680 Waterloo Street, London, ON N6A 3V8

SISKINDS | THE LAW FIRM

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February 22, 2013

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

c/o 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
Fax: 514-864-6381

Dear Sir or Madam:

Re: CSA Consultation Paper 33-403 - Request for Comments

By way of background, Siskinds LLP is a leading securities class action firm. While we act in a broad range of shareholder rights litigation, the focus of our practice is representing institutional and retail shareholders in securities class actions arising out of disclosure violations by issuers, their directors and officers, and other market participants. We have been and are counsel to the plaintiffs in numerous class actions in which claims for prospectus and secondary market misrepresentation have been asserted under section 130 and Part XXIII.1 of the Ontario Securities Act, and the equivalent provisions of the Securities Acts of the other Canadian provinces and territories.

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We have reviewed the proposed amendments with a focus on ensuring that adequate financial advisers are properly incentivized to behave in a manner that is consistent with the public interest, and that remedies are available to investors who are exploited by financial advisers. Adequate remedies, ensure the accountability of financial advisers to investors and the integrity of securities markets more generally.

We are of the view that the imposition of a fiduciary duty on financial advisers would be a positive development in ensuring the fair and efficient operation of Canadian capital markets.

The ever-increasing complexity and opaqueness of financial products has widened the financial literacy asymmetry between advisers and their clients. It is now the case that financial advising is an area that calls for highly specialized expertise, and that retail investors are relying more and more heavily on this specialized expertise. The relatively unsophisticated retail investor is increasingly in a position of trust and vulnerability to her financial adviser – precisely the circumstance in which a fiduciary duty traditionally arises.

Preliminarily, we note that we are regularly consulted by retail investors who believe that their interests have been abused by their financial advisers. Frequently, after we have investigated a complaint of this nature, we form the view that the complaint of the investor has merit, but because the advice the investor has received is of an individualized nature, his or her claims cannot properly be pursued as a class action. Further, because the damages caused by an incompetent or dishonest financial adviser are often too small to make an individual action economical, the victims of that incompetence or dishonesty have no effective means of litigating their claims. Further, the limited enforcement resources of securities regulators make it impossible for regulators to address every instance in which financial advisers have abused the interests of retail investors. Therefore, it is essential that another mechanism be found for protecting the interests of such investors, who are particularly vulnerable to abuse. The imposition of a fiduciary duty on financial advisers would go a long way to addressing this problem.

Further, we note that an array of actors with ambiguous and conflicting interests that were built in to the financial system played a major role in facilitating the subprime mortgage crisis of 2008. Ratings agencies were paid to give investment-grade ratings to securities that did not necessarily merit those ratings. As long as the investment banks were paying for these ratings, however, they had no incentive to question what they were doing. Of course, their lack of diligence – which was only a product of the incentivization structure (or lack thereof) within which they operated – was eventually discovered and exposed. By then, however, the damage had already been done, and at a tremendous social cost. Addressing this flawed system of competing incentivizations may have avoided or at least mitigated some of the damage.

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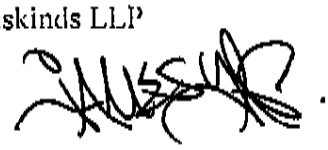
In terms of the formulation of the standard, our position is to keep it simple. The standard suggested in the CSA Consultation Paper 33-403 that solicited this and other comment letters – to act in the client's best interests and to exercise the care, diligence, and skill of a reasonably prudent person in the circumstances – is one that is well known to the law and that judges and the lawyers who advise financial advisers alike will know how to interpret and apply. To the extent that authoritative Supreme Court of Canada decisions such as *BCE Inc. v. 1976 Debentureholders* and *Peoples Department Stores Inc. (Trustee of) v. Wise* have not already elucidated the content of this standard, this is all the more reason not to muddy the waters by introducing new variations. In fact, in the vast majority of cases, the standard is clear enough that a financial adviser will not need expert legal advice to understand her obligations. She will understand that she must act in a manner that advances the best interests of her client to the exclusion of all other competing interests that may exist, and that in doing so, she must exercise a reasonable degree of care, diligence, and skill. Simple and elegant, nothing could be more straightforward or easy to understand. Therein lies the appeal of this standard – it is well defined and known to the law and legal experts, but at the same time it is straightforward enough that a layperson can understand it.

Sincerely,

Siskinds LLP



Per:

A. Dimitri Lascaris
Class Actions

James Yap
Class Actions

AL/jy