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Delivered by Email

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Nova Scotia Securities Commission

Attention: Ms. Josee Turcotte, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
comments@osc.gov.on.ca

Me Anne-Marie Beaudoin, Corporate Secretary
Autorité des marchés financiers
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Dear Sirs / Mesdames:

Re: CSA Consultation Paper 33-404 – Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives Toward Their Clients

Assante Wealth Management Ltd. ("Assante") appreciates the opportunity to provide comments on the Canadian Securities Administrators ("CSA") Consultation Paper 33-404 - Proposals to Enhance the Obligations of Advisors, Dealers and Representatives Toward Their Clients (the "Consultation Paper") published on April 28, 2016.

Assante is one of the country's largest independent wealth management firms with over 775 professional advisors overseeing almost $37 billion of assets under administration. Assante's subsidiaries include Assante Capital Management Ltd. ("ACM"), an IIROC member firm, and Assante Financial Management Ltd. ("AFM"), an MFDA member firm. AFM advisors are currently licensed to sell mutual funds, guaranteed investment certificates and government bonds whereas ACM advisors are licensed to sell equity securities, bonds, mutual funds, GICs and other securities that are subject to available regulatory exemptions.

This response letter outlines our overall impressions and concerns with the Consultation Paper. The enclosed Appendix provides specific feedback on each of the targeted reforms and the Best Interest Standard ("BIS").

ACM is a member of the Investment Industry Association of Canada ("IIIAC") and we have actively participated in the IIAC's Working Group on the Consultation Paper. We acknowledge and support the

IIAC's submission to the CSA relating to this matter as we believe it to be a considered and detailed response to the issues resulting from the Consultation Paper.

Assante shares the concerns of the CSA with respect to investor protection and we support the need for appropriate regulation in this critical area. We believe that the best approach to achieve this objective and enhance the client-advisor relationship is for the regulators to effectively and consistently enforce existing rules and if necessary, implement principles-based reforms that are targeted to specific issues where investor harm has been identified. We believe the Consultation Paper is overly prescriptive and in many instances, would result in significant unintended consequences.

Significant Change to Current Business Practices
The proposed targeted reforms contained in the Consultation Paper would, in some instances, require firms and advisors to significantly change the way business is currently conducted while adding costs and complexity to the business with little or no benefit to the client. For example, the requirement of firms with a mixed/non-proprietary product shelf to complete an annual market investigation, product comparison and product list optimization process would be a time-consuming and expensive process with limited or no added value for clients. Additionally, the obligation for advisors to know the features of all products on the firms' shelf instead of for those products the advisor recommends, is unrealistic and would consume enormous amount of time without a measurable benefit to the client.

Introducing regulation that requires firms to change their business practices without a clear benefit adds to the regulatory burden that is overwhelming firms and advisors, the costs of which are, in part, passed along to clients. To remain profitable, advisors need to focus on higher net worth clients thereby expanding the advice gap for clients with lower amounts to invest. These individuals are often the ones that would benefit the most from advice.

Reforms are Premature
Understanding the full impact of the Point of Sale ("POS") and Client Relationship Model Phase 2 ("CRM2") regulatory amendments will take time and we applaud the CSA for undertaking this important post-implementation review. The CSA's news release, *Canadian Securities Regulators to Measure Impact of Point of Sale Amendments and Phase 2 of the Client Relationship Model*, on August 22, 2016 acknowledges that a three-year period is required "to measure the outcomes related to investor knowledge, attitude and behavior, registrant practices and fund fees and product offerings." While the POS and CRM2 amendments have significantly increased the level of disclosure provided to clients, they have also impacted other aspect of the advisor-client relationship including the shift away from traditional Class-A mutual funds to fee-based business models.

Given the relevance of the above noted research, we agree with the view of the British Columbia Securities Commission ("BCSC") and the "Jurisdictions with Concerns", that the impact of these amendments must be measured before considering the reforms considered in the Consultation Paper.

