Credential®

September 30, 2016

VIA EMAIL

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
Financial and Consumer Affairs Authority of Saskatchewan

Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
E-mail: comments@osc.gov.on.ca

Autorité des marchés financiers
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E-mail: consultation-en-cours@lautorite.qc.ca

Attention: Mr. Robert Blair, Acting Secretary of OSC
Me. Anne-Marie Beaudoin, Corporate Secretary of AMF

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

Dear Mr. Blair and Me. Beaudoin:

I write on behalf of Credential Financial Inc., a national wealth management firm, including its subsidiary companies Credential Securities Inc. ("CSI") and Credential Asset Management Inc. ("CAM") (collectively "Credential"), to provide comments on CSA Consultation Paper 33-404 – *Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives toward their Clients* (the "Consultation Paper").

Through CSI (an IIROC-registered Investment Dealer) and CAM (an MFDA-registered Mutual Fund Dealer), Credential provides dealer services, trading and custodian services, and an online brokerage to credit unions and independent financial institutions across Canada. Credential offers a full suite of products and services to over 225 organizations and more than 1,800 advisors.

At Credential our vision is to enable *sustainable financial strength for all Canadians*. We strongly believe that access, at all income levels, to affordable wealth management advice is essential to promoting the security and prosperity of Canadians.

We are broadly supportive of the regulatory objectives outlined in the Consultation Paper and initiatives designed to elevate client interests. However, after careful review and analysis, we believe

that certain of the proposed reforms may lead to unintended outcomes, including higher costs for investors, narrower product choice and the potential disenfranchisement of smaller investors.

Credential appreciates the opportunity to participate in this Consultation and our comments are intended to promote a constructive dialogue on the issues.

Credential was involved in broad industry discussion groups involving both IIROC and MFDA member firms, including the Investment Industry Association of Canada ("IIAC") and the Association of Canadian Compliance Professionals to review the Consultation Paper. While we support many of the points made by these groups, we submit our response to highlight our specific comments, concerns and areas of support.

Conflicts of Interest

The proposed conflicts of interest rules have two main aspects – enhanced disclosure requirements and the prioritization of clients' interests. The former would provide further clarity that conflicts of interest disclosure must be prominent, specific and clear, and that the client must fully understand the disclosure, including its implications and consequences. The latter would require firms and advisors to respond to each identified material conflict of interest in a manner that prioritizes the interests of the client ahead of the interests of the firm and/or advisor.

Disclosure

Credential supports the adoption of enhanced disclosure requirements. Further guidance or direction as to appropriate disclosure, in particular what constitutes prominent, specific and clear disclosure, would be useful to registrants. In our view, any new disclosure rules should apply based on an objective standard, requiring the disclosure to be sufficient to provide clients with an understanding of the specific conflict. The content of the disclosure itself should evidence whether the disclosure is sufficient for a reasonable client to understand it, rather than putting the onus on the registrant to prove that a particular client fully understands it, which is an unattainable standard. Applying a subjective standard would too often result in a 'he-said, she-said' battle, with clients simply claiming they did not understand the disclosure, despite confirming its adequacy at the outset. We recommend aligning any new disclosure rules with those already implemented by the SROs (IIROC Rules 42 and 3500 and MFDA Rule 2.1.4), which rules we view as clear and effective.

Prioritization of Client Interests

Credential requests further clarification on the CSA's proposal that firms and advisors respond to material conflicts in a way that prioritizes client interests. In particular, what is a "material conflict", and how might the CSA determine whether the client's interest was put first? We submit that current SRO rules, such as IIROC Rule 42, provide clarity to firms and advisors. We are unaware of any shortcomings associated with current conflict rules, and believe this requires further explanation from the CSA. We view IIROC Rule 42 as effective because it applies to both advisors and firms, but reasonably distinguishes between the standard applicable to each. Dealers and advisors must address all material conflicts of interest in a fair, equitable and transparent manner, either "*consistent*

with the best interests of the client", in the case of advisors, or "*considering* the best interests of the client", in the case of dealers.

Importantly, IIROC recognizes that "it is not always possible or practical for a Dealer Member to address all conflicts of interest in the best interests of each client when the conflict of interest situation involves multiple clients with competing interests." The CSA's proposal does not appear to acknowledge this challenge, nor the realities of firms and advisors that operate on a for-profit basis. The IIROC standard provides clarity and enables firms to balance clients' interests and business operations.

