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CANADIAN BANKERS ASSOCIATION

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Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
The Manitoba Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission
Ontario Securities Commission
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Dear Sirs/Mesdames:

Re: CBA Comment Letter on CSA Consultation Paper 33-404 – *Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives toward their Clients*

The Canadian Bankers Association (**CBA**)[1] welcomes the opportunity to comment on CSA Consultation Paper 33-404 – *Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives toward their Clients* (the **Consultation Paper**) published by the Canadian Securities Administrators (**CSA**).

[1] The CBA works on behalf of 59 domestic banks, foreign bank subsidiaries and foreign bank branches operating in Canada and their 280,000 employees. The CBA advocates for effective public policies that contribute to a sound, successful banking system that benefits Canadians and Canada's economy. The CBA also promotes financial literacy to help Canadians make informed financial decisions and works with banks and law enforcement to help protect customers against financial crime and promote fraud awareness. www.cba.ca.

In the Consultation Paper, all of the CSA jurisdictions are consulting on specific amendments to National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) intended to better align the interests of registrants with the interests of their clients by enhancing registrant obligations to clients (the **Targeted Reforms**). Further, all of the CSA jurisdictions except the British Columbia Securities Commission are consulting on a regulatory best interest standard (**BIS**).

The CBA supports regulatory initiatives that are intended to enhance investor protection and supports the targeted approach of the Targeted Reforms. We are concerned, however, that some of the proposals set out in the Consultation Paper could have negative unintended consequences. We have set out our concerns in greater detail below and have recommended modifications to the framework described in the Consultation Paper to mitigate some of these concerns. The CBA's member banks offer a wide range of financial services through their affiliates to assist their clients in achieving their investment objectives. While the Targeted Reforms will affect each of these services to varying degrees, the discussion that follows is focussed primarily on the effect of the Targeted Reforms on the bank branch mutual fund distribution networks (the **Branch Distribution Networks**) of the CBA member banks as they will be particularly impacted. Some of our comments about the impact of the Targeted Reforms also will apply to the banks' other business models.

Mutual funds are distributed through the Branch Distribution Networks by affiliates of the CBA member banks that are registered as mutual fund dealers (the **MFD Affiliates**) with the relevant Canadian securities regulatory authorities or regulators, and that are also members of the Mutual Fund Dealers Association of Canada. Generally speaking, such mutual funds are an integral component of, and serve to complement, the suite of financial products and services that are offered by CBA member banks, and they therefore consist primarily of a wide range of proprietary funds that are established and managed by the MFD Affiliates or any of their affiliates. Third party funds can also be acquired from some MFD Affiliates but typically only on a limited basis in response to customer demand for such products. Within the Branch Distribution Networks, mutual funds can be acquired on a transactional basis, or as a component of the financial planning and asset allocation services that are available from other CBA member bank affiliates.

BEST INTEREST STANDARD

The CBA agrees with the British Columbia Securities Commission that only the Targeted Reforms, not the BIS, should be considered by the CSA. Implementing specific Targeted Reforms to address directly the issues identified by the CSA in the client-registrant relationship is preferable to adopting a vague and potentially unworkable BIS that would have to be subject to a number of exceptions to accommodate its adoption in respect of a variety of different business models. We support the focused approach of the Targeted Reforms and view the BIS as a problematic and potentially contradictory standard which will create uncertainty for registrants generally, and could also have unintended adverse consequences for proprietary-only business models in particular, without corresponding investor protection benefits. Accordingly, our comments will focus on the Targeted Reforms only, not on the BIS. In the absence of a consensus among all CSA members, and in light of the significance of the BIS and its potential detrimental impact on investors and other market participants, the BIS should not be implemented by any CSA jurisdiction. The implementation of the BIS in the absence of a consensus among all CSA members would run contrary to the CSA's efforts towards greater interjurisdictional harmonization and cooperation.

Furthermore, the impact of requirements introduced by Phase 2 of the Client Relationship Model (**CRM2**) and the Point of Sale (**POS**) amendments on investors and the industry have not yet been thoroughly assessed and should be well understood before any steps are taken towards introducing a new and problematic obligation such as the BIS. The CSA recently announced a multiyear research project expected to be completed by 2021 to measure the impacts of the CRM2 and POS amendments. The CBA supports this initiative and is of the view that this research should be completed and its results thoroughly assessed before any further consultation on the BIS takes place.

