

September 30, 2016

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

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

Mawer Investment Management Ltd. (**Mawer**) is pleased to provide our comments in connection with the Canadian Securities Administrators' (CSA) Consultation Paper 33-404 - *Proposals to Enhance the Obligations of Advisors, Dealers, and Representatives towards their Clients (Consultation Paper)*.

Our Firm and Our Values

Mawer Investment Management Ltd. is a privately owned, independent investment firm, managing over \$37 billion in client assets across all major investment strategies, with offices in Calgary, Toronto and Singapore. We manage 12 mutual funds offered by prospectus, 4 private pooled funds offered by offering memorandum (the **Mawer Funds**) and we provide sub-advisory strategies to other firms in the industry.

Mawer operates in Canada as a Portfolio Manager and Investment Fund Manager serving individuals, family offices, charities, foundations, pension plans and other institutional clients primarily through discretionary portfolio management. Mawer also operates a non-discretionary retail client subsidiary

Mawer Direct Investing Ltd. (**MDIL**) which is an IIROC registered dealer offering access to the Mawer Funds.

Outside of Canada, Mawer is licensed in the United States as an Investment Adviser with the U.S. Securities and Exchange Commission, and we manage collective investment trusts in the U.S. for our pension and retirement account institutional clients. Mawer also operates in Singapore through our subsidiary Mawer Investment Management Singapore PTE. Ltd. which is registered under a Capital Markets Services License for Fund Management with the Monetary Authority of Singapore.

Throughout Mawer's 40 year history, we have provided portfolio management for our clients based on a disciplined, time-tested, 'boring' investment approach. This approach has helped our clients safely, and profitably, navigate the investing landscape over time and through many different economic cycles. As bottom up, fundamental investors, we seek excellent securities with sustainable competitive advantages, regardless of industry or economic conditions. We believe that by consistently following our investment philosophy and process we can provide investors with above average, long-term, risk-adjusted returns.

Our core values are the foundation of our corporate culture and they inform our attitude towards the regulatory issues raised by the CSA in the Consultation Paper. Our values reflect what is truly important to our organization and serve as a compass for our decisions as a firm, and in our relationships with each one of our clients:

- ✓ Act with Integrity
- ✓ Put Clients' Interests First
- ✓ Pursue Excellence
- ✓ Work as a Team
- ✓ Think Long-Term

Mawer is an active member of the Portfolio Management Association of Canada (**PMAC**) and we have played a leadership role within PMAC for a number of years. As a firm, Mawer adheres to the CFA Institute's Asset Manager Code of Professional Conduct, and our individuals, including our asset managers, research team and client relationship managers are nearly all CFA Charterholders who adhere to the CFA Institute's Code of Ethics and Standards of Professional Conduct. Mawer was proud to have a senior member of our firm, Beth Hamilton-Keen (Director of Investment Counselling), recently serve as the global Chair of the CFA Institute's Board of Governors. Mawer is a firm that consistently demonstrates its commitment to the highest standards of ethics and conduct in the investment industry, and we believe in leading by example.

Our Views on the Consultation Paper

Mawer supports the analysis and views PMAC submitted with respect to the Consultation Paper (**PMAC Comment Letter**) and we were pleased to join our peers in preparing that comprehensive PMAC response to the various aspects of the Consultation Paper.

While we strongly endorse the views expressed by PMAC, we also wish to provide certain supplementary comments that address issues more specific to Mawer's client experiences, our business model and our industry perspective.

1. Fiduciary Standards for Discretionary Portfolio Managers

As an overriding principle, Mawer supports a clear and unambiguous fiduciary standard of care for all discretionary investment management client relationships. The current common law fiduciary standard has appropriately recognized the trust discretionary clients' place on their portfolio managers, and the highly skilled nature of the discretionary management industry.

Mawer supports the CSA enshrining a nationally harmonized statutory fiduciary duty across all CSA jurisdictions for any instance of discretionary investment management. We agree with the recommendation in PMAC's Comment letter that section 75.2(2) of the *Alberta Securities Act* would be appropriate language for that statutory fiduciary standard.

