

VIA E-MAIL:

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British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

John Stevenson, Secretary
Ontario Securities Commission
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Toronto, Ontario
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Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
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Montréal, Québec
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Re: Canadian Securities Administrators (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 (Consultation Paper)

We are writing to provide comments on the CSA's Consultation Paper on the proposed statutory best interest duty published on October 25, 2012.

Investment Planning Counsel Inc. (IPC) is a diversified financial services company and is a large manager and distributor of mutual funds in Canada, with assets under administration of over \$16 billion at January 31, 2013. IPC distributes its products through approximately 789 sales representatives engaged with its subsidiaries that are for the most part members the Mutual

Fund Dealers Association of Canada. We provide financial planning solutions to approximately 208,000 accounts in Canada.

IGM Financial Inc. (which in turn is a member of the Power Financial Corporation group of companies) owns approximately 95% of IPC.

IPC has a strong interest in the discussion set forth in the Consultation Paper since the proposal has the potential to diminish the degree of personal saving and investment and the level of support, advice and encouragement currently provided to Canadians by the financial services industry in Canada.

Strength of Existing System

While there is likely universal agreement that interests of advisors and clients should be aligned, there is a difference of opinion as to how to best achieve that. The Consultation Paper proposes that a new standard be adopted that requires that advisors act “in the best interests of the client” to further this goal. In our view this is unnecessary and has the potential to confuse matters instead of clarifying or enhancing obligations.

The problem begins with the question of the definition of the standard. “Best interest of the client” can mean many things from a legal perspective and a central problem with the Consultation Paper is that it does not indicate exactly what it is intended to encompass in this context. In addition, the CSA proposal does not identify exactly what gap actually exists in the current system that the introduction of this standard is intended to close.

In our view there is no gap that needs to be filled. The current regulatory regime in Canada for securities is a comprehensive one that already addresses the key issues referenced in the Consultation Paper: the obligation of advisors to recommend suitable investments, the disclosure and management of conflicts of interest and detailed relationship disclosure, among others.

Nature of Proposed Standard

Although the CSA proposal does not flesh out what the interest standard would entail, it does appear to suggest that assessing whether it has been met depends on the ultimate performance of the investment recommended by the adviser. This is a determination that can only be made after the fact and is dependent on factors outside of the adviser’s control (such as client choices and market gains and losses). This is simply not an appropriate approach. An advisor cannot act in the nature of a guarantor of an investment. Imposing a standard along these lines would be detrimental to client interests. For example, a long term financial plan will generally be more heavily weighted towards equity investments, which will often lead to volatile results, which may not be appear to be in the client’s best interest in the short term, but which will be when a longer view is taken.

Difficulties in Assessing Financial Instruments

The existing suitability standard that applies in the securities industry has evolved to recognize the fact that there will almost always be a range of products that will meet a client's needs. In making this assessment, an advisor needs to take into account a number of factors, which includes price, but which also includes many others (using investment funds as an example, these would include past performance, management style, volatility and the like). The Consultation Paper appears to assume that a single solution can be identified based on objective criteria. But securities are not commodities and the best – that is, most suitable – choices are dependent on these subjective factors.

The current regulatory system takes these considerations into account and, by basing advisors' obligations on the concept of "suitability", compels them to recommend options that are consistent with clients' personal situation and investment objectives. It recognizes that there is a subjective element that is at the core of the advice that advisors provide, while also ensuring that those services are subject to an overriding duty to act fairly, honestly and in good faith.

Focus on a Single Sector

The financial services industry in Canada has three main elements. The securities industry is a crucial part but the insurance and banking industries are also key sectors. A major flaw of the Consultation Paper is that the proposed best interest standard would only apply to the securities sector and not the other two. The concern is that most clients do not appreciate the distinction between these various sectors. A best interest standard that depends on which product the client buys leads to a perverse result. An advisor offering investment funds would be subject to that duty but one who offers a similar insurance product such as segregated funds – and often this may be the same person, since most advisers are dually licenced – would not be. If the fiduciary standard is to be introduced, it must apply to all competing products and all advisors in the financial services industry.

Compensation Issues

One aspect of the Consultation Paper that is particularly troubling is its apparent antipathy towards embedded compensation structures in particular securities, such as investment funds. In our view this focus is misplaced and is based on an incorrect analysis. The more appropriate way in which to review this issue is to look at the question as to whether the advisor's interests are aligned with the client's.

Practical Issues

Implementing a best interest standard raises a number of significant issues. As the Consultation Paper notes, other jurisdictions which have proposed or introduced such a standard have had to include qualifications to address certain matters, most notably to permit dealers to limit the range of products they offer. Over the years courts have addressed the nuanced way in which fiduciary duties have had to be applied in specific fact situations by introducing exceptions and qualifications where circumstances warrant. Unlike the common law, a statute does not have this flexibility. This means that if the CSA is to introduce the best interest standard through legislation, the rules will have to build the exceptions in. This creates two practical problems,

namely the fact that it is likely impossible to anticipate all of the qualifications that will be necessary (which is a major concern since rules are not easy to change) and the difficulty of implementing identical regimes across 13 jurisdictions in Canada.

Summary

The current securities regulatory regime in place across Canada establishes a comprehensive regime that protects the interests of clients through a combination of disclosure obligations and effective and well understood duties owed by advisors and dealers to their clients, which continue and evolve through a number of recent initiatives that are not yet fully in place. This structure already meets the goals that underlie the CSA's best interest standard proposal. In the absence of a clear gap in the existing system, there is no benefit in recasting the relationship between advisors and clients – which is what the CSA proposal would do – which can only introduce uncertainty and result in unintended consequences, to the detriment of retail investors.

We thank you for the opportunity to provide comments on the Consultation Paper. Please feel free to contact me if you wish to discuss this further or require additional information.

Yours truly,

INVESTMENT PLANNING COUNSEL INC.



John Novachis

President, IPC Investment Corporation

President, IPC Securities Corporation