Management of Conflicts

Current SRO rules already require firms to have policies and procedures in place to identify and manage conflicts of interest, including reporting and escalation by employees. Firms are required to supervise how conflicts of interest between the firm/advisors and clients are addressed.

The potential guidance in Appendix A to the Consultation Paper explicitly states that to avoid a conflict of interest, a registrant may be required to cease providing a service, not trade in or advise on a particular product, or end the relationship with the client. Credential is concerned that an unintended consequence of the CSA's proposal may be that firms are forced to significantly limit the services and products offered to clients. It would seem that much deeper and more precise guidance is required for firms to properly comment on the scope of what is being proposed with respect to controlling and avoiding conflicts.

In our view, the proactive and systematic identification of conflicts of interest on an ongoing and periodic basis, for example, by the creation of a conflicts inventory, would be a very time consuming and costly endeavour, likely requiring new systems and resources allowing firms to survey all advisors for potential conflicts.

Advisor Compensation

Credential questions the CSA's proposal that firms introduce a mechanism to reduce compensation as a result of compliance issues. While an advisor's compensation may be directly (fines) or indirectly impacted as a result of a compliance concern, in our view the approach to advisor discipline is a matter for registered firms to handle. To mandate a penalty against revenue for non-compliance may result in registrants not reporting compliance issues, such as complaints, which in our view is detrimental to firms, the industry and most importantly clients. By not reporting or hiding compliance issues, registrants will effectively be rewarded by avoiding a reduction in compensation. Further regulatory intervention is not warranted here, in our view.

On the issue of compensation grids, more clarity from the CSA on the precise problem(s) associated with compensation grids would be helpful.

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Know Your Client

The existing KYC rules require advisors to establish the identity of their clients and ensure that they have sufficient information about their clients' investment needs and objectives, financial circumstances and risk tolerance, in order to meet suitability obligations. In Credential's view, the rules currently in place adequately ensure that registrants are gathering sufficient client information.

The proposed reforms look to expand on the current rules, requiring advisors to consider, among other things, the amount and nature of all assets and debts, employment status, tax position, and spousal and dependents' status and needs. Collection of this additional information would require substantial effort and expenditure by registrants to update documents, systems and processes. In our view, some of the proposed KYC reforms are problematic, for the reasons set out below.

Tax Planning Services

Advisors may have a basic understanding of tax planning strategies, in order to use the KYC information currently collected (such as net worth and annual income) to satisfy the suitability obligation. However, they do not possess, nor should they be required to possess, the same level of proficiency as a person who is trained professionally to provide tax planning services. The CSA should provide more clarity on what information comprises a client's "basic tax position", and what registrants are expected to do with that information. Advisors are not licensed to give tax-related advice, and there is a danger that clients may believe or expect they are receiving such advice if they are required to provide detailed tax-related information.

No One-Size Fits All Approach

The proposed reforms appear to require registrants to acquire a level of KYC information similar to that expected by a portfolio manager (for managed accounts). In our view, this is not necessary or beneficial for all clients. Requirements should be tailored to the type of services / accounts being offered - 'one-size' does not fit all clients. Different account types, for example managed accounts compared to order-execution-only accounts, appropriately require different levels of information to be collected. Registrants must be able to provide services to smaller investors without the additional costs associated with unnecessary requirements. Advisors will still have all of the information they need to meet the suitability obligation, where applicable, without requiring the client to provide information that is not needed to properly service their account. Any reforms in this area should recognize the different client and account types that exist today, and allow for the proper customization of requirements suitable to the nature of the relationship.

Client Resistance to Providing More Information

Requiring advisors to collect further information in addition to what clients consider necessary for suitability assessment, such as detailed tax information, may be met with resistance by some clients, in particular those clients that are more concerned with protection of their privacy. As a result, some investors may be less willing to proceed with opening an account, viewing the requirement to provide such detailed information as intrusive and a violation of their privacy.

As another example, the requirement to obtain applicable investment constraints and preferences, such as socially responsible investing and religious constraints, could prove challenging in terms of both collection and supervision as supervisory technology does not currently accommodate these kinds of client constraints. The current process where an advisor recommends an investment to a client in a non-discretionary account is sufficient in that the client could simply choose not to authorize a transaction based on religious, SRI or other reasons.

