 product, whereas the affiliated product goes right
6 on the shelf without really any visible standards.
7 Obviously they have standards behind the scene and
8 IIROC has an affiliated products, due diligence
9 rule and all that, but those are largely
10 meaningless in the sense that an affiliated dealer
11 will never ever reject an affiliated manufacturer's
12 product. So you're automatically on the shelf.

13 Whereas from the independent fund
14 manager's perspective we don't have that luxury.
15 So I think that's an important point we shouldn't
16 lose sight of.

17 Now, looking at the shelf. Obviously
18 if you have a full financial planning model and a
19 firm ends up going proprietary probably isn't that
20 big a problem either, but again you are living
21 investor choice and it's not really clear why you
22 would want to do that.

23 So our response is really the shelf
24 should be unlimited and the other obligations
25 around the advisor's duty to their client really

1 take care of what are the suitable or the best
2 investments or whichever standard we end up going
3 with at the end of the debate.

4 It's also interesting, you know,
5 people say oh, well, nobody is going to limit the
6 shelf, the big IIROC dealers want to offer a wide
7 range of products.

8 Now, there's some truth in that. I
9 think like the big five banks, their IIROC dealer
10 probably will want to keep a wide range of
11 products, beyond those guys it's not clear how
12 many will.

13 What we find interesting is many,
14 many dealers we've spoken to that have an
15 intention to continue offering a wide range of
16 products have said well, if these reforms come in
17 we'll have to limit it to five or six fund
18 companies because we can't really know product
19 beyond that.

20 Now, you combine that with Environics
21 surveys which consistently show advisors
22 themselves really partner with three to four fund
23 partners at a time, and you might think, okay,
24 that math works out. But it actually doesn't
25 because the three to four companies that one

1 advisor at RBCDS use might be different from the
2 three to four that his friend uses across the desk
3 and that the guy on the other side uses.

4 Whereas at the dealership currently
5 they might be using 15 or 20 dealers, they would
6 be reduced.

7 So, again, choice is being reduced
8 and it's not always clear what the factors are
9 going to be in making those decisions, especially
10 at firms with proprietary product because, you
11 know, one of the reasons they have proprietary
12 product is it gives them enhanced ability to earn
13 revenue.

14 So talking about solutions then.

15 So one simple solution that we
16 proposed is if you are going to go with this
17 system that's been proposed and you want to call
18 yourself an open architecture shop, for every
19 proprietary fund you have in a particular
20 classification category you have to offer ten
21 unaffiliated funds. And there you have real
22 choice because you have 11 products to choose from
23 at minimum, the advisor can take a look at it.
24 You can of course game that system but presumably
25 there would be standards put in place that would

1 avoid gamesmanship and let the advisor have a real
2 choice among those 10 or 11 products.

3 A second solution is when we're
4 constructing the shelf -- you know, I think one of
5 the fears that especially active managers have is
6 that cost is a prominent feature in the guidance.
7 And it's interesting the guidance is written in
8 such a way that cost isn't the only factor.

9 But going back to the low risk, low
10 cost approach it seems like the safest approach
11 for a dealer or an advisor who may be facing a
12 liability down the road so they go low cost, low
13 risk. They probably don't have a lot to worry
14 about. They are probably not also serving their
15 client's best interest, so it will be interesting
16 to see how that conflict gets adjudicated.

17 But if you remove the guidance on the
18 KYP process and replace it with more a system, or
19 encourage a system that pension consultants use
20 where they look at a lot of factors -- you know,
21 they're looking at the composition, the investment
22 team, how that team works together, the clarity of
23 the philosophy, the merits of the philosophy, the
24 impact on idea generation, all with a view they
25 are trying to make a prediction about which

1 investment manager is more likely to achieve the
2 objectives.

3 So put it in the hands -- so have an
4 analysis like that where at least there is some
5 basis for putting something on the shelf that
6 doesn't really have to do with cost.

7 And not to say consultants don't look
8 at cost, they do. But it's just one factor among
9 many. The investment process is really the bigger
10 issue then.

11 MR. VINGOE: Just in the interest of
12 time. We will open it up for more discussion
13 later, but I just it wanted to see from Gerry if
14 you felt there were ways we could counter this
15 tendency to reduce the shelf or limit offerings to
16 mitigate that through regulatory design.

17 MR. ROCCHI: I think shelves may well
18 constrict somewhat, but I think -- as you know I'm
19 a fan of the portfolio concept. But only one
20 advantage of it is that in working more portfolio
21 concepts into this, is that as people look to
22 potentially shrink their shelves they need to make
23 sure that to form competitive portfolios they have
24 all the essential building blocks, hopefully some
25 non-correlated opportunities and not whether they

1 had three versus ten dividend equity funds all
2 with similar returns.

3 So I think that forces any choices
4 into the right ones. How do I know I've got the
5 right building blocks available.

6 Second comment I would make is, I'm
7 sympathetic to the concept that the firm may have
8 certain obligations and for the advisor to be
9 aware of the entire shelf can be a challenge, and
10 I'm sympathetic to that.

11 But I would just offer that there's
12 -- you will eventually -- I mean, ultimately we
13 all expect you'll work on making that more
14 practical for the advisor. You must. But there's
15 probably a point where you shouldn't go beyond,
16 which is how can you expect the investor to
17 understand all these funds and fund offerings and
18 investment offerings if you think the advisor
19 can't.

20 So I think when you look at making
21 this more practical for the advisor, the point
22 beyond which I would not like to see it go is to
23 make it less useful from the point of view of the
24 advisor, is actually the one with more information
25 and expertise than the investor. Information

1 asymmetries will still exist and they must always
2 have a higher obligation than the investor.

3 MR. VINGOE: Thank you.

4 The next area. We touched on in the
5 first panel -- and it's one of the common themes
6 in discussion of any of these reforms is the issue
7 of the risk of an advice gap, and we've heard of a
8 variety of points of view about it. And I guess
9 in terms of the targeted reforms, the perceived
10 risk is that we're loading on requirements,
11 imposing costs and firms will continue a trend of
12 jettisoning clients that don't have sufficient
13 assets to sustain the increased burden.

14 On the other hand we've heard there
15 may be solutions through technical fintech
16 offerings or other ways that the gap would be
17 filled.

18 So, Ellen, from your point of view,
19 will we be generating an advice gap and how can we
20 mitigate it?

21 MS. ROSEMAN: Ursula talked about a
22 CSA survey that showed 56 percent of Canadians
23 invest with an advisor, if they have investments
24 to begin with.