TARGETED REFORMS

By way of general comment, we note that some uncertainty exists as to how certain of the Targeted Reforms (and the BIS) would be workable in the context of either a proprietary-only/sales-type business model or the provision of transactional (as opposed to fee-based) investment advice with indirect payment mechanisms such as embedded commissions. Further guidance in this regard would be helpful in fully evaluating these proposals and we set out below specific examples of such additional guidance.

We also note that the Targeted Reforms will increase opportunities for regulatory and product arbitrage as between securities products, which will be subject to the Targeted Reforms, and other investment products which will not, such as insurance products. As a result, investors might mistakenly assume the standard owed by their representative is the same across securities and insurance regimes. Product substitution may also occur with insurance products being substituted for securities products.

Conflicts of Interest

Prioritizing the interest of the client

The proposed requirement to respond to conflicts of interest in a manner that "prioritizes the interest of the client ahead of the interests of the firm and/or representative" is not sufficiently clear to provide a meaningful code of conduct. There is concern regarding the extent to which registrants will have to contend with after-the-fact principles-based regulatory inquiries or possibly civil claims regarding the manner in which conflicts of interest were addressed by them. In its current form, this proposed requirement will be costly to address and administer and will likely lead to firms offering fewer products in each product category, or to the elimination of entire product categories, due to an inability, real or perceived, to adequately address potential conflicts of interest based on the general principles described in the current proposal. Further clarification of this standard is required. Specifically, guidance should be included regarding the types of controls that proprietary firms can establish for the express purpose of demonstrating that they have prioritized the client's interest. Specific guidance should also be included to clarify how firms with a proprietary-only business model, including integrated mutual fund dealer and manufacturer firms such as the MFD Affiliates, and firms in restricted categories of registration, may continue to operate.

Disclosure of conflicts of interest and related carve-outs

Under the proposed Consultation Paper guidance, it is not clear when - or even whether - disclosure alone will ever be sufficient to address a conflict of interest. In particular, the proposed guidance appears to eliminate the ability of firms that trade in or advise on proprietary products to rely on disclosure alone to address conflicts of interest. Instead, such firms would be

required to respond to conflicts with "thorough controls that effectively mitigate the conflict". The guidance is unclear whether this requirement would apply to firms that offer proprietary-only products or to firms that offer mixed / non-proprietary products, or to both. The guidance should be clarified in this regard. More importantly, eliminating the ability of firms that trade in or advise on proprietary products to rely on disclosure alone to address conflicts of interest would have a significant and disproportionate adverse effect on integrated firms that both manufacture and distribute proprietary products, such as the Branch Distribution Networks and MFD Affiliates. This proposed approach to conflicts of interest disclosure would have a severe detrimental impact on the ability of these firms to continue to operate under their current business models and may force some integrated firms to "decouple" by exiting either their manufacturing or distribution activities.

The Consultation Paper provides various carve-outs from certain aspects of the Targeted Reforms, including conflicts of interest Targeted Reforms, for a newly defined "institutional client" category of investor. It seems impractical and unnecessary to adopt another sophisticated investor definition in addition to the existing "accredited investor" and "permitted client" categories. Accordingly, the CBA proposes that the term "institutional client" be replaced in the Consultation Paper with "non-individual permitted client", with reference to the existing definition of "permitted client" in NI 31-103. This would be consistent with various other existing NI 31-103 carve-outs, including certain CRM2-related carve-outs.

The Consultation Paper provides that disclosure alone "may be sufficient" in the case of institutional clients, "unless the interests of the registrant are materially opposed to the interests of the institutional client based on the information the firm and representative have about the institutional client". The "materially opposed" qualification renders this carve-out largely ineffectual since material conflicts of interest may often involve interests that are "materially opposed".

It is also unclear whether the "materially opposed" standard is supposed to be a different or higher standard than the "material conflict of interest" standard otherwise contemplated throughout NI 31-103. The CBA is of the view that a single "material conflict of interest" standard should apply in all cases. Furthermore, if disclosure alone may be sufficient in the case of a material conflict of interest, disclosure alone should also be sufficient when a presumably more serious "materially opposed" conflict is disclosed to a sophisticated client, given the ability of both parties to make an informed assessment of their relative interests.