We are however concerned about the CSA's proposal for an overlapping 'regulatory best interest' duty applied to portfolio managers. Despite laudable intentions around establishing consistent expectations, the application of this universal standard may unintentionally diminish the fiduciary obligations owed to discretionary clients. We are concerned that this could cause confusion for clients and firms, and potentially dilute the commitment of portfolio managers to the highest professional fiduciary standards in the investment industry. Of particular concern is the Consultation Paper's failure to articulate how a statutory fiduciary duty would interact with a universally applied 'regulatory best interest' duty when applied to a discretionary portfolio manager. The inability of the CSA to distinguish the similar principles, or to define an intended interaction between them, suggests a significant weakness in the CSA proposal. Uncertainty about how such principles will interact, and what different expectations result from them, will inevitably create challenges when these standards are to be applied to evaluating the conduct of a firm or individual, and in any client dispute brought to a legal or regulatory forum, or escalated to OBSI. We do not believe there is any benefit to clients in applying a lesser universal best interest standard of care to what are otherwise fiduciary relationships. We recommend the CSA avoid altogether any overlapping regulatory best interest standard which differs from, or is even subsumed by, the higher fiduciary standard applicable to discretionary portfolio managers.

We also encourage the CSA to apply any new nationally harmonized fiduciary standard to all discretionary investment managers, including those regulated outside the CSA by self-regulatory organizations. Specifically, the CSA should ensure that IIROC dealer firms with managed account clients are held to the same fiduciary duty of care as portfolio managers regulated directly by the CSA. Clients under both regulatory models should be afforded equal care and protection when entrusting their investments to a discretionary adviser. In our experience, clients have expressed some confusion about the use of ‘portfolio manager’ as applied to IIROC managed account relationships. If the standard of care is made equivalent then client expectations of an equivalent fiduciary relationship will be valid, but if the standards differ, then we recommend the term ‘portfolio manager’ be reserved only for firms registered with the CSA as a Portfolio Manager.

2. Proprietary Pooled Funds of Portfolio Managers

Mawer is a proprietary focused firm that deploys in-house pooled investment vehicles to design investment solutions for our clients. We believe this is the most efficient and effective way of utilizing our skills and delivering successful investment strategies. Our mutual funds, pooled funds and collective investment vehicles are driven by asset class managers and our proprietary research team based on a diversified strategy and focused investment discipline. In our experience, clients are attached to Mawer primarily because of our security selection methodology and our performance across our asset class strategies. We have been pleased to be frequently recognized by our industry peers for excelling as asset managers and for consistently demonstrating our commitment to quality security selection and disciplined investment focus.

We applaud the CSA for its efforts to raise concerns with certain registrant’s in-house KYP programs and highlight potential examples where firms may not expose clients to superior investment alternatives external to their firm. The CSA’s effort to set out KYP best practices in Appendix D of the Consultation Paper is commendable, but does raise a potential risk of conflicting with the highly specialized security analysis and selection methods used by Mawer and other portfolio and investment fund managers. The CSA’s guidance on ‘market investigation’, ‘product comparison’ and ‘benchmarking criteria’ will no doubt have a positive impact on the industry generally, but we recommend the CSA more explicitly exempt portfolio managers from that rudimentary KYP guidance. In Appendix A of the Consultation paper, the CSA suggests pooled funds employed by portfolio managers would be outside the scope of the KYP rules, however we note the definition of “managed account pooled fund” still includes the requirement that the KYP for such pooled funds use “the process set out for mixed/non-proprietary product list”. We recommend that the new KYP approach be more clearly expressed to ensure it is not applicable to highly specialized portfolio managers and their managed account proprietary pooled funds.

3. Regulatory Best Interest Duty for Non-Discretionary Dealers

Mawer supports the introduction of a harmonized regulatory best interest standard for client relationships with dealers to elevate standards across the industry and better align industry practices with investor interests. As a registered IROC dealer and a mutual fund dealer, Mawer and MDIL have always applied the same principals of client service across our discretionary and non-discretionary client service channels. Our approach at Mawer is quiet straightforward – in all circumstances we strive to *‘Do The Right Thing’* for our clients, and as our firm values state, we *‘Put Our Clients Interests First’*. As a foundational principle in managing all client relationships, we believe this is elementary and essential to protecting clients and serving them with integrity.

The CSA should be commended for its years of effort to enhance of point-of-sale disclosure, fee and compensation disclosure, enhance suitability, KYC and compliance expectations, and devote considerable resources to further reforms set out in the Consultation Paper’s ‘targeted reforms’. These have all been positive steps for the industry and we encourage the CSA to finish its work in these areas. Finding the right balance on these issues to protect investors and also ensure a vibrant capital markets industry should be the CSA’s priority.

Conclusion

We appreciate this opportunity to contribute our views to a very important policy making discussion. We encourage the CSA to continue its efforts to elevate standards across the industry and we commit our support to that goal.

We thank you for considering our comments and we look forward to participating in further dialogue and the upcoming industry roundtables on these important issues.

Sincerely,

“Michael Mezei”

Michael Mezei
President, Director

“Geoffrey Ritchie”

Geoffrey Ritchie
General Counsel