



Quadrus Investment Services Ltd.

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BY ELECTRONIC MAIL: comments@osc.gov.on.ca, consultation-en-cours@lautorite.qc.ca

September 30, 2016

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

Attention:

Robert Blair,
acting secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, ON M5H 3S8

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal (Québec) H4Z 1G3

Dear Sirs / Madames:

Re: Canadian Securities Administrators (CSA) Consultation Paper 33-404: Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives toward Their Clients (Consultation Paper)

On behalf of Quadrus Investment Services Ltd., I am pleased to provide this detailed submission in response to the CSA Consultation Paper. For ease of reference, we have included an Executive Summary supported by detailed comments. Answers to the specific questions are provided in Appendix A.

EXECUTIVE SUMMARY

Canada has a robust regulatory environment with layers of safeguards that have proven effective in protecting its citizens under both steady state and the most challenging economic conditions. Quadrus supports efforts to build on those strengths to ensure that Canadian investors of all demographic, asset and income levels can obtain effective, high quality coaching, assistance and advice to better achieve their financial and life goals.

Canadians weathered the 2008 financial crisis better than most in large part due to the regulatory system but also due to cautious and appropriate advice provided by investment representatives. Any proposals for regulatory reform should be considered in that context.

We support many elements of the Consultation Paper specifically:

Focus on the Customer:

- the premise that an investment representative should place the clients' interest ahead of his or her own
- ongoing investor education efforts¹, including the introduction of financial literacy courses throughout the school curriculum
- high standards for investment representatives
- access to advice at different levels of service and affordability

Regulatory Reform Strategies:

- learning from worldwide regulatory actions
 - the New Zealand government set out clearly the expected duties and obligations between an advisor and client and an enforcement mechanism:

“Together these options should provide a net benefit over the other proposals in improving the conduct of advisers and making different forms of conflicted remuneration more transparent to consumers. In the first instance, these options are preferred over “blunter” options to ban or restrict conflicted remuneration, which could have significant unintended consequences...”²

- evidence-based policymaking (i.e. before making regulatory changes (e.g. CRM2 initiative) thorough analysis and impact assessment is conducted)

In addition, we do not support:

- The proposed “regulatory best interest standard” as it is unclear to us what the inclusion of a statutory concept of “best” interest means. The current Codes of Conduct and existing IIROC, MFDA and CSA requirements, in conjunction with common law principles, already establish that representatives have a duty to act in the best interest of the client and avoid conflicts of interest. The imposition of a vague and general “regulatory” best interest standard may simply add uncertainty and additional potential liability without added value. The research cited in the Consultation Paper does not provide evidence that a statutory standard will add such value. As a result we agree with the concerns

¹ Quadrus and its parent corporations are development sponsors of the CPA Canada Financial Literacy Program

² New Zealand Ministry of Business, Innovation & Employment, “Review of the Financial Advisers Act, 2008, Regulatory Impact Statement”, pg. 46



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expressed by the British Columbia Securities Commission and do not support a broadly stated regulatory “best” interest standard.

- the imposition of changes to the investment advice industry similar to the approach in the United Kingdom³ which negatively impacted small and moderate investors by effectively eliminating affordable access to advice.
- adopting a “one size fits all” approach to advice; There is a wide array of unique clients’ needs requiring a variety of investment advice access options, with different fee structures.
- Excluding from the assessment process research studies which demonstrate the effectiveness and value of financial advice to clients specifically and the economy in general.

Quadrus appreciates the opportunity to provide input to the Consultation Paper. The issues raised are critical to the future financial health of Canadians and the retail investment industry in general.

ABOUT QUADRUS

Quadrus is one of the largest mutual fund dealers in Canada with more than 3700 registered investment representatives. It is the exclusive mutual fund dealer for London Life Insurance Company and preferred mutual fund dealer for Gold Key investment representatives of The Great-West Life Assurance Company.

SUPPORT FOR OTHER SUBMISSIONS

We have had the opportunity to review the submission of the Investment Funds Institute of Canada. We support their comments, and have attempted to avoid repetition.

CURRENT CANADIAN SITUATION:

The stated objectives of the Consultation Paper are:

“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 believe that in general, Canadians have been well served by the current system, which provides reasonable access to affordable financial advice. Canadians have done better in preparing for retirement than many other groups and fared better during the financial crisis of 2008⁴. Canada’s advice structure is subject to a strong and engaged regulatory regime comprised of the CSA itself, but also the MFDA and IIROC. This oversight, based on cooperation with the industry, self-regulatory organizations and consumer groups, separates the CSA from many other countries’ securities administrators and has benefited Canadians. We commend the CSA for continuing to evolve a regulatory model which balances market forces and principles and rules-based governance.

In jurisdictions which fared badly during the financial crisis, the regulatory response was often extreme with the imposition of new and untested approaches in a well-intentioned attempt to “improve client outcomes”. The

³ Financial Advice Market Review, Final Report, HM Treasury, March 2016

⁴ McKinsey & Company, *Building on Canada’s Strong Retirement Readiness*, Feb 2015



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risk of “unintended results” is high whenever large scale systemic change is imposed, and we have seen evidence of this occurring in other jurisdictions. For example, large scale changes to the investment advice industry in the United Kingdom created harm for small and moderate investors by effectively eliminating affordable access to advice. This Consultation Paper (together with the forthcoming paper on embedded compensation) proposes to impose similar approaches, also with a broad objective of “improving client outcomes”.

Clear, understandable and enforceable expectations and obligations are the cornerstones of an effective regulatory structure. As a result, we are concerned about implementing broad and unclear policies in Canada when similar policies have been unsuccessful elsewhere and have a high probability of inadvertently introducing the same negative results.

Value of Financial Advice – to individuals and the economy

We are concerned that the Consultation Paper fails to recognize the high value that investment representatives provide to Canadians individually and to the economy as a whole. The authors acknowledge excluding from consideration any studies that prove the single most important value that advice provides to clients⁵. Failing to assess the impact of this service significantly understates the value of investment representatives and the critical role they play for their clients. Therefore, any resulting conclusions should be viewed as incompletely researched. We note that the IFIC submission makes specific reference to additional current research papers, some of which we have referenced, that support the high value that advice and financial coaching provides. As the Consultation Paper is focused on improving client outcomes, we believe that any policy action should take into consideration the implications to Canadians of losing access to this valuable service.

We believe that Canadians have better long term financial outcomes when they work with a registered investment representative, and consequently, the single most important factor in building the financial success of our over 190,000 clients is ensuring that they have access to affordable advice appropriate to their specific needs. The client will receive informed recommendations based on their needs and goals. Research concludes that the core benefits of advice involve engaging Canadians to invest for their own futures and maintaining that focus during challenging times⁶. Recommending which particular fund or product to invest in is helpful for clients, given the vast universe of potential products available, but not as important as convincing them to start investing and stay invested.

