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February 21, 2013

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Re: CSA Consultation Paper 33-403

Dear Canadian Securities Administrators ("CSA"):

fi360, Inc. ("fi360")[1], appreciates the opportunity to comment on CSA Consultation Paper 33-403 (the "Paper"), addressing the standard of conduct for advisers and dealers. As noted in the Paper, fi360 was one of the sponsors of the Academic Study cited in the Paper.[2] Since its inception, fi360 has been a proponent of a single fiduciary standard applicable to all financial service providers who manage client funds on a discretionary basis or who provide clients with personalized investment advice ("investment advisors"). For the reasons stated in our comments, below, fi360 believes that the CSA should adopt a statutory best interest duty for advisers and brokers who provide investment advice to their clients.

[1] fi360 provides fiduciary training services and other resources to the financial services industry; it also administers the the Accredited Investment Fiduciary® ("AIF®") [U.S.], Accredited Investment Fiduciary Professional ® ("AIFP®") [in Canada], and Accredited Investment Fiduciary Analyst® ("AIFA®") designation programs. At present, there are more than 5,800 active AIF, AIFP, and AIFA designees, including 60 AIFP designees in Canada.

[2] Page 26 of the Paper.

As a general matter, fi360 believes that a fiduciary standard, consisting of the fiduciary's twin duties of loyalty and care, are the utmost protection for investors and should be the standard for financial service providers who give investment advice and who manage client assets. The duty of loyalty requires that investment advisors make decisions for their clients based solely on the clients' best interest, without regard to any benefit that might accrue to the advisor; we believe that this is equivalent to the "best interest standard" under consideration by the CSA. The duty of care requires that investment advisors undertake to give advice and select investments for their clients on the basis of a fiduciary process, a process that incorporates the duty of care by excluding any consideration of advisor benefit from the security selection process. To that end, we strongly encourage the CSA to adopt a statutory best interest standard.

The individual questions posed by the CSA will be restated in bold type, followed by our comments.

Consultation Questions on Investor Protection Concerns

Question 1: Do you agree, or disagree, with each of the key investor protection concerns discussed above with the current standards applicable to advisers and dealers in Canada? Please explain and, if you disagree, please provide specific reasons for your position.

For the reasons stated below with respect to each of the concerns, we agree with all of the key investor protection concerns with the current standards applicable to advisers and dealers in Canada.

Concern 1: Principled Foundation. fi360 strongly believes that a standard requiring advisers and dealers ("Advisors") to act in their customers best interest—a "fiduciary standard"—provides the necessary principled foundation for the relationship between Advisors and their clients, particularly when an Advisor is given investment discretion over its client's account. The suitability standard—i.e., will a product serve the purpose for which it is being recommended or purchased?—may be acceptable when a buyer has a foundation of knowledge about the product or a broad range of competitive products (for example, when purchasing nails), but it is not sufficient when a client seeks to place his health, wealth, or well-being in the hands of an advisor that has a distinct advantage in terms of knowledge. In other words, a fiduciary is obligated to select or recommend investments that are not only suitable, but also in the best interest of its client.

Concern 2: Information and financial literacy asymmetry. Financial illiteracy remains a stubborn problem confronting investors not only in Canada, but in the United States and elsewhere. (U.S. Securities and Exchange Commission ["SEC"], *Study Regarding Financial Literacy Among Investors,* August, 2012.) In an environment where most investors lack even basic financial literacy, the effectiveness of disclosure as an

antidote for conflicts of interest, compensation confusion, and other similar issues is highly questionable; furthermore, without thorough understanding of disclosure, it is unlikely that truly informed consent can be granted by investors.

Concern 3: Standard of conduct expectation gap. The result of the IEF Study is not surprising. While we do not have comparable studies to demonstrate a similar gap in the United States, it is nevertheless our belief, based on numerous observations and conversations that investors assume that— similar to physicians, lawyers, and other professionals—Advisors will, particularly in a discretionary setting, act in their clients' sole interest. While investors may recognize that certain conflicts of interest may be avoidable, they nevertheless expect that their Advisors will avoid such conflicts whenever possible and, when a conflict cannot be avoided, will forthrightly explain the conflict to the client and obtain the client's consent to the suggested course of action. A legal standard—such as the suitability standard—that permits Advisors to deviate from these expectations do a disservice to investors.