25 There was an earlier study also,

1 National Smarter Investor Survey, that showed
2 50 percent of Canadians in general don't have
3 investments and of the others, 30 percent of
4 Canadians aged 35 and above invest through an
5 advisor, while 19 percent they don't invest with
6 an advisor but they do have investments.

7 So there is a market that is doing it
8 on their own, and maybe doing it rationally either
9 because they can't find an advisor that suits
10 them, maybe their account is smaller than the
11 minimums that many firms impose, or maybe they
12 just don't see the value of the cost. And I know
13 that for many advisors they don't understand what
14 the costs are, and with CRM-2 finally they should
15 be able to.

16 But there is a group there that can
17 be potentially converted to an advice model if the
18 advice is good. This is the problem, that the
19 advice is often sales advice.

20 And since I'm a journalist, a story
21 that came in must have been early July and it's
22 still being looked at by the firm. It's an MFDA
23 dealer.

24 The female who wrote to me was in her
25 early sixties. She was with a credit union, and

1 had been for many years, mostly with fixed income
2 investments that later migrated all her
3 investments into mutual funds, and she had
4 \$200,000 worth.

5 She wasn't looking to change but she
6 had an issue where she worked outside the country
7 and the pension that she had, what she wanted to
8 bring into the country, was difficult for this
9 credit union to handle because they have all kinds
10 of money laundering rules and everything else and
11 she needed some help and she went to her employer
12 and they recommended somebody from this MFDA firm
13 to come to her house and help her out with the
14 transfer.

15 So the transfer was \$21,000 worth of
16 pension, but while this person was there at her
17 home she started talking about how do you invest,
18 where are your investments, what do they cost, and
19 all this. Investor knew that it was costing her 2
20 percent a year. I wasn't clear from her e-mail
21 whether that was 2 percent MER, 2 percent fees,
22 she wasn't sure.

23 But the advisor immediately started
24 saying that's dishonest, it's unfair, you can
25 invest with us, we don't charge anything, we're a

1 much better firm, bigger firm. And that day or
2 the next day they signed the paperwork.

3 Then three months later the client
4 changed her mind. She wasn't sure about the
5 service she was getting. That advisor didn't even
6 live in her city. And she closed the account and
7 moved her money back to the credit union.

8 The cost of doing that was \$11,000 on
9 her initial \$200,000. Five-and-a-half percent
10 commission. If she had been told in a way that
11 she understood that it would cost her that much,
12 probably she wouldn't have bought these funds
13 because the DSC, differed sales charge, would have
14 been explained to her. Number two, she wouldn't
15 have just moved them back.

16 So a lot of sales advice to me is
17 just get more assets, get them under management,
18 tell people when they complain, well, on it's this
19 piece of paper, it's disclosed to you in writing.
20 You should've read it, that's not the good thing.

21 In general, we want to have informed
22 advice that makes sense.

23 In the area that I look at a lot of
24 people are realizing that mutual funds are too
25 high cost. Those MERs add up over the years when

1 you compound them, half or more of your returns go
2 to the advisor in the firm that is managing the
3 money.

4 So they're looking for a low cost
5 solution and they are hearing about ETFs, they are
6 reading about ETFs, they are reading about Couch
7 Potato portfolio, Easy Chair portfolio, whatever
8 you want to call it. It's not hard to manage but
9 it is hard to set up and it's probably hard to
10 rebalance on a regular basis.

11 So there's a perfect market niche for
12 people to come in and teach the do-it-yourself
13 investor how to get started, to coach them along
14 the way.

15 The robo advisors are doing it but
16 there are costs once you add up the underlying
17 MERs, and the cost of managing the money is
18 .7 percent up to one percent. And maybe many
19 do-it-yourself investors just want to hold and
20 they don't want to do very much. They can save
21 money that way.

22 So there are new advice channels
23 opening up and I don't think we have a gap for
24 advice but we have a gap for good advice that
25 serves the investor's interests.

1 MR. VINGOE: That's an interesting
2 illustration and mis-selling and sales as opposed
3 to advice.

4 But, Paul, do you think the industry
5 can and will adapt to a set of rules that pose
6 these challenges and address the potential of an
7 advice gap for good advice?

8 MR. BOURQUE: Yes. I have no doubt
9 the industry will adapt. I don't believe for a
10 minute that the industry is going out of business.
11 They will find ways to remain profitable and they
12 will find ways to serve clients. So I have no
13 doubt that that will continue.

14 But we still want to know where we're
15 all going to end up and what kind of service are
16 certain segments of clients getting and who are
17 being sort of disenfranchised from the kind of
18 advice they actually need.

19 So let me just say something about
20 the relationship, because the investment
21 relationship, the advisory relationship, is all
22 about a relationship. And although there's been
23 some talk about how, you know, it used to be a
24 transactional model and now it's an advisory
25 model, it was always a relationship model, from

1 the very beginning to today and to the end of
2 time, likely.

3 So we're always talking about
4 relationships, and without a relationship with an
5 advisor it becomes very difficult to do a number
6 of things. And I wanted to just focus on the
7 whole retirement savings issue, because if we get
8 that wrong then we've made a big mistake.

9 So most Canadians are modest
10 investors. We know that. 74 percent of Canadians
11 with investable assets have less of \$50,000 to
12 invest. So we have a lot of small accounts.

13 Canadians are going to rely more and
14 more on their investments for requirement because
15 a number of employer-based defined benefit and
16 defined contribution are shrinking, we know that.

17 Canadians are living longer. They
18 will have to save more for retirement. If you are
19 born in 2007 you have a 50/50 chance of living to
20 be a hundred. Lower interest rates. Low growth
21 will make it very difficult to save for
22 retirement.

23 So we have to be very careful that we
24 don't create an advice gap. And I'm not saying
25 that an advice gap is inevitable, but it's

1 certainly foreseeable. And it occurred in the UK
2 when they banned embedded commissions and raised
3 proficiency, and you can argue about causality and
4 what caused what, but the fact is HM treasury and
5 the FCA are working very hard today to close the
6 advice gap. They are offering people tax-free
7 money out of their pension accounts to pay for
8 advice. They are trying to lure the banks back
9 into the robo advice business.

10 So it's all about relationships.

11 I think technology is important. I
12 think the industry has been innovating and will
13 continue to innovate on how to make advisors more
14 efficient. And let me give you a U.S. example.

15 Vanguard just launched their advisory
16 channel. Vanguard -- that's a new thing for
17 Vanguard. They launched it with a robo offering
18 and they hired 400 advisors and put it together
19 with a robo advisor and they have accumulated
20 \$47 billion in assets. Wildly successful. But
21 there's an advisor, there's a face, there's a
22 relationship.

