Fiduciary – Response to "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"

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In a nutshell

*A **fiduciary duty** requires the fiduciary to place the interests of the client ahead of one's own*. Consider fiduciary in the context of the ancient wisdom of the Bible which very sensibly suggests *not placing an obstacle before the blind*. In the financial adviser context*, not placing an obstacle before the blind* can be implemented by two orthogonal requirements: (1) statutory fiduciary requirement for financial advisors when dealing with retail clients (e.g. require adviser not to take advantage of the client's ignorance/naiveté due to asymmetric financial knowledge and client's incorrect assumption that adviser is already obligated to act in the client's best interest), and (2) placement of advisers for retail clients into business models conducive to acting in the client's best interest (i.e. permit only business models which eliminate/minimize temptation for adviser self-dealing; e.g. fee-for-service/fee-only rather than embedded/commissioned compensation structure). Thus "help" advisors meet the client's best interest standard we must legislate: statutory fiduciary requirement and business models conducive to its delivery.

Background

The fiduciary debate has been covered extensively in Canadian press but the drivers were primarily investor advocates and investor protection groups. Now the regulators must be commended for having stepped into the Canadian fiduciary debate in the form of a consultation paper issued by the Canadian Securities Administrators (CSA). According to the CSA website, in Canada with securities legislation being a provincial/territorial responsibility, there are 13 such separate securities overseers. "The CSA is primarily responsible for developing a harmonized approach to securities regulation across the country." Though any CSA recommendation, I suspect, would be non-binding on the separate and independent provincial/territorial regulators and legislators, such recommendations could influence legislators to consider the urgent need for a statutory fiduciary standard for those claiming an advisory role in the interaction with retail investors.

In the simplest terms, **a *fiduciary duty requires the fiduciary to place the interests of the client ahead of his own*** (and his employer's, shareholder's or anyone else's interest). There are no shades of grey here: this is not just about moral but a legal obligation, it's not about disclosing that you have a conflict of interest but about not having one, it is not about disclosure of fees/commission but about finding the best and most cost-effective product that meets the customer's needs. It is ultimately about providing untainted advice from a position of power due to the benefit of asymmetric information. Surveys indicated that most clients incorrectly/naively believe that they already benefit from a fiduciary relationship with their "adviser" and, a surprising proportion, believe that the "advice" is free! Of course, the advice not only isn't free, but very often the advice will result in net systematic damage to one's financial wellbeing (e.g. when paying 2-3% mutual fund fees halves one's retirement assets over 30 years of accumulation).

To "help" advisers meet the client's best interest standard we must legislate: statutory fiduciary requirement and business models conducive to its delivery.

Of course the investor must also be prepared to pay explicitly for the advice rather than continue the ostrich policy of thinking/assuming that advice is free when it's buried in a transaction price or mutual fund trailer fees or other opaque mechanisms.

Real advice includes at least an Investment Policy Statement (IPS), e.g. see the **"Elements of an Investment Policy Statement for individual Investors"**, which includes an asset allocation and a view of the required savings necessary to achieve the individual's (retirement) goals as outlined in the IPS roadmap. If one is not getting an IPS from one's advisor, what s one getting for one's fees?

Accommodation must also be made for mass market retirement financial advice (e.g. clients within certain parameters such as below average wages, <$200K assets and/or inability/unwillingness to pay for example about $2-3K for an initial IPS and then for ongoing advice) which might in fact be more than adequately provided by software based online services with some additional expert support but still within the context of fiduciary level of care. (e.g. see **"Meeting the global challenge of funding retirement" – Highlights of Robert Merton's CFA Institute seminar** and Ron Lieber's NYT article **"Finding advice for more modest retirement investments"**) One might think of this as making the 'product' more idiot proof, of higher quality, more reliable, less in need for "repair/maintenance". A very loose analogy would be that 40 years ago the car repair business was a gold mine with a repair shop associated with every gas station. Some were honest and competent but lots were crooked and/or incompetent operators, but the customer was unable to distinguish the good apples from the rotten ones. Over time the car became of better quality and higher reliability; we need the same for financial products and services. What we need is a set of low cost and low maintenance financial solutions which can be delivered painlessly to the mass market and which have a reasonable chance of delivering the retirement income that used to be provided by now largely extinct/defunct traditional private sector DB pensions.