Rules are Vague and Confusing
It is very difficult to comment on some of the targeted reforms contemplated in the Consultation Paper due to the lack of clarity of the standard to which firms and advisors will be held and what is required to satisfy the obligations outlined in the targeted reforms. Additional information is required from the CSA to establish a uniform understanding of these new regulations to ensure clients are provided consistent disclosure and treatment. For example, what does the CSA consider to be a material conflict? The conflicts of interest targeted reform states that "for firms that trade in or advise on proprietary products,

the incentive to recommend the proprietary product results in a material conflict of interest which may increase the likelihood that the firm or representative will recommend a product that is not suitable for a client, in breach of its suitability obligation". How does this reconcile with the Know Your Product – Firm targeted reform that specifically provides for a suitability assessment with proprietary products? With respect to Know Your Client ("KYC"), what does the CSA consider to be an understanding of a clients' "basic tax position"? How would a firm or advisor confirm that "a client has a reasonable understanding of the KYC form"?

Significant Costs

Assante completed a cost impact analysis based on the information available in the Consultation Paper. This analysis looked at the cost to implement the targeted reforms and the impact to the ongoing operating costs for both Assante and our sister company CI Investments, a fund management firm. We estimated that it will cost $14.4 million to implement the targeted reforms and add $5.9 million to our annual operating costs. Of the total implementation costs, just over 50% of these relate to developing new IT systems for Assante and 20% is allocated to hiring additional staff in various departments across the organization. By any measure these are significant costs increases that will inevitably be passed onto clients, thereby increasing the cost of advice and exacerbating the advice gap.

In addition to these direct costs, we anticipate that the cost for advisor insurance coverage will also increase as a result of the reforms. Insurers are concerned that the reforms provide a basis for establishing liability which would lead to higher settlements as well as increased frequency of claims.

The financial impact of regulatory reform is having a profound impact on the wealth management industry as smaller, independent dealers are increasingly finding it harder to implement and comply with the new regulations. Consolidation within the industry will continue as dealers look for increased scale to be competitive. This in turn negatively affects clients by limiting choice and their access to advice.

Conclusion

We believe it is critical for the CSA to undertake a comprehensive post-implementation review of the regulatory changes recently introduced to determine what gaps exist, if any, in the current regulatory framework. It is also imperative that the CSA perform and disclose a more detailed cost/benefit analysis of the proposed regulatory changes. The post-implementation review and the cost/benefit analysis must be completed before any further consideration is given to the Consultation Paper.

Assante appreciates the opportunity to provide our input to this initiative, and as always, we are available to discuss these comments if there are questions.

Yours sincerely,

ASSANTE WEALTH MANAGEMENT

Per: Steven J. Donald
President

Appendix

Part 1 – Comments on the Targeted Reforms

Conflicts of Interest

Assante has significant concerns with the Conflicts of Interest target reforms as many of the requirements are vague and undefined. Concepts such as "material conflict of interest" and "prioritizing the interests of the client" are not defined and as a result, many of the requirements are unclear as to their effect and practicality. Importantly, the targeted reforms fail to recognize that the MDFA and IIROC have clear and effective rules governing conflicts of interest that go well beyond the obligations required by NI 31-103 and these SRO rules effectively deal with the issues the reforms are trying to address. As a result, SRO member firms have policies and procedures in place for both firms and advisors to identify and respond to conflicts of interest. We suggest that the CSA review and implement these SRO rules for all registration categories.

Requiring firms to "obtain informed and specific consent before the transaction is entered into or the course of action is undertaken" is not clear and in many cases impractical. The CSA should indicate if plain language disclosure that is brought to the attention of the client would satisfy the obligation. There are many technical challenges associated with this requirement as systems would need to be developed tying the receipt of consent to a transaction order which are processes that do not currently exist.

Instead of outlining all of our concerns with this targeted reform, we direct the CSA to Appendix B of the IIAC submission as we believe their analysis of the issues to be thorough and responsive to the questions raised in the Consultation Paper.

