Mackenzie INVESTMENTS

February 22, 2013

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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

Mr. John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario
M5H 3S8

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

Dear Sirs:

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.

Mackenzie Financial Corporation (Mackenzie Investments) is a portfolio adviser and investment fund manager registered under National Instrument 31-103 of the CSA with total assets under management of over $62.8 billion (including mutual funds under management of approximately $41.4 billion) at January 31, 2013. Mackenzie Investments is a wholly owned subsidiary of IGM Financial Inc., which in turn is a member of the Power Financial Corporation group of companies.

We appreciate the opportunity to participate in the CSA's review of the framework for the standard of conduct for dealers and advisers in Canada and, in particular, on the appropriateness of adopting a statutory best interest duty in this regard.

Based on our review of the Consultation Paper, we expect that the potential changes to the regulatory regime for advisers and dealers will have very little direct impact on firms like ours, which (i) as a registered portfolio manager operates under an existing regulatory regime that imposes a fiduciary standard pursuant to the securities legislation in four provinces or at common law as a result of the discretionary authority our portfolio managers have, or (ii) as an investment fund manager having a fiduciary duty imposed on us pursuant to securities legislation.

However, our assessment is that the possible impact on registered dealers, vertically integrated asset/distribution firms and dealer representatives could be significant and thus would have implications on the smooth operation of the existing distribution model for financial services in Canada. As such, the majority of our comments are directed at the potential impact on dealers and dealer representatives, efficient access to the markets, and on the investing public.

A. Value of Advice

Mackenzie Investments relies on third-party registrants to distribute its mutual fund products, including firms that are regulated by the Autorité des marchés financiers or whom are members of either the Mutual Fund Dealers Association of Canada or the Investment Industry Regulatory Organization of Canada. Today there are 253 registrants with over 41,000 active sales representatives in Canada with the opportunity to recommend the use of our products that will be potentially impacted by this initiative.

Mackenzie Investments strongly believes in the value of advice provided to Canadian investors and to Canadian society as a whole. Independent research has demonstrated the significant value of the advice model to the investing public at all demographic, income, and asset levels. Among other things, advised households (i) are twice as likely to save for retirement at all ages; (ii) have significantly higher levels of investable assets at all ages; (iii) improve their regular saving for retirement at all income levels; (iv) rate themselves as more financially knowledgeable; and, (v) are more comfortable making the financial decisions they need to plan for their future.

We support more research and further discussion on the advice model, and methods to encourage Canadians to access the advice model, ways to expand financial literacy, and to take advantage of the existing system in the context of this Consultation Paper and other initiatives that the CSA has or may undertake.

B. Potential Unintended Consequences

One concern we have regarding the discussion set forth in the Consultation Paper is that the proposal, as drafted, has the potential for a negative effect on the access of advice model to Canadian investors, by restricting access due to an increased cost to administer a best interest standard, educational requirements of advisers, infrastructure, policies, procedures and compliance requirements necessary at the dealer firms, which, given the strong correlation between access to such advice and the achievement of financial goals, may not be a desirable outcome. In particular, one of the potential unintended consequences of the proposal may be 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. In turn, this would have an adverse effect on the distribution network, much of which is focused on providing advice to the retail public. We do not see enough analysis of the quality of the existing advice model in the Consultation Paper.

The apparent lack of any significant research to support the incremental policy benefits to Canada over the existing system as explained in the Consultation Paper, in relation to the inevitable costs of implementation, particularly given that financial services are distributed through multiple channels, with different regulators and forms of regulation which make it very difficult today to provide a uniform investor experience across the different distribution channels or investment products. We did not feel that there was sufficient discussion in the Consultation Paper to explore an evolutionary approach to addressing the policy concerns of the CSA. Instead, the Consultation Paper appears to suggest that a new model is required because other countries have made these types of changes without identifying the specific gap in Canada that needs to be addressed (or examining more fully the specific differences in those jurisdictions and our marketplace like, our current regulatory distribution structure, policy objectives, retirement preparedness, or access to multiple forms of advice at different levels of relationship).

