

September 30, 2010

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RE: CSA Notice and Request for Comments - Proposed Amendments to National Instrument 31-103 ("NI 31-103"), National Instrument 33-109, and Ontario Securities Commission Rule 33-506

A.1. We are pleased to provide you with the following comments of the Canadian Foundation for Advancement of Investor Rights (FAIR Canada), in response to the request for comment on the proposed amendments to current registration requirements.

A.2. FAIR Canada is a non-profit, independent national organization dedicated to representing the interests of Canadian investors. FAIR Canada's mission is to be a voice for investors in securities regulation and a catalyst for the enhancement of the rights of Canadian shareholders and retail investors. Please visit www.faircanada.ca for more information.

A.3. Our principal recommendations are as follows:

- 1) Introduce a requirement for registrants to put their clients' best interests first when providing investment advice.
- 2) Require the inclusion of net annual return and appropriate performance benchmarks in account statements.

1) Introduce a Requirement for Registrants to put Clients' Best Interests First

1.1. In fulfilling their obligation to provide “suitable” advice, registrants are required to understand the securities they recommend, and to know and understand the client’s circumstances and objectives. However, ensuring that a trade is suitable does not necessarily mean that it is in the best interests of the client.

1.2. The proposed amendments to section 3.4(1) of NI 31-103, which require that registered representatives understand the structure, features and risks of each security they recommend, are positive. We also view the added guidance in section 1.3 of the Companion Policy to NI 31-103 (the “**Companion Policy**”), which outlines the extension of responsibility to registered firms for registered individuals’ compliance with proficiency requirements, as a positive step.

1.3. However, the framework within which registrants currently operate continues to be based on the “suitability” concept. We believe that the framework should be shifted to one where a client’s best interests are put first, so that registered firms and individuals that provide investment advice are required, when providing that advice, to put their client’s best interests first.

1.4. There are already a number of what we view as “client first” principles within the Companion Policy, particularly in the conflicts of interest section. For example, the last heading within section 13.4 of the Companion Policy discusses “Compensation practices”. We agree with the statement contained in that section that:

Registered firms should consider whether any particular benefits, compensation or remuneration practices are inconsistent with their obligations to clients, especially if the firm relies heavily on commission-based remuneration. *For example, if there is a complex product that carries a high commission, the firm may decide that it is not appropriate to offer that product.* [Emphasis added]

1.5. A second example is contained in section 13.5. of the Companion Policy under “Obligation to clients”, where guidance is provided with respect to referral arrangements, which are defined broadly to include sharing or splitting of any commission resulting from the purchase or sale of a security:

... For example, if the registered firm is not satisfied that the referral fee is reasonable, *it should assess whether an unreasonably high fee may create a conflict that*

could motivate its representatives to act contrary to their duties toward their clients.
[emphasis added]

1.6. The examples cited above from the Companion Policy illustrate common situations that arise in registrant-client scenarios, and would be well-suited (in a redrafted form) for a “client first” requirement.

1.7. Unfortunately, there frequently continues to be a misalignment of interests between registrants and their clients. This may be for a number of reasons. First, under the existing framework, registrants are often compensated and incentivized to sell products that may be “suitable” for a client, but not necessarily in the client’s best interests. Second, there is no specific requirement (although there is guidance along those lines within the Companion Policy) that a client’s best interests be put first in the provision of investment advice.

1.8. In a number of other jurisdictions, notably the UK, Australia and the US, regulatory initiatives have been introduced to address these inherently conflicted relationships. Examples include the future banning of embedded product provider commissions in the UK, and the consideration of a uniform statutory fiduciary standard for providers of financial advice in the US and Australia.

1.9. In the US, the Committee for the Fiduciary Standard has introduced five core principles which it believes lie at the core of a uniform “fiduciary” standard, notably:

1. Put the client’s best interests first,
2. Act with prudence – that is, with the skill, care, diligence and good judgment of a professional,
3. Do not mislead clients – provide conspicuous, full and fair disclosure of all important facts,
4. Avoid conflicts of interest, and
5. Fully disclose and fairly manage, in the client’s favour, unavoidable conflicts.

1.10. We believe that the principles described above are worth considering in shifting to a “client first” framework. At its core, such a framework should have the requirement for registrants to put their clients’ best interests first. We believe that such a change is key to remedying the imbalance and misalignment of interests in current registrant-client relationships.

Recommendation 1: FAIR Canada recommends that the CSA introduce a requirement for registrants to put their clients' best interests first when providing investment advice.

2) Account Statements – Net Annual Return and Benchmarks

2.1. Under section 14.14 of NI 31-103, registered dealers are required to deliver an account statement to clients at least once every three months. We believe that this information is important and relevant, but that it should be supplemented, at a minimum on an annual basis, with information regarding the client's net annual return, as well as performance benchmarks.

2.2. Most investors want the simplest number available to measure their investments' performance – their total return over the past year, net of costs, fees and commissions. Periodic calculations of net annual returns are essential to an investor's understanding of the performance of their investments.

2.3. In addition, the provision of relevant, comparative benchmarks is crucial information for clients. Comparisons to appropriate index benchmarks make annual return figures meaningful to investors, and allow them to evaluate the effectiveness of their investment strategies. For example, our research has found that mutual funds, particularly equity funds, are subject to material variations in returns, necessitating benchmark comparisons for investors to make sense of performance in an informed way.

2.4. In summary, FAIR Canada believes that, in order for the information contained in account statements to remain meaningful to investors, it should include a client's net annual return as well as relevant performance benchmarks.

Recommendation 2: FAIR Canada recommends that the CSA require that account statements include details about a client's net annual return and relevant performance benchmarks.

FAIR

Canadian Foundation *for*
Advancement *of* Investor Rights

We would be happy to speak to you further about these comments or to provide further information. Please do not hesitate to contact Ermanno Pascutto at 416-572-2282/
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Best regards,

Canadian Foundation for Advancement of Investor Rights