Peter and Yvonne Whitehouse

February 20th 2013

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 Advisors and Dealers: Exploring the Appropriateness of Introducing a Statutory Best Interest Duty when Advice is provided to Retail Clients

Thank you for the opportunity to feed back our view points on where the Securities Authorities should make changes in regulations to include the "Best Interest Duty" as a measure of the conduct of the Dealer and its Representatives.

The small unsophisticated investor's vulnerability needs to be protected from the egregious costs of unwarily trusting the Investment Dealers and their Representative employees. We have experienced the delivery of advisory services and RRIF investment products that in the end are geared maximize the financial gain for the Dealers and their Representatives, as opposed to minimizing the costs for the investor client.

The net result was that after spending many years of saving about $220,000. in near cash funds for retirement in our 70s, in a matter of about four years of self-serving RRIF investment advice and Advisor neglect, we very quickly gave away about 40% of our liquid assets. All of this occurred because we were denied available investment influencing information, prior to making investments, that should properly have been included in a written disclosure. Because we did not receive the written information of the consequences of agreeing to purchase based on the Investment Advisors recommendation, we were denied the opportunity to evaluate the purchase of the same or different investments either on a front commission or DSC basis. A full explanation of this experience is provided later in this submission.

Our view from experience is that the "Best Interest Duty" must include the statutory requirement that the Advisor must commit to a written listing of the information that could influence the investor's decision. A later claim by the Advisor that the information was verbally given to the investor would then have no standing. The written listing should be signed by both the Advisor and the investor. By agreeing to the disclosures, the investor would then have no basis for complaint.

From our painfully expensive experiences of 72 and 70 year old RRIF investors, we recommend that two groups of legal definitions be included in the Best Interest Duty.

The first group of regulation definitions relate to a list of responsibilities with mandatory written disclosure requirements for the Dealer and its Representative's when dealing with the investor, before the investments are transacted. This includes the Advisor providing a Prospectus of an investment and directing the investor to the conditions in the Prospectus that influence the investment decision and its costs. This would include the implications of the consequential limitations of purchasing mutual funds on a DSC basis. The current statutory requirement for the Dealer to send a Prospectus after the investment in made is ridiculous. Can you imagine the level of distrust the investor would have in the Advisor if, after he/she has convinced the investor to invest in a specific security, then immediately afterwards the investor gets a magnifying glass to work to find all the holes in the investment Prospectus that was never disclosed by the Advisor !

Continued / 2

The second group of regulation definitions should relate to written assurance to the investor that the due diligence and compliance requirements of the dealer and its representative have been applied to the specific choice of an investment product recommended by the Dealer's Representative. As an example, this would include advice of the individual features of an investment such as dividends only being paid once a year with the dividend date. There could be other restraints to the cost benefits of a specific investment that should be disclosed to the investor.

Our Experiences related to non-disclosures -

When the Dealer's Advisor Representative was questioned by the Dealer's Client Services Vice-President and the Bank Assistant Ombudsman and IIROC and OBSI about the investors claim that none of this information had been disclosed prior to the investment transaction, the Advisor resorted to making the claim that all such information had been given verbally to the investor. This claim was sufficient for the Advisor's Dealer employer, the Bank Ombudsman and IIROC and OBSI to take a neutral position that, as there was no written evidence, it was the investor's word against the Representative's word and therefore they could not pass judgment on the investor's claim. The Investor loses.

In addition, we had requested copies of the Dealer Advisor's notes to examine the details of the two-way communications with us, the investors. We were denied this information so we made a PIPEDA request to get copies of the Advisor's notes. The Advisor's notes were undated and devoid of any details of our RRIF investment discussions other than to say "Fees Discussed". This information of course relates nothing as to what fees were discussed.

We recommend that the Dealer's Advisor always be required to use a standardized written list of dated notes that would fully record the investment influencing factors related to the investments being recommended by the Advisor.

What should be the minimum Best Interest Duty of an Investment Advisor for the unsophisticated Investor client ?