Concern 4: Recommendation of suitable investments versus investment in the client's best interests. The application of a suitability standard for investment recommendations goes to the very heart of the issue under consideration by the CSA. When an Advisor is only required to select an investment from the broad range of "suitable" investments, the investor can have no confidence that the recommended investment will best fulfill the purpose for which it was recommended; the "suitable" investment may have higher embedded costs, may have a lackluster performance history, and may pay a higher level of compensation to the Advisor. Only when the Advisor is required to consider these—and many other factors typically taken into consideration by fiduciaries—can the investor feel that the recommended investment will best serve the purpose for which it has been recommended. That is to say, investments in the best interest of the client represent a sub-set of those investments that may be suitable for the client; a sub-set that eliminates those investments that—while coming within the realm of suitability—provide benefits for parties other than the client, possibly at the cost of benefits that would otherwise accrue to the client.

Concern 5: The application in practice of the current conflicts of interest rules might be less effective than intended. fi360 has no direct knowledge of the application of NI31-103 or other Canadian rules regarding conflicts of interest. However, it is our belief that conflicts of interest constitute a serious problem for Advisors and their clients. We believe that an Advisor's first response to a conflict of interest is to position itself so as to avoid the conflict, i.e., align itself with its client's sole interest. In the event that the conflict is unavoidable, the Advisor should be required to make full disclosure of the conflict and obtain informed consent from its client. For this purpose, "informed consent" can only be obtained when the disclosure is not only full, but meaningful to the client, and that the client—fully comprehending the nature and extent of the conflict—consents to the Advisor's proposed course of action.

Question 2: Are there any other key investor protection concerns that have not been identified?

fi360 does not have sufficient knowledge of the Canadian market to identify other key investor protection concerns. Certainly, the CSA has identified sufficient concerns through which to analyze the issues.

Question 3: Is imposing a statutory best interest standard on advisers and dealers the most effective way of addressing these concerns? If not, would another policy solution (e.g., changes to one or more of the existing statutory standard of conduct requirements) offer a more effective solution?

fi360 strongly believes that the imposition of a principles-based best interest standard is the most effective way of addressing the concerns expressed by the CSA. Similar to the CSA, we have found that the imposition of a less stringent standard gradually deteriorates into a paradigm under which investor protection is no longer paramount.

Question 4: Do you believe that some or all of these concerns are inapplicable (or less significant) in any CSA jurisdiction as a result of its current standard of conduct for advisers and dealers?

fi360 does not have sufficient knowledge about the current standards of conduct in the various CSA jurisdictions to address this question.

Consultation Questions on the Statutory Best Interest Standard

Question 5: Should securities regulators impose a best interest standard applicable to advisers and dealers that give advice to retail clients? Why or why not?

In general, fi360 believes that a best interest standard should be imposed on Advisors for three primary reasons: first, it is the most effective standard for the protection of investors; second, it is a clear standard not readily susceptible to dilution through regulatory and judicial interpretation; third, it most closely correlates with the standard most typically believed by investors to currently apply to Advisors.

Question 6: If such a duty is imposed, are the terms of the best interest duty described above appropriate (for example, should there also be an on-going obligation regarding the suitability of advice previously given or investments held by a client)? What

changes, if any, would you suggest to the terms of the best interest duty described above?

fi360 believes that the terms of the best interest duty as described are appropriate, with the following exception. Rather than applying only a suitability standard to "permitted clients" and allowing them to pursue a private law right of action, we would suggest that there should be a presumption that the best interest duty also apply to "permitted clients," but that they be allowed to waive the presumption as a contractual matter. This would enable sophisticated institutional investors to establish the relationship with their investment advisors on a negotiated basis, but would also protect investors that meet the "permitted client" threshold—but are not particularly sophisticated. Examples of this type of investor would include charitable trusts or pension plans whose trustees or administrators are not financially sophisticated.