Personal savings is a key component to the accumulation of financial wealth and retirement readiness. The role of financial advice is a critical element, contributing positively and significantly to the retirement readiness of Canadians⁷. According to Investor Economics, 61% of the \$3.6T in personal financial assets is held in accounts

⁵ Consultation Paper, Part 3, pg. 3949: “This part does not identify the research findings related to the benefits that registrants may provide to their clients, for example, with respect to increased saving.”

⁶ Beyond active management (“Alpha”) and asset allocation (“Beta”), better financial planning decisions (“Gamma”) have a significant impact on an investor’s retirement outcomes. “Gamma” can increase the arithmetic “Alpha” on a portfolio by approximately 1.59% (Source: Morningstar, *Alpha, Beta and Now... Gamma*, 2012).

⁷ Canada’s retirement system is well balanced and effective, with 83% of Canadian households on track for retirement. “Savers” (i.e. households with an above-average savings rate) are far more prepared for retirement than “non-savers” (i.e. households with a below-average savings rate). “Savers” are almost twice as likely to use financial advice and significantly more likely to use tax-advantaged savings vehicles such as RRSPs and TFSA’s than non-savers – both of which are linked to

where an investment representative is engaged⁸. Contrary to the perception of many, financial advice is not only used by the wealthy. Approximately 47% of households in Canada with less than \$100,000 in assets use financial advice, compared to approximately 56% of households with greater than \$100,000 in assets. This is greater than in other countries, such as the U.K., Ireland and Australia, where only 10% of similar households use advice⁹.

Validity of Investor Protection Concerns:

The Consultation Paper sets out five investor protection concerns based on the research papers cited:

- (1) Clients are not getting the value or returns they could reasonably expect from investing
- (2) Expectations Gap
- (3) Conflicts of Interest
- (4) Information Asymmetry
- (5) Clients are not getting outcomes that the regulatory system is designed to give them

These concerns suggest that Canadian investors have been badly served. If so we should find evidence of significant and consistent increases in complaints and enforcement actions. Based on publicly available information, that does not appear to be the case.¹⁰ Complaints to the Ombudsman for Banking Services and Investments (OBSI), for example, appear to show a pattern of fewer complaints each year. The 2016 edition of the annual Pollara survey found that:

“investors are generally quite satisfied with the advice they receive from their financial advisors. There has been an overall improvement in this satisfaction over the last eight years. A significant improvement first noted in 2014 has been maintained, contributing to an overall satisfaction rating of 97%.”¹¹

This suggests an industry that is adjusting to a changing world environment and client expectations, rather than the negative conclusions included in the Consultation Paper.

As stated earlier, we are concerned that the research relied upon is incomplete or even selective. IFIC has referred to several important papers in its submission and we respectfully recommend that the CSA take all applicable and relevant research into consideration.

increased financial security in retirement (Source: McKinsey & Company, *Building on Canada's Strong Retirement Readiness*, Feb 2015). Canadians over 65 rank 7th highest among OECD countries in terms of relative income compared to the national mean income of the total population, and have the 11th lowest poverty rate – on both measures, ranking better than the USA, UK and Australia. (Source: OECD, *Pensions at a Glance*, 2013).

⁸ Investor Economics, *Household Balance Sheet* (2015).

⁹ Ipsos Reid, *Canadians & Financial Advice* (2015). Research also shows that most advice relationships begin with only modest amounts of assets: 86% of Canadians indicate having less than \$100,000 in savings when they began using an advisor (Source: IFIC & Pollara, *Canadian Investors' Perceptions of Mutual Funds and the Mutual Fund Industry*, 2015).

¹⁰ Annual Enforcement Reports, MFDA, <http://www.mfda.ca/about/EnfAR.html>

Annual Enforcement Reports, IIROC, http://www.iiroc.ca/Documents/2016/6d7889a0-ea28-438f-98c8-e455a223cf3c_en.pdf

¹¹ “Canadian Mutual Fund Investors' Perceptions of Mutual Funds and the Mutual Fund Industry, 2016, Pollara Inc., pg 5.



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PRINCIPLES UNDERLYING OUR ANALYSIS/REVIEW:

In our view:

(1) The role of an investment representative is an honourable and valuable one. It involves establishing trust and then coaching, educating, assessing, planning and guiding clients to behaviour that may not be intuitive for many. It involves helping people balance longer term objectives and immediate gratification. It is not simply stock or fund picking, and the success of this advice is not simply investment performance, but the actual act of saving and planning for the future. An investment representative brings significant value to the investor irrespective of income or asset levels. Studies have shown that investors can gain significant additional value by making “more intelligent financial planning decisions”, all of which reflect the core strategies used by investment representatives when working with clients.¹² Clients who use an investment representative (i) are twice as likely to save for retirement at all ages (ii) have significantly higher levels of investable assets at all ages (iii) improve their regular saving for retirement at all income levels (iv) rate themselves as more financially knowledgeable, and (v) are more confident in their ability to achieve a comfortable retirement.¹³

(2) Canadians are entitled to, and should take control of their financial futures. Savings should be directed to investment vehicles that best reflect the investors’ situation, short and long term goals, appetite for risk and general comfort level.

(3) The primary source of investment information for most investors comes from their investment representative, not from broad investor education programs.¹⁴ . This is understandable – life is busy, time is short and investment representatives are available to assist. However, we believe that an educated investor is a good client. An educated investor is better positioned to receive, contribute to and act upon advice from their investment representative. Broad educational programs will serve the next generation well. However, most of the current and previous generations need help to start and continue with saving and investing and the smaller the investor the more help they typically need. Investment representatives are ideally positioned to provide this service. “Advice” can take many forms, and the regulatory environment should support all potential opportunities for clients to obtain it – internet based, call centres and personal meetings. With appropriate incentives the market will develop a continuum of access models, with varying degrees of service and cost, to serve all potential investors.

(4) Anyone purporting to serve as an investment representative should have minimum qualifications and be subject to a robust code of conduct that is enforced by the dealer and the regulator. These requirements are in place now, enforced by the CSA, the MFDA and IIROC and all registered firms. These standards are important to ensuring the ongoing trust of our clients and the reputation of the industry. However, not all representatives need to be full-fledged financial planners and not all clients will require, or be willing to pay for, a full-fledged financial plan. The investment advice landscape should be broad enough to accommodate access for all Canadians, and not just those willing and able to pay for the highest service level directly.

¹² Montmarquette and Viennot-Briot, “The Gamma Factor and the Value of Financial Advice”, CIRANO, August, 2016

¹³ Montmarquette, Viennot-Briot, *Econometric Models on the Value of Advice of a Financial Advisor*, 2012

¹⁴ Key Highlights, CSA Investor Education Study 2016 prepared for the CSA by Innovative Research Group Inc, April 2016



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(5) Clients expect representatives to recommend products that are appropriate for them, and representatives do that. Clients expect representatives to avoid or disclose conflicts of interest, and representatives do so as well. MFDA and IIROC member firms already build and operate compliance regimes that support representatives who meet these client expectations and identify and remove those that do not.

