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John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
Fax: (416) 593-8145
E-mail: jstevenson@osc.gov.on.ca

Anne-Marie Beaudoin, Secrétaire
Autorité des marchés financiers
Tour de la Bourse
800, square Victoria
C.P. 246, 22e étage
Montréal, Québec H4Z 1G3
Fax: (514) 864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

Re: CANADIAN SECURITIES ADMINISTRATORS 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

Thank you for allowing me the opportunity to offer my thoughts on this important matter. What follows are my own person views- views which may or may not be shared by my employer, BBSL. Having read the CSA discussion paper about the Fiduciary Standard and what it might mean for Canada should it be adopted, I cannot help but notice the near total lack of direction. To be honest, I'm surprised at how little leadership the CSA is showing.

To my mind, the biggest challenge regulators face stems from the widely-held misconception that advisors are already bound by a best interests (Fiduciary) standard. Retail investors are likely to be satisfied in general because they:

a) Have likely not had a material dispute with their advisor; and
b) Believe, in the absence of evidence (either to the contrary or to corroborate) that advisors are already being held to a best interest standard.

Our friends at IIAC have submitted research suggesting that "Canadian investors have spoken"…. And that the public gives "good marks for advisors", which is "good news for Canada." In fact, IIAC goes on to say that Canadians "value and trust their advisor". Ironically, IIAC is silent on the fact that research from various places shows that Canadians think a Fiduciary Standard is already in place. **I can think of no examples anywhere of people being upset about adverse circumstances they were oblivious to.**

Even though I would be a strong proponent of a fiduciary standard being legislated into existence, I have seen far too many reform initiatives take decades when they should likely take months. Glorianne Stromberg suggested eliminating embedded compensation (trailing commissions) in 1995, for example. As other jurisdictions are taking those very steps, Canada continues to defer action. The regulatory inertia is shameful, in my respectful opinion.

My understanding is that, when the investing public is polled, high levels of support for the introduction of a fiduciary standard are found. In short, open-ended inquiries seem to suggest that Canadians both:

a) Like and trust their existing advisors; and
b) Would like to see a Fiduciary Standard implemented (when advised of its absence after the fact)

Organizations such as IIAC suggest, spuriously, that since a) is true, then b) is unnecessary. I disagree in the strongest terms. If there is a dispute between an investor and an advisor, no amount of good will before the fact will protect an investor from the lack of a protection should the matter go to litigation. Reeva Steenkamp implicitly trusted Oscar Pistorius the day before she was murdered. If, in fact, Mr. Pistorius is guilty of murder, what difference does it make- what protection was Ms. Steenkamp afforded- as a result of her trust?

I have spoken and written repeatedly about the need for greater transparency in the financial services industry. While I believe that Canada will ultimately adopt a fiduciary obligation for advisors, I also believe that Canada will be a laggard- as Canada has always been- and that Canada will be among the last of the developed nations to do so. I would like to make a few suggestions that could be implemented almost immediately and that would cost next to nothing. These are as follows:

- Make it transparent that a fiduciary relationship is not necessarily in place upon account opening. This could be done by having a separate, one page letter itemizing the salient details for client sign-off as a precondition for a client opening an advisory account. The fact that cigarettes cause cancer is undeniable and the cigarette industry (because it had to; not because it wanted to) is entirely transparent about this by virtue of using packaging that makes it essentially impossible to think otherwise. The financial advice industry could be forced to make similar disclosures immediately… **even if a fiduciary standard is never adopted**.
- Itemize the elements (as enunciated in the paper) where a fiduciary relationship might be deemed to exist, should it come to litigation down the road. Establishing ground rules before the fact helps participants to 'play by the rules'. Sadly, most consumers don't even know that there are any rules or tests re: fiduciary obligation because they think it already exists.
- Allow advisors to 'opt in' to a fiduciary obligation. In other words, even if the account is not discretionary/ managed, allow advisors to voluntarily submit to a higher standard if they wish. This would allow advisors to differentiate their services and it would allow consumers to seek out fiduciary advisors (if they would prefer to work in that arrangement). Lastly, it would facilitate and hasten the transition to a fully-legislated fiduciary obligation down the road.

Thank you again for allowing me to offer my thoughts. It would be appreciated if you actually took tangible action rather than simply asking open-ended questions for years at a time.

Sincerely,

John J. De Goey, CFP
Vice President and Associate Portfolio Manager
Burgeonvest Bick Securities Limited
Toronto, Ont.
M5H 3B3