Here are our suggestions - Please note -
The followingis an Extract of Questions posed to TD Waterhouse regarding Peter & Yvonne Whitehouse's March 26th 2011 Complaint regarding the unsatisfactory advisory conduct of the TD Waterhouse PIA Advisor Representatives. The TDW Client Services Management refused to respond to the below 9-questions, or to any part of this extract. The full extent of their response was to say that their Investment Advisors acted appropriately and professionally at all times. They also refused to provide evidence to support their claims.

Here was our communication to TDW PIA Senior Management -
On your recommendation we downloaded the files from TDBFG intranet (http://www.td.com/code.jsp) and the TDBFG website at http://www.td.com/governance/code_ethics.pdf, which you say "rightly indicates that we (TDW) comply with many industry-level Codes of Conduct at TD". The 16 page TD Code of Conduct and Ethics for Employees and Directors and the TD Codes of Conduct and Public Commitments, do not provide answers to the questions raised in our April 26th 2011 email request to you.

Also, on your recommendation, we have made extensive enquiries to IIROC, MFDA,OBSI, IFIC, CBA, OSC, as well as SIPA, regarding rules of conduct for Financial Advisors. We downloaded documents from most of these sources. This included the 74 page Client Relationship Model (CRM) from IIROC. In total, we have been unable to satisfy our quest for definitive investment industry standards for Financial Advisors related to our complaints that you currently have under investigation.

As you say that the TD rightly complies with the "many industry-level Codes of Conduct, we would like you to provide us with the actual TD and financial industry code statements that permit the following conduct by the TDW Financial Advisors. You have already directed us to go to various TD and industry regulating sources for answers to our questions. We have had to spend many hours examining details related to the conduct of the whole banking and financial services industry, in order to try to determine which conduct standards apply to TDW and its Financial Advisors. We would now like you to provide us with the specific regulatory statements that permit the following detailed conduct of TDW Financial Advisors. Some of the following information may seem repetitious from our March 26th 2011 complaint. However, we will make the list as brief as possible.

Continued / 3

Your (TDW PIA) response would be appreciated to the following questions -

As a standard code of practice REGARDING DISCLOSURES, when the Financial Advisor is providing an advisory selling mutual funds to customers/clients, is it mandatory that he be required to -

1. Disclose and provide copies of unsanctioned single (sell) sheet mutual fund descriptions and fund performance ?
2. Disclose and provide copies of the full prospectus of a mutual fund being proposed ?
3. Disclose and provide printed details showing a schedule of alternative sales commissions rates, as well as all sales and administration charges and redemption fees for registered investments, prior to the client purchasing mutual funds ?
4. Disclose and provide written information on the lowest cost alternatives that the Financial Advisor can make available for the various services performed ?
5. Disclose and provide complete details to the customer/client, prior to the client purchasing mutual funds, regarding trailer fees and any other fees or costs associated with disposing of securities.
6. Disclose and provide complete details when a mutual fund's terms and conditions require the mandatory reinvestment of dividends back into the same mutual fund (In other words, dividends from a specific mutual fund that are restricted and cannot be made available for reinvesting in other securities. This restriction constrains the ability to use dividends from a poor performing mutual fund to invest in other securities in order to assist in rebalancing a portfolio).
7. Disclose and provide written explanation that the TD Bank, TDW and the Financial Advisor will also receive trailer fees on mutual fund mandatory reinvested dividends.
8. Disclose and provide a written explanation of the Financial Advisor's limitations in their ability to rebalance mutual fund investments being proposed by the Financial Advisor.(This relates to the Financial Advisor claiming that he will do asset rebalancing as part of the advisory service when an asset class deviates from its optimal target by more than 10%. At the same time as making this commitment, the Financial Advisor then recommends and places 85% of the RRIF portfolios in mutual funds that have undisclosed limiting terms and conditions. Also, the deferred sales charge (DSC) redemption fees are higher for the first two or three years, than the commissions would have been by paying the upfront, front-end loaded sales commissions. The possibility of rebalancing a portfolio with these DSC conditions are then more costly for the customer/client. This information was never disclosed by the TDW Financial Advisor. The original Financial Advisor stated in the August 25th 2004 Proposal that rebalancing of the portfolios would be performed if there was more than a 10% deviation from the optimal target. Neither of the two Financial Advisors put forward any plan to rebalance the portfolios when the mutual funds passed the 10% maximum deviation point. *In fact, the message from both TDW Financial Advisors (1) has always been, "buy and hold".*
9. Disclose and provide a written explanation that the originating Financial Advisor, at his discretion and for whatever reason, can transfer the customer/client's RRIF portfolio investment account to any other Financial Advisor without prior consultation with the customer/client. Also, that the originating Financial Advisor can accept some form of payment from the recipient Financial Advisor for the customer/client's RRIF portfolio account being transferred to the recipient Financial Advisor. (This question relates to the fiduciary responsibility attached to the originating Financial Advisor, when he generated a maximized $12,000.00 in sales commissions and trailer fees, for selling mutual fund investments on a DSC basis and then abandoning the customer/client RRIF portfolio account just18-months after making the sale.