(6) Being compensated for providing professional investment advice and helping a client to save is both fair and appropriate and does not constitute a conflict of interest. The cost of this service should be clear to the client, in terms that they can understand, and should be agreed in advance. Payment methods should be broad enough to accommodate various investors and provide an incentive for representatives to work with small and medium investors – those most likely in need of education, coaching, guidance, advice and planning assistance.

(7) Regulators should assess the impact of, and enforce, existing rules before creating new ones. Assessing existing rules will allow the regulator and those being regulated to know whether new rules are actually required to remedy perceived concerns. Enforcing existing rules appropriately will allow us to determine if new rules are really required.

(8) Rules should be clear and should be forward looking, not retroactive in application, allowing market participants to adjust their processes and activities, and clients to adjust their expectations, accordingly.

(9) Rules should be based on evidence. For example, concerns about “regulatory arbitrage” do not appear to reflect an actual issue.¹⁵

We believe that any retail investment model should be flexible enough to accommodate various ways that clients can access the market and save and invest for the future. A client with an interest in the details of the investment process and products available will require a different access model (and a different fee structure) than a client without that interest. We believe that it would be unhelpful to adopt a “one size fits all” approach to such a large and varied market. Doing so will, as shown by the UK experience, disenfranchise the vast majority of small and medium investors from the vital coaching, planning and educational service provided by investment representatives.

Again, as noted at the outset, Canadians have generally saved more for their retirement and are better financially prepared for the future than the citizens of many other countries.¹⁶ To a very great extent this is because Canadians have affordable access to investment advice through many different platforms suitable to their individual needs. This model has been very successful for Canadians. Changing it should only be done with full understanding of the implications of those changes and only if evidence clearly shows that the change will improve, rather than detract from, current client outcomes.

The Proposed “Regulatory Best Interest Standard”

¹⁵ CCIR Segregated Funds Working Group Issues Paper, May, 2016, s. 3.2

¹⁶ McKinsey & Company, *Building on Canada’s Strong Retirement Readiness*, Feb 2015

The Consultation Paper seeks input on two proposals:¹⁷

- (i) A regulatory best interest standard for advisors; and
- (ii) A series of targeted reforms to address the “best interest” objectives

The current Codes of Conduct and existing IROC, MFDA and CSA requirements, in conjunction with common law principles, establish that representatives already have a duty to act in the best interest of the client and avoid conflicts of interest. Imposing a new “regulatory” best interest standard implies that the expectations of clients and regulators - and the duties of firms and investment representatives – will be different from the current rules and standards. However, there is no clarity around what those differences will be. This places firms and investment representatives in a difficult position – their actions are subject to a new standard with no details provided.

In our view, there is no “expectations gap”. On the contrary, the expectations of clients and investment representatives are fully aligned: clients believe their representatives have to put the clients’ interest first¹⁸ and representatives believe they are required to act in their clients’ best interest.¹⁹ We support the proposition that an investment representative should place the clients’ interest ahead of his or her own and as noted, that is the current and recognized standard in the industry. Given that, it is unclear to us what the inclusion of a statutory concept of “best” interest means. This addition suggests that something new is required, even though for all practical purposes this standard already applies. The result would be increased client and regulator expectations without clear guidance to firms or investment representatives as to how to meet those new expectations. In our view the imposition of a vague and general regulatory best interest standard will simply add uncertainty and additional potential liability without added value. The research cited in the Consultation Paper does not provide evidence that a statutory standard will add such value.

The proposal to add “in the best interest of the investor” to the current CSA standard may actually *create* a real “expectations gap” between clients and investment representatives – with clients expecting advice that will guarantee *best* long term results and representatives obviously being unable to do so. If the CSA has specific concerns about current practices we strongly recommend targeted guidance and clarification of the existing requirements.

¹⁷ In addition, CSA Staff Notice 81-327, published on June 29, 2016 indicates that the CSA will be publishing another consultation paper on the “option of discontinuing embedded compensation for mutual funds”. That Notice suggests that stakeholders should consider the forthcoming consultation paper on banning embedded fees in conjunction with consideration of the current Consultation Paper. In our view the two matters are separate, as the payment of fees for services provided by investment representatives – whether directly by the client or by the manufacturer – does not constitute a conflict provided that it is appropriately disclosed and discussed with the client. CRM2 initiatives are designed to facilitate these disclosures and discussions. We note that the CSA recently stated that it is embarking on a detailed review of the impacts of CRM2. We support evidence based policymaking and believe that assessing the impact of the CRM2 initiative is an appropriate and necessary regulatory approach. This assessment should occur before making further changes.

¹⁸ Consultation Paper, part 5, “Expectations Gap”

¹⁹ OSC Annual Report, online: https://www.osc.gov.on.ca/documents/en/Publications/Publications_rpt_2015_osc_annual-rpt_en.pdf at p.7.

Part 8 of the Consultation Paper attempts to clarify regulatory expectations in this regard, noting that:

“...the proposed regulatory best interest standard is not intended to:

- Interfere with the registration categories under Canadian securities legislation or the scope of application of those categories;
- Prohibit firms from charging clients for their services;
- Prohibit the offering of proprietary products by firms;
- Guarantee that clients’ securities investments never lose value, result in the “best” or “highest” returns for the client, or result in the lowest risk;
- Always result in the lowest cost product on the firm’s shelf being recommended to clients since the lowest cost product may not, based on an analysis of a client’s investment needs and objectives, always be in the client’s best interest; or
- Interfere with the ability of courts to apply common law doctrines relating to, for example, fiduciary duty, negligence or contract law principles, to the client-registrant relationship”²⁰

These limitations are helpful, however none of them appears in the “Description of Potential Guidance – Proposed Regulatory Best Interest Standard” in Appendix H. Even were they to appear (which we suggest is a minimum requirement) we are concerned that statements in the Consultation Paper appear to contradict or at least complicate them significantly²¹ and it is still not clear exactly what additional duties are expected of firms or investment representatives.

Small and Medium Investors

Imposing a “regulatory best interest standard” without detailed, clear and unambiguous explanations may lead to the unintended result of limiting access to advisory services for small and medium investors. For investment representatives and dealers to take on additional, undefined, compliance risks, it is reasonable to anticipate that they will limit their services to clients who can afford the related fees. This is not a theoretical concern. The Financial Advice Market Review in the United Kingdom recently concluded that the steps taken by the UK to require upgraded representative requirements and ban embedded compensation, though well intentioned, has led to a significant “advice gap” for small and medium investors.²² HM Treasury acknowledges the problem that reforms have created: “the high quality financial advice available in the UK is not always accessible or affordable for individuals with lower levels of wealth”.²³ HM Treasury is now consulting on the wisdom of allowing citizens to withdraw 500 GBP tax free from their defined contribution pension savings to pay for this advice. We are not convinced that this move will actually motivate small and medium investors to seek out advisors. Far better to

²⁰ CSA Consultation Paper 33- 404, Part 8, page 3968

²¹ For example, statements suggesting that any sale of proprietary products have an element of bias requiring detailed explanation in support of the recommendation seems to suggest that offering proprietary products may be practically prohibited.