The 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"** deserves much credit for being a very thoughtful background document on the drivers(the concerns) toward a statutory fiduciary requirement when interacting in an advisory role with retail investment clients. This document explains the meaning of fiduciary, the current Canadian standard of conduct, recent developments in this area in the US/UK/EU/Australia, and the concerns with the current standard of conduct in Canada.

Unlike the US which at least has one category of advisers called RIAs (Registered Investment Advisers) who must provide advice with a fiduciary level of care, Canada has no such statutory requirements except under very narrow context. According to the consultation paper currently only four provinces (AB, MA, NL and NB) have a "statutory requirement that when advisers/brokers/dealers have *discretionary* authority over their clients' investments, the adviser or dealers must act in the clients' best interests". In Quebec "according to both the general civil law and the *Securities Act* (Québec), registered dealers and advisers are currently subject to a duty of loyalty and a duty of care and must act in the client's best interest" which according to some experts quoted in the consultation paper "is comparable to that of the common law fiduciary standard". Therefore in Canada only Quebec appears to might have what some interpret as to some degree the equivalent to statutory fiduciary level of care.

The CSA's concerns are boiled down to a list of five major issues, which are then used to generate 52 detailed consultation questions as a means of requesting feedback. The five areas of concern identified in the CSA consultation paper with the current standard of conduct in Canada are:

Quote:

1) There may be an *inadequate principled foundation* for the standard of conduct owed to clients.

2) The current standard of conduct may *not fully account for the information and financial literacy asymmetry* between advisers and dealers and their retail clients.

3) There is an expectation gap because *investors incorrectly assume that their adviser/dealer must always give advice that is in their best interests.*

4) Advisers/dealers must recommend *suitable investments but not necessarily investments that are in the client's best interests.*

5) The application in practice of the *current conflicts of interest rules might be less effective than intended."*

End of quote.

One might think that this list of concerns would be sufficient for legislators to spring into action, as obviously all is not well in the world of Canada's retail investor protection.

I have included my responses to the 52 questions posed by the CSA in the Appendix below, but I believe it is necessary to also try to articulate in a little more detail why I believe that when an *advisory role* is claimed under any circumstances, but in *a retail investor context in particular*, statutory fiduciary level of responsibility is necessary but not sufficient requirement for a successful client outcome.

Some questions for your consideration

Can a commissioned salesperson act as a fiduciary? Is the expectation that humans always place their own self-interest below client interest unreasonable? Can an advisor restricted by his employer to offer only in-house products truly act as a fiduciary? Can financial advisers working at a fiduciary level of care make a decent living and receive fair compensation for their training, expertise, skill and due diligence? The answers to these questions are probably: No, no, no, and hopefully yes.

One could also ask if a wrap account giving discretionary power to the adviser might be a way of dealing with fiduciary responsibility in the context of the brokerage industry. The answer is maybe with an all-in fee of under 1% and well under 1% when significant AUM is involved, but not at a fee of 2-2.5% typically associated with such accounts. Depending on the investor's asset mix the 2.5% represents 30-90% of the available market returns, which by definition does not feel like the best interest of the client.

Whatever relationship one might have with one's 'adviser', in addition to understanding the cost that one incurs, one better understand if one is getting value for money even in a low fee context; I certainly wouldn't want to trade an IPS, a strategic asset allocation and a low cost index based portfolio implementation, for empty promises of tactical asset allocation (market timing) and alpha (stock selection). If an IPS does not come with the advice then on what basis is the advice generated and what is the essence of the advice that's delivered for the fee (whatever form it might take)?