23 And I think that's very important
24 that all advisors, and particularly modest
25 investors, because the affluent will always be

1 able to bargain and negotiate what they need. But
2 it's the modest investors that are going to get
3 left behind. So we want to make sure we do not
4 create an advice gap for those investors where
5 they lose access to advice and then we have a
6 retirement savings problem to deal with.

7 MR. VINGOE: Thanks.

8 Well, I know, Gerry, you have
9 international experience that includes the UK and
10 reforms in the UK. But do you perceive these
11 reforms generating an advice gap and is there
12 anything to be learned from the UK experience?

13 MR. ROCCHI: I think there are two
14 things. Initially there may have been some part
15 of an advice gap, quickly became an advice change
16 as technology meant that advice was delivered in a
17 more systematic lower cost method for lower or
18 smaller asset pools. I'm not sure they got
19 differentiated advice before anyway but they are
20 now able to get that advice, again with the help
21 of technology.

22 I think the problem in the UK, and I
23 think the problem everywhere on relying on
24 technology to deliver advice for smaller asset
25 pools is going to be with seniors. I think that

1 every challenging circumstance described, either
2 by Ellen or others, I think could get magnified in
3 that environment.

4 I think we're learning that seniors
5 now have more nuanced investment needs than what
6 people thought ten years ago -- put them into
7 bonds. So they actually need advice, and as their
8 asset pools decline whether or not they can
9 actually access advice through technology as well
10 as a younger person who can likely figure that out
11 I think is going to be one of your bigger
12 challenges.

13 MR. VINGOE: Thank you.

14 Before I move on now, we're getting a
15 flood of on-line questions. So given the interest
16 we're seeing, we're thinking everyone's agreeable
17 to extending our time 15 minutes beyond 4:00.
18 Actually -- 15 minutes over. Sorry, to 4:45. We
19 were going to go to 4:25.

20 So, again, there's a flood of
21 questions. I wanted to raise that before we get
22 to the next question on conflict of interest. So
23 we'll go to approximately 4:45.

24 On conflict of interest. We have
25 broad requirements in the targeted reforms, and

1 some have argued that we should focus more
2 narrowly on compensation and incentive practices
3 at the heart of conflicts of interest.

4 And so the question is, if we were to
5 do that should we focus really specifically on
6 compensation and practices rather than the broader
7 conflict of interest area, and would we get the
8 most bang for our buck by narrowing the concerns
9 addressed to those practices.

10 With that, I'll start with Eric.

11 MR. ADELSON: Thanks.

12 So to answer the first question
13 first. I would say absolutely, definitely
14 compensation incentives are all the heart of what
15 drives conflict of interest. If there wasn't a
16 financial advantage to somebody at the other end
17 in a conflicted situation, in many cases it's
18 unlikely they would act on the conflict, assuming
19 of course that acting on the conflict is the wrong
20 approach in that particular case.

21 So if you have two products, one you
22 are going to get paid more than on the other.
23 There are people that will stop the inquiry there.

24 I can tell you a story about one
25 where we had -- an advisor had clients in one of

1 our funds and we have a series of what we call our
2 flagship funds -- very, very low trail.

3 The performance of the funds was fine
4 but yet the advisor switched the fund -- the
5 client investments anyway so the advisor can get a
6 bigger trail. So absolutely, positively
7 compensation incentives drive behaviour.

8 It's not entirely clear to us what
9 else drives conflicts of interest, but we think if
10 you focus on compensation and incentives you are
11 going to get rid of most of the issues.

12 Now, that's not to say that you
13 shouldn't still have an overriding rule saying put
14 your client's interest first. I think the two go
15 hand in hand, it's not a binary decision. I think
16 you need both.

17 So you need the overriding principle
18 about how you deal with conflicts of interest,
19 namely putting your client's interest ahead of
20 those of the firm. But you do still need to
21 attack this specific behaviour because there are
22 so many outs in securities law as it is that you
23 might have an overriding principle then you have
24 about 15,000 pages of legislation and there's
25 loopholes and in those 15,000 pages and lawyers

1 like me are paid to find those and exploit them.

2 So if you have the overriding
3 principle it might be a little bit harder to do
4 that. But you have to go part at the problem.

5 I talked about proprietary products
6 before. An obvious solution to the proprietary
7 product conflict is just don't allow dealers and
8 manufacturers to be affiliated. That gets rid of
9 the problem right there. Or -- obviously that's
10 controversial, but I mean that's just an obvious
11 solution. Yet we don't ever discuss that in this
12 country which -- called into question.

13 But we're talking about incentives.
14 In question 48 of our responses to the
15 consultation we listed a whole bunch of bad
16 practices out there, some of which dealers claim
17 are consistent with the NI 81-105, some which are
18 not. Yet these go on. They are all incentive
19 driven in some fashion. They are all allowed to
20 go on. Some of them are clearly illegal, but they
21 don't get enforced.

22 So this is another area -- I can
23 propose a whole bunch of rules, but the fact is
24 until the rules that are on the books gets
25 enforced people are going to keep acting in a

1 conflicted situation.

2 And you can look no further that
3 81-105 has been around for 18 years and we've
4 never had a prosecution. Those of us that work
5 every day in this industry are a little shocked by
6 that because we know there's been a lot of bad
7 behaviour out there and we wouldn't be sitting at
8 this table today if there wasn't bad behaviour.

9 So why do we need more rules when we
10 have deals that deal with this but they don't get
11 enforced? So that's what we ought to do about
12 conflicts of interest.

13 MR. VINGOE: Well, the affiliation
14 issue, thank you for raising that. It's an
15 appropriate subject for conversation for sure.

16 Rosemary, what do you think about
17 narrowing our conflict focus to --

18 MS. CHAN: I do agree that we should
19 focus specifically on what the commission is
20 trying to address in terms of investor protection
21 and conflict of interest.

22 We have existing rules. We have
23 81-105. We have SRO rules. What's not clear is
24 in what areas are we not no longer able to address
25 conflict through disclosure? So where are

1 conflicts so great it must be avoided that's not
2 already in legislation or an SRO rule?

3 I think that in terms of conflict we
4 need greater clarity on what the investor harm is
5 and what we're actually trying to address, because
6 we have these overarching rules that are already
7 in place that we currently deal with through
8 disclosure. Disclosure is not enough. What are
9 the acts that -- or what are the structures that
10 need to be addressed in order to bring greater
11 clarity to this obligation.

12 MR. VINGOE: Thanks.

13 Prema?

14 MS. THIELE: Obviously CSA is
15 absolutely on track in terms of emphasizing the
16 principle of prioritizing client's interests and
17 emphasizing conflicts of interest and how we're
18 going to deal with it.