²² Financial Advice Market Review, Final Report, HM Treasury, March 2016

²³ <https://www.gov.uk/government/consultations/introducing-a-pensions-advice-allowance, August 30, 2016>



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support an advice model that provides fairly disclosed incentives for investment representatives to counsel clients of all walks of life. This is especially the case when 80% of Canadians qualify as “modest investors”, with less than \$100,000 of investible assets.²⁴

We also draw the CSA’s attention to a recent research paper that concluded that banning embedded compensation would lead to the same negative advice gap in Canada that now exists in the UK.²⁵ As a result we support clearly stated targeted reforms, accompanied by clear guidance as to expectations, subject to the specific comments noted in our response to the CSA questions set out in the Appendix.

Specific Responses to Questions

We attach as Appendix A our specific responses to each question posed in the body of the Consultation Paper.

Summary

We commend the CSA and its associated regulatory bodies, the MFDA and IIROC, for creating an environment where dealers and investment representatives owe their clients such a high standard of conduct. The CSA should pause before replacing the current established standard with an unclear and untested regime that implicitly suggests unstated enhanced obligations and expectations. We are not convinced that the result will be an environment which provides any better protection to Canadian investors and may create higher costs, greater liability for investment representatives and firms and fewer advice options for Canadians who truly need it.

We thank the CSA for seeking input on these very important proposals. We look forward to continuing this important discussion, and specifically working towards the development of effective modifications or alternatives, where appropriate, to the proposed reforms. We would be pleased to discuss the contents of our submission in more detail at any time.

Yours Truly,



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²⁴ Investor Economics, Household Balance Sheet 2015

²⁵ Lortie, Pierre, “A Major Setback for Retirement Savings:”, School of Public Policy SPP Research Papers, Vol 9, Issue 13 April 2016



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Appendix A **Responses to Questions**

(1) CONFLICTS OF INTEREST – GENERAL OBLIGATION

1) Is this general approach to regulating how registrants should respond to conflicts optimal? If not, what alternative approach would you recommend?

We agree with the consultation paper's position that the interest of the client be placed ahead of the interest of the firm and representative. The consultation paper suggests that "the disclosure must be sufficient to be meaningful to the client such that the client fully understands the conflict, including the implications and consequences of the conflict for the client." This is a subjective test and we are not clear on what evidence would be appropriate or acceptable to ensure that the test has been met. For example, would a client's signed statement to that effect be sufficient? It is important that the test be done at the time of the transaction, and not be based on hindsight and recollections. Detailed guidance will be required in order for appropriate training, procedures and compliance oversight to be implemented on an effective basis.

2) Is the requirement to respond to conflicts "in a manner that prioritizes the interest of the client ahead of the interests of the firm and/or representative" clear enough to provide a meaningful code of conduct? If not, how could the requirement be clarified?

The proposed requirement focuses on "material" conflicts of interest. We would want to better understand what conflicts the CSA considers to be inherently "material". Although the proposed requirement appears clear enough on its face, the potential guidance expressed in Appendix "A" gives us significant pause and suggests that there is room for confusion between the industry's understanding of this phrase and the expectations of the CSA.

We assume that references to "material conflict of interest" and "conflict of interest" are to be treated as synonyms, such that the proposed requirements only apply to conflicts considered to be "material". Appendix "A" seems to use the terms interchangeably, which could create confusion.

The current conflicts of interest rules require actual and potential conflicts to be identified and disclosed to the client and "addressed by the exercise of responsible business judgment influenced only by the best interests of the client" (MFDA Rule 2.1.4). Implicit in this rule is a conclusion that some conflicts must be avoided. It is not clear to us that the proposed general requirement changes the dealer or advisor's duties in this regard. If the proposed requirement is simply a restatement of existing requirements, this should be made clear. If it is intended to be something different, those differences should be made clear so that dealers and advisors can adjust their compliance regimes and activities accordingly.

The sale of proprietary products is not a conflict of interest, material or otherwise. The receipt by the advisor of compensation for the sale of a product is also not a conflict, material or otherwise. Contrary to the apparent assumption in Appendix "A", advisors working for a dealer that offers proprietary and non-proprietary products have no incentive to sell proprietary products – this is already prohibited by National Instrument 81-105, s. 4.2. As there is no incentive, there is no conflict. Proprietary product shelves are designed and managed to provide



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for a reasonable range of investment options to be suitable for any retail investor. These products are well designed, well managed and competitive with independent funds. The Consultation Paper does not point to evidence in support of the conclusion that advisors offering such products “may” be more likely to make unsuitable recommendations.

We do agree that disclosure of amounts paid to the dealer is important to facilitate a discussion about the value of advice, and this will be accomplished by the new disclosures required by CRM2. We do agree that the fees paid by a client for a given investment should be a factor in making a recommendation. However, we do not agree that compensation should be treated as a conflict of interest, as the Appendix seems to do. If this is not the intent, a clear statement to that effect would be useful.

The proposed new approach, as the guidance in Appendix “A” suggests, will focus more on prohibition than on disclosure. Given the uncertainty around the scope of the language, we are concerned that this could restrict innovation and lead to homogeneity in product and service offerings.

Much of the discussion regarding conflicts of interest has focused on the role that compensation plays in product recommendation. Advice is a valuable service and it does not come without cost, whether that cost is paid by the manufacturer or the client. We would not want this generally phrased requirement to be interpreted to mean that the level of compensation becomes a significant, if not determining, factor in analyzing the suitability of an investment recommendation.

3) Will this requirement present any particular challenges for specific registration categories or business models?

A well defined, clear set of rules of behavior that support a best interest standard would be appropriate for any financial interaction with a client, whether under a securities, banking or insurance regime. We understand that the CCIR and CSA are working cooperatively to harmonize client results between their respective jurisdictions. We are not aware of any similar cooperative actions involving bank regulators, but would strongly support such consistency.

As noted, we and our investment representatives are already subject to a mandatory requirement to act in the clients’ best interest. If the proposal follows current requirements, then we see no material change to our business model or registration category. However, if the guidance changes the current understanding of “materiality” or “best”, then it will be important to apply it on a prospective rather than a retrospective basis. If the proposal requires behavioural, procedural or other changes it is only appropriate to apply them after the industry has an opportunity to adjust to them. Applying new rules to a period of time when those rules were not applicable is not appropriate.

(2) KNOW YOUR CLIENT

4) Do all registrants currently have the proficiency to understand their client’s basic tax position? Would requiring collection of this information raise any issues or challenges for registrants or clients?