Services of an adviser typically might include: IPS, financial plan, tax plan, investment plan, asset management, estate plan, risk management plan (insurance), discretionary/advisory role, and 'best' investment products to achieve objectives within an open architecture

Are there some reasons why one would not want to work with a fiduciary financial adviser? If you can't think of any, then why you don't ask you adviser if he is a fiduciary and if he is not then ask him to at least sign a **fiduciary pledge** such as the one suggested by Tara Siegel Bernard in NYT's **"Will you be my fiduciary"** (or better). Otherwise perhaps you should go and find another adviser. (Though I don't believe that disclosure of all conflicts of

interest and all fees (commissions, trailers, etc) are sufficient to replace a statutory fiduciary/best interest of the client level of care.)

The business model

The business model concerns include: differences between suitability vs. fiduciary level of care, compensation model, conflict between the employer's business model and adviser's professional code of ethics and operation, open architecture and impact of roles. Lets look at each of these in turn:

Suitability (KYC) vs. fiduciary level of care

This topic has been extensively covered in Section 4 of the **CSA Consultation Paper** and numerous articles in the US and Canadian press.

In simplest terms, the difference between a suitability/KYC model (which specifies that you can only sell suitable securities) and fiduciary model (that you must at all times act in the client's best interest) might be for example: The former means that if the product type is "suitable" the price might be irrelevant, the latter "fiduciary" means that the not only must the product type be suitable but the price/cost must be compatible with the client's best interest.

The compensation model

Can an adviser compensated on commissions and/or trailers act as a fiduciary? Here we have a compensation model which might inadvertently influence the advisor of a retail client transaction. Requiring a less conflict of interest intensive and less opaque compensation model, such as one based on fee-only or even better fee-for-service compensation, leads to a business model more conducive to meeting a fiduciary level of care.

Can an "adviser" who is only licensed to sell mutual funds, which in Canada typically charge 2-3% fees, act as a fiduciary? The adviser knows, or should know, the advantages of low cost passive index based broadly diversified ETFs over much more expensive and typically actively managed funds; by definition the average fund will underperform the indexes by fees, so while a small percentage of the funds will outperform the indexes it is very difficult (impossible) to pick the winners a priori in any one year; and an even smaller percentage will outperform sustainably.

I have difficulty seeing how a mutual fund only licensed advisor or a mutual fund transaction/trailer based compensation model would transition smoothly into a statutory requirement for fiduciary level of care. Fee-for-service/fee-only compensation and advice/product which is demonstrably in the client's best interest are the foundation for fiduciary level of care.

Fee for professional services should be the gold standard of compensation model. A hierarchy of compensation goodness (highest to lowest) would then be: fee-for-service, fee-only (e.g. % of AUM), transaction fees, trailers, hidden trailers/fees. Fee for service and fee-only models are conducive to delivering fiduciary level of advice

Open architecture

Can an 'adviser', broker or fund salesman, limited to only selling his own firms' products, act as a fiduciary unless he works for a/the firm offering the 'best' products in the industry? I suspect not, unless he was working for Vanguard or some other fund company (are there any others?) which is already not only committed to a fiduciary level of care as part of its business model, but is also a mutually structured not-for-profit investment management firm owned by those who buy the firm's products.

Employer business model vs. professional code of ethics/standards conflict

In Forbes's **"Investors misled by brokers masquerading as fiduciaries"** Edward Siedle writes that there are sometimes circumstances when even CFA charter holders (and their clients) have to deal with conflict between the requirement by the CFA Institute who holds the members to the "highest fiduciary standards" while their employers as in the case of "brokers employed by the major Wall Street firms, do not acknowledge a fiduciary duty, which requires them to make their clients' best interests their top priority." The article continues with following explanation from the CFA Institute "You've hit upon a dilemma for some of our members, who are bound by our Code of Ethics and Standards of Practice as charter holders and/or members of CFA Institute, but who are employed by firms with business models that apply suitability standards rather than fiduciary standards in their dealings with clients. Our understanding is that in many such instances, the firms do not allow CFA charter holders to display the CFA designation after their name on business cards or other publicly available material, so that clients do not perceive any different standard than what the firm has adopted for all of its employees." Siedle concludes that "…only the clueless will continue to employ financial advisors who resist accepting fiduciary duty for their life's savings."