19 But -- and I don't know, I throw it
20 out to Eric as well, but in my experience just as
21 a lawyer dealing with this subject, because
22 everything seems to be conflict of interest-based
23 related in some fashion. But it's a real
24 challenge to conceptually define and explain what
25 is or is not a material conflict of interest.

1 I got to admit that's something that
2 I have tremendous difficulty doing, let alone
3 identifying circumstances when conflicts exist.
4 I'm not talking about the obvious ones that we all
5 know -- and Eric, that might still go on and are
6 unbelievably conflicts of interest. Those
7 egregious ones I think we all we agree on.

8 But this is a really tough job for
9 registrants, let alone a tough job for their
10 lawyers.

11 I guess I would urge the CSA to focus
12 efforts on providing significant, practical and
13 concrete guidance on the meaning and the terms of
14 conflict of interest.

15 Now, I commend -- I was very pleased
16 when 31-103 came out. I thought the companion
17 policy did a very good job at explaining an
18 approach to conflicts of interest. It really did
19 a very good job of that. But I think we've taken
20 things to a different level, or maybe the next
21 level.

22 And I think industry, certainly me
23 personally, need help here in identifying what it
24 means -- Eric, were you going to say something?

25 MR. ADELSON: Yeah, just, they do put

1 out the three approaches but nobody ever chooses
2 avoidance. Like, it's not realistic.

3 (Speaker overlap)

4 MR. ADELSON: But that's where the
5 regular has to step in.

6 MS. THIELE: And I think that there
7 has to -- I really believe -- this area cannot
8 just be a principles-based approach. I think we
9 really do need examples of what is in -- what the
10 regulatory expectations are in this regard.

11 On the specific question of
12 compensation incentive practices. Obviously that
13 is a central conflict of interest theme, no
14 question about it. But I think I certainly want
15 to park any discussions on that topic under this
16 reform package until the CSA has issued its paper
17 on the mutual fund fees because I think that's
18 going to be a fundamental step that will inform
19 anything that any of us have to say about the
20 target of reforms.

21 And just leaving the discussion on
22 one final thought that -- I just think the fact
23 and reality of compensation in and of itself, we
24 can't just say that's a conflict. I think
25 compensation has to go on. I just don't want it

1 to, in and of itself, be considered to be a
2 conflict.

3 MR. VINGOE: Thank you.

4 At this point I have a number of
5 question cards and I'll pose these questions.

6 The first one addresses the know your
7 product -- in the case of private placement. So
8 for the most part we've been talking about the
9 impact on larger firms.

10 But if you take the example of EMD
11 with a -- an exempt market dealer with a very
12 limited shelf offering private placement
13 securities, how would these work? In a sense, if
14 there's a proprietary shelf of that kind, the
15 issue is making sure that you're offering the most
16 suitable product on that shelf, and then there
17 would be circumstances under a most likely
18 standard where the product would not be suitable
19 at all and you would have to go elsewhere.

20 I wanted to ask Ellen. There's a
21 large number of exempt market dealers with very
22 limited product offerings. What do you think we
23 should expect from them in the know-your-product
24 area?

25 MS. ROSEMAN: Well, when you talk

1 about suitable, it's always suitable for the
2 investor. So you have to do a thorough KYC, which
3 I guess they still have to do, but they don't have
4 to do all the prospectus requirement that other
5 dealers do. And they are supposed to be dealing
6 with accredited investors, but is that always
7 enforced properly.

8 And I really think it's important
9 that if investors are taking on more risk that,
10 number one, they should be questioned thoroughly
11 about the amount of risk that they feel they can
12 take on and make sure that there's some experience
13 in their history. Because we all say that we can
14 -- we love risk in a bull market and we've had a
15 great run over the past seven, eight years. But
16 you have to make sure that they can handle it,
17 that they have the resources to handle it.

18 The worst thing is always that the
19 client sells at the bottom of the market. And
20 it's a very common thing even for people in the
21 industry. They get very discouraged there's so
22 much bad news and everything else.

23 So you want to make sure that they
24 are making products suitable.

25 And then there's always the case that

1 the suitable product right now isn't suitable
2 later.

3 I had a number of complaints about
4 principle-protected notes during the 2008 crash.
5 They were un-moored so the customer had no more
6 upside. They just took away the investment that
7 could go up, and they were stuck ten years getting
8 their principle back at the end of it. So that
9 was a pretty poor investment for the client and
10 couldn't really catch them under the regulatory
11 regime because it seemed like a suitable
12 investment at the time. Nobody expected the
13 market to go down by 40 percent.

14 MR. VINGOE: Thank you.

15 Paul?

16 MR. BOURQUE: Interesting question
17 because the CSA actually addressed that about 18
18 months ago in a notice that they issued covering
19 what they called captive exempt market dealers.
20 And it was an attempt to give some guidance to the
21 exempt market to firms where the mind and
22 management of the issuer and the distributor were
23 the same person. And they didn't have limited
24 product shelf. They had one product.

25 So it was an attempt by the CSA to

1 say, how do you operate under the current regime.
2 And there was advice given on what firms could do.

3 It seems to me that that model --
4 it's a contradiction to have that model in the
5 best interest environment. I mean, the two just
6 don't go together. You can't square that circle.
7 So you have -- either you have to prohibit the
8 business model or you have to explain the best
9 interest standard in a way that's different than
10 what we commonly believe.

11 MS. THIELE: Or you keep the
12 suitability standard and enforce it and develop it
13 further.

14 MR. BOURQUE: Yes. That's always
15 a good option, to enforce the current rule.

16 MR. VINGOE: I'm going to move to the
17 next question now that -- that's a fascinating one
18 to actually consider the impact on the captive and
19 on the EMDs.

20 The next one really looks at the
21 shelf investigation, product shelf investigation
22 requirements for non-proprietary shelves and the
23 optimization process. And the question really
24 begins with -- by stating we're assuming that such
25 a capital markets investigation is even possible.

1 Rosemary, do you think that that type
2 of market test is feasible?

3 MS. CHAN: I think the scope of the
4 reform is too broad. I think that it's possible
5 for a limited number of products that that firm's
6 business model supports. But it's not an outcome
7 that regulators can have certainty. Reasonable
8 and very proficient portfolio managers can have
9 different views on the merits of different
10 product.

11 So the reform should really focus on
12 the process -- the due diligence process, how
13 decisions are made, how products get on a shelf
14 with all these considerations with asset
15 allocation, some of it might cost, all these
16 factors that a professional portfolio manager
17 would look at. That's what contributes to the
18 list.