KYC Updates

Credential recognizes that having current KYC information is important for registrants in meeting their suitability obligation to clients. However, we question the proposed requirement to update KYC information at least once every 12 months. Under applicable SRO rules, registrants are required to take reasonable steps to keep client KYC information current, including in circumstances where there has been a material change, which we believe is an appropriate standard. Requiring an update at least every 12 months risks moving an advisor's focus to tracking down documentation, rather than managing their clients and their investments. In our view the existing approach to KYC updates works well and is proportional to the risk.

Further, CRM2 will enhance client-advisor communication generally, including notification of material updates to KYC information. This ongoing communication approach is a more appropriate way of facilitating KYC updates than an annual administrative process. That said, Credential may support a requirement to update client KYC on a prescribed basis (perhaps based on the FINRA model), if firms had the ability to do so by sending a standardized letter to clients requesting they contact us if any material changes have occurred. Otherwise, their information could be confirmed as current.

New Account Application Form Documentation

The proposed reform indicates that the KYC form state all of the information gathered as part of the KYC process. This could not be achieved in a standardized form. The current SRO form captures the information necessary to open the account and to conduct supervisory reviews. However, in determining this information, advisors gather much more information through their client discovery process which is maintained in the notes to file, on questionnaires, and in other documents in the client file. This information is available to supervisory staff on request and is referred to when determining the suitability of an account or a specific transaction. Therefore the desired outcome of this proposed reform is already being satisfied, however the information is maintained in the file and not on a single form.

Codification by the CSA of a new account application form would be duplicative and unnecessary. The SROs have already codified the minimum new account application form requirements, which firms have built into their own customized forms. Requiring firms to adopt a revised new account application form would result in significant costs, including major systems functionality changes, without any material benefit.

Current SRO rules already require a supervisor to approve a new account application. Credential has no objection to requiring a supervisor to evidence account approval, be it by way of signature on

account opening documents or other electronic evidence connected to the account, whichever method is practical and appropriate based on the firm's systems.

Know Your Product - Representative

Existing KYP rules promulgated by the SROs require advisors to understand the features and risks of products they recommend to their clients. In our view, these rules are not broken, and amending them may do more harm than good.

The proposed KYP reforms are far-reaching, in that they would require advisors to consider the structure, product strategy, features, costs and risks of *every security* on their firm's product list, including having an understanding of how each product compares to each other product. We are concerned about the proposed reforms for the following reasons:

1. Advisors cannot achieve compliance with the proposed standard. It is not possible for anyone to obtain and maintain the proposed level of familiarity with thousands of products, the list of which grows continually, nor is it appropriate or necessary for advisors to do so in order to properly service their clients.

2. Firms will have to spend significant time and resources into developing a product education platform for advisors, and then spend more resources testing compliance. This would be detrimental to all firms, particularly smaller firms.

3. Inevitably, advisors will necessarily end up knowing less about more investments, rather than more about focused investments, which will not serve investors better.

4. More time spent on product education equates to less time spent elsewhere. We expect advisors and firms will be required to stop servicing smaller clients in order to get that time back. We view this as a negative outcome for the investing public.

5. We struggle to see the client benefit to be gained by amending the existing KYP rules in the manner proposed. In the absence of a defined benefit, we are left with an extreme regulatory burden balanced against a theoretical gain for investor outcomes. The lack of nexus makes the proposal troubling in our view.

Apart from the above comments, it is our view that if the proposed KYP reforms do go forward, they should recognize boundaries within a dealer's product shelf. For example, Credential's IIROC dealer houses a full service offering, a discount brokerage, separately managed account programs that are sub-advised, and a custodial services offering for independent portfolio managers. It strikes us as illogical to require full service IIROC advisors to have a thorough understanding of certain securities transacted by portfolio managers or 'penny stocks' traded by discount brokerage clients (simply because such securities exist on the same security master), in particular those instruments that are restricted for sale by IIROC advisors.

Know Your Product – Firm

The proposed firm KYP rules would require mixed/non-proprietary firms to regularly conduct a "fair and unbiased market investigation, a product comparison and an optimization process based on the needs and objectives of its clients." As part of this process the CSA suggests that firms would categorize their clients into various profile groups, for the purpose of ensuring there were optimal products on the shelf for each group, taking into account factors such as structure, product strategy, risks, cost, liquidity, performance, and whether or not the product manufacturer is a related or connected issuer to the dealer.