Clearly a very complex subject trying to separate the advisor's duty of care demanded by one's professional code of conduct, contractual relationship with the client, and the business model of one's employer. A statutory fiduciary requirement in all retail client interactions would eliminate all doubt in the mind of the adviser, his employer and the client.

Role

So if one is acting as a financial advisor for retail investors the fiduciary requirement should be a statutory requirement. However if one is dealing with an "execution only broker" then you might only expect "best" execution in a fiduciary model; similarly if one is dealing with "counterparty" or a "principal" in a transaction you may not necessarily get fiduciary level of care.

All financial transactions, but especially those involving retail clients where advisory role is inferred should have default to fiduciary level of care; in situations when the interaction/transaction is does not meet fiduciary level of care, an explicit and clearly visible disclaimer should state "This is NOT A FIDUCIARY transaction and therefore it is not necessarily based on advice which is in the best interest of the client"

A clarification of the struggle that a broker who is also a CFA charter holder would deal with is provided in CFA Institute Magazine's **"What's a broker to do?"** where Jonathan Stokes (Head of Standards of Practice) addresses the matter as follows: "The CFA Institute Code and Standards explicitly states in Standard III (A) *Loyalty, Prudence and Care that: "Members and Candidates have a duty of loyalty to their clients and must act with reasonable care and exercise prudent judgment. Members and Candidates must act for the benefit of their clients and place their client's interests before their employer's or their own interest.*" Stokes writes that "The requirement to act in the client's best interest, with loyalty, prudence and care, and for disclosure of conflicts of interest apply to all when engaging in their professional activities. What specific conduct is required of members to fulfill these duties will depend on the member's relationship to the client and the nature of the member's job functions (e.g. execution only brokers, retail brokers, institutional broker). Although members and candidates must comply with any legally imposed fiduciary duty, the Code and Standards neither imposes such a legal responsibility nor requires all members to act as fiduciaries. In particular, the conduct of CFA charter holders who are broker/dealers may or may not rise to the level of being a fiduciary, depending on the type of client, whether the broker is giving investment advice, and the many facts and circumstances of a particular transaction or client relationship. The specific actions required may vary by job function, but CFA charter holders…must comply with one of the most rigorous and comprehensive codes of conduct anywhere".

A statutory fiduciary requirement for advisers would override any professional code of ethics or standards of practice and insure that employer's business model did not conflict with a fiduciary requirement

Fiduciary duty is necessary, but not sufficient requirement

Unfortunately, for those who believe that once fiduciary obligation becomes a statutory requirement, investors are guaranteed superior outcomes, might still be disappointed. Fiduciary obligation is a necessary, but not sufficient condition for superior outcomes for investors.

The legal profession is one of the most commonly used examples in which fiduciary duty is owed to the client. In fact it is common practice that should a conflict arise between two clients of the same lawyer, they usually must ask one of the clients to obtain alternate legal representation. However consider the following remark of Justice Winkler on the current state of the legal profession in this matter quoted in Bert Hill's Ottawa Citizen article **"Chief Justice Winkler vs. the Nortel quagmire"** "The environment in which many lawyers currently practice has, over time, become increasingly competitive and commercial. There is a pressure to bring in, and to keep, clients. The drive to the bottom line is difficult to resist.

But I reiterate: Law is, first and foremost, a profession; it is a business only secondarily. If you fail to recognize this distinction, you will almost certainly lose your way." "At another legal conference, Winkler recalled that lawyers did not keep dockets when he was practising law. The amount of time spent on a case "was determined entirely on what the case called for, and how thoroughly you wanted to be prepared," he said. "It had nothing to do with how much you could charge."