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Without a clear definition of what a “client’s basic tax position” entails, the question cannot be answered with any degree of certainty. We appreciate that Appendix “B” specifically confirms that the CSA “acknowledge(s) that firms and representatives are not engaged in tax planning services unless they undertake this service explicitly”. However, in the absence of more details it is very difficult to assess whether registrants currently receive appropriate training to accomplish this purpose.

The current best practice for investment representatives is to encourage clients to consult their tax professionals on matters requiring tax advice. This is because investment representatives are not tax experts and as such do not dispense tax advice.

It is reasonable for investment representatives to have a basic understanding of the tax position of a non-complicated client’s tax position; however, this is quite different from many situations which arise where a client has a complex tax situation. For example, there is a significant difference between understanding RRSP and TFSA contribution limits for a client versus factoring the tax strategies appropriate for a client who is the owner of a holding company with various operating companies underneath. The first example would be within the scope of understanding the client’s basic tax position while understanding the tax nuances of a hold co/op co structure to be well beyond a typical registrant’s understanding of a client’s basic tax position. The definition of “basic tax understanding” needs to be carefully thought through in order to clearly delineate what is and isn’t expected of the advisor.

A client’s willingness to openly share their tax position may also be a challenge. Some clients are not comfortable disclosing their tax information to a representative. In those circumstances, requiring the representative to obtain information that the client refuses to provide will result either in the representative having to refuse to serve the client or providing advice to the client that is limited by the lack of information, and thus potentially exposing the representative to liability. Any reform in this area must recognize this limitation and protect representatives appropriately.

5) Should the CSA also codify the specific form of the document, or new account application form, that is used to collect the prescribed KYC content?

A common, standard, simple and usable approach would be helpful, in that it would provide the equivalent of a “safe harbour” for firms and representatives similar to the current approved KYC form. The development of such a standard form could be ably performed by the SROs and we encourage the CSA to delegate this direction to the SROs. In our experience the MFDA has provided useful guidance and clarity on the current KYC and building from their experience would be valuable.

6) Should the KYC form also be signed by the representative’s supervisor?

The representative’s branch manager is currently responsible for reviewing and approving all new account opening materials, including the current KYC form. The dealer is required to retain a record of that approval²⁶. Confirming that this process has been completed could be evidenced with a wet signature or by electronic means – current rules do not impose a specific method of recording approval. We would not recommend that

²⁶ MFDA Rules, s. 2.2.3



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a specific method be required as that could restrict the dealer's ability to efficiently process a client's investment intentions and would not be flexible as technology changes.

(3) KNOW YOUR PRODUCT – REPRESENTATIVE

7) Is this general approach to regulating how representatives should meet their KYP obligation optimal? If not, what alternative approach would you recommend?

The requirement for representatives to understand and consider the structure, product strategy, features, costs and risks of every security on the firm's product list would not be a realistic objective. The existing product shelf of many firms is very extensive, including thousands of investment options. Quadrus has over five thousand investment options on its shelf, for example. There is some duplication, as funds may have several different series, but the range of choice remains broad. This coupled with the fact that new investment options are constantly added while existing investment options are continually being modified makes it beyond the human capability of representatives to properly assess each and every product on the shelf and to do such on a continual ongoing basis. Such an approach would leave little time for meeting with clients, as the representative would be required to spend almost all of their time staying abreast of product development changes.

It is important to understand why firms have such broad shelves. Often clients may join a representative with an existing suite of investments that continue to be appropriate. If the firm does not have those products, it must add them in order to accommodate the client and not force a sale of those investments. In addition, as manufacturers develop new and appropriate products that representatives wish to offer to their clients, the shelf is broadened. Existing products must remain as clients already hold those investments. The end result is a very large shelf of appropriate investments available to representatives.

As a result, representatives choose a manageable selection of investments from the total shelf and use those to build appropriate investment recommendations for their clients. As there is no one set of investment options that is the only suitable one for a client it is our view that this approach is appropriate, reasonable and in the clients' best interest.

The unintended consequence of this requirement may be that representatives would seek firms which have a limited product shelf where this new obligation could realistically be met. Firms would limit their product shelves accordingly. Representatives may also adopt simpler ways (such as a lowest price approach) to demonstrate they are meeting their obligation. Client interests are not served when the lowest price is used as a short cut for an evaluation of the full risk/return profile of an investment and its impact on an overall portfolio. We do not think that these outcomes are intended by the CSA, but this is what will happen if representatives are required to have detailed knowledge of all products offered by their firms. As this is impossible to achieve with a broad shelf of products, shelves will inevitably shrink.

(4) KNOW YOUR PRODUCT – FIRM

8) The intended outcome of the requirement for mixed/non-proprietary firms to engage in a market investigation and product comparison is to ensure the range of products offered by firms that present



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themselves as offering more than proprietary products is representative of a broad range of products suitable for their client base. Do you agree or disagree with this intended outcome? Please provide an explanation.

We agree that a firm that offers a mixed proprietary/non-proprietary shelf should offer an appropriate range of products that will be suitable for their client base. This also applies to a purely proprietary firm. It does not matter that the firm offers proprietary or non-proprietary: the key is that it offers an appropriate range of products to accommodate the needs of its target clients.

We do not agree that adding “broad” to the requirement is helpful, as it is undefined and imposes what could amount to expensive and significant additional work with little to no additional value. In our view, most firms already offer a “broad” selection of investment options, and already have appropriate processes in place for reviewing, adding and removing investments from the product shelf. It is not clear what “broad” adds to the current requirement, and much more detail would be required before we could reasonably assess whether this adds value or not.

The proposed approaches in Appendix “D” to undertaking a “fair and unbiased” assessment of available products interestingly includes as a factor for consideration “whether the product manufacturer or issuer is related or connected to the registrant”. While the other factors noted in the Appendix appear to be directly relevant to determining whether the product may be appropriate for the firms’ client base, whether the issuer is related to the manufacturer is not. It is not clear to us what the addition of “fair and unbiased” is intended to achieve other than to imply that related products involve an inherent bias. It is also not clear to us how a firm offering products of a related party is expected to satisfy this element.

The test proposed in Appendix “D” – that the product shelf should “include those products *most likely* to meet the investment needs and objectives of (the firms) clients” – is problematic. The key problem is the use of “most likely”. Assuming that the average clients could fall into a continuum from conservative to moderate and aggressive, and there are any number of investment product options available that would be appropriate and suitable for them, we do not believe it is possible to determine which product mix is “most likely” to achieve the clients objectives. “Suitable” is the appropriate test.

It is unclear if this new requirement will produce any material enhancements to the returns received by clients. Today most firms have very extensive investment shelves and so current clients will receive very little tangible benefit from the added costs that firms will incur in performing ongoing “independent and unbiased” market investigations to arrive at a conclusion that the current shelf meets the definition of a broad range of products suitable for their client base.

9) Do you think that requiring mixed/non-proprietary firms to select the products they offer in the manner described will contribute to this outcome? If not, why not?