It is not clear to us what problems the CSA is trying to address by implementing the above requirements. We do not believe clients are currently suffering from a lack of product choice. Most firms have massive product shelves with a range of cost options, and if an advisor or a client wishes to purchase a product not currently available, most firms have a detailed product review process to review and, if appropriate, approve the addition of the product.

We have a number of concerns with the proposed KYP reforms, as outlined further below.

Shortening of Product Shelves

Credential generally supports the CSA's objective of ensuring the range of products offered by firms is representative of a broad range of products suitable for their clients. However, our view is that the proposed KYP reforms would instead result in a shortening/restriction of product choices, in order for firms to ensure their advisors are able to comply with the requirement to understand the features of every security offered by the firm and/or to make the annual product shelf review more feasible. A shorter product list reduces advisor choice and client access to products that might otherwise be suitable, which would not be a positive outcome for investors and one that we do not believe the CSA intends.

Product Shelf 'Optimization'

We are concerned with the proposed requirement for a firm to conduct a product shelf 'optimization process' to ensure it offers a range of products that are 'most likely to meet the investment needs and objectives of its clients'. If the rule is implemented, further clarity from the CSA on what specific criteria should be considered to create an optimized product list, and how regulators would expect to monitor compliance with this requirement would be needed. How will compliance with this requirement be fairly adjudicated by regulators, given that firms employ a variety of business models and market strategies in order to provide a meaningful value proposition to clients?

This process could also result in shortened, somewhat standardized 'regulator-approved' product lists, especially when combined with the proposed KYP rules for representatives, again reducing client access to products. In order to manage the impacts of the proposed new requirements, the optimization process could result in firms offering only the lowest risk, lowest cost products to clients, regardless of the other features factoring into the suitability analysis (structure, liquidity, product strategy).

Further, the proposed requirement to conduct a market investigation, product comparison and optimization process appears to only apply to mixed/non-proprietary firms. This would put these firms at a competitive disadvantage to proprietary firms, potentially leading to some mixed firms deciding to limit their shelves to proprietary products only, resulting in reduced advisor and client product choice, and an increased conflict of interest issue. We do not believe this is a fair or intended consequence of the proposed reform.

Order Execution Only
In Credential's view, order execution only firms should be excluded from any version of the proposed KYP rules that moves forward, as KYP is a component of suitability and these firms do not owe a suitability duty to their clients.

Suitability

Credential supports the regulatory objective of ensuring that investors receive investment advice suitable to their individual circumstances. We believe the current regulatory requirements set forth in National Instrument 31-103 and the corresponding SRO rules effectively codify that obligation.

We are concerned that the CSA may elevate the suitability standard to a height that may well prove unattainable for most advisors. In fact, elements of the proposed 'basic financial suitability analysis' and 'investment strategy suitability analysis', in particular, may exacerbate the problem by requiring advisors to give financial advice to clients that they may not be qualified to provide.

Basic Financial Suitability
MFDA and IIROC advisors are qualified to give advice within certain registration parameters. Those parameters do not include opining on debt repayment strategies, nor do they include financial planning. Other professionals, such as Certified Financial Planners and accountants, exist to serve those needs. It is unclear to us why the CSA would propose that advisors give advice best left to other qualified professionals. Further, we wonder what standards the CSA would apply to determine whether an advisor has fulfilled the requirements of a financial suitability assessment.

The proposed basic financial suitability analysis also assumes a high level of advisor-client engagement and discussion is required for every account and every transaction. In many instances this is not the case. Many clients with smaller accounts are not in need of advanced financial planning services. As discussed above (see "Know Your Client"), the requirement also involves a level of information collection that clients may be unwilling to provide, which would make the proposed regulatory obligation impossible to satisfy.

As a firm we also question how we would effectively supervise advisor compliance with the financial suitability rule.

Investment Strategy Suitability

The CSA's proposal mandating advisors to provide investors with a target rate of return is problematic because many advisors do not have the necessary proficiency to do so. Again, there are other professionals (financial planners with CFA designations, for example) that can be retained by investors for this analysis.

We have the following other concerns with the proposed use of target rate of return:

1. Many investors do not require such a service. For example, consider a client who simply wishes to perform a one-off transaction, such as buying a treasury bill. The client does not want to pay for the analysis or sit through a time consuming exercise – they simply want to buy the product.