It is also unclear what is meant by a materially opposed interest "based on the information the firm and representative have about the institutional client". Is this intended to address circumstances where a conflict is created by information the firm has obtained from third party sources? If so, and such information had been obtained on a confidential basis, and could not therefore be disclosed, then the conflict could not be addressed through disclosure and would either have to be mitigated through controls or avoided. If, however, the information could be disclosed, it is not clear why the disclosure of such information should not be sufficient to address the conflict when provided to a non-individual permitted client. The guidance on this point should be clarified.

In any event, the CBA is of the view that disclosure of material conflicts of interest alone should be sufficient in the case of non-individual permitted clients, without exceptions. An unqualified carve-out to this effect should be specifically introduced in the guidance.

Conflicts of interest to be "fully understood" by clients

The Consultation Paper guidance would require firms and representatives to have a reasonable basis for concluding that a client fully understands the implications and consequences of a conflict of interest that is disclosed beyond obtaining an informed written acknowledgement from the client. It is not clear how firms and representatives would be able to establish, for both regulatory and evidentiary purposes, they had a reasonable basis for concluding that a client "fully understood" the implications and consequences of any conflict that has been disclosed. Adoption of this standard would likely result in registrants refraining from providing services to less sophisticated clients. The CBA is of the view that this proposed standard should be abandoned. Firms should be able to discharge their conflicts of interest disclosure obligations by providing clients with a comprehensive conflicts disclosure document at account opening.

All outside business activities

When providing disclosure to clients regarding conflicts of interest, the proposed guidance sets out expectations for firms to disclose "all outside business activities (**OBAs**) of the firm and applicable representatives". Such disclosure should be limited to only those OBAs that are directly relevant to the conflict. Disclosure of "all" OBAs would be impractical, unnecessary and potentially confusing to clients. By way of example, it should not be necessary to disclose a representative's position as a member of the board of directors of his or her condominium corporation or a representative's role as a coach or instructor of an athletic club or team.

Know Your Client

Information about clients' "financial circumstances"

The information that firms and representatives would be required to collect about their clients' "financial circumstances" pursuant to the Consultation Paper guidance would represent a vast and onerous extension of what is required under current standards. Specifically, the proposed requirement to obtain information regarding all assets and debts, interest rates on loans, tax position and spousal and dependents status would be particularly challenging in practice because many clients consider such information to be private and personal and are unwilling to share it. The assessment of a client's tax position would also be inconsistent with the proficiency standards of many representatives and may give clients the mistaken impression they are receiving tax or financial planning services. The types of debt relevant to the KYC inquiry should be specified in the guidance.

In their current form, the KYC Targeted Reforms would involve exponential compliance cost[2] increases for registrants and may result in the creation of fee structures and business models that have increased cost consequences for investors and thereby limit access to advice for those investors having limited assets. The depth and frequency of the proposed KYC inquiries and analyses will have the greatest impact on transactional models, including the Branch Distribution Networks. The anticipated increase in compliance costs would likely cause dealers to impose account minimums which in turn may cause an advice gap for those investors who

[2] References to "compliance costs" in this letter include both first line of defence supervisory obligations as well as second line of defence testing and monitoring activities performed by a Compliance Department. The Targeted Reforms would significantly increase compliance costs as they will necessitate systems and operational modifications, extensive amendments to internal policies and procedures, and more onerous staff training and hiring protocols.

need advice the most. This has the potential to decrease availability of investment advice provided through the Branch Distribution Networks, compelling clients without the requisite account minimums to move to a no-advice channel. The CBA views this as a significant and highly foreseeable[3] potential mass market impact of the proposals and urges the CSA to conduct research on the advice gap risk and perform a cost/benefit analysis before proceeding with the proposals.

In connection with the proposed guidance regarding client risk profiles, “loss” should be narrowly defined in the context of a client’s “capacity for loss” or “loss aversion”.

No codified or signed KYC form

The CBA disagrees that a KYC form should be codified. Instead, we are of the view that the CSA should set out specific guidance regarding minimum KYC criteria to be adopted by firms as part of their KYC protocols. This approach would be consistent with guidance instituted by the Mutual Fund Dealers Association of Canada (**MFDA**) and the Investment Industry Regulatory Organization of Canada (**IIROC**). See, for example, Appendix 1 to MFDA Staff Notice 0069 respecting suitability, Appendix A to MFDA Bulletin #0611-C – *MFDA Discussion Paper on the Use of Investor Questionnaires*, IIROC Rule 1300.1 and IIROC Notice 12-0109 – *Know your client and suitability – Guidance*.