We do not see a reason to distinguish between proprietary and mixed/non-proprietary firms with respect to the development of an appropriate product shelf. All firms should be subject to the same requirement that they offer a reasonable selection of appropriate investments suitable for the needs of their target client base. Whether those investments are proprietary or not does not matter provided that the investments are suitable and the resulting recommendations are in the clients interest.



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We believe that imposing significantly more stringent requirements on a mixed or non-proprietary firm than on a proprietary firm will cause many mixed/non-proprietary firms to consider becoming proprietary only firms. It is not clear to us if this is the CSA's intent, but it will be the probable outcome. We would not support such an outcome, as we believe that a robust market requires a broad selection of options.

10) Are there other policy approaches that might better achieve this outcome?

As stated in our response to question 8, we do not support the proposed outcome, and therefore whether other policy approaches may better achieve it is an unhelpful enquiry. We believe that a more effective approach would be to ensure that firms that offer a mixed proprietary/non-proprietary shelf offer an appropriate range of products that will be suitable for their client base. "Broad" is not the right criteria – "appropriate" is.

We question the apparent underlying rationale, which appears to assume that firms that purport to offer a choice of investment managers and products may not actually do so. The implication seems to be that they may have a large selection but they actually focus sales on certain products only – proprietary or otherwise. Whether this is the case or not, it is not clear to us that this is inherently inappropriate if the end recommendation to the client is suitable, appropriate and reasonable.

We are a firm that offers an inclusive proprietary shelf that accommodates our target client base. These "proprietary" funds have multiple managers, offering a range of investment styles and approaches. In our view, proprietary products are as suitable and as appropriate for clients as any independent fund family. We also have many clients that come to us with existing investments that are also appropriate. It would not be in the client's interest to require that they sell those holdings in order to work with us, so we add their products to our shelf to accommodate them. We also have clients who prefer specific fund managers but wish to stay with the firm. To accommodate them we may add the fund manager to our shelf, if it passes our product review process.

The Consultation Paper states that proprietary products create an inherent conflict of interest, and that firms like ours that offer a mixed shelf would be subject to an increased obligation to ensure that any proprietary recommendation somehow is "better" than any other non-proprietary product we offer. We strongly disagree with this assessment, as in our view, all investment options we make available – whether proprietary or otherwise – are similarly appropriate for the right client. If this is the outcome of the proposal, it is a reasonable expectation that mixed shelf firms will move to a proprietary only model, limiting client choice and requiring that clients liquidate their previous holdings in order to change dealers. We question whether this result actually supports the desired result of "improving client outcomes".

11) Will this requirement raise challenges for firms in general or for specific registration categories or business models? If so, please describe the challenges.

Yes. As stated above, this requirement will push firms towards a proprietary model because the oversight and compliance responsibilities inherent to a mixed or non-proprietary model will be too costly to maintain and the representative's obligation to know all the products from a "broad" shelf is not humanly possible. Existing non-proprietary firms will narrow their shelves or develop exclusive relationships with specific fund managers. Smaller fund managers will likely disappear, further restricting competition.



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We suggest that regulatory attention should be focused on ensuring that firms offer a reasonable list of investments to accommodate the needs of their target client base. It should not be focused on creating an artificial distinction between proprietary and non-proprietary investment options.

Additionally, under the current regulations a dealer may have distinct sales agreements applicable to representatives who provide separate product lists corresponding to these differing sales agreements. Some representatives may have access to the full product shelf while others may be limited to offering only proprietary products. Under the targeted reforms a firm which wanted to position itself as a “proprietary list” firm for some of its representatives and a “mixed/non-proprietary list” firm for another set of representatives may be restricted from doing so and so would need to go through the considerable expense of creating a second dealer firm. Forcing a dealer to split itself in two doesn’t further client outcomes but simply increases costs through the work and expense of the additional legal, capital, regulatory and technology costs of operating two dealers.

Any move forward on the proposal would have to recognize that a single firm could be both a “proprietary list” firm and a “mixed/non-proprietary” firm. The firm would have the responsibility of ensuring that representatives properly identified and held themselves out under the appropriate category for which they are associated. The firm would then need to demonstrate that controls were in place to ensure that a “proprietary list” representative could not distribute “mixed/non-proprietary list” products. Many of the system vendors supporting the industry already have such controls in place and so consideration of this approach seems more pragmatic opposite the challenges and difficulties that would go with splitting an existing dealer into two firms.

12) Will this requirement cause any unintended consequences? For example, could this requirement result in firms offering fewer products? Could it result in firms offering more products?

Yes. Our concerns regarding the logical consequences of this proposal are discussed in our responses to the previous questions. It will result in firms offering fewer products, and it will result in firms moving to a proprietary fund model. We feel that the size of the investment fund shelf offered by firms is secondary to the actual value clients receive from representatives.

13) Could these requirements create incentives for firms to stop offering non-proprietary products so that they can fit the definition of proprietary firm?

Yes. Whether a firm’s product list is “broad”, or proprietary or non-proprietary are not significant differentiators in the outcomes a client receives. We are very concerned that the CSA is overemphasizing in the targeted reforms the impact that size and nature of the firm’s product shelf has on investor outcomes.

14) Should proprietary firms be required to engage in a market investigation and product comparison process or to offer non-proprietary products?

If this question is asking whether proprietary firms should be forced to sell products manufactured by others, then our response must be no. If the question is asking whether such firms should ensure that their proprietary shelf can accommodate the reasonable investment needs of their target client base, then we would agree.



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We understand that the role of the CSA is to encourage a fair and competitive securities marketplace in Canada, for the benefit of Canadians. Ensuring that marketplace participants are subject to clear and enforceable rules achieves these objectives. Forcing marketplace participants to offer competitors' products interferes with the normal course of competition and, in our view, is not an appropriate outcome.

Proprietary products often include funds that are managed by external fund managers in order to obtain the benefit of a range of investment styles and approaches. It is not clear to us what additional benefit to client outcomes would come from forcing such a firm to offer a competitor's products.

There is a role for competition to play in the marketplace and it would seem reasonable to allow these competitive forces to determine the depth and breadth of a firm's proprietary product lineup.

For example, a proprietary firm choosing to distribute only products that it feels it has internal, core competency and expertise to oversee, and whose target client base is limited to those who would benefit from such products, does not, in and of itself, create lesser client outcomes. However, forcing that same proprietary firm to distribute products it is less familiar with and with respect to which it has no internal competency could very well harm Canadian investors.

15) Do you think that categorizing product lists as either proprietary and mixed/non-proprietary is an optimal distinction amongst firm types? Should there be other characteristics that differentiate firms that should be identified or taken into account in the requirements relating to product list development?

