



February 22, 2013

**SENT BY ELECTRONIC MAIL**

Me Anne-Marie Beaudoin  
Corporate Secretary  
Autorité des marchés financiers  
800, square Victoria, 22e étage  
C.P. 246, Tour de la Bourse  
Montréal, Québec  
H4Z 1G3  
e-mail: [consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)

and

John Stevenson, Secretary  
Ontario Securities Commission  
20 Queen Street West  
Suite 1900, Box 55  
Toronto, Ontario  
M5H 3S8  
e-mail: [jstevenson@osc.gov.on.ca](mailto:jstevenson@osc.gov.on.ca)

Dear Sirs/Mesdames:

We are writing this letter on behalf of the Canadian Exchange-Traded Fund Association (“**CETFA**”). Based in Toronto, CETFA is the only exchange-traded fund (“**ETF**”) association in Canada, representing 85% of the companies offering ETFs and over 95% of the ETF assets under management in Canada.

CETFA appreciates the opportunity to provide comments on the CSA Consultation Paper 33-403: *The Standard of Conduct for Advisers and Dealers: Exploring the Appropriateness of Introducing a Statutory Best Interest Duty When Advice is Provided to Retail Clients* (the “**Consultation Paper**”).



We are pleased that this issue has been raised for discussion, and we are in favour of efforts to assess the best interest standard as a means of potentially strengthening investor protection. There is agreement within the CETFA that the current standard of conduct owed to investors is inadequately understood by the retail public, and while there are continuing efforts towards improving the financial literacy of Canadian investors there are still substantial gaps in investors' knowledge.

The Consultation Paper also illustrates some of the ambiguity that exists under the current regime as to when a fiduciary duty currently applies. Based on the survey results presented in the Consultation Paper, a large percentage of Canadian investors assume that their adviser or dealer already has a fiduciary duty when in fact it may not. Our hope is that discussion of this issue will eventually result in greater clarity as to when a fiduciary duty applies, as well as what adhering to any such fiduciary duty will require.

Prior to determining whether securities regulators should implement any new legislation or rules that would impose a fiduciary standard on advisers or dealers, the CEFTA would encourage the CSA to conduct additional research to help demonstrate whether the impact of a new standard would be positive for the industry as a whole. For example, while the implications for registered portfolio management firms are likely to be minimal, the impact on registered dealers and dealer representatives is likely to be significant.

In the CETFA's view, it would be premature to conduct such research before (i) CRM2 is fully implemented, (ii) federal Bill C-28 (An Act to amend the Financial Consumer Agency of Canada Act) is enacted, (iii) new point of sale disclosure requirements have been fully implemented and (iv) the potential for new Investment Industry Regulatory Organization of Canada ("IIROC") rules based on the responses IIROC receives from their *"Use of Business Titles and Financial Designations"* paper released on January 8, 2013, have been fully considered. We believe that the needs of investors for full disclosure and transparency will be improved tremendously by these changes.

If the best interest standard is implemented, it would need to be clear – to investors, regulators and the courts – that the duty to act in a client's best interest should not mean that advisers or dealers would have to give "perfect" advice, provide "perfect" service, or provide a guaranteed positive investment outcome. As stated in the JPC<sup>1</sup> report, the advice would not need to be "ideal, perfect or best".

---

<sup>1</sup> Parliamentary Joint Committee on Corporations and Financial Services, Inquiry into financial products and services in Australia (November 2009), online: [http://www.aph.gov.au/binaries/senate/committee/corporations\\_ctte/fps/report/report.pdf](http://www.aph.gov.au/binaries/senate/committee/corporations_ctte/fps/report/report.pdf).



Whatever approach ultimately adopted should be consistent across all provinces and territories to allow national firms to have a uniform compliance program and for investors to have an expectation that they have the same protection regardless of where they reside. We also believe a comprehensive companion policy would be useful to advisors, dealers and other marketplace participants.

We thank you for allowing us the opportunity to comment on the Consultation Paper. Please feel free to contact the undersigned if you would like further elaboration of our comments.

Yours Truly,

A handwritten signature in black ink, appearing to read "Howard Atkinson", written in a cursive style.

**Howard J. Atkinson**, CFA, CIMA<sup>®</sup>, ICD.D  
Chair – CETFA Board of Directors  
[hatkinson@horizonsetfs.com](mailto:hatkinson@horizonsetfs.com)