The Consultation Paper guidance would also require KYC forms and a record of the risk profile, both at initial account opening and upon material changes, to be dated and signed by the client. The client signature requirement is problematic because clients are increasingly relying on electronic and mobile forms of communication, particularly when engaged in the KYC update process. Accordingly, the guidance should provide sufficient flexibility to accommodate clients’ preference for digital communications and to allow digital client acknowledgments and confirmations, for example by reply e-mail, in lieu of physical signatures.

Freedom to contract

The CBA is of the view that firms should be permitted to agree by contract with clients to limit the universe of products and/or services that will be offered, subject to the satisfaction of a limited universe that is consistent with suitability requirements and general disclosure that a wider universe of products is available from other broadly identified sources.

Collection of KYC information

Currently, only registered representatives may collect KYC information from clients. While the CBA agrees that a registered representative should be performing the KYC and suitability analysis, the collection of KYC information should not in and of itself require the expertise of a registered representative, provided that the individual collecting the information has completed the Canadian Securities Course or the Investment Funds in Canada course as a minimum proficiency requirement, is the subject of ongoing oversight, supervision and training, and is using comprehensive KYC forms that include detailed annotations and instructions. The individual collecting KYC information would also be subject to internal escalation policies and procedures which would require the individual to promptly bring any client questions which

[3] Please see Appendix A hereto which describes the impact of the United Kingdom’s changes to the financial advice framework on the advice gap.

exceed his/her expertise to the attention of a registered representative. Requiring registered representatives to both perform the KYC analysis and collect the KYC information is an expensive and inefficient use of human resources.

A more cost effective and efficient reform would be to permit non-registered representatives to collect KYC information, which registered representatives would then review and assess. This KYC division between collection and analysis would recognize the impracticality of requiring fully registered representatives engaged in the provision of ongoing trading and/or advisory services to devote significant time to the collection of KYC information, and it would thereby lead to staffing efficiencies, cost savings and the development of client relationship professionals. It is our understanding that it would also be consistent with the U.S. process for the collection of client information.

The CBA also suggests that guidance be added to clarify registrant obligations when clients refuse to provide requested KYC information, particularly as to financial assets. As mentioned above under the heading "Information about clients' "financial circumstances"", many clients consider such information to be private and personal and are unwilling to share it. The relationship disclosure document should clearly identify client obligations vis-à-vis the firm and consequences for the client of not fulfilling such obligations.

Know Your Product

Impact on mixed/non-proprietary firms

MFD Affiliates of CBA member banks already have in place comprehensive and effective KYP processes, including product selection committees and related policies and procedures. Under the proposed guidance, a firm would be required to undertake a fair and unbiased investigation of the market of products that the firm is registered to advise or trade in order to satisfy itself it has a range of products that will "most likely meet" the investment needs and objectives of its clients based on its client profiles. The "most likely to meet" standard is problematic as it may result in fewer products being offered by firms and should be replaced with a "reasonably expected to meet" standard. Further clarification is required regarding the scope of the proposed market investigation of a "reasonable universe of products", the product comparison evaluation and the product list optimization process.

Impact on proprietary firms

We agree with the CSA that the proposals should not impede the operation of proprietary firms. The CBA believes there is value in the availability of different business models to meet diverse investor needs. Accordingly, proprietary firms should not be required to offer non-proprietary products, nor should they be required to engage in a market investigation and product comparison. This should be made clear in the guidance. The current proposed guidance creates uncertainty as to the regulatory status and continued economic viability of "proprietary firms" as compared to "mixed/non-proprietary firms".

The proposed KYP requirements may have unintended negative consequences

The proposed KYP requirements may create incentives for some firms to stop offering non-proprietary products so that they can fit the definition of proprietary firm. This may reduce the variety of business models and limit investor choice. The scope of proposed KYP obligations will

also likely cause firms to reduce the diversity of their product shelves by removing otherwise suitable products.