Know Your Client

The requirement of advisors to understand the "basic tax position" of their clients is particularly problematic and requires additional clarification from the CSA. As most advisors are not tax professionals and do not have visibility into the clients overall tax position, it may not be possible for advisors to understand the clients potential tax liabilities. Further, clients are often reluctant to provide this information to their advisor making this requirement even more challenging.

Know Your Product

The requirement for advisors to know the structure, strategy, features, cost and risks of each security on their firm's product shelf and the requirement of advisors to compare the recommended product to other products on the firm's product list represents a significant change to current rules that we believe is neither realistic nor beneficial to clients. The complexity of these requirements should not be underestimated by the CSA as it would require significant investment in new systems and tools that currently do not exist.

As an independent dealer, Assante has a broad and open product shelf that is continually reviewed by the firm's investment committee using established internal policies and procedures and in accordance with SRO rules. It is not clear how the requirement for firms with a mixed/non-proprietary product shelf to complete a Market Investigation, Product Comparison and Optimization process would improve upon the SRO rules and how the proposed regulations would be of benefit to clients. Given the enormity of the

products in the market, the number of client accounts at the firm and the extensive number of products on the firms' product shelf, the complexity and cost to fulfill these new requirements, in particular the product comparison, would be significant.

In response to the Know Your Product targeted reform, Assante and many other firms with a mixed/non-proprietary business will significantly reduce the number of products on the firms approved shelf in order to comply with the new prescriptive requirements, resulting in reduced choice for clients. This outcome is contrary to the objectives the CSA has indicated it is trying to achieve; namely to ensure that the range of products offered by mixed/non-proprietary firms is broad enough to be suitable for its client base.

We also anticipate there will be a significant impact on independent fund managers and how they distribute their products. As mixed/non-proprietary dealers reduce their product shelf it will be increasingly difficult for independent fund managers to have their products included in firms' product shelf. Independent fund managers may need to change their product, marketing and distribution strategies in order to satisfy the demands of dealers. In addition, dealers will most likely require the independent fund managers to bear some or all of the costs associated with listing their products on the dealers' product list, which may be significant if firms have proprietary systems to facilitate the product comparison and optimization requirements.

Suitability

While Assante clearly recognizes the importance of a suitability analysis when providing advice, we are in agreement with the comments made by the IIAC with respect to the suitability as these reforms are not appropriate for all clients and all business models. In particular, imposing a requirement to conduct a Basic Financial Suitability analysis that includes "basic strategies beyond transacting in securities" and determining if a "non-securities product strategies are more aligned with the client's investment needs and objectives" are, in many cases, beyond what is considered to be permitted registerable activities. In addition, we are not clear how an advisor would know systematically if one strategy is better than another, such as paying off debt versus investing in a security, as performance can only be measured retrospectively. Similarly, the requirement to identify a target rate of return for each client as part of the Investment Strategy Suitability assessment may not be necessary for every investor, especially those clients just starting to save with minimal amounts to invest.

In regard to the Product Selection Suitability assessment, we are concerned that the reform requires the selected product to be the "most likely to meet the clients investment needs and objectives". We suggest that the CSA provide additional guidance on how advisors can satisfy this future outcome based standard and how the regulators will determine if this standard has been achieved.

Assante believes that the current IIROC and MFDA suitability rules to be sufficiently detailed and result in the same investor protection objectives as those contemplated in the Consultation Paper. As such, we recommend that these SRO rules be implemented for all registration categories in place of the Suitability targeted reforms. At a minimum, the proposed targeted reforms be modified to formally recognize the value and importance of "professional judgment" in the Product Selection Suitability process.

Two new suitability trigger events were added; when there has been a significant market event affecting capital markets to which the client is exposed, and when there has been a material change in the risk profile of an issuer. The CSA needs to provide additional guidance on these trigger events. What does the

CSA consider a significant event and who is responsible for establishing the criteria? How would an advisor know if there was a material change in the issuer profile?