No – distinguishing between proprietary and mixed/non-proprietary is not helpful for the reasons noted in our earlier responses. Proprietary firms may have broad investment choices and non-proprietary firms may have narrow choices. The distinction is not useful and is misleading. In emphasizing the proprietary versus non-proprietary distinction the CSA may be fostering an illusion that Canadians will always do better with a mixed/non-proprietary firm. We have seen no evidence in support of such a conclusion, and do not believe that it is the case. It would not be appropriate for the CSA to appear to show regulatory favouritism between competitors' business models if all competitors follow the same rules and make suitable product recommendations for their clients.

(5) SUITABILITY

16) Do you agree with the requirement to consider other basic financial strategies?

We agree that as part of the "know your client" process representatives should identify whether the client is in a position to invest. If the client has significant high interest debt it may not be appropriate for them at that time and suggesting that they pay down that debt would be reasonable advice. This is a simplistic example of course, and there will be situations where investing and borrowing can reasonably coexist and be suitable for the client.

We are concerned about the proposal dealing with dual-licensed representatives who may recommend another non-securities investment as an appropriate alternative. The requirement that the "representative must be able to substantiate why the recommendation not to buy a securities product is suitable for the client" seems to



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carry an implicit assumption that securities are always a superior or otherwise suitable product, and a failure to recommend them requires explanation. This seems to imply that if a representative can recommend a securities product, he or she is required to do so. That is not an appropriate position, as other products may be equally or more suitable for the client. It is not the role of a regulator to force representatives to sell only regulated products except in situations where they are unsuitable.

17) Will there be challenges in complying with the requirement to ensure that a purchase, sale, hold or exchange of a product is the “most likely” to achieve the client’s investment needs and objectives?

Yes, because such a test will always be challenged in hindsight. Is “most likely” determined by historical back testing or is it to be determined through use of the efficient frontier model, or is Monte Carlo forecasting the method that can determine “most likely”? The words “most likely” seem to indicate some sort of probabilistic methodology; however the above mentioned methods may be beyond the scope of many representatives. The more likely outcome, particularly for clients, is that “most likely” will be treated as synonymous with “best result”, and will be assessed in the future with the benefit of hindsight. The CSA should not create a standard that will inevitably create an impossibly predictive standard for representatives and firms, or create unrealistic expectations on the part of clients.

18) Should there be more specific requirements around what makes an investment “suitable”?

Currently, and for some time, firms and representatives have been required to only recommend “suitable” investments to their clients. The standards are reasonably well established, and provided that additional criteria are not added, are well followed and integrated into compliance models. As a result, we do not believe that more specific direction is required. We agree that there could be several strategies or products that could be equally suitable and equally effective in meeting clients’ objectives.

19) Will the requirement to perform a suitability assessment when accepting an instruction to hold a security raise any challenges for registrants?

In our experience clients do not request “holds” on existing investments – they simply take no action, as the investment stays in place unless the client chooses to sell or accepts the representatives’ recommendation to sell. To the extent that this never happens the burden would appear to be minimal. Because this does not happen, we wonder if the CSA is suggesting some degree of ongoing monitoring duty on the dealer or representative to continuously enquire whether the client wishes to sell? Clearly such a requirement would be overly intrusive to the client relationship, impractical and unnecessary.

If a suitability assessment would need to be applied on a continuous basis (to determine whether a client should continue to hold) it would require the representative to undertake a daily review of the suitability of all investments held in a client’s account. This is a very onerous task and would have the unintended consequence of severely limiting the number of clients that a representative could service because the greater part of the day would be spent on reviewing client accounts. The requirement to perform a suitability analysis at least once every 12 months in our view is sufficient to not require a continual suitability assessment on the holding of securities.



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If a client ever did call in and request a “hold” it would seem unnecessary to do a suitability review. The portfolio would remain unchanged, just as if the client didn’t call in. It might be appropriate to ask what

motivated the client to call in though, as it could suggest that something had changed for the client. If something had changed and it was significant enough to warrant a review, then a review would be appropriate. We suggest that this would be captured in the existing requirement to do a review in the event of a change in the client’s circumstances, and not simply because the client continues to be happy with the portfolio.

20) Will the requirement to perform a suitability analysis at least once every 12 months raise challenges for specific registrant categories or business models? For example, a client may only have a transactional relationship with a firm. In such cases, what would be a reasonable approach to determining whether a firm should perform ongoing suitability assessments?

The requirement to perform a suitability analysis every 12 months is reasonable where the investment representative provides advice to the client. However, in many situations a truncated analysis may be appropriate where little of note has changed in the intervening period. Clients may not want to be put through a full analysis each time they meet with their representative, and this requirement could have the unfortunate effect of leading clients to avoid meetings. Generally speaking, we believe that the investment representative should meet with the client at least annually and should take the opportunity to determine if any further review is appropriate.

21) Should clients receive a copy of the representative’s analysis regarding the client’s target rate of return and his or her investment needs and objectives?

We do not agree that a “target rate of return” should be a requirement, as the end goal of the client is to obtain sufficient funds to achieve their objective – not achieve a set rate of return. The client’s objective will include additional saving and investing and the client should not be misled into believing that investment returns alone will suffice to achieve their goals.

We are also very concerned that a “target rate of return” will be misunderstood by many clients as a “promised rate of return”, creating expectations that cannot be guaranteed. If this becomes mandatory, one can assume that representatives will tend to be conservative to minimize the chance that the client does not achieve the target, potentially resulting in either over saving by clients (at the cost of current requirements) or simply the abandonment of an investment program due to disillusionment.

Not all clients desire or have need of a target rate of return analysis. As such, we do not feel that this requirement should be imposed on each client relationship. If a client requests such an assessment then they should receive a copy of it, but we strongly oppose this being a requirement for the above reasons.

22) Will the requirement to perform a suitability review for a recommendation not to purchase, sell, hold or exchange a security be problematic for registrants?

The dealer will not know each and every time a recommendation is made to not purchase, sell, hold or exchange a security. This lack of sightline makes such a requirement impossible to monitor and evidence. It is not entirely



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clear how extensive this proposed requirement is, as every recommendation to purchase is indirectly a recommendation NOT to purchase anything else. Further details would be required to better understand the implications, but our initial reaction is that the volume of non-recommendations would far exceed the volume of actual recommendations, and would be unsupportable.

(6) RELATIONSHIP DISCLOSURE

23) Do you agree with the proposed disclosure required for firms registered in restricted categories of registration? Why or why not?

This requirement is largely met with the current relationship disclosure document. Enhancements could be made to this disclosure document if it provides further benefit to clients, however any potential benefit of increased disclosure will be offset by the fact that there is already significant disclosure making any additional material less valuable.

24) Do you agree with the proposed disclosure required for firms that offer only proprietary products? Why or why not?

We do not agree. As stated earlier, it is not clear to us how distinguishing between proprietary and mixed/non-proprietary firms improves client outcomes. All firms, no matter which category they fit into, offer a limited list of products simply for efficiency and manageability. Proprietary product firms may offer as broad an investment fund shelf as a mixed or non-proprietary firm. The issue is not whether the investment selection is proprietary or not but whether the range of investments are sufficient to suitably meet the target client's needs.