Within the past 24-months of submitting our complaint to TDW PIA, there are other onerous issues that have become obvious to us after it was necessary for us pursue our own investigation. Below is detailed the circuitous route we had to take to try to get someone to fairly consider our Complaint within the existing regulatory definitions.

Complaint Pursuit Path - Request For Restitution For Losses Incurred Due to Investment Advisor's Wrongdoing

The following narrative documents the course unwary investors are required to pursue when they claim to have been taken advantage of by the practices of the financial institutions, who are permitted to freely operate with the present loose enforcement of rules and regulations. If there was an effective "Best Interest Duty" regulation in force and enforced, the 2-years we have spent of FULL-TIME pursuing our interests would have been unnecessary, because all the pertinent investment factors would been known and pre-parsed. We would have agreed to the full terms and conditions that were disclosed and applied to our transaction, so we would have had no excuse. In addition, it would have saved the precious IIROC and OBSI investigation time that could be better used for other more pressing cases

Continued / 4

When we first filed our complaint in March 2011, we had no specific strategy, we just expressed our basic logic of where we had been wronged. However, when we received the TDW PIA rejection of our complaint, we then decided on a strategy to find out all the rules and regulations that had been violated and how we, as investors, had our interests subordinated to those of the Investment Advisors and TDW PIA. The course we pursued through the TD-CT Bank Ombudsman, IIROC and OBSI has now confirmed that although there may be applicable rules and regulations as well as ethical principles, the enforcement is seriously lacking to protect small investors, other than by expensive litigation. There is also conflicting reasoning given by the parties in their rejections. The net result is that as the Financial Institution and the Bank Ombudsman are aware of the toothless enforcement, they then have the freedom to pour on false and misleading defensive statements in order to dissuade a complainant from going further.

There are two issues we would like you examine related to the "Best Interest Duty" regulation. One issue is whether or not we really had a complaint of merit that should not have been subjected to the obstacles described below. The other issue is the nature of the obstacles that we have encountered as deterrents to pursuing our complaint. Here are the obstacles we have encountered on the way.

Original Complaint - Filed on March 22nd 2011 with the then current Investment Advisor and his Branch Manager, as well as with our first Investment Advisor the TDWPIA Branch Manager at the original location. This latter Branch Manager directed our complaint to the TDW Client Services department. While the TDWPIA Customer Services dept. were investigating our complaint we continued to try to get more validating information to support our complaint. We weren't getting anywhere, so we sent a letter on May 14th 2011 to Mr Jim McCabe, Senior V-P TDW reinforcing certain points in our complaint and at the same time requested that he respond to nine questions on conduct standards, with "Yes" or "No" answers.

TDW Response - Received a reply from TDW Mr Jim McCabe, Senior V-P dated June 8th 2011. He rejected our complaint and assured us that the two TDW Investment Advisors had "handled the accounts professionally and appropriately" We also received an email stating that the TDW policy was to "observe" all the industry rules and regulations. However, Mr McCabe ignored providing answers to our nine questions of where we tried to find out conduct standards required of TDW employees.