C. Product and Regulatory Arbitrage

The financial services industry is essentially comprised of three different sectors: securities, insurance and deposit products. Each is regulated by different federal and/or provincial regulators and is subject to different regimes. We believe that by focusing only on one segment of the distribution model (and ignoring insurance and banking products), the Consultation Paper understates the complexity of the current regulatory regime in Canada and, if implemented, will create confusion for the investor as to different standards applying to different products potentially sold by the same adviser. Further, we would encourage greater discussion and thought regarding the current regulation of distribution in Canada, that sees, for example, (i) that the CSA only regulates securities (and not insurance or deposit products;) (ii) that different provinces have enacted requirements and interpreted the relationship between clients and their adviser differently; and, (iii) that the licensing requirements are administered for different products by different organizations (a range of provincial and federal regulators). The result is that only a small percentage of financial advisers are licensed to recommend and sell all types of financial investment products in Canada.

Advisers in the insurance or banking sector (or dually licensed individuals to the extent they are dealing with insurance or banking products) would not initially be subject to this proposed standard, which could result in product and regulatory arbitrage by dealers or investors in the marketplace. Obligations owed by advisers selling products to their clients should not be dependent on the legal nature of the product being sold or the licence held by the registrant. Further, where investors are dealing with dually licensed salespersons (particularly securities and insurance), it is unlikely that an investor will understand that different standards of conduct will apply depending on the product purchased. If a statutory best interest duty were to be implemented, we believe that to achieve the maximum impact the initiative would have to apply concurrently across the securities, insurance, and banking distribution segments.

By not fully describing the total regulatory regime in Canada for the distribution of financial products, the discussion in the Consultation Paper regarding other jurisdictions is not as meaningful as it could be, in that the regulatory environment and breadth of control in those jurisdictions are very different than what we see in Canada today (for example, where a single regulator who oversees all financial services and is able to apply a common standards in Australia). The policy objectives in each of the jurisdictions are also different for each country.

D. Best Interest Duty

The difficulty in digesting the Consultation Paper begins with the formulation of the initial concerns and the related questions. It presupposes that the concept of "best interest" has a precise meaning, when it does not. In particular, the paper discusses whether a "best interest" standard should govern the relationship between advisers and their clients without clearly indicating what that would mean. "Best interest of the client" can mean many things in practice, at law and its applicability to products and services with uncontrollable variable outcomes are very different.

As highlighted in the Consultation Paper, certain segments of the industry are already subject to fiduciary duty. In these cases, the application of fiduciary duty is driven by the nature of the relationship, which focuses on discretionary control of the investment portfolio or account. In these cases it is our experience that the investor has turned specific control of the portfolio over to the adviser or portfolio manager and the relationship is guided more by the formulation of an investment objective and investment policy statement. Reporting of investment activity and performance is reported after the fact, with the investor having little or no input into the specific investments within the portfolio. The current non-discretionary distribution model through advisers is based on a disclosure regime and increasingly focused on the specific transaction or product investment rather than on the overall financial plan, policy statement, or investment objective. We felt that the CSA could have introduced the applicability of maintaining the existing disclosure regime and involvement of investors in the transactional process of investing with the existing suitability standard as modified to address the CSA regulatory concerns. Further, the current fiduciary duty extends to loyalty and duty of care and also reviews the prudent person rule. The proposed best interest standard contemplates a standard, although not defined, that places focus on best price and best investment on every single investment. This appears to be inconsistent with the existing practices and is potentially not practical to implement or administer in a consistent cost effective way. Often, the "best" outcome can only be known after the fact. This is because the results of any investment strategy are the product of a number of uncontrollable variables, some of which cannot be predicted, which are determined by the investor and, importantly, some from the market. The Consultation Paper, perhaps implicitly recognizing this, seems to equate "best price" as being the only investment choice consistent with "best interest". In our view, this analysis is incorrect. Investor decisions in this area are guided by a range of factors.