2. Attempting to match a target rate of return with a client's risk tolerance potentially creates an unsolvable dilemma: what is the advisor to do when the client needs to generate a large return but is highly risk averse? Most advisors will gravitate to the lower income, lower risk product, which while "suitable" on one hand (risk tolerance) is not suitable on the other (target return required). In other situations, a client's indicated risk tolerance may be adjusted to a higher level in order to allow for the purchase of 'high risk/high reward' products, notwithstanding that the client's true risk tolerance remains low.

3. Some investors may effectively view a target rate of return as a performance guarantee, thus exacerbating the expectations gap. These investors may ultimately be quite upset if after several years their actual return underperformed their target return.

The 'Most Likely' Standard

We are also concerned with an aspect of the "product selection suitability analysis", namely the proposed regulatory expectation that advisors will choose the financial product "most likely" to achieve the client's investment needs and objectives. This requirement ties in with the proposed KYP reforms, in that it requires an advisor to deeply understand every product on a firm's product list. In our view, advisors have the duty to comply with conflicts of interest rules and make sound recommendations.

Furthermore, we are materially concerned with the expectations that clients will have of advisors due to such a standard. The obligation implies that advisors have the foresight to cut through all of the variables in the capital markets and discern the "winners" from the "losers". We expect frequent complaints and litigation in situations where, with the benefit of hindsight, it turns out that the advisor was unable to pick the single best product, out of many thousands.

Complicating matters, we believe there is a certain amount of subjectivity inherent in assessing a product. Cost is one factor, but there are many others, as highlighted by the CSA (structure, features, strategy, liquidity, risk, etc.). We think reasonable people could disagree on which product is "most

likely" to meet the client's objectives. Despite this, we foresee the after the fact analysis typically coming down to whether a lower cost product happened to perform better over a period of time.

From a supervisory perspective, the current regulatory expectation affords compliance staff the ability to view a trade in the context of a client profile, and make a proper determination as to the suitability of the transaction. When combined with the proposed KYP reforms, the proposed suitability rule would have the effect of requiring supervisory compliance staff to determine whether an advisor made the "best" selection. Consequently, each supervisory review will necessarily be more manual and in-depth, creating the need for additional technology and/or staff. It is questionable whether technology could ever effectively review trades against a "most likely" standard.

<u>Frequency of Suitability Reviews</u>
Credential questions the CSA's proposal that a suitability review be conducted at least every 12 months. The SROs require suitability to be reviewed on certain triggering events, which Credential believes is an adequate standard. The vast majority of clients do not undergo significant life altering events every year, such that their investment objectives, time frame or risk tolerance frequently change. To the extent they do, clients are reminded to advise their advisor/dealer of these changes, and triggering events will otherwise capture the shift in circumstance.

In our experience, many investors buy securities or mutual funds and hold them for the long term. Barring a material change in the client's circumstances, the obligation to perform ongoing suitability obligations strikes us as unnecessary and time consuming. We do not believe it provides material value to clients, and we encourage the CSA to reconsider this proposed obligation.

<u>Suitability Triggers: Significant Market Event</u>
Credential believes that more guidance is required around the proposed trigger that calls for a suitability review upon the "occurrence of a *significant market event* affecting capital markets to which the client is exposed". Is a "significant market event" based on a subjective or objective standard, or will there be a regulatory definition provided? We suggest that 5% may be 'significant' to some clients, while 15% may be insignificant to others. Other clients, such as those that trade derivatives, may benefit greatly from these investments that profit on the occurrence of significant market events. The uncertainty surrounding this proposed standard strikes us as problematic.

<u>Relationship Disclosure</u>

Credential agrees that relationship disclosure should give clients a clear understanding of the client-registrant relationship, including disclosure of all information that a reasonable investor would consider important about the relationship. That said, we believe that the proposed relationship disclosure reforms are unnecessary, as existing SRO rules (such as IIROC Rule 3500) currently satisfy the objectives of the proposed reforms. Dealers are currently required to provide a description of the services and types of products offered, the account relationship and the investment suitability assessment process. Similar disclosure requirements exist under MFDA rules (Rule 2.2.5), including the nature of the relationship and what types of investments CAM advisors are able to offer, among

other things. Any conflicts of interests must also be clearly disclosed to clients in account opening documents. In all cases, the disclosure must be written in plain language that communicates the information to the client in a meaningful way.

We are not aware of any material issues with existing relationship disclosure requirements that warrant additional rules or guidance from the CSA.

