Federation of Mutual Fund Dealers
Fédération des courtiers en fonds mutuels

September 28th 2016 VIA E-MAIL ONLY

Alberta Securities Commission
Autorite des marches 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

Josee Turcotte, Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, ON
M5H 3S8
comments@osc.gov.on.ca

Me Anne-Marie Beaudoin, Corporate Secretary
Autorite des marches financiers
800, rue du Square-Victoria, 22e etage
C.P. 246, tour de la Bourse
Montreal, Quebec
H4Z 1G3
Consultation-en-cours@lautorite.qc.ca

Dear Sirs and Mesdames:

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

The Federation of Mutual Fund Dealers (the "Federation") has been, since 1996, Canada's only dedicated voice of mutual fund dealers. We currently represent dealer firms with over $124 billion of assets under administration and 18 thousand licensed advisors that provide financial services to over 3.8 million Canadians and their families and as such we have a keen interest in all that impacts the dealer community, its advisors and their clients.

General Comments

Over the last few years we have continued to include in our comments to various regulatory bodies through the consultation process our concerns regarding the

unintended consequences of over regulation and over disclosure. We add to that list our concerns about a non-harmonized approach to securities regulation across Canada.

We appreciate your desire to *better align the interests of registrants with the interests of their clients, to improve outcomes for clients and to clarify the nature of the client-registrant relationship for clients.* We remain concerned about the interests, outcomes and relationships of clients in non-participating jurisdictions, and about the confusion amongst registrants, dealers and advisors, who are licensed across multiple jurisdictions including those in non-participating jurisdictions. We urge you not to underestimate the impact of this.

The current consultation is a sweeping one and while we agree that some change is warranted, we would strongly recommend that as part of it:

- You review ALL of the regulations that impact the stakeholders to ensure you are working within your respected jurisdictions and not overstepping in areas of free trade and competitiveness;
- That you review ALL existing disclosure requirements against desired outcomes, taking the psychology of investing into account because we believe there to already be so much disclosure and disclosure that is misguided, that clients are now harmed by it; and
- That amongst yourselves, including ALL jurisdictions, commit to future proposals that would not exclude any jurisdiction. To continue to propose regulation that is not harmonized nationally does an enormous disservice to those you are bound to serve.

With the above in mind, we continue below with our comments on the Proposals.

Comments

Rather than address each question individually we have chosen to look at each area of targeted reforms, combining some as we considered appropriate.

<u>Conflicts of Interest & Suitability</u>

We believe that the Mutual Fund Dealers Association's (MFDA's) current Rules address the issues brought forth in your Proposals. We have provided references below. We do not believe that any further requirements are necessary. In addition, we are disturbed by your suggestion that *Any disclosure given to a client about a conflict of interest must be prominent….* How, amongst the plethora of disclosures currently required does one make anything 'prominent'?

2.1.4 Conflicts of Interest

(a) Each Member and Approved Person shall be aware of the possibility of conflicts of interest arising between the interests of the Member or Approved Person and the interests of the client. Where an Approved Person becomes aware of any conflict or

44 Faversham Cr Etobicoke ON M9C 3X6
Tel: 416-621-8857 Cell: 647-409-8369
www.fmfd.ca sandra@kegieconsulting.com

potential conflict of interest, the Approved Person shall immediately disclose such conflict or potential conflict of interest to the Member.

(b) In the event that such a conflict or potential conflict of interest arises, the Member and the Approved Person shall ensure that it is addressed by the exercise of responsible business judgment influenced only by the best interests of the client and in compliance with Rules 2.1.4(c) and (d). - 11 - July 15, 2016

(c) Any conflict or potential conflict of interest that arises as referred to in Rule 2.1.4(a) shall be immediately disclosed in writing to the client by the Member, or by the Approved Person as the Member directs, prior to the Member or Approved Person proceeding with the proposed transaction giving rise to the conflict or potential conflict of interest.

(d) Each Member shall develop and maintain written policies and procedures to ensure compliance with Rules 2.1.4(a), (b) and (c).

What's interesting about suitability in some cases and whether or not *a purchase, sale, hold or exchange of a product is the "most likely" to achieve the client's investment needs and objectives"* depends in so many cases on the ability of the client to follow their own agreed upon investment strategy. There is nothing in the Proposals that speaks to the client's responsibility with respect to suitability. Clients are part of any transaction and therefore should bear some responsibility. We believe that should be reflected in any recommendations for disclosure.

A suitability analysis is appropriate at the same time as a know your client update; when there are material changes to investment holdings and/or the client's circumstances that would changes the client's investments objectives etc.