We believe that prescriptive rules and/or guidance will be required by the CSA in the context of interpreting the meaning of a best interest standard. The concept of something being "best" in securities regulation has been considered by the CSA in the context of "best execution". In its original consultation paper on best execution and soft dollar arrangements the CSA acknowledged that a purely objective definition of "best execution" was very difficult because there are many factors that are relevant in any particular circumstance. The CSA did adopt a definition of "best execution" as set out in National Instrument 23-101 *Trading Rules* – i.e. "most advantageous execution terms reasonably available under the circumstances" - and also provided additional guidance in Companion Policy 23-101CP by setting out specific elements that a firm may consider when seeking best execution. This is illustrative of how elusive the definition of "best" is, and consequently how difficult it would be for the industry to comply with a "best interest" requirement without an appropriate framework around the meaning of "best interest" against which a firm can assess its actions.

In addition, there will need to be consideration given to creating a comprehensive list of qualifications and exceptions to the application of the best interest standard in order to address the current registration categories and the distribution models they allow. This would potentially need to include the ability of dealers to have both restricted product shelves, sell proprietary products or products of a related party, permit the continuation of compensation paid by mutual funds to dealers i.e. commissions and trailer fees, among other things. Because the proposed standard is statutory, these qualifications would have to be codified in the legislation and it may not be possible to identify all of them in advance (unlike in the courts, where the common law can adapt to particular fact situations, rules cannot be amended quickly). We are also concerned that this process may lead regulators to discuss the applicability of regulating the form, type or level of compensation to advisers. We feel that this would not be a productive outcome for investors and that the nature, form and method of compensation should be set by competition of the participants and the nature and form of advice that investors choose, across the sector under a set of acceptable regulatory conditions, like the current disclosure regime.

E. The Current Canadian Regulatory Landscape

In our view, some of the concerns suggested in the Consultation Paper are being addressed in securities sector in Canada through other initiatives, like Registration Reform and the Client Relationship Model, for example. Some are in the latter stages of consideration (such as Cost, Compensation and Performance Disclosure). We also see that natural competitive factors, evolving needs of investors, and new product options are driving changes in the methods and standards of delivery for financial advice.

The existing regulatory system in Canada has evolved to address investor needs by imposing a suitability obligation on advisers. The Consultation Paper does not demonstrate that there is in fact a gap between the current standard of conduct for advisers and dealers, which requires "suitable" solutions, and a potential statutory "best interest" duty. Concerns are expressed largely in conditional terms (there "may be" a gap or the current model "may not" address an issue).

In our view the current standard of conduct (which continues to evolve through recent and pending reforms) achieves the goals of the proposed best interest duty. The Consultation Paper also suggests that there is a gap between investor expectations and the current applicable standard, in our view this disappears if they become aware as to how extensive the existing duty already is.

The current suitability standard requires advisers to recommend investment options that are consistent with the client's personal circumstances, objectives, risk tolerance and time horizon. Almost always there is more than one suitable product, which may or may not include the lowest priced choice. This standard recognizes that the process of recommending appropriate options is a dynamic one that is dependent on subjective analysis, namely the guidance provided by the adviser. In addition, the regulatory system grafts certain other obligations on those advisors to ensure that they are competent and professional and act fairly, honestly and in good faith.

We believe that the current standard of conduct for dealers and advisers, together with the other reforms in process but not yet fully implemented, is designed to achieve the overall principle of a best interest duty. The better approach is to defer any changes in this area until recent investor protection initiatives have had a chance to have an impact and to then determine whether a gap remains and then to conduct the necessary research to determine the best way to minimize that gap and the consequences of any proposed regulatory changes.

F. Conclusion

The distribution of financial services is both a financial and economic good for Canada. It is crucial that the different distribution channels that are available continue in order to help ensure that all sectors of the Canadian public of all income and asset levels have access to the advice they need to help plan and secure their financial future. This proposal has the potential to have the unintended adverse consequence of restricting the advice and products, including those offered by Mackenzie Investments. In our view the current regulatory structure governing advisers' dealings with clients works well. If any changes are required, they should be introduced incrementally as opposed to recasting the entire relationship.

We thank you for the opportunity to provide comments on the Consultation Paper. Please feel free to contact Tim Pryor (tpryor@mackenziefinancial.com) or myself, if you wish to discuss our letter further, if you require additional information or have any questions.

Yours truly,

MACKENZIE FINANCIAL CORPORATION

Charles R. Sims, FCA
President and Chief Executive Officer