Proficiency

Advisors

Credential is supportive of advisors having the necessary proficiency, skills and training to ensure they are appropriately and adequately prepared to provide advice and service to their clients. It is paramount that they are proficient and knowledgeable about the "basic structure, features, product strategy, costs and risks" for every product that they advise on and recommend to clients. The proposed proficiency reforms would require an equal level of proficiency for "all types of securities, such as equities, fixed income, mutual funds, other investment funds, exempt products, and scholarship plan securities". Credential does not believe such a requirement to be necessary or reasonable, particularly if the advisor's firm (MFDA dealer, for example) is not able to trade in many types of products.

Current regulatory regimes include different categories of registration, each with their own initial and ongoing proficiency requirements. There is no accompanying requirement or expectation for advisors to know the universe of products outside of their registration. The proposed reforms would appear to require a mutual fund advisor to have the same product knowledge as a portfolio manager. We question the logic of such a requirement, given the advice and trading restrictions associated with certain registration categories. On a related note, requiring such proficiency and knowledge carries the risk of blurred lines between the limitations of the advisor's registration and his/her (as proposed) product knowledge, and the advice they provide.

CCOs and UDPs

As senior officers of a member firm, the individuals in the role of CCO and UDP are highly experienced professionals with significant industry knowledge, background and expertise. They are ultimately responsible for the firm's supervision and compliance, which includes holding employees accountable. We generally support enhancing proficiency requirements for these individuals, to the extent necessary to assure they are capable to fulfill their duties and responsibilities.

The current proficiency standard in National Instrument 31-103 requires CCOs to pass either the Chief Compliance Officers Qualifying Examination or the Partners, Directors and Senior Officers Qualifying Examination. Credential would support increasing this standard to require that CCOs pass both of these qualifying exams, as is consistent with the standard outlined in IIROC Rule 2900.

Titles

Credential agrees with limiting the titles currently used in the industry to provide greater transparency to clients and to establish some standardization with which clients can fairly compare the titles of different advisors. However, the alternatives proposed by the CSA do not adequately recognize the different levels of registration, education and experience obtained by advisors.

The proposed titles can also be misleading, for example, "restricted securities advisor" could be misinterpreted to mean that the advisor is "restricted" by a penalty imposed by the SRO, not as a result of a category of registration. We support the approach whereby titles reflect the products the advisor is able to offer, such as a "mutual funds advisor" or "securities advisor", to the extent that is a workable approach.

Credential also seeks clarity in situations where an advisor offers managed accounts as a Portfolio Manager and also offers non-discretionary services to retail clients. In that situation, would the advisor be able to use a single title that requires greater qualification (such as "Portfolio Manager"), or must that advisor change titles based on the clients to whom any communications are directed? Requiring the use of multiple titles would be potentially awkward and misleading, and it would be difficult for firms to supervise compliance.

Credential also supports the use of the term "Senior" before any approved titles to recognize advisors that have achieved certain significant prescribed education and/or experience thresholds, for example obtaining the CFA designation or 20 years of experience in the securities industry.

The CSA proposal does not consider titles for registered assistants, either Investment Representatives or fully licensed persons working in an assistant capacity to an advisor.

Lastly, we believe the term "salesperson" unfairly diminishes the education and experience that these advisors have obtained to be able to offer mutual funds to clients. They will have the same KYC and KYP obligations of a "securities advisor". Referring to them as "salespersons" implies they are less qualified and do not need to meet the KYC and KYP requirements. This also does not appear to align with the proposed increased proficiency standards.

Designations

The CSA's proposal with respect to designations would prohibit representatives from holding out in a deceptive or misleading manner to clients or potential clients, given any particular representative's proficiency, qualifications, or scope of product or service offering. The proposal further states that firms should have policies and procedures that will promote greater transparency for existing or potential clients, particularly more vulnerable and less sophisticated investors.

Credential agrees with the CSA's proposal regarding designations, and notes that we currently adhere to the proposed standard across our IIROC and MFDA business lines. Current SRO policies are

consistent with the CSA's proposal on this issue and Credential believes this obligation should be consistent across the industry.

Role of UDP and CCO

The proposed reforms would clarify the role of UDPs and CCOs, both in terms of compliance systems generally as well as ensuring compliance in key areas, such as obligations relating to conflicts of interest and suitability.

Credential's position is that any new rules should be aligned with those already enforced by the SROs dealing with compliance and supervision (such as IIROC Rule 38 and MFDA Rule 2.5), which deal with the duties of UDPs and CCOs specifically. However, as discussed above under "Conflicts of Interest", we have some concerns with the proposed client prioritization requirement.

