RAYMOND JAMES®

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

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

and

Me Anne-Marie Beaudoin
Directrice du sécretariat
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, Québec H4Z 1G3

Dear Sirs/Mesdames:

Re: Response to Canadian Securities Administrators Consultation Paper 33-403: *The Standard Of Conduct For Advisers and Dealers: Exploring The Appropriateness of Introducing a Statutory Best Interest Duty When Advice is Provided to Retail Clients*

In response to the request for comments on CSA Consultation Paper 33-403, Raymond James Ltd. ("Raymond James") is pleased to have the opportunity to provide comments. Raymond James is a full service investment dealer registered in all the provinces and territories in Canada, and is a member of both the Investment Industry Regulatory Organization of Canada ("IIROC") and the Investment Industry Association of Canada ("IIAC"). As such, we have had the opportunity to review the IIAC's responsive submission on the Consultation Paper regarding the introduction of a statutory duty for both advisers and dealers when advice is provided to retail clients. We agree with the submissions made by the IIAC. Rather than reiterate IIAC responses to the specific questions posed in the Consultation Paper, we provide our general overview.

Overall, the Consultation Paper seems to portray Canadian Securities regulations as lagging behind other countries. On the contrary, we see our provincial securities regulators (cooperating under the CSA) as leaders in addressing investor protection and regulating client relationships with advisers and dealers. The issue of a statutory fiduciary duty was considered in the OSC's Fair Dealing Model approximately 10 years ago. The CSA further considered and developed the Client Relationship Model ("CRM") regulatory initiatives under National Instrument 31-103 after many years of rule development and industry consultation. Considerable expense, both in terms of time and industry compliance costs, has been incurred preparing for the March 26, 2013 implementation. It is, therefore, surprising at this juncture for the CSA to publish a paper suggesting that there "may" be a need to address potential investor protection concerns regarding standards of conduct for investment dealers. The Consultation Paper offers no evidence of harm or shortcomings with current standards which include a duty to act fairly, honestly and in good faith and onerous suitability requirements.

The CRM regulatory initiative takes into account the service offering and business model of the investment dealer industry. It demands engagement with retail clients mandating not only relationship and conflicts disclosure, but also discussion with the retail client. Potential conflicts of interest are required to be disclosed and if actual conflicts are present and cannot be avoided, disclosure and consent is expected. Additional suitability requirements have been introduced together with the requirement to communicate to clients using plain language. Client engagement and involvement are encouraged to both understand and participate in the investment process.

The new regulatory CRM requirements are in addition to the duty to act fairly, honestly and in good faith when advice is provided to a retail client. At common law, a fiduciary exists where there is an exercise of discretion by the investment adviser or where the underlying facts to the investment adviser-client relationship include an extent of reliance and vulnerability of the client due to lack of investment knowledge, education or experience with investing, or perhaps lack of understanding due to age or language skills. Where a fiduciary relationship exists, the resulting fiduciary duties are the highest duties in law. The common law on fiduciaries originated from trust law, imposing fiduciary duties on trustees of trusts who had authority to manage trust assets on behalf of beneficiaries. No participation or engagement by the beneficiary is expected. Canadian jurisprudence on fiduciary duties has been well developed over many years. The Consultation Paper contains no discussion and presents no evidence suggesting court decisions are erroneous or that the common law concerning fiduciaries is uncertain or in need of a legislative fix. The common law should not be overridden or ignored.

If all client relationships are categorized as fiduciary attracting the duty to act "in the best interest of the client", an entire body of common law case law will then need to develop to determine in what facts and circumstances the "best interest" duty has been either met or breached by investment dealers. We need only look at the complex case law for corporate directors in Canada meeting "best interest" duties and the differences in approach to fulfilling those duties between Canadian and American courts. Without the benefit of common law cases or very clear and lengthy regulation accompanying newly introduced statutory standards, we would expect there to be considerable uncertainty as to what an investment advisor can or cannot do in various circumstances. Even then consensus on what is a "best investment", or what is in the "best interest" of a client, remains susceptible to subjective interpretation and is unlikely to be achievable, even among experts.