Suitability

The “basic financial suitability” requirement is inappropriate

Consistent with the concerns expressed above regarding the collection of financial and tax KYC information, the CBA considers the proposed “basic financial suitability” requirement to be inappropriate. In particular, the requirement to consider other basic financial strategies goes beyond the proficiency requirements applicable to, and beyond what can reasonably be expected of, dealing representatives. The proposal would impose a quasi-financial planning requirement on representatives who cannot be expected to have the necessary proficiency to discharge it. Investors may also mistakenly believe they have received financial planning advice when in fact they have not. This will greatly increase compliance costs, place dealing representatives in untenable situations vis-à-vis their clients, and exacerbate the very client “expectation gap” that the Targeted Reforms are meant to address. The CBA urges the CSA to abandon these proposed Targeted Reforms.

Unreasonable “product selection suitability” standard

The proposed requirement to ensure that a purchase, sale, hold or exchange of a security is not only suitable, but also the “most likely” to achieve the client’s investment needs and objectives is not reasonable. The performance of a portfolio of securities can be affected by numerous factors outside the control of a representative, so this standard would be highly susceptible to after-the-fact second-guessing which would expose firms to unnecessary compliance costs and potential legal and regulatory risks without corresponding investor protection benefits. A representative should only be expected to make recommendations that are suitable and reasonably expected to meet a client’s investment needs and objectives.

Investment strategy suitability – problematic “target rate of return”

The proposed requirement to identify a target rate of return that a client must meet or exceed in order to achieve its investment needs and objectives is problematic. While it can be a useful tool to assist with an assessment of income generation objectives, it is a financial planning tool that should only be used for financial planning purposes to avoid fostering an expectation gap and/or being construed by the client as a guaranteed rate of return. As such, it is not suitable for more transactional business models and representatives cannot be presumed to have the necessary proficiency to calculate and apply it.

Frequency of suitability analysis

With reference to the heading “Frequency” in Appendix E of the Consultation Paper, it would be inappropriate to require a suitability assessment when the registrant “reasonably should have known” there are material changes in the client’s KYC information. Instead, the suitability analysis should be triggered when the registrant actually knows such material changes.

It would also be inappropriate to require a suitability assessment when a significant market event occurs affecting capital markets to which the client is exposed or when a material change in the risk profile of an issuer occurs, the securities of which are held in the client’s account, whether determined by external credit ratings or other internal or external risk assessment

mechanisms. Such events are more appropriate triggers for portfolio management actions, rather than a suitability analysis.

The guidance should also specify that the suitability obligation for "holds" is not an ongoing obligation, but rather one that is triggered by a recommendation to hold, or by a client instruction to hold.

Relationship Disclosure Information

Relationship disclosure to be "fully understood" by clients

The proposed guidance requires registrants to have a reasonable basis for concluding that a client "fully understands" the implications and consequences for the client of the relationship content being disclosed. It is unreasonable to require registrants to intuit a client's level of understanding and to document that they have done so. It is not clear how firms and representatives will be able to establish for both regulatory and evidentiary purposes they had a reasonable basis for concluding that a client fully understood the implications and consequences of the disclosure. Adoption of this standard will result in registrants refraining from providing services to less sophisticated clients. Consistent with the discussion above under the heading "Conflicts of interest to be "fully understood" by clients", the CBA is of the view that this proposed standard should be abandoned.

Firms registered in a restricted category

The proposed guidance would require firms that are registered in a restricted category to identify not only what products or services they can provide their clients, but also identify in general terms what products and services they do not, or cannot, provide to their clients. Such firms would also be required to disclose that their suitability analysis does not consider a full range of securities products or whether such other types of products are better, worse or equal in meeting the client's investments needs and objectives. The requirement to identify products and services which are not offered - and which may be entirely unsuitable for the client - is too broadly cast and will likely create investor confusion. It should be sufficient for firms registered in a restricted category to identify products and services they do offer and state that there are financial products and services that they do not or cannot offer.

Proficiency

While the CBA supports enhanced proficiency requirements, they should be flexible enough to accommodate restricted registration categories and different business models. A broad mandatory minimum proficiency requirement may not be relevant to particular restricted registration categories. A more tailored approach for each registration category would be more appropriate. The CBA is of the view that any enhancements to proficiency requirements should be led by the applicable SROs. Guidance should be included on how the enhanced proficiency requirements may be met, whether by an enhancement of existing course requirements such as the Canadian Securities Course, or by way of in-house or third party continuing education.