By this time we suspected we were being stonewalled by TDWPIA, so we spoke to and opened up case files at IIROC and OBSI. We also sent a response to Mr McCabe on June 15th 2011 pointing out that he had avoided passing judgment on our claims and ignored the facts. We sent a copy of this letter to IIROC and OBSI as well as to Mr Ed Clark, President TD-CT Bank. This letter was ignored. Later, Mr McCabe told us all future response would come from the TD Bank Ombudsman.

Complaint to TD-CT Bank Ombudsman - Complaint filed on June 21st 2011 to a Ms Laura Duvall. Included were full details of our communications to and from the TDW V-P and Client Services department. We sent additional information to a Ms Martha Duplesis, Deputy Ombudsman, on July 27th 2011 pointing out that the TDW V-P was not responding to our requests for answers to questions and the TDW V-P had told us to refer all future requests to the TD-CT Bank Ombudsman. We pointed out to the Deputy Ombudsman that we had asked one question and that was, *"We have tried to get information from the TDW compliance department, the Senior V-P and the Branch Manager, as to how they arrived at our risk tolerance. Also, we asked how they categorized the risk value of each one of the eighteen securities in our three RRIF investment portfolios. We have been very specific, but they have ignored all our requests".* This comment to the TD-CT Deputy Ombudsman also fell on deaf ears.

TD-CTOmbudsman Response - Received a reply from Mr Eric Duchesne, Assistant Ombudsman, dated Sept 21st 2011 rejecting our complaint and rejecting our request for reimbursement. This letter was so incredibly riddled with false and misleading statements, rationalizations and conclusions that we could not allow this supposed authority of *"fairness and reasonable resolution"* to go unanswered. We wrote a rebuttal letter on November 8th 2011 and included a separate document with a paragraph by paragraph dissection of the Assistant TD Bank Ombudsman's September 21st letter. In the 16 page dissecting analysis, we pointed out the errors and asked the TD-CT Ombudsman to come forward with the evidence to back up certain statements he made in his September 21st letter of rejection. There was no response. We then sent another letter on November 8th pointing out 7 issues with his Sept 21st Ombudsman's letter that did not fit facts and logic. The Ombudsman, Mr Paul Huyer, responded with a letter dated November 29th 2011 telling us to take our complaint to OBSI. This was the day before Mr Huyer retired on November 30th.

Continued / 5

PIPEDA Request - We made a PIPEDA request to TDW on December 9th 2011 for all documents related to our RRSP/RRIF Portfolio Accounts at TDWPIA. The reason was that one of our requests to the TD-CT Ombudsman was for a copy of the Investment Advisor's notes. The Ombudsman had referred to the TDW Investment Advisor's notes as evidence that the notes were proof that the Investment Advisors properly discussed the investments, etc. with us. Because the Ombudsman refused to co-operate and provide copies of the notes, we discovered (from the comments of a lawyer) that we could make a PIPEDA request to get this information. After we received copies of the notes on or about February 7th 2012, we discovered that the first Investment Advisor's undated notes did not support the TDW V-P and the TD-CT Ombudsman's claims. The second Investment Advisor's notes had traces of connections as to what took place, but even they were devoid of critical supporting dates and details.

There were other documents related to our request that had not been forthcoming. After several more tries and receiving other documents, the TDW Clients Services assured us that there were no more documents.

Complaint to IIROC - The original letter to IIROC was sent on May 25th 2011 requesting that they examine our complaint with TDWPIA because we learned that we could simultaneously file complaints to the TD Ombudsman, IIROC and OBSI. We learned from our own research that IIROC regulated the Investment Advisors and the investment side of the Financial Institutions. Based on rules that we understood, we later complained that TDW and its employee Investment Advisors had violated some of those rules. To us certain sections of IIROC Rule 200 and Rule 1300 had been violated. We also complained that the Investment Advisors Advisors had not retained proper records of our investment instructions or of the advice or information that the Investment Advisors said they had supposedly given to us. We also made an issue that TDW had never complied with OSC regulations which required that TDW send us Prospectuses of our original RRSP/RRIF mutual fund investments.