Statutory Fiduciary Duty When Client Grants Discretionary Authority

Although discretionary management is not currently a large portion of Credential's business, we are nonetheless troubled by the regulatory proposal to add a statutory fiduciary duty to provincial securities legislation. In general, the patchwork of legal standards applicable to advisors is difficult to navigate, and we are not in favour of adding more complexity or uncertainty to the environment. It is further unclear how various standards (statutory fiduciary duty, civil fiduciary duty, and regulatory best interest) might be interpreted and applied in a given situation. We are concerned that this will increase the complexity of the industry's regulatory and legal environment.

Best Interest Standard

The proposed regulatory best interest standard would require registrants to deal fairly, honestly and in good faith with their clients and act in their clients' best interests, including the requirement to avoid or control conflicts of interest in a manner that prioritizes the clients' best interests.

Credential agrees with the regulatory focus of improving the client-registrant relationship. However, Credential disagrees that the proposed standard is required to address the regulatory concerns identified in the Consultation Paper, nor do we believe it would be beneficial to industry participants or investors.

Credential supports the standard already in place by the SROs, which requires registrants to deal fairly, honestly and in good faith with their clients. We view the current standard as clear and effective. If regulators perceive the standard is not effective, it may be appropriate to first conduct a detailed review of SRO enforcement against the standard. The current rule is more than broad enough to successfully go after bad actors.

The current standard also benefits from being universally applicable. Our strong preference is for all CSA jurisdictions to agree on any proposed modifications to the registrant standard of conduct (and

all other material changes to securities legislation) before such proposals are introduced. The lack of uniformity on this significant initiative, were it to proceed, may well have unintended consequences. For example, as a British Columbia firm with a national reach, we would find it challenging to have different standards applicable to advisors depending on where they lived. The outcomes from this would include disjointed internal policy, differing oversight and audit standards, and two tier advisor communication and training.

Further, Credential agrees with the following points, which are identified as reasons why the BCSC is not consulting on a best interest standard:

1. It would be unworkable in the current regulatory and business environment. The proposed best interest standard will not eliminate or prohibit certain fundamental conflicts between registrants and their clients. Registrants will continue to be able to sell a limited range of investment products, as well as be affiliated with and be compensated by investment product manufacturers. These arrangements are not consistent with what a client would expect from a standard that purportedly requires registrants to act in their "best interest".

2. It would exacerbate the expectations gap between clients and registrants and would further raise clients' expectations and reliance on advisors. Clients may expect that all registrants have an unqualified duty to act in their best interests, not understanding that some conflicts would still be permitted or that some relationships give registrants more decision-making authority than others.

3. The implementation of certain of the proposed targeted reforms, in addition to the current CRM2 and Point of Sale initiatives, is sufficient to meet investor protection concerns. At a minimum, the effectiveness of recent regulatory changes should be studied in great detail, before any further initiatives are finalized.

4. It will create legal uncertainty. It does not create a clear standard for registrants to follow or for regulators to enforce.

Credential believes that the proposed standard may have the following unintended effects:

1. It may effectively act as a guarantee that a client's investments never lose value, result in the "best" or "highest" returns, or result in the lowest risk. The corresponding result would be a dramatically increased number of client complaints and claims, where a chosen investment loses value or is outperformed by another investment.

2. Insurance costs would rise, provided insurers were willing to underwrite the risk of firms and advisors being subject to a best interest standard. Firms would presumably pass these higher costs onto clients.

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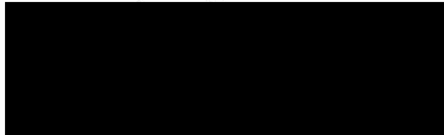
3. It may result in only the lowest cost products on the firm's shelf being recommended to clients, being the only defendable position the firm could take in any future complaint or claim by a client.

Before proceeding, Credential strongly encourages the CSA to first undertake a detailed cost-benefit analysis. The introduction of a best interest standard would result in significantly higher costs of compliance going forward (and likely frequent penalties for non-compliance, mainly in the form of settling claims with clients). Registrants would be required to implement in-depth and ongoing product shelf scrutiny, as well as rigorous advisor training and oversight.

On behalf of Credential, I thank you for considering our comments. Please contact me with any additional questions or requests for further information.

Yours very truly,



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