This type of potential conflict would not be eliminated in the case of financial advisors either, even if they used a fee-for-service compensation model. It seems that even some "professionals" need help to overcome the challenges associated with doing the right thing. I have no doubt that many lawyers still operate as Justice Winkler did: "The amount of time spent on a case "was determined entirely on what the case called for, and how thoroughly you wanted to be prepared…It had nothing to do with how much you could charge." Still the fiduciary model is not working perfectly.

In the financial 'advice' business' (and hopefully in the future more appropriately a 'profession') the stakes for the client (and society in general) are even higher; not everybody goes to a lawyer, but everybody must save for their retirement, must interact with the financial industry, and generally do so from a position of weakness due to information asymmetry.

So having a fiduciary responsibility might be a necessary but not sufficient condition to a conflict-free interaction with a professional; experiencing a truly fiduciary interaction/transaction will ultimately be also determined by the character/integrity of the professional; of course the quality of the outcome for the client will also be affected by the capability and the due diligence of the professional.

A professional rather than a business model would be appropriate for the financial advice industry and would be more conducive for delivering fiduciary level of care. A professional adviser would also have the required accreditation backed up by the education/training necessary to provide advice in the best interest of the client (In Canada there appears to be no mandated minimum formal/uniform accreditation/designation or education/training requirements to become an adviser; how can one provide independent fiduciary level of advice without an ongoing comprehensive training/education program and accreditation?)

The transition to a statutory fiduciary requirement

In Financial Planning's **"Hybrid advisors outpace RIAs"** Donald Korn discusses the growing number of US 'advisers' and aggregators moving to a dual registration (I suspect not 'hybrid' as the title suggests) model whereby advisor assumes the RIA hat (which requires fiduciary level of care) while continuing to maintain a relationship with an independent broker-dealer; this way advisor has "access to both commission- and fee-based business". This may be a just a transition path to the growing trend to fee-based model or (some cynics/critics might say) that it is just another way to generate additional commission/trailer income from mutual funds or insurance products such as variable annuities. (The article does not make a judgement whether this might be good or bad for the

client: it is good if it offers an easier short-term transition path for “advisor” from their non-fiduciary/commission-based to a fiduciary/fee-only model, but bad if it is just a way to circumvent the fiduciary responsibility by tactics such as a bait-and-switch, i.e. bringing client in with fiduciary promise and then shifting her to “cheaper” commissioned model.)

The fiduciary retail financial advice context cannot be supported with dual/hybrid models except for a very short (1-2 year) transition period; one cannot provide advice with a fiduciary level of care by wearing fiduciary or non-fiduciary hats, as a matter of convenience.

Bottom line

As we begin to understand the scope of the changes required to move the retail financial advice industry to a fiduciary model, we see that it might be perceived by some as an attack on the industry’s business model. But it is not an attack against the financial industry or its business model in particular; introducing a fiduciary level of care and a business model conducive to fiduciary behaviour are essential for the protection of individuals’ and society’s financial well being.

It’s about time that the financial industry places “no obstacle before the blind”. It is now long overdue that retail financial advisors should be required to operate with a fiduciary level of care with their clients, and that the business/compensation models used by the industry are conducive to operating in the client’s best interest. Statutory fiduciary duty is not the same as code of conduct fiduciary or non-fiduciary requirement. Independent (not SROs) regulators must provide cost-effective oversight and muscular enforcement, as these are essential companions to legislated fiduciary duty in retail financial advice situations for the protection of the vulnerable retail client.