IIROC Response - The response from IIROC on November 23rd 2011 said they found no fault with the conduct of the TDW Investment Advisors or TDW and IIROC could find no regulatory concerns. As an example, IIROC said in the same response letter, that the original investments by the first Investment Advisor in March 2005 were appropriate for our investment objectives and risk tolerance. They then said that when the second Investment Advisor acquired our Portfolio Accounts 18-months later in October 2006, he was correct in recommending selling 25.8% ($65,000.) of equities and replacing them with a like amount of fixed income because the equity investments were of a higher risk. (In this connection, the IIROC staffer's response made a false statement in order to make his point) IIROC then goes on to say that there is no contradiction when IIROC accepts the second Investment Advisor's claims that 12-months later in December 2007, he recommended that we continue with the same investments that he previously deemed as representing a higher risk than our risk tolerance. The IIROC letter states that second Investment Advisor claimed, *"that financial markets had changed (between 2006 and 2007)and that you (PW & YW) (then) owned quality funds".* If IIROC had truly examined and tested this statement, they would have discovered this to be an abject false statement not borne out by the facts. We had already supplied IIROC with these facts. There were other IIROC explanations that were so convoluted to the extent that they did not fit the facts. We pressed them for responses which they declined to give.

The last email received from an IIROC senior staff person on June 11th 2011 said that they have concluded their investigation and they will not be responding to any further correspondence. Their reasoning for their decision needs to be investigated when they include the following statements in that final email -

Statement #1

"While this may not affect you directly, it does help IIROC to ensure we are pursuing the most appropriate enforcement cases. As we've tried to explain previously, we cannot pursue every case that is brought to our attention. We must make decisions based on all the available information and choose the cases that not only include evidence of regulatory violations but that also send the most meaningful regulatory messages. This decision to open, or not open, an investigation based on any complaint received rests solely with IIROC".

Continued / 6

IIROC Response Continued

Statement #2 - This is the IIROC response to our telling them that we had hard physical evidence that TDW could not have enclosed the Prospectuses with the first mutual fund Purchase Transaction Confirmation forms. Here is what IIROC said -

"IIROC has made a final decision in this case after a thorough review of all of the information provided by you and by the firm. Additionally, we consulted with our Business Conduct Compliance Department as to examinations they have conducted where they have physically reviewed TDW's procedures for sending prospectuses to clients. We are confident that we have made the right decision in this case and that there is no evidence of an issue that requires an enforcement action to be initiated at this time".

This is absolute bunkum. OSC commands that a Prospectus must be sent with each Purchase Confirmation. IIROC are naturally prepared to accept their Business Compliance Department's views that the TDW procedures comply with the OSC enforcement requirements. However, IIROC were not willing to at least look at the evidence we could provide in our case. We can show the overwhelming multiple differences between when TDW did include Prospectuses and the 18 times out of 24 when they did not include Prospectuses. The 18 times TDW omitted Prospectuses started with our first MF investments.

The TDW response was that if it says on the Purchase Confirmation "Prospectus Enclosed", the Prospectus must have been enclosed. The importance of this issue is that TDW uses the escape clause that says "the investor should read the Prospectus before investing" and also, if the investor does not like the information in the Prospectus, they have 48 hours to cancel after a purchase. Here's the joke -we have Purchase Confirmations that do not require a Prospectus, but they still show "Prospectus Enclosed".

Complaint to OBSI

- On November 14th 2011 we filed a detailed complaint letter with OBSI. We also included all of the previous Exhibits and evidence as well as correspondence and relative emails to and from TD Waterhouse and the TD Ombudsman. After the initial investigation, the OBSI Investigator called to discuss some derails. As a result of a couple of conversations, we made a further submissions on May 16th 2012 and August 11th 2012 and September 4th 2012. Included in all the submissions were details of additional complaint issues that we had discovered in the process of our having to go deeper into the rules and regulations that govern the investment retail sales operations.

Our case really starts out with the original August 25th 2004 Proposal letter and IPS from our first TDW PIA Investment Advisor. These documents detail contractual undertakings that we, along with the TDW PIA Investment Advisor agreed to and signed.