Question 7: Are there other general issues related to imposing the best interest standard described above that should be addressed?

fi360 will not suggest other issues that should be addressed at this time.

Consultation Question on Potential Benefits and Competing Considerations Generally

Question 8: Do you agree, or disagree, with each of the potential benefits and competing considerations of the statutory best interest standard described above? Please explain and, if you disagree, please provide reasons for your position. Are there any other key potential benefits or competing considerations that have not been identified?

fi360 strongly agrees with each of the potential benefits of the statutory best interest standard as described in the Consultation Paper. As further discussed below, we have significant disagreements with several of the competing considerations that are stated.

Consultation Questions on the Potential Benefits of a Statutory Best Interest Standard

Question 9: What are the criteria that should be used to identify an investment that is in a client's best interest?

fi360 does not necessarily believe that it is necessary—or even possible—to identify individual securities or investments that are in a client's best interest. Instead, we believe that investments should be selected as a result of a fiduciary

process. In that regard, three criteria should be considered in determining whether a best interest standard has been followed:

First, has the investment advisor avoided, to the extent possible, any investment that would involve a conflict of interest? If such avoidance is impossible, has the investment advisor taken steps to manage and minimize the impact of the conflict?

Second, has the investment advisor gathered and considered all of the relevant information regarding the client and the client's needs in developing an investment plan for the client?

Third, has the investment advisor implemented the investment plan by means of a consistent process that can be formalized and reviewed?

These three criteria are important because they make it possible to determine whether the investment advisor has selected investments pursuant to a fiduciary process.

fi360 has developed a number of Prudent Practices that are intended to ensure that an investment advisor following those Practices has engaged in a fiduciary process in selecting investments for its clients. In particular, the criteria—or constituent steps—for Prudent Practice 3.3 are relevant in this instance:

3.3.1 A documented due diligence process, consistent with prudent practices and generally accepted investment theories, is used to select investments and third-party Investment Managers (i.e., managers of separate accounts or other portfolios).

3.3.2 Decisions regarding the selection of investments consider both qualitative and quantitative criteria.

3.3.3 The documented due diligence process used to select investments and third-party Investment Managers is consistently applied.

3.3.4 Regulated investments are preferred over unregulated investments when all other characteristics are comparable.

3.3.5 Investments that are covered by readily available data sources are preferred over similar investments for which limited coverage is available when all other characteristics are comparable.

3.3.6 Decisions regarding passive and active investment strategies are documented and made in accordance with due care obligations.

3.3.7 Decisions regarding the use of separately managed and commingled accounts, such as mutual funds, unit trusts, exchange-traded products, and limited partnerships, are documented and made in accordance with due care obligations.

3.3.8 Decisions to use complex investments or strategies, such as alternative investments or strategies involving derivatives, are supported by documentation of specialized due diligence conducted by professionals who possess knowledge and skills needed to satisfy the heightened due care obligations.

3.3.9 When socially responsible investment strategies are elected, the strategies are implemented appropriately.

It is not necessarily possible to determine whether any specific security or investment is appropriate or in the best interest of a client; it is, however, possible to ascertain whether the investment advisor has implemented a process that will result in the selection of a portfolio of investments that are likely to best serve the client's needs.

Question 10: Should breaches of a best interest standard give rise to civil liability at common law?

While fi360 does not have expertise regarding the Canadian legal system, we would note that a statutory standard that is applicable to both regulatory enforcement actions and civil actions results in a more consistent body of law and more predictable outcomes than a statutory standard for regulatory purposes and possibly different standards applicable for civil liability purposes.

Question 11: If so, is it necessary to state expressly that a best interest duty will give rise to civil liability on the part of the adviser or dealer or is it sufficient if that standard is a statutory duty?

Without an express application of a best interest duty to civil actions, thereby preempting existing or developing common law standards, investment advisors—and investors—may still be faced with uncertainty as to the standard that will apply to an investment advisor's actions.