All financial transactions, but especially those involving retail clients where advisory role is inferred should have default to fiduciary level of care; in situations when the interaction/transaction is does not meet fiduciary level of care, an explicit and clearly visible disclaimer should state “This is NOT A FIDUCIARY transaction and therefore it is not necessarily based on advice which is in the best interest of the client”

Structural obstacles must be eliminated: profession vs. business, fee for service vs. commission/transaction/trailer fees, professional code of ethics vs. employer’s business model. Vast majority of advisors are honest and hard-working individuals but are at times working in a business model where they cannot provide the advice to the client which is in the client’s best interest; firms in the retail advice industry must have compensation models, training/education programs, open architecture products, products which demonstrably meet “best client interest” hurdle (even potentially “good” financial products can be toxic when the industry takes an unfair share of the available benefits when they are so opaque that client, and often even adviser, doesn’t understand its implications)

The CSA could further enable best practices for advisers by establishing a “client user review” website where clients can rate and comment of the adviser experiences. This would

be an opportunity for the 'best' advisers in that they become known and clients will gravitate toward them and also for those rated lower in that they would be able to learn from their colleagues' successful practices.

Statutory fiduciary level of care must also apply to the insurance industry and their products; insurance is a key part of the risk management component of the IPS, the roadmap to one's financial future.

Appendix- Consultation Questions on Investor Protection Concerns

Question 1: Do you agree, or disagree, with each of the key investor protection concerns discussed above with the current standards applicable to advisers and dealers in Canada? Please explain and, if you disagree, please provide specific reasons for your position.

Agree

Question 2: Are there any other key investor protection concerns that have not been identified?

Do not put advisor in position (business/compensation model) where he might be tempted not to act with a fiduciary level of care. Require minimum training/education/accreditation level. Statutory fiduciary requirement should also be extended to insurance industry

Question 3: Is imposing a statutory best interest standard on advisers and dealers the most effective way of addressing these concerns? If not, would another policy solution (e.g., changes to one or more of the existing statutory standard of conduct requirements) offer a more effective solution?

Yes, only way for adviser and broker-dealers claiming to provide advice

Question 4: Do you believe that some or all of these concerns are inapplicable (or less significant) in any CSA jurisdiction as a result of its current standard of conduct for advisers and dealers?

No

Question 5: Should securities regulators impose a best interest standard applicable to advisers and dealers that give advice to retail clients? Why or why not?

Yes, because that's what advice is about- otherwise it is sales

Question 6: If such a duty is imposed, are the terms of the best interest duty described above appropriate (for example, should there also be an on-going obligation regarding the suitability of advice previously given or investments held by a client)? What changes, if any, would you suggest to the terms of the best interest duty described above?

Yes, but so long as there continues an ongoing relationship, then there is an ongoing responsibility; real advice can only be delivered in context of an Investment Policy Statement

Question 7: Are there other general issues related to imposing the best interest standard described above that should be addressed?

"Do not place a stumbling block before the blind" (as described above)

Question 8: Do you agree, or disagree, with each of the potential benefits and competing considerations of the statutory best interest standard described above? Please explain and, if you disagree, please provide reasons for your position. Are there any other key potential benefits or competing considerations that have not been identified?

Agree with "Potential Benefits", but disagree with "Potential Competing Considerations"

Other advantage is that a fiduciary level of care comes with net positive benefit for society

Question 9: What are the criteria that should be used to identify an investment that is in a client's best interest?

Use Investment Policy Statement as context; also default should be passive and low-cost investments, risk-tolerance based asset allocation, periodic rebalancing. There may also be a mass market that needs to be addressed (e.g. when client has lower income, fewer assets so as to fit into some predetermined parameters which make their situation amenable to semi-automated solutions as described above)

Question 10: Should breaches of a best interest standard give rise to civil liability at common law?

Yes

Question 11: If so, is it necessary to state expressly that a best interest duty will give rise to civil liability on the part of the adviser or dealer or is it sufficient if that standard is a statutory duty?

I don’t know

Question 12: Does the duty of an adviser or dealer to act fairly, honestly and in good faith when dealing with clients, coupled with the existing rules related to suitability and conflicts of interest, already impose a standard of conduct that is functionally equivalent to a fiduciary duty?

No…Some of the simplest examples would be individuals only licensed for mutual fund sales and “advisers” who only sell own company products, rather than considering cheaper low-cost alternatives for portfolio implementation. These individuals are trapped by their employers’ business model in a situation where they cannot provide advice in the best interest of the client.