Know Your Client

We believe that the existing requirements including the SRO's policies which we would suggest you parallel, are more than sufficient in order for an advisor to understand the needs of the client. What is important to recognize here is that one size does not fit all. For example, if an advisor determines early on that a young first-time investor with all of $5500.00 to invest in a TFSA wants something relatively safe, a full financial plan will not be wanted, needed or necessary and frankly if the advisor were to continue with that line of questioning, the client would accuse him/her of not listening. The advisor can educate the client about what is available when and if he needs it, but going further would not benefit anyone. However, if this same client were to come into a substantial amount of money, the conversation would and should proceed differently, more fully.

We would suggest that clients should be made aware of what an advisor can offer on an 'a la carte' basis and that client will the assistance of the advisor can choose the level of engagement that they believe is appropriate at that time. This is something that they can review as the client's circumstances dictate. These KYC updates could be necessary in three months or in three years. Other than the advisor reminding the client

that should their circumstances change they should contact the advisor (which they do via their quarterly statements currently) nothing else should be necessary.

We are concerned that placing 100% of the onus for updating on the advisor absolves the client of any and all responsibility as a partner in this relationship which is a disservice to the client. The client must take responsibility for their part in their own financial planning. With no expectation of responsibility, they will not participate. They will not be forthcoming with information or any change of information previously provided.

That said, clients generally will not share full information about themselves, therefore "full knowledge" is NOT possible. It would be counterproductive to impose this standard on registrants.

We believe that certain ongoing initiatives will go a long way to clarifying some financial services as and suggest that you encourage the continuation of the Financial Planning Standards Council's (FPSC's) and the MFDA's work in the area of financial planning and financial planners. We support the professionalization of financial planning.

Know Your Product – Representative/Firm

In the mutual fund dealer channel of distribution, registrants hold a 'restricted' license allowing them to sell investment funds. By definition the products they should know are limited, but 'limited' is a relative term. With over 12,000 funds, no dealer would approve all for their shelves and no advisor could possible 'know' all of them. A dealer could have a broad shelf of products so that the client can have a broad choice, but an advisor can only know – the way you propose - about 100; you can't have both.

Your proposals however will shrink a dealer's shelf offering significantly, marginalize fund company's value offering, and a proprietary product dealer will cease to offer non-proprietary products. These will be unintended consequences but mandating a dealer to offer non-proprietary products for e.g. is not the answer and we don't believe that regulators should insert themselves into this area of a dealer's business.

Proficiency, Titles, Designations

We would suggest that you consider tying proficiency to product. Many MFDA Approved Persons completed the Mutual Funds Course. If they wanted to sell hedge funds, their dealers required they complete a hedge funds course. This fulfills the MFDA's requirement that an Approved Person be able to demonstrate that they 'know their product'. This standard could be expanded across the industry and monitored by the SRO or another applicable regulator.

Insurance licensed individuals are obviously advantaged. They can sell segregated funds (a mutual fund in an insurance wrapper) without a mutual funds license, GICs, annuities, etc. Unless this changes, mutual fund registrants will continue to migrate to the insurance industry and give up their mutual funds sales license.

44 Faversham Cr Etobicoke ON M9C 3X6
Tel: 416-621-8857 Cell: 647-409-8369
www.fmfd.ca sandra@kegieconsulting.com

The Ministry of Finance for Ontario has made proposals for titles and we would suggest that you consider adopting those.

Notwithstanding the foregoing, there is an aspect of proficiency which is beyond product. We feel that Canadians would be better served in better distinguishing between advisors offering full financial planning and those advisors who do not. Both help Canadians move towards achieving their personal goals and provide benefits to consumers. Canadians largely do understand this difference between the two and to the degree that you want to create distinctions in titling we think that is where you should start.

We do not agree with your holding out terms and believe that your alternatives are very confusing and are essentially pejorative descriptors for MFDA advisors.

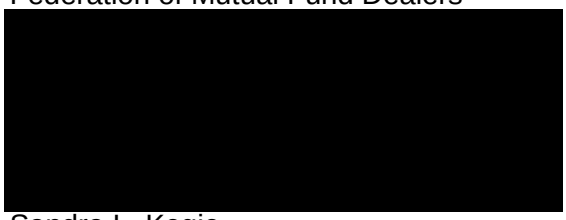
Best Interest Standard

We agree in principal with the standard that you have laid out in the Paper, it appears to codify the standard that most dealers and advisors hold themselves to. However, as we have stated in our opening comments, this standard must be harmonized across all Canadian jurisdictions. No one, investors, investor advocates, and registrants would be able to comprehend codifying a standard of this nature unless it applied to all.

We thank you again for the opportunity to provide comments on these important matters, and we did appreciate the extension for comments. Should you have any questions or wish to discuss this submission, do not hesitate to contact the undersigned.

Regards,

Federation of Mutual Fund Dealers



Sandra L. Kegie
Executive Director

44 Faversham Cr Etobicoke ON M9C 3X6
Tel: 416-621-8857 Cell: 647-409-8369
www.fmfd.ca sandra@kegieconsulting.com