19 And I would say that the product due
20 diligence obligations are not too great as long as
21 it's not the broad universe the products
22 available, as long as we're not looking at the
23 test of most suitable.

24 The other thing I would say is this
25 determination at a point in time with information

1 available that a prudent portfolio manager would
2 undertake, it can't be judged in hindsight. It
3 can't be judged in terms of what happened to the
4 market, what are the alternatives and how did
5 those securities react during this time. It
6 really needs to be a point in time.

7 Then I would just say lastly, and
8 this was brought up by the former panel. And not
9 to underestimate what compliance programs we need
10 in place to make sure we're meeting our due
11 diligence obligations and then making sure that
12 whatever the standard is, that clients are getting
13 the right advice and being placed in the right
14 product.

15 So we will, in terms of a -- not just
16 because compliance people have to stick together,
17 but just how technology has transformed the
18 delivery of financial services, technology has
19 transformed the compliance function. It's not
20 just written policies and procedures that we need
21 to have in place to evidence compliance. It's
22 systems, it's tools.

23 I have to interpret and give life to
24 product due diligence and to whether we're
25 discharging, whatever that standard of advice and

1 standard of care is.

2 Inevitably, we will oversimplify our
3 obligations in order to deliver the system of
4 compliance and supervision that we're obligated to
5 demonstrate to the commission. That we're
6 undertaking.

7 MR. VINGOE: Eric, did you want to
8 comment on the shelf optimization and its
9 feasibility?

10 MR. ADELSON: I think I'm sympathetic
11 to what Rosemary is saying. I think it's really
12 hard to do. I think it's -- you know, it's one of
13 those proposals that I think sort of sounds good
14 when you think about it and then when you put it
15 on paper and think about it a bit more you realize
16 there's going to be a lot of hindsight and second
17 guessing.

18 I think earlier you made a comment,
19 Grant, about having policies and procedures around
20 that. And I think that's probably a better
21 approach at the end of the day where -- I don't
22 think it's outside the realm for the regulators to
23 give some suggestions, some ideas. But when you
24 call it guidance, and there's a whole laundry list
25 of factors, inevitably those who write the policies

1 and procedures feel that their polices and
2 procedures have to mimic the laundry list of
3 factors.

4 So you end up in a place that
5 probably is not so good because it makes it way,
6 way too onerous.

7 I think if you have a proper due
8 diligence policy and procedure around products,
9 whether it's affiliated or unaffiliated, and if
10 you follow that and you evidence it and then --
11 compliance isn't just about polices and
12 procedures. You have to test and monitor for your
13 policies and procedures. So you have to be able
14 to show you've been following them.

15 If you've done all that, and that's
16 how you constructed your shelf, if you missed a
17 few of the factors -- I mean, there's probably a
18 hundred factors overall that we can come up with
19 over what should go into it. Nobody is going to
20 hit all the factors. So there has to be that kind
21 of leeway.

22 So I do think that should go to the
23 discretion of the registrant.

24 We made the suggestion around using
25 sort of a pension consultant approach. There's

1 other ways to do it as well. I don't think heavy
2 prescription in the matter is helpful. I think it
3 actually ends up being detrimental because of the
4 propensity for people to follow line by line
5 what's in guidance or what's in a rule or
6 whatever.

7 MR. VINGOE: Thank you.

8 The next question goes to the
9 conflicts of interest. There was a fair amount of
10 comment that we were asking potentially for --
11 were asking for a registrant to really confirm or
12 assure that the client actually understands that
13 the investor has a meaningful understanding of the
14 implications of disclosed conflicts of interest
15 made through disclosure that's prominent, specific
16 and clear.

17 So what can we reasonably expect from
18 a compliance standpoint in ensuring that the
19 client actually understands the implications of
20 conflict of interest.

21 So I think I will start with Prema.

22 MS. THIELE: We've seen -- and I
23 still am not clear what additional level and how
24 we're going to achieve this additional level of
25 conflict of interest management. Because again I

1 go back to 31-303 introducing what I thought to be
2 a conflict of interest management sort of regime
3 and expectation, then accentuated through further
4 developments on relationship disclosure
5 information.

6 So I hate to say it, but to me -- on
7 some of the those conflicts of interest to me
8 those discussions first have to happen within the
9 organization. And when we're getting to client
10 level, I do think that it has to be distilled in
11 acceptable disclosure. I don't really think that
12 there is a workable universally accepted other
13 alternative than disclosure on that sort of thing.

14 I mean, CRM-2 obviously on pre-trade
15 disclosure has put into play that discussion to
16 happen with clients. But let's face it, not all
17 clients want to have all of that discussion. Not
18 every client is sitting down for this financial
19 plan meeting, you know. And I always talk about
20 me being the worst investor and passivist
21 investor, and I don't think that I'm that much
22 different than anybody else. I'm still in favour
23 of good, plain disclosure requirements in that
24 regard.

25 MR. VINGOE: Gerry, what do you think

1 we can expect of firms and -- actually some would
2 say hand holding, some would say guiding, but
3 really ensuring that the -- if we rely on
4 disclosure, that it's really understood by the
5 client.

6 Often as regulators we feel that
7 disclosure is insufficient. But is there a way in
8 the engagement with the client to actually -- from
9 a compliance point of view, do you think there's a
10 way of actually measuring that and assuring it?

11 MR. ROCCHI: I would have thought it
12 would be appropriate answer in many more cases
13 that happen now is to avoid the conflict, because
14 it is so hard given the information asymmetry to
15 communicate it in a way that's understood and
16 freely consented to by the client.

17 I'm not ruling it out. I'm just
18 saying I would've thought the outcome in more
19 cases would have been conflict avoidance.

20 MS. ROSEMAN: I've consistently asked
21 the regulators for examples where conflicts are so
22 great that they must be avoided, that it cannot be
23 adequately addressed through disclosure, like
24 meaningful, clear disclosure.

25 MR. VINGOE: Well, the issue is the

1 comprehension of disclosure as well, which is very
2 difficult to --

3 MR. BOURQUE: We have the same
4 standard for purchasers of private placements,
5 either under an OM or credit investors have to
6 sign off on a risk acknowledgment. The issuer has
7 to make sure that the purchaser understands the
8 risk.

9 So -- I mean, I suppose there must be
10 a way to do it.

11 MR. ADELSON: But that's not
12 different from informed consent in the medical
13 context where I guarantee you 95 percent of the
14 people in the room have had a medical procedure in
15 the last two years where they had to sign a
16 consent, and I bet you they didn't read a word of
17 it. So it's the same thing.