Titles

The titles proposed in the Consultation Paper are likely to produce additional investor confusion as they are not particularly descriptive. Furthermore, the proposal that proprietary-only dealers must call their representatives "salespersons" should not prevent representatives who are

financial planners from using that term in their title, rather than "salesperson". Accordingly, the CBA is of the view that guidelines for clear and accurate titles should be provided instead of prescribed titles.

Use of Designations

The CBA believes that the bodies which grant designations should monitor their use. Accordingly, the CSA should not regulate the use of designations, unless the designation in question is within the CSA's purview. Instead of prescriptive rules, the CSA should consider requiring firms to put in place policies and procedures that provide for the appropriate use of designations. This approach would provide an appropriate balance of clarity, predictability and flexibility.

Role of UDP/CCO

The Consultation Paper proposes amendments to section 5.1 of NI 31-103 which would specifically reference certain UDP conflict of interest and suitability responsibilities, and would also include the obligation to "promote compliance with the suitability obligation, including assessing the impact of the cost of products on the client's ability to meet his/her investment needs and objectives, given his/her risk profile and financial circumstances."

These proposed amendments are redundant in light of the broad existing requirements already set out in paragraphs (a) and (b) of section 5.1 of NI 31-103. Moreover, the proposed amendments are overly-focused on conflict of interest and suitability-related responsibilities which form but a part of a UDP's overall responsibilities.

At a minimum, and subject to all our other comments above, if the proposed amendments to section 5.1 of NI 31-103 are nonetheless introduced, we suggest that they be revised as follows to clarify that the role of the UDP is not to conduct the cost impact assessment themselves, but rather to promote compliance with this obligation by those under the UDP's supervision:

> A UDP must "promote compliance with the suitability obligation, including compliance with the obligation to assess the impact of the cost of products on the client's ability to meet his/her investment needs and objectives, given his/her risk profile and financial circumstances."

Our comments above on the proposed amendments to section 5.1 of NI 31-103 with respect to the role of the UDP also apply, with conforming changes, to the proposed amendments to section 5.2 of NI 31-103 regarding the role of the CCO.

Statutory Fiduciary Duty when Client Grants Discretionary Authority

It is unclear how this additional statutory fiduciary duty would differ from, or interact with, the common law fiduciary duty. Generally speaking, a grant of discretionary authority will be sufficient to establish a fiduciary duty at common law. As a result, the proposed adoption of this statutory fiduciary duty is unnecessary and would result in increased legal uncertainty and undue risk of liability without any corresponding investor protection benefits.

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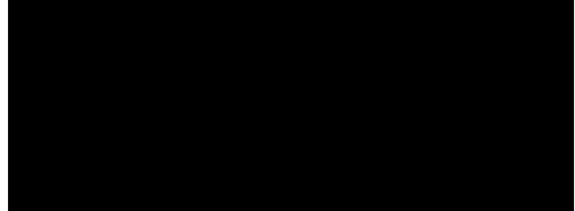
We would appreciate the opportunity to discuss these matters further with the CSA. We thank the CSA for the opportunity to provide our views on these important issues. Please do not hesitate to contact us to pose questions or further discuss points raised in this letter.

Sincerely,



APPENDIX A

Impact of the United Kingdom's Changes to the Financial Advice Framework on the Advice Gap

Retail Distribution Review

In 2012, the majority of changes arising from the UK Financial Conduct Authority's (**FCA**) retail distribution review (**RDR**) came into force. The RDR represented a significant overhaul of the framework for financial advisors. The initiative raised the minimum level of advisor qualifications, improved the transparency of charges and services, and removed commission payments to advisors and platforms from product providers. The goal of the RDR was to make retail investment markets work better for consumers.

The FCA committed to conducting a post-implementation review (**PIR**) of the RDR to determine whether it was on track to meet its objective. The FCA retained consulting firm Europe Economics (the **Consultant**) to perform the first phase of the PIR and in December 2014, the Consultant published its report (the **Report**).[4] While the RDR has had a number of positive effects, research indicates that the RDR has resulted in an advice gap for certain consumers.