Relationship Disclosure

Assante is supportive of reforms to relationship disclosures that provide clients with a clear and better understanding of the nature of the relationship they have with advisors and firms and the types of services and products that are available. We believe the current SRO relationship disclosure rules provide clients with this information and suggest that these rules be applicable to all registration categories in place of the proposed "Proprietary Product List Disclosure" and the "Restricted Registration Category Disclosure" reforms. Assante does not believe these disclosures will be understood by clients and in fact may add to the confusion clients may have about the services and products offered by an advisor.

With respect to Appendix F General Disclosure Guidance, the targeted reform requires that "the disclosure must be sufficient to be meaningful to the client such that the client fully understands the disclosure, including the implications and consequences for the client of the content being disclosed". The CSA must provide additional guidance on how firms and advisors are to satisfy these obligations as we are concerned that these obligations are not realistic or achievable. For example, what is "meaningful" is subjective and differs from individual to individual. How does the CSA suggest firms provide customized disclosure to every client? How does the CSA suggest we test clients to ensure they "fully understand" the disclosures? Instead, we suggest the standard should have a "reasonableness" such that dealers and advisors must have a reasonable basis for concluding that a client understands the disclosures.

Proficiency

Assante is supportive of enhanced proficiency standards and mandatory continuing education requirements to ensure there is a uniform, minimum level of training and knowledge for all advisors providing financial advice. As noted in the IIAC response to the Consultation Paper, we believe it would be unrealistic and inappropriate to require all advisors to understand the structure, strategy, cost and risks associated with all types of securities as proposed. Instead, the proficiency and continuing education requirements should be specific to a registration category based on the types of services and products that are permitted to be recommended. In addition, we encourage the CSA to consult with industry and the SROs to determine what new standards are required, how to implement new standards, including an appropriate transition period, so that these reforms do not negatively impact the supply of advice. It is important to note that IIROC currently has proficiency rules in place and the MFDA is actively considering similar rules.

Titles and Designations

Assante is supportive of limiting the number of client-facing business titles for representatives as we believe this will help reduce investor confusion. However, we do not support the three proposed alternatives outlined in the Consultation Paper as we do not believe clients will understand the distinctions between the titles and therefore will not achieve the objective of protecting clients. We encourage the CSA to take a principles-based approach to the regulation of titles.

Role of the UDP and CCO

Assante generally supports the proposed reforms to the Role of the UDP and CCO as they further clarify the roles and responsibilities and are consistent with the current requirements of NI 31-103 and SRO rules.

Statutory Fiduciary Duty when Client Grants Discretionary Duty

Assante supports the introduction of a fiduciary duty for all registrants when they manage an investment portfolio of a client through discretionary authority granted by the client. This is the standard that Portfolio Managers and certain other registrants are held to today and this same standard should apply to all registrants in all provinces when they have discretionary authority. In effect, this reform would codify the established common law.

As detailed below, Assante is not clear on the distinction between the proposed BIS contemplated in the Consultation Paper and a fiduciary duty as we believe the overlapping standards may result in legal uncertainty and client confusion. As such, only one standard should apply when an advisor manages a discretionary account and by codifying the fiduciary duty in these circumstances \ provides a clear, uniform requirement

Part 2 – Comments on the Best Interest Standard

Assante agrees with the position of the BCSC, that the best outcome for clients is achieved by establishing clear requirements for advisors to follow and for regulators and courts to enforce. For this reason, we support an approach to regulatory reform which prioritizes the implementation and enforcement of reforms that address clearly defined investor concerns, in conjunction with the full implementation of existing initiatives such as CRM2 and POS. Accordingly, Assante does not consider the proposed BIS to be required or beneficial.

Efficient capital markets require regulations that are clear and understandable. The BIS provides neither upfront clarity nor specificity regarding registrant conduct. Accordingly we do not agree that the BIS offers a useful guide for registrants. Instead, we expect the BIS to introduce a level of uncertainty and corresponding regulatory risk that will be difficult for registrants to mitigate, and significantly increases operational costs that will ultimately be borne by clients.

