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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
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut
CSA Notice 81-324 and Request for Comment Proposed CSA Mutual Fund Risk Classification Methodology for Use in Fund Facts
http://www.osc.gov.on.ca/documents/en/Securities-Category8/csa_20131212_81-324_rfc-mutual-fund-risk.pdf

I realize you are primarily looking for comments from the industry but as a consumer who may one day be the recipient of decisions that are made I would like to share a few thoughts for your consideration.

We are five years from retirement. I am not sure what "medium risk" means in terms of potential loss. Although knowing how a fund performed in its best and worst year in the last ten years will give me some useful information, I see it as only a small piece of the pie I will need to make a valid and informed decision. Also as the industry likes to say quickly at the end of a TV ad or in small print, past performance is not predictive of future performance.

There seems to me to be many other risks involved in owning a mutual fund. Standard deviation will somewhat be able to indicate to me the variability of possible returns. The system you propose is based solely on market data. As a consumer I want to know if this is the best product available to me with the least amount of risk, fees and costs to obtain my objective. Is the advice I am getting impartial? Is the advice conflicted due to embedded commissions and trailer commissions? From what I have been reading almost half of the management fee isn't even for portfolio management, it is for advice and services purportedly provided by the dealer/representative selling the mutual fund. How do costs impact my investment over time? Are their liquidity costs if I need to access this money? Is it being structured properly for me or is the advisor swayed by when and how he/she receives his commission? CSA has recognized in previous papers that sales commissions may create a conflict of interest between an advisor and client. Unsuitable investments, unduly expensive funds, improper asset allocation, liquidity constraints, leveraging, churning...are all real risks to consumers and will not be captured by analysis of standard deviation. Yet these risks are significant, I think a "conflict of interest risk" should be prominently disclosed as an implicit risk factor and labelled as such. Why is Fund Facts given after the sale? That is like having to buy a used car before being allowed to look under the hood or take it for a test drive!

Many funds do not have a 10 year history and although you address this issue in your proposal discussing the use of reference index data, you use words like "*ideally* the reference selected", "*should* comply" "*we expect*" this phraseology is weak and sounds like suggestions that can be ignored. Who would review the fairness of the index data used? Who would enforce a standard?

Regarding monitoring and changing risk categorizations, although necessary with this model it sounds time consuming and costly. Are these costs going to end up being passed on to consumers and come out of our pockets?

Regarding the proposal to change the volatility risk scale from a five band to six I think that is helpful. I also think there should be a "no to low" risk category. Many seniors are seeking advice and want their principal protected so risk might be interest rate risk, inflation risk.

Advocis has recently submitted a letter to the Ministry of Finance

<http://www.advocis.ca/regulatory-affairs/RA-submissions/2014/Advocis-Response-Ministry-of-Finance-Financial-Planning-Consultation.pdf>

Advocis recognizes "**the existing regulatory framework places Ontarians at risk.**" Mr. Pollock indicates in his submission "**the public is exposed due to four major flaws in the existing regulatory framework:**

- (a) Anyone can call themselves a financial advisor and offer planning and advice
- (b) Existing regulation is focused on the sales of products, not the ongoing relationship of trust between financial advisors and their clients.
- (c) There is no firm and clear requirement for advisors to keep their knowledge current.
- (d) There is no effective, industry-wide disciplinary process."

I would add (e) Advisors are not obligated or mandated by law to act in a client's best interests at all times.

Mr. Pollock further states,"**In fact, the need to elevate standards across the board is more pressing today than ever before: Ontario is facing the confluence of a demographic shift, where an unprecedented portion of the population nears retirement age, coupled with the need for fiscal restraint, as the government addresses its own financial challenge of returning to a balanced budget. With social programs under pressure, Ontarians will have to be financially self-reliant. And time and time again, studies have proven that a key component of this self-reliance is working with a financial advisor.**

Given all of this, the government must promote a regulatory framework that ensures the financial advice all Ontarians receive is professional, proficient and accountable.

Therefore, to protect the public interest, we believe the government should establish baseline minimum standards for all those providing retail advice and planning. To recognize those advisors who have obtained additional education, we suggest they be recognized as being specialists in their area of expertise. This would be analogous to what the Law Society of Upper Canada offers: all its members must satisfy baseline standards, but through its Certified Specialist program, it also recognizes those practitioners who are experts in, inter alia, criminal law, family law or real estate law."

In our legal system, the solicitor/client relationship has long been recognized as a fiduciary relationship. The term 'fiduciary' means trust, so in a fiduciary relationship one person (the client) places his or her confidence, good faith, reliance and trust in another (the solicitor), whose advice is sought in some matter. The same standard of care therefore should be in place for a financial advisor for his analogy to be properly comparable. Unfortunately the financial industry wants the professional recognition without the comparable responsibility of a professional standard of care.

The industry often does not honour the definition of informed consent. John Fabello a securities lawyer and partner of Tory's LLP is giving several podcasts on litigation risks for advisors.

Top three ways to protect yourself from rising litigation risk

Interview of Patricia Chisholm, John Fabello | February 7, 2014

http://www.investmentexecutive.com/-/top-three-ways-to-protect-yourself-from-rising-litigation-risk?redirect=http%3A%2F%2Fwww.investmentexecutive.com%2Fspecial-feature%3Fp_p_id

[%3D175_INSTANCE_TS7iffNVLHa9%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_pos%3D1%26p_p_col_count%3D2](#)

In this particular podcast Mr. Fabello states, "The second thing that trips up advisors is being very shy on providing advice that includes all of the risks of the particular product. It's a bit counter-intuitive I appreciate, because if an advisor has a product he or she really, really likes for their clients, they might be disinclined to highlight the risks of loss of that product, but it is very, very important to do so."

I found this to be very interesting. I personally would replace the word "shy" with "sly" but perhaps I am more cynical than Mr. Fabello. As a securities lawyer who represents firms and advisors, he has an appreciation of the dilemma a commission-based advisor faces in disclosing risk to a client. He uses words like "counter-intuitive" and "disinclined to highlight risks of loss".

It is "counter-intuitive" because he/she wants to make the sale. They are "disinclined to highlight the risks of loss", because the client might then make an informed autonomous decision and decide the product is not for them and now the advisors pay is impacted. Commission based advice is tainted advice. Get rid of it!

No one discloses all their personal financial information to a total stranger, in fact most people don't even disclose this information to their closest friends or even other family members. You disclose this information to a financial advisor because you believe this person has knowledge and expertise that is useful and needed by you and most importantly you are convinced that this person will act responsibly and in your best interests. If you thought otherwise you would not give out your information and you certainly would not give them access to your accounts and money.

If the industry is selling products and has no mandated duty to act in a clients best interest then this needs to be disclosed as a simple fact plainly to consumers. It is dishonest and unfair to lead clients to believe they are dealing with a professional offering them unbiased advice when in reality they are salesmen compensated directly by the sale of products and that different products not only pay different commissions but depending on how they are set up and structured, will pay the advisor differently over time. Consumers need to be told plainly their financial persons pay is not tied to the type, amount or quality of service; it is directly tied to what they sell, how much they sell you and how long you keep the product and advisor.

The bait and switch game being played needs to be exposed. The sale and delivery of products and transactions on the one hand while leading the consumer to believe they are offering advice and wealth management is wrong. These two things are completely incompatible and no amount of rules regulation, education, accountability, transparency or competition can change that fact or will ever adequately protect the consumer.

Too much time is being spent pursuing bunny trails and side issues, when what really is needed to address the majority of problems, is a Best Interest Standard.

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Debra McFadden