Consultation Questions on Functional Equivalency

Question 12: Does the duty of an adviser or dealer to act fairly, honestly and in good faith when dealing with clients, coupled with the existing rules related to suitability and conflicts of interest,

already impose a standard of conduct that is functionally equivalent to a fiduciary duty?

fi360 does not take a position of the functional equivalence of the existing standard of conduct under Canadian law with a fiduciary duty or a standard of sole interest. However, we would note that if these standards are already functionally equivalent, the imposition of a statutory best interest standard would avoid possible needless litigation in the future to determine that the standards are, indeed, equivalent. It would seem much more efficient to settle this question by preempting the current—functionally equivalent—standard through the adoption of a statutory best interest standard.

Question 13: If so, should it be made clear that investors can enforce that duty as a private law matter?

While not claiming any expertise in Canadian legal matters, fi360 would note that the availability of a private cause of action would enable individual investors to pursue actions that might not rise to the level of consequence requiring the expenditure of public resources by a regulator or prosecutor.

Question 14: If you believe that the existing standard of conduct for advisers and dealers already imposes a standard of conduct that is functionally equivalent to a fiduciary duty, what impact (if any) would the introduction of a statutory best interest standard have? For example, would it be desirable for investors to have the benefit of a statutory best interest standard that has long been recognized and interpreted under fiduciary duty common law principles?

As state above, fi360 does not take a position on the current existence of functional equivalency.

Question 15: Do you think the investor protection concerns raised in this Consultation Paper could be addressed by issuing guidance about current business conduct requirements, including the duty to deal fairly, honestly and in good faith with clients? Please provide specifics about the type of enhanced guidance that would be most effective.

fi360 does not believe that the investor protection concerns would be best addressed by the issuance of such guidance.

Question 16: Do you think that the concerns raised in this paper could be addressed by increased enforcement of current business

conduct rules, including fair dealing, suitability and conflict of interest requirements?

fi360 does not have an opinion on this question.

Consultation Questions on Potential Increased Costs

Question 17: Would the statutory best interest standard described above increase ongoing costs for advisers and dealers in Canada? If so, please identify the areas in which you believe there would be increased costs for advisers and dealers and provide any relevant qualitative arguments or quantitative data. In responding, please consider potential costs in the following areas:

- **(i) regulatory assessment (client information required to meet standard)**
- **(ii) compliance/IT systems**
- **(iii) supervision**
- **(iv) ensuring representative proficiency**
- **(v) client documentation/disclosures**
- **(vi) insurance**
- **(vii) litigation/complaint handling**
- **(viii) other (please identify)**

As noted on page 26 of the Consultation Paper, fi360 was co-sponsor of a study (the "Academic Study") on the impact and effect of a fiduciary duty on U.S. broker-dealers and their relationship with clients.[3] In short, the Academic Study found that the costs and availability of investment advice was not significantly different in states in which a strict fiduciary standard had been adopted for broker-dealers as opposed to those states in which such a standard did not exist. If investment advisors in Canada do not encounter radically different cost structures from their U.S. counterparts, the findings of the Academic Study would imply that it is unlikely that the adoption of a statutory best interest standard would materially increase ongoing costs for advisers and dealers—and, possibly more importantly, clients—in Canada.

Question 18: If yes, given that a fiduciary duty is already owed to a client in certain circumstances, why do you think that clarifying the circumstances in which such a duty is owed will affect ongoing costs of advisers and dealers in Canada?

[3] Michael S. Finke & Thomas Patrick Langdon, *The Impact of the Broker-Dealer Fiduciary Standard on Financial Advice* (March 9, 2012), online: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2019090.

Not applicable.

Question 19: Are the computer systems advisers and dealers use today to support their compliance mandate able to support a statutory best interest standard? If no, what types of investment do advisers and dealers anticipate needing to make to improve their IT systems in order to ensure compliance with a best interest standard?

fi360 is not qualified to address this question.