18 MR. BOURQUE: Then why do we require
19 it? Because it's --

20 MR. ADELSON: Because of people like
21 me, lawyers.

22 MR. BOURQUE: So we can blame the
23 lawyers, but this is part of regulatory burden.
24 So if we're making people sign dozens of forms
25 that they are not reading and paying no attention

1 to it, why are we doing it? We must have some
2 belief that there's some value to it because it's
3 just cost that ultimately investors are paying.

4 MS. CHAN: I think we can do a better
5 job on disclosure. I think that CRM-1,
6 relationship disclosure document, I think some of
7 us could have done a better job in terms of
8 describing the types of conflicts we may engage
9 in. There's a lot of 'mays' in some of those
10 documents. I think conflicts can be addressed
11 through disclosure but it's got to be
12 comprehensive and comprehensible.

13 So I would like not to see more
14 intrusive regulation in terms of avoidance of
15 conflict. I would like to see us do a better job
16 and the regulator, recognize that conflicts can be
17 mitigated through appropriate disclosure.

18 MR. VINGOE: So at this point, given
19 the amount of interest we thought we would do an
20 open mic session where we'll take questions from
21 the audience that's assembled here in the room,
22 and I'll direct it, at least initially, to one of
23 the panelists, so we'll see what comes up.

24 Are there any questions from the
25 floor that you would like to pose to the panel?

1 AUDIENCE MEMBER: I've been around a
2 long time, 50 years in the business. I own an
3 independent mutual fund dealership. I still
4 advise. I'm the only advisor in that dealership.
5 I have 1500 clients, and I sit on the board of the
6 MFDA to represent the constituency of dealers who
7 are not big banks.

8 I preface my remarks with that
9 because I want you to know I'm just not a
10 malcontent or someone who thinks that you're
11 beating up on advisors.

12 But that's really what it feels like.
13 We hear from Ellen about somebody who was
14 mis-sold, but we don't hear about the other 79,900
15 advisors who sell properly. We don't hear about
16 people like myself who, 48 years ago put a sign on
17 the wall that the commission I earn is a byproduct
18 of the service I provide and have lived with that.

19 Most of the advisors are members of
20 -- I am a CFP and a CLU, you know, a member of
21 Advocis. We have a code of ethics that we live
22 by, and most of us out there are like that.

23 So I guess the only question I have
24 is, why not focus a little bit, just a little bit,
25 on the positive, and why not give credit to those

1 of us who are doing a good job, and why not let
2 people like myself help write the rules about
3 disclosure? Because I know how people out there,
4 the bad apples are beating the rules. And I know
5 how they, the bad apples, are mis-selling, and to
6 not have somebody from the industry, an advisor?

7 Because I have to tell you that my
8 interests are not the same as, you know, the large
9 banks, they are not the same as IFIC. We come
10 from different places.

11 I sold insurance for 50 years --
12 CLHIA did not represent my interest for one day,
13 but yet they were the controlling body in
14 the industry --

15 MR. VINGOE: Let me let the panel
16 address your question on -- which is really, as I
17 understand it, you're putting forward the case
18 that there are many positive outcomes and also --
19 that should be addressed and acknowledged, and
20 also that firms like yours haven't had input into
21 the rules.

22 AUDIENCE MEMBER: And advisors have
23 had no input. You have not yet had an advisor sit
24 on a panel or discuss this. And it's the advisor
25 that's being impacted.

1 MR. VINGOE: I'll put that to --

2 MS. FOUBERT: Just on that point,
3 though, I want to say that we did do an OSC
4 advisor event where we went to communities
5 throughout Ontario and had full conversations,
6 just as we're having now with an open mic session
7 where people were able to provide whatever
8 comments they wanted.

9 So we've done that in three separate
10 cities around Ontario. So we have received input
11 from advisors. We knew that we had to go into the
12 industry and actually get the input from the
13 advisors. So we have done that.

14 MR. VINGOE: And this occasion is one
15 in the public comment process.

16 Eric?

17 MR. ADELSON: I'm sympathetic to what
18 he's saying. I think -- in large part I think
19 advisors don't get recognized in forums like this
20 the way the rest of us get recognized. I think
21 maybe next time it would help to have an advisor
22 at the table.

23 I also would point out that there are
24 a lot of us in the industry who have made similar
25 arguments in the past. My last several comment

1 letters I cite all the enforcement statistics and
2 ask, well, what's the problem because the numbers
3 don't really justify the regulatory reform effort.

4 I ask the question, is it just that
5 the numbers are too low and we're not enforcing
6 enough or is there really not a problem? I don't
7 know what the answer is. We need that data.

8 But the numbers show -- I mean, when
9 you look at a couple thousand enforcement cases
10 last year, among all the SROs among the CSA
11 members, when you have millions of Canadians
12 investing, that's not a horrible number.

13 But I would say to you, when the
14 rules are published there's a comment process.
15 And I spend months -- and I have a day job too --
16 I spend months writing these comment letters to
17 try and put forth a position that I think is good
18 for us and good for the industry and good for
19 investors. You should do the same.

20 AUDIENCE MEMBERS: I spend hours. I
21 don't have months.

22 MR. ADELSON: Because I agree, the
23 disclosure stinks and it's incomprehensible, but
24 it's because the same people keep writing up the
25 disclosure. We need new people writing the

1 disclosure, and with your experience I think you
2 have a lot to contribute.

3 MR. VINGOE: Other questions from the
4 floor?

5 AUDIENCE MEMBER: I'm Jim Boyle. I'm
6 a securities lawyer and I have an EMD of which I'm
7 the chief compliance officer.

8 First, I want to thank everyone on
9 the panel for all the work and everything they did
10 to make the presentation today. I think it was
11 really excellent and there were some really,
12 really good ideas that came out, really thoughtful
13 things.

14 One of the things I wanted to talk
15 about is conflict of interest, but I wanted to ask
16 a question about regulatory conflict of interest.

17 It seems to me the drafting of the
18 instruments has -- that the regulator doesn't
19 explicitly recognize that it's its own primary
20 client in preparing these particular kind of
21 instruments and proposals.

22 I think what this gentlemen spoke to
23 kind of hints at that. I think what Eric referred
24 to when he spoke to the opportunity to respond to
25 the vast proposal and everything in a way exhibits

1 that exact characteristic.

2 How do we, or how do you, look at
3 what you are trying to do and do it in such a way
4 that it doesn't increase the regulatory burden,
5 doesn't increase regulatory activity? It's pretty
6 random this stated outcome will occur, but it's
7 assured regulatory activity will increase.