Vagueness of Best Interest Standard and Legal Uncertainty

We share the reservations of the BCSC and the Jurisdictions with Concerns regarding the potential unintended consequences of introducing an over-arching, vague and aspirational duty called a "regulatory best interest standard". We recognize that the BIS is not intended as a restatement or formulation of a fiduciary duty. However, it remains unclear how registrants, regulators and clients will interpret and differentiate between the civil liability standard, the proposed "Statutory Fiduciary Duty when Client Grants Discretionary Authority" and the BIS. In practice, how would a registrant's standard of care differ when servicing a fully managed account compared to servicing an account where the client retains oversight? With no consensus concerning what a "regulatory best interest standard" requires and what , it is difficult to predict how registrants will change their behavior and whether or how any changes could actually improve outcomes for clients.

As the proposed BIS is a vague and broad standard we are concerned that the CSA are providing themselves with considerable and inappropriate discretionary power. At the extreme, this could result in retroactive rule-making by the CSA without any of the administrative constraints that are ordinarily required for regulatory reform. In effect, a ruling applying the BIS could effectively render certain business models and/or practices offside without actually amending any securities regulations.

Overbreadth

We agree with the BCSC that it "is simply not possible to require a salesperson of proprietary products only to act in a manner that is truly in an investor's best interest." A standard that applies indiscriminately to all relationships, without regard to the level of trust, reliance and sophistication existing between an advisor and the client, cannot be described as "flexible, tailored and contextual". On the contrary, such a standard excludes many contextual factors including a client's level of sophistication and participation in investment decisions. In practice, it would elevate all advisor-client relationships to a single standard regardless of whether that level of service is actually necessary or beneficial.

Expectation Gap

We support the position that the introduction of a BIS may further distort a client's understanding of the client-registrant relationship, resulting in the widening of the expectations gap. It is at best confusing and, at worst misleading, to describe the relationship using terms such as "best interest" while at the same time permitting certain conflicted business models to operate. The implementation of the BIS may raise client expectations beyond that which are feasible, further exacerbating the investor protection concerns of misplaced trust and corresponding overreliance.

Increased Costs and Reduced Choice

In our view, the increased compliance and legal costs associated with the introduction of a BIS will be borne by all clients, and will be particularly problematic for those clients who are most in need of enhanced investor protection. For clients with relatively simple and straightforward needs, the BIS may impose legal and compliance costs that make simple and straightforward advice unaffordable. We believe these challenges will lead to fewer choices for clients and ultimately result in reduced access to advice and/or financial products.

Before proceeding with the proposed overarching BIS we encourage the CSA to further evaluate the experiences of other jurisdictions that have either considered or implemented a similar best interest standard. The regulatory reforms in the UK introduced as a result of the Retail Distribution Review ("RDR") have resulted in significant unintended consequences. The Financial Advice Market Review, an analysis of the UK financial advice market conducted by the Financial Conduct Authority ("FCA") and HM Treasury, concluded that while the standards and proficiency levels of advisors has increased as a result of RDR, the reforms have also resulted in an advice gap[1]. The advice gap is a result of clients not being able to get advice at a price they are willing to pay thereby primarily limiting advice to the more affluent clients. In an effort to help clients gain access to advice the FCA has recently proposed a Pensions Advice Allowance which would allow clients to take £500 tax free from their defined contribution pension plans multiple times to redeem against the cost of financial advice.[2] Further, the UK

[1] Financial Advice Market Review, Final Report, March 2016

[2] Introducing a Pensions Advice Allowance: Consultation, August 30, 2016, HM Treasury https://www.gov.uk/government/consultations/introducing-a-pensions-advice-allowance/introducing-a-pensions-advice-allowance-consultation

is now proposing to narrow the definition of regulated financial advice to make it easier and more affordable for clients to get general advice that does not provide a personal investment recommendation.[3]

[3] Amending the Definition of Financial Advice: Consultation, September 20, 2016, HM Treasury, https://www.gov.uk/government/consultations/amending-the-definition-of-financial-advice-consultation/amending-the-definition-of-financial-advice-consultation