Question 20: We note that cost-benefit and/or market impact analysis has been conducted to varying extents on the proposed reforms in each of the U.S., U.K., Australia and E.U. Do you believe that this international analysis is relevant to the possible introduction of a statutory best interest standard for advisers and dealers in Canada? If so, please explain.

fi360 believes that the analysis found in the Academic Study is relevant to the possible introduction of a statutory best interest standard for advisers and dealers in Canada. As the CSA is undoubtedly aware, the Canadian and U.S. markets for investment advisory services are substantially similar both with regard to market structure and regulatory regime. This being the case, fi360 believes that the conclusions of the Academic Study are applicable in large part to the introduction of a statutory best interest standard.

Consultation Question on Investor Choice, Access and Affordability

Question 21: Do you believe that the statutory best interest duty described above would have a negative, positive or neutral impact on retail clients across each of the following dimensions: choice, product access, and affordability of advisory services?

As stated above in our response to Question 17, the Academic Study found no statistical difference between U.S. broker-dealers who were subject to a fiduciary standard and those to which no fiduciary standard applied with respect to "…the ability to provide a broad range of products [or] the ability to provide tailored advice."[4] To the extent that the ability of Canadian investment advisors to adapt to a statutory best interest standard is not significantly different from the ability of U.S. broker-dealers to adapt to a fiduciary standard, we believe that the

[4] Academic Study, p. 22.

Academic Study suggests that there is no reason that there would be an adverse or negative impact on retail clients with respect to choice, product access, and affordability of advisory services.

Consultation Questions on Impact on Certain Business Models

Question 22: How should a statutory best interest standard apply to mutual fund dealers, exempt market dealers and scholarship plan dealers?

fi360 is not qualified to address this question.

Question 23: Are there any adviser or dealer business models that could not continue if the best interest standard described above was adopted?

fi360 is not qualified to address this question. However, we would question whether a business model that could not continue following the adoption of a best interest standard is a desirable alternative for Canadian investors, since such a business model would—by its very nature—depend for its success on providing investors with services that serve the interests of the investment advisors above those of the investor.

Question 24: Do you agree with the approach reflected in the Australian Reforms or UK Reforms to accommodate restricted advice and scaled advice, respectively?

fi360 is not qualified to address this question.

Question 25: What specific qualifications to the best interest standard described in this Consultation Paper are required (please provide proposed statutory language where possible)?

fi360 is not qualified to address this question.

Question 26: Will the qualifications required to make a best interest standard work in Canada result in retail clients receiving only advice on a narrow range of investment products?

As discussed above in our responses to Questions 17 and 21, we believe that the Academic Study found that the imposition of a fiduciary standard on U.S. broker-dealers did not result in a narrowing of the range of investment products

available to their clients. We believe that it is unlikely that such a result would occur in Canada as a result of the adoption of a best interest standard.

Consultation Question on Impact on Capital Raising

Question 27: Would imposing a statutory best interest standard as described above affect capital raising?

fi360 is not qualified to address this question.

Consultation Questions on Effect on Compensation Practices

Question 28: Do you believe that the statutory best interest duty described above would affect the current compensation practices of advisers and dealers? If so, in what way?

fi360 is not qualified to address this question.

Question 29: Should a best interest duty expressly address adviser and dealer compensation practices? If so, in what way?

As noted in the Consultation Paper on page 51, "the Academic Study in the U.S. …concluded that the existence of…a [fiduciary] duty did not affect compensation arrangements." On this basis, we do not believe that it is necessary for a best interest standard to expressly address compensation practices. It is our belief that, between market forces and advisor ingenuity, compensation practices in Canada will adjust to both comply with a best interest standard and provide sufficient compensation to encourage the delivery of investment advisory services.

Question 30: Could volume based payments or embedded commissions continue if the statutory best interest standard described in this paper is introduced? If so, should such compensation structures be specifically prohibited?

As suggested in the response to the previous Question, it is possible and likely that compensation practices and structures will adjust to the adoption of a best interest standard. It is likely that such compensation structures not acceptable under a best interest standard would be successfully addressed by the enforcement activities of securities administrators and by civil actions brought by investors; such actions would continue to evaluate innovative structures as they arose, rather than requiring legislators to envision all possibly compensation structures for inclusion in the legislation.