One of the questions that the Consultant examined was whether the RDR had led to an advice gap. They identified three groups who may be in need of investment advice and analyzed whether there is an advice gap: (1) *the unengaged* who have the means to invest but are not engaged in the investment market; (2) *the unwilling to pay* who have the means to invest and are engaged in the investment market, but are unwilling to pay for advice at its true cost or prefer to self-direct; and (3) *the unserved* who have the means to invest, are engaged in the market, are willing to pay for advice at its true cost, but are unable to find an advisor willing to advise them. The Report suggests that the RDR has reduced the availability of advice for certain segments of the population. Indeed, one of the priorities identified in the FCA's business plan for 2016-2017 is affordable, accessible advice that meets consumers' needs.[5] We encourage the CSA to consider the proposals in the Consultation Paper in light of the experience in the UK, which demonstrates that regulatory initiatives may have negative unintended consequences for consumers.

The unengaged

The Report indicated that there was no advice gap for the unengaged because this group is not actively seeking investment advice so there is no disparity between supply and demand. The Report did note, however, that there is evidence of a slight decline in the number of existing investors who opened investments post-RDR, most notably investors in the £50,000 to £100,000 range. The Report stated that this is consistent with the view that bank-based advisors were effective in encouraging investment decisions and that their exit from the market has slightly reduced investment levels. Further, the Report indicated that this is reinforced by the FCA Practitioner Panel's research, which found that the mass market has less access to mid-market advisors, resulting in these consumers not seeking advice or investing.

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[4] Retail Distribution Review Post Implementation Review, Europe Economics, December 16, 2014 http://www.fca.org.uk/static/documents/research/rdr-post-implementation-review-europe-economics.pdf

[5] FCA Business Plan 2016/17 https://www.fca.org.uk/publication/corporate/business-plan-2016-17.pdf

The unwilling to pay

The RDR has affected this group by elucidating the price of advice. As a result, some choose not to seek advice, but have few opportunities to access less expensive options. The Report stated that, while factors other than the RDR played a role in the exit by banks from the market, the RDR is likely to have accelerated the exit.

The unserved

The RDR has led some firms to focus on wealthier clients with more investable assets and more complex (and profitable) advice needs. The Report referenced research by Towers Watson, another consulting firm that the FCA retained as part of the PIR. Towers Watson expressed the view that under the RDR, holistic advice has become more profitable than the transactional advice demanded by most consumers. This has caused a shift away from simpler services, resulting in a shortage of transactional advice options, particularly at the lower end of the mass market.

Financial Advice Market Review

In March 2016, HM Treasury and the FCA released the Financial Advice Market Review (**FAMR**) final report.[6] Launched in August 2015, the goal of the FAMR was to explore ways in which government, industry and regulators could stimulate the development of a market that delivers affordable and accessible financial advice and guidance.

The FAMR reported that the majority of advisors exiting the market during the period from 2011 to 2014 were those employed by the banks and building societies. One of the reasons cited for this decline was anticipation of the RDR. The FAMR also stated that banks, insurers and other large firms have traditionally been more likely to serve mass market customers with lower levels of wealth. While some advisors have re-entered the market, they tend to do so on a restricted advice basis – i.e., advice is limited to certain types of products, or to products from one or a limited number of providers. Independent advice, which considers all retail investment products "is set to become the preserve of the wealthy."[7]

Media Reports of an Advice Gap

Media reports of comments made by FCA executives suggest that the RDR has reduced the availability of investment advice. In an article in the Financial Times, Tracey McDermott, former acting chief executive of the FCA, acknowledged that the RDR led banks to reduce the number of advisors, making it more difficult for less affluent consumers to access investment advice.[8] In another article, FCA chief executive Andrew Bailey said that the RDR contributed to the advice gap: "if you are a less well-off member of the public or you don't want lifetime advice, it has left a gap."[9]

[6] https://www.fca.org.uk/publication/corporate/famr-final-report.pdf

[7] War on independence: New data reveals advisers set for restricted future - https://www.moneymarketing.co.uk/issues/14-april-2016/war-on-independence-new-data-reveals-advisers-set-for-restricted-future/

[8] FCA admits RDR made advice too expensive - http://www.ftadviser.com/2016/03/04/opinion/emma-ann-hughes/fca-admits-rdr-made-advice-too-expensive-ZocBsJabZkdBye6B2slvtI/article-0.html

[9] Bailey: No conviction that FAMR will work - https://www.moneymarketing.co.uk/bailey-no-conviction-famr-will-work/