Question 13: If so, should it be made clear that investors can enforce that duty as a private law matter?

N.A.

Question 14: If you believe that the existing standard of conduct for advisers and dealers already imposes a standard of conduct that is functionally equivalent to a fiduciary duty, what impact (if any) would the introduction of a statutory best interest standard have? For example, would it be desirable for investors to have the benefit of a statutory best interest standard that has long been recognized and interpreted under fiduciary duty common law principles?

N.A.

Question 15: Do you think the investor protection concerns raised in this Consultation Paper could be addressed by issuing guidance about current business conduct requirements, including the duty to deal fairly, honestly and in good faith with clients? Please provide specifics about the type of enhanced guidance that would be most effective.

N.A.

Question 16: Do you think that the concerns raised in this paper could be addressed by increased enforcement of current business conduct rules, including fair dealing, suitability and conflict of interest requirements?

N.A.

Question 17: Would the statutory best interest standard described above increase ongoing costs for advisers and dealers in Canada? If so, please

identify the areas in which you believe there would be increased costs for advisers and dealers and provide any relevant qualitative arguments or quantitative data.

In responding, please consider potential costs in the following areas:

(i) regulatory assessment (client information required to meet standard)

(ii) compliance/IT systems

(iii) supervision

(iv) ensuring representative proficiency

(v) client documentation/disclosures

(vi) insurance

(vii) litigation/complaint handling

(viii) other (please identify)

Operationally no increased costs…just potentially lower revenues if customer reluctant to pay the same amount once they understand the services received…more client information would have to be collected/analysed to do an IPS, but advisor could charge for that explicitly, and proper advice cannot be provided without the IPS…incremental and ongoing costs to raise advisor proficiency/capability to provide high quality advice might also be necessary

Question 18: If yes, given that a fiduciary duty is already owed to a client in certain circumstances, why do you think that clarifying the circumstances in which such a duty is owed will affect ongoing costs of advisers and dealers in Canada?

N.A.

Question 19: Are the computer systems advisers and dealers use today to support their compliance mandate able to support a statutory best interest standard? If no, what types of investment do advisers and dealers anticipate needing to make to improve their IT systems in order to ensure compliance with a best interest standard?

IPS

Question 20: We note that cost-benefit and/or market impact analysis has been conducted to varying extents on the proposed reforms in each of the U.S., U.K., Australia and E.U. Do you believe that this international analysis is relevant to the possible introduction of a statutory best interest standard for advisers and dealers in Canada? If so, please explain.

Yes, cost may be marginally higher, but can't provide personalized advice without an IPS

Question 21: Do you believe that the statutory best interest duty described above would have a negative, positive or neutral impact on retail clients across each of the following dimensions: choice, product access, and affordability of advisory services?

No

Question 22: How should a statutory best interest standard apply to mutual fund dealers, exempt market dealers and scholarship plan dealers?

Mutual Fund only dealers might disappear as they might not be able to meet fiduciary level of care given 2-3% management fees which would be incompatible with client best interest standards

Question 23: Are there any adviser or dealer business models that could not continue if the best interest standard described above was adopted?

"restricted" business models where advisor is limited to own company products rather than an open architecture, unless own products imply fiduciary level of care (e.g. Vanguard)

Question 24: Do you agree with the approach reflected in the Australian Reforms or UK Reforms to accommodate restricted advice and scaled advice, respectively?

No

Question 25: What specific qualifications to the best interest standard described in this Consultation Paper are required (please provide proposed statutory language where possible)?

N.A.

Question 26: Will the qualifications required to make a best interest standard work in Canada result in retail clients receiving only advice on a narrow range of investment products?

Perhaps narrower than today, but that would be for the better. Most retail clients don't need more product, they need retirement solutions

Question 27: Would imposing a statutory best interest standard as described above affect capital raising?

No

Question 28: Do you believe that the statutory best interest duty described above would affect the current compensation practices of advisers and dealers? If so, in what way?