We would support disclosure by all firms that do not offer all investment products available in Canada through a statement that they have a limited shelf and hence their recommendations are made from the products on that shelf and do not consider the larger market of products not on their shelf. This statement applies to all dealers equally and does not imply a lesser status to one or the other.

25) Is the proposed disclosure for restricted registration categories workable for all categories identified?

Although we do not object to this proposal, we are not sure what value it adds for the client. This will become boilerplate disclosure language and will have little informative value.

26) Should there be similar disclosure for investment dealers or portfolio managers?

As stated in our answer to question 24), we believe all firms should disclose that they have a limited shelf, do not offer all investments available in Canada, and that any recommendations are limited to the products that they make available. This common disclosure makes it clear to all clients that every firm offers limited options without implicitly incorporating an inappropriate value judgment. This would include investment dealers and portfolio managers.

27) Would additional guidance about how to make disclosure about the relationship easier to understand for clients be helpful?



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The guidance provided appears to be sufficient.

PROFICIENCY

28) To what extent should the CSA explicitly heighten the proficiency requirements set out under Canadian securities legislation?

Although we strongly support continuing education for advisors so that the product for our clients is always of high quality, the proposal causes us some concern.

The proposal seems to require that all registrants must have proficiency in all potential products, whether they are authorized to distribute them or not. It is not clear why this is either appropriate or necessary, as the representative registered only for mutual funds could not, for example, offer the client or advise on equities, fixed income or exempt products. Requiring this level of proficiency without authorizing the registrant to provide advice on the products referred to would be counterproductive and potentially dangerous, as it may encourage representatives (and clients) to believe that the CSA actually allows them to provide advice on such products.

If there is a concern that advisors currently do not have sufficient education or training on specific products that they are registered to offer, targeted, specific and carefully crafted guidance will be required. We encourage the CSA to work with the SROs as they continue to raise the level of proficiency standards including continuing education and regulation of financial planning activity.

The regulator should be very careful about not implying a value judgment regarding the role of cost or investment approach (active v. passive) in client outcomes. The Consultation Paper should not suggest, for example, that the main factor in investment success is finding the lowest possible cost product. In our experience, (and according to many research papers) the main factor is finding and working with an investment representative and actually saving for the future.

Finally, increased proficiency will inevitably lead to increased cost to the consumer or the elimination of access to advice for small and mid-level consumers. This has been the experience in the UK, for example. This is not a reason to avoid improvement, but we do think the CSA should consider whether all clients require the same high level of knowledge. Perhaps tiered registrations and requirements would better accommodate the needs of a broad and varied target client base. Clients may be willing to pay different amounts for services ranging from purely transactional to minimal advice, to coaching and ultimately to a full-fledged financial plan. The regulatory environment should make it easier for clients to obtain the level of advice they want or can afford.

29) Should any heightening of the proficiency requirements for representatives be accompanied by a heightening of the proficiency requirements for CCOs and UDPs?

Proficiency requirements for CCOs and UDPs should appropriately reflect their responsibilities. Imposing requirements that go beyond those responsibilities could shrink the talent pool of individuals willing to take on these critical positions.



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TITLES

30) Will more strictly regulating titles raise any issues or challenges for registrants or clients?

We agree that consistency in titling would assist Canadians in better understanding the role of the person they are dealing with. A proliferation of titles will only raise confusion for Canadians already unfamiliar with the securities industry. This confusion would be best avoided by introducing titles that distinguish between the capabilities of the registrant.

All investment representatives, except for the few who are engaged solely in the fee for service financial planning business, sell investment products as part of servicing their clients. As a result, all are “salespersons”, and artificially distinguishing between those who sell proprietary products and those who sell other products appears to suggest that those that offer proprietary products are of a lesser proficiency, and that distinction is neither valid nor appropriate.

It would be reasonable to distinguish between fully accredited fee based financial planners, discretionary advisors and persons who are neither so accredited nor offer discretionary trading services. We do not support the creation of a distinction based on the nature of the products offered by the advisor and firm as this is artificial and creates a misleading distinction regarding the quality and breadth of advice to be provided by investment representatives.

31) Do you prefer any of the proposed alternatives or do you have another suggestion, other than the status quo, to address the concern with client confusion around representatives' roles and responsibilities?

We do not prefer any of the three alternatives. We prefer the introduction of financial planner vs other registration categories as we feel this division would be easiest for Canadians to understand and provide the greatest benefit to them.

32) Should there be additional guidance regarding the use of titles by representatives who are “dually licensed” (or equivalent)?

Individuals who have complied with regulatory requirements necessary to obtain licenses or registrations relating to non-securities products or services are entitled to present to the public as required by the applicable regulator. Any guidance for “dual licensed” persons should be jointly developed with the applicable regulator.

We do suggest that use of the term “financial planner” be restricted to representatives who also possess an insurance license along with a professional financial planning designation such as the CFP or CLU. Only these representatives are qualified and should be able to hold out as financial planners to Canadians

DESIGNATIONS

33) Should we regulate the use of specific designations or create a requirement for firms to review and validate the designations used by their representatives?



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We support the proposal and encourage the CSA to work with the SROs to approve the designations to be used by representatives.

ROLE OF UDP AND CCO

34) Are these proposed clarifying reforms consistent with typical current UDP and CCO practices? If not, please explain.

The proposed reforms in this section would not change current practice in our view: UDPs and CCOs already have these duties. The challenge will arise in the interpretation of “material conflict of interest”, what amounts to “manage(ing) by disclosure and controls” and the changed suitability tests. All of these are new and untested, are very subjective and are not easily discernible. The focus on “impact of cost” in the Consultation Paper seems to suggest that firms should only offer the lowest cost product available, because any other product would require explanation and justification. The obligations to ensure that the firm complies with applicable laws and regulations already exists for UDPs and CCOs. It is reasonable for UDPs and CCOs, who are taking on significant responsibility, to require that those laws and regulations be sufficiently clear and unambiguous so they know what they must do.

STATUTORY FIDUCIARY DUTY WHEN CLIENT GRANTS DISCRETIONARY AUTHORITY

35) Is there any reason not to introduce a statutory fiduciary duty on these terms?

In our view, if an investment representative is exercising discretionary trading authority on behalf of a client they are acting in a fiduciary capacity. As a result they are already subject to a common law fiduciary duty. It is not clear to us that introducing a statutory element will change the legal duty of care these individuals already owe their clients, other than to introduce uncertainty. We do not engage in this business, and will defer commentary to those more familiar with the implications on their business.

36 – 43) Part 8 – Proposed Framework for a Regulatory Best Interest Standard

We have incorporated our responses to these questions in the body of our submission relating to the proposed standard.

44 – 68) Questions Arising from the Appendices

We have incorporated our responses to these questions in the previous questions specifically associated with each appendix.