In the information we supplied to OBSI, we also pointed out the incongruities between the promises of the TDW advertising and publications and the lack of due diligence and the lack of full disclosure of conditions associated with our purchase of mutual fund investments. We drew to the OBSI attention to a breach of trust and a breach of contract in the terms and conditions included in the first Investment Advisor's Proposal letter and the IPS. This was because18-months after he convinced us to invest $240,000. in our RRSP/RRIFs and he earned about $12,000.+ in commissions, our first Investment Advisor then abandoned (sold) our RRIF Portfolio accounts, to a second Investment Advisor. We also brought to OBSI's attention that both of our Investment Advisors had violated some of the conditions that are specifically disciplined in the Code of Ethics of their respective CIM & CFP professional designations. (We supplied OBSI with copies of the respective Codes of Ethics)

Here is what we told OBSI -

"The following are new discoveries of information that should strengthen the evidence that TDW failed to adequately supervise the TDW Investment Advisors. With this lack of oversight process, TDW failed to enforce professional conduct standards required of the Investment Advisor's Professional Designations (CIM & CFP)" .

This information we supplied contradicts the claims of TDWPIA Senior Vice-President that,
"Compliance procedures are in place to ensure clients are protected and regulatory policies are met. We (TDW PIA) are comfortable with our procedures in adhering to the applicable securities act legislation and other regulatory code of conduct guidelines".

Continued / 7

Complaint to OBSI Continued

The TD-CT Bank Ombudsman accepted these assurances in spite of the evidence to the contrary. The denials in the TD Waterhouse and TD Ombudsman complaint rejection letters are used to then exonerate the TDW Investment Advisors and TDWPIA)".

In addition, we conveyed to OBSI that the modus operandi of TDW PIA was that, if there were no specific IIROC or other regulatory rules and regulations, TDW PIA and its employees were not obliged to fully disclose information that could be in the investor's best interests. This of course is in conflict with the CIM and CFP Code of Ethics.

OBSI Response - We received a letter from OBSI dated August 30th 2012 related to our complaint filing. In the process of rejecting our complaint, they explained the following -

OBSI opened by saying, "we have outlined your complaint and the firm's (TDW) response and the reasons behind our conclusions"

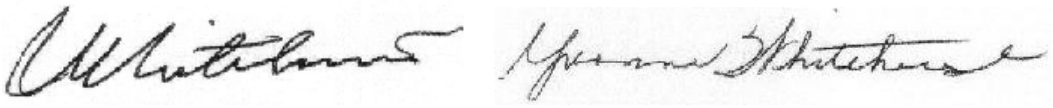
As it turns out, the OBSI say that they can only pass judgment on the appropriateness of the RRIF investments relative to what our investment profiles should be. Then, if there is inappropriateness in the RRIF investments, the OBSI then determines if there has been any financial losses on account of the inappropriate investments.

The OBSI make it clear that they have done their own analysis and drawn their own conclusions. However, much of the OBSI reasoning and rationalization side steps the TDW PIA Investment Advisor's questionable actions and inactions and the TDW PIA explanations. OBSI declines to pass judgment on the TDW PIA Investment Advisor's lack of due diligence testing and fiduciary duty that should subordinate the TDW PIA interests to those of the investor.

We provided OBSI with a copy of the TD Bank Ombudsman's September 21st 2011 letter rejecting our complaint. We showed that it contained many false and uninformed statements. Never-the-less, OBSI still used some of those TD Bank Ombudsman's opinions in the OBSI conclusions.

We trust that the extent of our submission will reinforce the terrible need for disciplined "Best Interest Duty" regulations that remove the escape clause opportunities used by the financial institutions to silence legitimate complaints by unknowing small investors. On one hand, there is a Financial Institution promoting the concept of trust by advertising that they consider the investor's interest are "paramount". Yet, when they receive a complaint they are quick to point out that there are no regulations requiring them to subordinate their financial interests to those of the small investor. This is shocking. Up to now, the Financial Institutions and their Representative Advisors have a free reign. This has to change. We lost about $80,000. trusting that the Financial Institution Advisor Representative was just as concerned about protecting our investment as we were. It did not turn out that way.

With Regards



Peter Whitehouse Yvonne Whitehouse

(1) Refer to Exhibits in Exhibits Binder, especially Exhibits 15-A and 15-B (This Exhibits Binder was part of our March 26th 2011 Complaint filing)