Yes, preferably fee-for-service but fee-only might also be acceptable- no embedded compensation

Question 29: Should a best interest duty expressly address adviser and dealer compensation practices? If so, in what way?

Yes…as indicated in #27 above

Question 30: Could volume based payments or embedded commissions continue if the statutory best interest standard described in this paper is introduced? If so, should such compensation structures be specifically prohibited?

No…Advice is not about sales

Question 31: What compensation structures that exist today among advisers and dealers do you think would be prohibited by the statutory best interest standard articulated in this Consultation Paper? Please consider compensation received by advisers and dealers both from clients and from product manufacturers. For each structure you mention, please provide your reasons.

No restriction to "sales"…fee-only for advice

Question 32: Should any statutory best interest standard be modified in any way to preserve various compensation structures?

No

Question 33: If the statutory best interest duty described above is introduced, what areas of guidance would be most useful to advisers and dealers?

Training in financial planning, e.g. IPS, retirement solutions instead products

Question 34: Are there specific circumstances or activities, such as principal trading, that should be addressed?

Yes, if permitted at all…but trading as a counter-party would have to be explicitly stated as not being in the fiduciary context

Question 35: Are there any categories of registrants today whose minimum proficiency requirements would need to change in order to comply with the statutory best interest standard described in this Consultation Paper?

Yes…IPS financial roadmap, also training in what it means to be a fiduciary

Question 36: Are there any advisory relationships between an adviser or dealer and a retail client where a fiduciary duty would not be appropriate?

There is no advisory relationship where fiduciary level of care not applicable for a retail client interaction

Question 37: Would the introduction of a best interest duty as described above require the introduction of any new rules?

Yes, e.g. separate rules for advisors and salespersons

Question 38: Would the introduction of a best interest duty as described above require any existing rules be revised or repealed?

Yes

Question 39: Are any existing regulatory rules inconsistent with the best interest standard described above?

Yes

Question 40: Would the statutory best interest duty described above require revisions to the rules that govern how firms address conflicts of interest with their clients?

Yes

Question 41: If changes are required to the rules on conflicts of interest, what changes do you recommend?

Disclosure is not enough…you cannot act as a fiduciary if you have conflict of interest

Question 42: Should the CSA consider only imposing a best interest standard in respect of certain requirements, such as conflicts of interest or suitability requirements?

No

Question 43: If so, how would more targeted best interest standards address the key investor protection concerns raised in this paper? Please provide specifics.

NA

Question 44: Should a best interest standard apply only to advisers and dealers when dealing with "retail clients"?

Start with retail clients, but certainly applicable to supposedly even more sophisticated clients

Question 45: If so, is the definition of a "retail client" appropriate? Should any such duty apply to other clients in addition to retail clients?

Advice=Fiduciary, Sales="buyer beware"

Question 46: Should certain kinds of permitted clients (e.g., municipalities) have the benefit of a statutory best interest standard?

Yes

Question 47: Are there certain kinds of retail clients that do not require the benefit of a statutory best interest standard?

I can’t think of any?

Question 48: If the best interest standard described above was introduced, should advisers and dealers be permitted to modify or negate the standard by contract with their clients? If so, what limitations (if any) should be placed on that ability?

No

Question 49: If a best interest standard is introduced, should the existing duty on advisers and dealers to deal with their clients fairly, honestly and in good faith continue to apply whenever the best interest standard does not?

As indicated above, it shouldn’t be “advisers and dealers” but “advisers vs. salespersons”, and advisors must always be fiduciaries

Question 50: Should the best interest duty described above apply when any advice is provided to a retail client or only when personalized advice is provided to a retail client?

Yes…all advice

Question 51: If a best interest duty should apply only when personalized advice is provided to a retail client, what should “personalized advice” mean in this context?

N.A.

Question 52: Should it be triggered in the same circumstances in which the suitability requirement arises? Does this include advice to *hold* securities (as opposed to buying or selling securities)?

Triggered always when advice is provided; other circumstances are sales situations or business transactions