8 So if that's a driver of what we're
9 doing and conflict of interest is one of the most
10 important things that we're supposed to look at,
11 then we look at it, our partners here are the
12 regulators, our clients, the manufacturers, the
13 distributors. So how do we look at regulatory
14 conflict of interest and manage it so the outcomes
15 are more effective, more likely to occur?

16 MR. VINGOE: You know, we've really
17 tried to invite comment that addresses more
18 effective ways of accomplishing our objectives.
19 So sometimes we get stymied because the comment
20 process produces a lot of opposition but without
21 suggestions about how something could be
22 streamlined, something could be improved.

23 In this particular roundtable I think
24 it was effective -- we posed questions about how
25 some of the proposals could be modified to avoid

1 adverse outcome. So that's one concrete example.

2 Also, in the consultation itself
3 there's a very extensive section on the research
4 that underlies the work and the harms that we're
5 seeking to correct. Even to the extent that we
6 commissioned our own financial economics research
7 and matters such as fund flows and -- fund flows
8 following embedded commission compensation
9 practices and an extensive review of literature.

10 But we really depend on consultations
11 like this, and I think this event shows a great
12 willingness to hear points of view and try and
13 find alternative ways of accomplishing our
14 objectives.

15 So I personally kind of reject the
16 idea that we are doing this in a vacuum, but
17 everyone is entitled to a view.

18 AUDIENCE MEMBER: If I could do a
19 supplemental question?

20 MR. VINGOE: Sure.

21 AUDIENCE MEMBER: Just because the
22 research is a perfect example of it.

23 There was two studies that are quoted
24 in the 33-404 proposals that speak to 88 percent
25 of the mystery shoppers were satisfied with the

1 information they got, but a third of those didn't
2 meet regulatory expectations.

3 Is the conclusion that the regulatory
4 expectations have gone beyond investors' needs?

5 There's another one, the smart
6 investor one that says that 92 percent of
7 investors trust their advisor. And the conclusion
8 is that trust leads to confidence and that
9 confidence somehow is negative. Yet one of the
10 two stated purposes of the Securities Act is
11 confidence in capital markets.

12 So as a regulator are we permitted to
13 say that confidence is a negative thing and that
14 trust is something that --

15 MR. VINGOE: Let me address that.

16 So in terms of the mystery shop. The
17 point of actually indicating that -- and these
18 were trained mystery shoppers, these were not
19 random individuals. And what we found was that
20 even in those cases they actually would connect
21 with their advisors, which was not surprising to
22 us, that a relationship of confidence would build
23 up. And we know that in any professional
24 interaction or any interaction, if we don't want
25 to characterize it as fully professional, but in a

1 relationship situation, that people develop
2 reliance and dependence, and when people are
3 really expert at selling things -- whether it's as
4 a lawyer, I'm a lawyer, we sell services too, in
5 private practice. When you do that, you build up
6 -- one of your skills, one of your stock and trade
7 is to build up a relationship of confidence.

8 It wasn't surprising to us that we
9 would see a high level of confidence and trust and
10 see a deficient process, and that actually worries
11 us. But I'll just leave it at that.

12 Other questions from the floor?

13 There are couple other questions I --
14 yeah, actually maybe we'll -- given the time,
15 maybe that's a good one. Would you like to
16 address the issue of what next steps we have in
17 mind?

18 MS. FOUBERT: Sure. Next steps.
19 Obviously everybody knows this was a proposal so
20 the CSA is working together to be able to go
21 through and analyze all the information that was
22 submitted through the over 120 comment letters,
23 plus all of the roundtables that are occurring
24 throughout the country, plus all of the questions
25 that we received today. All of that will go into

1 the thinking and understanding of how -- where we
2 go and how we move forward. So the CSA is going
3 to be working on that for the next little while.

4 And then we will be putting some
5 recommendations together on how to proceed which
6 will then be given to each of our chairs, and then
7 next steps will be -- after that is determined
8 whether or not rule proposals are required.

9 If there are rule proposals
10 published, there will be another full consultation
11 period on the rule proposals as well. So don't
12 think this is the only opportunity you have to
13 provide your input.

14 So I think that's what I would say on
15 that point.

16 MR. VINGOE: I think we said we would
17 go to quarter to. I think following the pattern
18 of last panel, I was going to give a few moments
19 to each panelist to help wrap up our event,
20 starting with Eric.

21 MR. ADELSON: Thank you for inviting
22 me today and for holding the roundtable. I think
23 it's been pretty helpful, especially the different
24 viewpoints that have come out today.

25 I think it's really important going

1 forward that when we embark on regulatory reform
2 projects, from the regulatory perspective, that
3 we're clear on whatever it is we're trying to
4 achieve and how that ties in, have different
5 aspects of the proposal tie in.

6 Obviously the CSA did a lot of
7 background work, and there's a lot of studies
8 cited in the paper. But it becomes difficult to
9 comment, to really provide the alternatives that
10 you guys seek when it's not always clear what the
11 rationale is for a particular proposal.

12 We talked about those today. And I
13 think you'd get higher quality comments back from
14 commenters if you did that.

15 I think generally the industry, the
16 last several years especially, has gotten the
17 message. They want to be part of reform. We want
18 to be part of the reforms. But we need a little
19 help from the regulators to understand what was
20 the rationale for this particular proposal or that
21 particular proposal.

22 As I said at the beginning, our
23 primary concern as a firm is really around
24 conflicts of interest. Everything boils down the
25 conflict of interest and obviously the fewer

1 conflicts there are, the better it is for an
2 independent operator, such as ourselves.

3 So we're going to be in favour of
4 almost anything you propose that's going to
5 mitigate conflict of interest.

6 As I've said before in public forums
7 and comment letters and the like, enforcement has
8 to be an aspect of all of this. The reality is
9 enforcement today is weak. 81-105 never having an
10 enforcement action doesn't make a lot of sense to
11 many of us. CRR branches have done several big
12 sweeps over the last 18 years. They found the
13 same problems repeatedly on sweeps, which to me
14 cries out for enforcement.

15 We had all the recent dealer
16 settlements on a no-contest basis and that sort of
17 seemed like each successive one, the fact panel
18 was even worse than the one before yet they still
19 get off without any repercussions, without paying
20 back money that they shouldn't have taken in the
21 first place.

22 I think when people see that that's a
23 little disappointing and I think that fosters a
24 lack of confidence.

25 So I think that's got to be thought

1 out a bit further, and I think if we enforce
2 what's on books, I'm not so sure we're going to
3 have a problem that cries out for more reform.

4 MR. BOURQUE: Eric covered my
5 enforcement point.

6 But to Sonny's point. One of the
7 beneficial effects of enforcement, if it validates
8 the work that the people that are trying to comply
9 actually do. So when people are trying to comply
10 and they are spending money to achieve the outcome
11 and they see other people over there not spending
12 the money and getting away with it, it's pretty
13 disappointing. Just a very important point.