If a retail client relationship is fiduciary at common law, then conflicts of interest must be avoided rather than managed by disclosure and consent. If a statutory "best interest" duty is introduced in keeping with fiduciary "best interest" duties, changes would likely be required on the service offering to retail clients by investment dealers.

Examples for questions to answer are:

- Would investment dealers be able to continue to offer commission based accounts to retail investors or would that account type then be limited to non-retail clients?
    - By eliminating commission based accounts for retail clients, the inherent conflict of earning a commission on a trade would be avoided. However, an assumption that a fee based account over a commission based account is always in the "best interest" of a retail client is not necessarily valid. Advisers have duties to deal fairly, honestly and in good faith in any event.

- Would investment dealers be able to engage in a trade as principle with a retail client? E.g.
    - Could bonds in firm inventory be sold to a retail client, or would only non-retail clients be eligible to purchase them?
    - Could retail clients purchase securities under an IPO or private placement where the investment dealer had been involved in advising or underwriting the Issuer of the securities, or would the offering of those securities be limited to non-retail clients?

- For experienced retail clients that are not fiduciaries in common law, what incentive or encouragement would there be in a deemed fiduciary statutory 'best interest' standard for that client to be engaged in the client relationship? (e.g. To review trade confirmations and client statements? To ask questions of his/her advisor?)
    - Would there ever be situations of contributory negligence by a retail client?

We think putting all retail client relationships in a classification that assumes every client to be vulnerable and reliant may not necessarily serve the best interest of experienced and educated investors with little or no dependence or vulnerability. We question the assumption in the Consultation Paper that all retail clients are vulnerable and reliant due to the complexity of investment products. Canadian jurisprudence should not be ignored as it considers the nature and extent of the investment adviser relationship, taking into account the degree of trust, dependence and vulnerability of the client.

We recommend that the validity of the assumptions or concerns stated in section 6 of the Consultation Paper entitled "Key Investor Protection Concerns" be tested and then measured following the implementation of the CRM requirements. We see no evidentiary basis for the stated concerns. It appears the concerns largely involve costs, fees and pricing of investment products. We do not think imposing a statutory best interest standard to be an effective way to address such concerns. We think education is necessary for investors to understand the nature of the client relationship and associated duties, costs, fees and pricing of products and services. CRM now mandates this client disclosure. Investor education is called for on the meaning and implications when using the term "fiduciary" and the complexity and uncertainty of application when the phrase "best interest" is used as a standard.

When considering this topic, the feasibility of introducing a "qualified best interest standard" and the definition of that standard need to be undertaken. The impact of changes in the UK and Australia, effective in 2013, should be carefully reviewed and understood after allowing for a reasonable period of time for implementation and assessment. Any meaningful consultation with industry in Canada on potential costs and impact would need to be responsive to a defined qualified standard in the hope of avoiding unintended consequences, with potentially increased costs or decreased retail client choice or service offering or the ability of retail clients to access investment advice. A cost-benefit analysis would need to be undertaken.

The Consultation Paper has not, in our view, demonstrated a need for more regulation with the imposition of statutory "best interest" fiduciary duties on investment dealers. There is no evidence that current duties to deal fairly, honestly and in good faith are inadequate for investor protection or that Canadian jurisprudence on fiduciaries is flawed. With existing fair dealing rules, and CRM reform requiring enhanced suitability and relationship and conflicts disclosure, we do not think it necessary or desirable to introduce more regulation with statutory amendments. Regulatory reform for addressing investor protection concerns is now being implemented with CRM rules. We recommend that the CSA allow CRM to be implemented and evaluated rather than speculating, at this point in time, about "potential" investor concerns.

If you have questions or wish to discuss further, please contact our General Counsel, Sharon Morrisroe, at 604-654-7244 or Sharon.Morrisroe@raymondjames.ca.

Yours truly,

Raymond James Ltd.

Per:

Paul Allison
Chairman & CEO