14 I think that we should always be
15 careful about unintended consequences about any
16 new proposal. I'm a big believer in enforcing
17 current rules and seeing if we need new ones. But
18 if we do need new ones, we've got to make sure we
19 know as best we can what the outcome will be.

20 If by implementing one or all of the
21 best interest standard, the targeted reforms, ban
22 embedded commissions or some combination of that,
23 we end up disenfranchising modest investors and we
24 will have done them a great disservice, I think we
25 should do everything possible to avoid that.

1 MR. VINGOE: Thank you.

2 Rosemary?

3 MS. CHAN: This year I've literally
4 criss-crossed Canada talking to advisors from
5 across the country. I talked to many dealers over
6 the course of my career.

7 All our discussions are about the
8 client. It's not about compensation. It's about
9 how do we deliver what the client expects in a way
10 that is what -- that furthers the client's
11 financial goals.

12 So I think as an industry when we
13 talk about regulatory burden, we want to see
14 positive outcomes that the regulatory efforts
15 achieve the actual objectives and clients are
16 better off.

17 So I don't talk about cost. Some
18 people say I'm naive. But I think it's -- the
19 cost is worth it if the clients are better off.
20 And that's what I would like the focus of
21 regulatory reforms to be.

22 I am concerned about -- when I talked
23 earlier about the role of compliance, this is not
24 -- we've moved beyond -- our evidence of
25 compliance is dependent on what the advisor said

1 and what the client understood, and we'll know
2 malfeasance if we see it.

3 I think that advisors want to do the
4 right thing. They want clarity as well. As a
5 compliance function, we want evidence in a system
6 of control and supervision that provides the
7 certainty that our management and other
8 stakeholders and our regulators are looking for.

9 I have scale. I can deliver whatever
10 you want. But not all dealers will have the scale
11 and will have the systems in order to provide the
12 infrastructure for these reforms.

13 So I always talk in terms of client
14 outcomes, how do we focus on the client and making
15 sure that we help you achieve your objective in
16 terms of that consistency that you talked about,
17 the two themes of today's session.

18 We're looking for certainty and
19 clarity so that we can make sure your regulatory
20 reforms are successful.

21 MR. VINGOE: Gerry?

22 MR. ROCCHI: I found the research the
23 CSA conducted compelling and it confirmed many
24 things I observed over a long period, and I was
25 delighted to hear Maureen's introductory comments

1 about how she wished to go further than these
2 proposals.

3 I also agree, though, with Eric that
4 adding rationale and narrative to what it is that
5 you wish to do can only help you in this
6 incredibly complex area. Especially hearing some
7 of the comments today, I would say that's an area
8 that really needs to be boosted going forward.

9 MR. VINGOE: Thank you.

10 MS. ROSEMAN: I don't think that
11 there's one model that fits everyone, and in the
12 last panel they talked about fee-based model and
13 how that was better than a transactional model.

14 I started investing in the days when
15 there were very few direct sales and mutual funds,
16 so I had an RSP with a broker who's with one of
17 the big IIROC firms owned by a bank. And she
18 keeps saying how there's pressure on them to go to
19 the fee-based model.

20 Well, that works for some clients,
21 but in the case of a buy and hold client, somebody
22 who doesn't do much trading, who can sit there and
23 are quite happy to let their dividends keep
24 re-investing, that doesn't work. And she said
25 she's trying to push off this demand, but it gets

1 harder and harder.

2 So I think we always have to put
3 ourselves in the client viewpoint of the kind of
4 advice they need that really suits their interest.

5 And in another case I have a discount
6 brokerage account and if I buy a mutual fund from
7 my discount broker there are trailer commissions
8 taken off. Even though a discount broker isn't
9 allowed to give you advice, they can give you
10 advice on how to execute an order but not what to
11 buy and sell. And that's something that shouldn't
12 exist either.

13 In the robo advisor, that's something
14 new. We're trying to figure it all out. That may
15 not be the model either. But today's discussion
16 was a lot about how the firms could adapt. And I
17 think we have to think about the client who may be
18 satisfied because they aren't really that
19 knowledgeable about investing but who could be
20 doing so much better if the conflicts were
21 eliminated and they were getting more of the
22 return rather than paying a higher part of return
23 to their advisor.

24 MS. THIELE: Thank you for putting on
25 these forums. I think no one really should say

1 you haven't engaged in consultation. It was a
2 very fair period of time to review this large
3 proposal as well, so I thank you for that.

4 Two things I might leave you with in
5 thinking about the comments that have been made
6 today, and certainly comments made by BLG in our
7 comment letter as well.

8 First off, I want us to remember the
9 very significant role that the MFDA and IIROC make
10 in setting rules and expectations for their
11 members. And I just want to make sure that
12 they're fully engaged in this process because I
13 think they play a very important role in ensuring
14 that the rules are implemented appropriately for
15 the SROs.

16 And then lastly, the themes that you
17 heard already from me, but I just reiterate that I
18 really want to make sure that firms and
19 representatives have a very clear, consistent and
20 what would be commercially viable guidelines to
21 follow any targeted reforms that you do impose so
22 that they are able to reasonably try and achieve
23 investor protection and the proportionate
24 protection that you are trying to achieve in this
25 process.

1 MR. VINGOE: Thank you.

2 Well, I think today has been very
3 informative for us, and we'll take into account
4 all of the viewpoints as part of the overall
5 consultation.

6 I want to turn it over to Deb to wrap
7 it up.

8 MS. FOUBERT: Well, I have the pleasure
9 of thanking everyone for participating, both sets
10 of panelists. It was a great discussion. And
11 also I want to thank the entire OSC team that put
12 this event together. It has taken a lot of time
13 and effort and I think it's been well worth it.

14 As I said, we will be taking all of
15 the comments that we receive today. We will be
16 looking at it with the CSA and assimilating those
17 comments into our analysis. We will also place
18 the audio recording of the roundtable, as well as
19 the transcript, onto the OSC website as soon as
20 it's available, so hopefully within the next week.
21 So if you replay it all again, you can go there
22 and listen to it again. But I wanted to just say
23 thank you to everyone.

24 --- Whereupon the proceedings concluded 4:47 p.m.

25

1 This is to hereby certify that
2 the forgoing to be a true and
3 accurate transcript of the
4 proceedings to the best of my
5 skill and ability.

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8 _____
9 Sandra Brereton
10 Certified Shorthand Reporter
11 Registered Professional Reporter
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