Question 31: What compensation structures that exist today among advisers and dealers do you think would be prohibited by the statutory best interest standard articulated in this Consultation Paper? Please consider compensation received by advisers and dealers both from clients and from product manufacturers. For each structure you mention, please provide your reasons.

fi360 is not qualified to address this question.

Question 32: Should any statutory best interest standard be modified in any way to preserve various compensation structures?

fi360 questions whether there is any justification for preserving any compensation structure that requires a modification of the best interest standard; it would not seem that such a structure would have any purpose other than to adversely affect investors in favor of an investment advisor.

Consultation Questions on Required Guidance

Question 33: If the statutory best interest duty described above is introduced, what areas of guidance would be most useful to advisers and dealers?

fi360 is not qualified to address this question.

Question 34: Are there specific circumstances or activities, such as principal trading, that should be addressed?

fi360 is not qualified to address this question.

Question 35: Are there any categories of registrants today whose minimum proficiency requirements would need to change in order to comply with the statutory best interest standard described in this Consultation Paper?

fi360 is not qualified to address this question.

Consultation Questions on Interaction with Existing Regulatory Regime

Question 36: Are there any advisory relationships between an adviser or dealer and a retail client where a fiduciary duty would not be appropriate?

fi360 is not aware of any advisory relationships between an investment advisor and a retail client where a fiduciary duty would not be appropriate.

Question 37: Would the introduction of a best interest duty as described above require the introduction of any new rules?

fi360 is not qualified to address this question.

Question 38: Would the introduction of a best interest duty as described above require any existing rules be revised or repealed?

fi360 is not qualified to address this question.

Question 39: Are any existing regulatory rules inconsistent with the best interest standard described above?

fi360 is not qualified to address this question.

Consultation Questions on Implications for Rules on Conflict of Interest

Question 40: Would the statutory best interest duty described above require revisions to the rules that govern how firms address conflicts of interest with their clients?

fi360 is not qualified to address this question.

Question 41: If changes are required to the rules on conflicts of interest, what changes do you recommend?

fi360 is not qualified to address this question.

Consultation Questions on Targeted Best Interest Standard

Question 42: Should the CSA consider only imposing a best interest standard in respect of certain requirements, such as conflicts of interest or suitability requirements?

fi360 would not encourage the CSA to limit the application of a best interest standard to only certain requirements.

Question 43: If so, how would more targeted best interest standards address the key investor protection concerns raised in this paper? Please provide specifics.

Not applicable.

Consultation Questions on Application of Duty on Retail Clients

Question 44: Should a best interest standard apply only to advisers and dealers when dealing with "retail clients"?

As stated in our response to Question 6, we would advocate that a best interest standard should presumptively apply to dealings between investment advisors and all of their clients. However, the application of the standard could be varied by contract between investment advisors and non-retail clients. This would provide presumptive protection for non-retail clients, such as retirement plans or charitable institutions, that may not have sufficient investment acumen to avoid the adverse impact of a standard less than best interest; however, institutional investors with sufficient investment acumen could contractually adjust the standard for conduct by their investment advisors.

Question 45: If so, is the definition of a "retail client" appropriate? Should any such duty apply to other clients in addition to retail clients?

Not applicable.

Question 46: Should certain kinds of permitted clients (e.g., municipalities) have the benefit of a statutory best interest standard?

Note our response to Question 44, above.

Question 47: Are there certain kinds of retail clients that do not require the benefit of a statutory best interest standard?

fi360 has reservations as to the existence of any such retail clients. However, to the extent that such clients may exist, we suggest that such exceptions would best be handled by regulatory action, rather than legislative fiat.

Question 48: If the best interest standard described above was introduced, should advisers and dealers be permitted to modify or negate the standard by contract with their clients? If so, what limitations (if any) should be placed on that ability?

fi360 does not believe that such contractual modification should be permitted as a matter of variance under the best interest standard. Too often, such contractual variations become the rule in the industry, rather than the exception; clauses lessening the standard would become boilerplate in investment advisory

contracts. As suggested in our answer to Question 47, above, any such exceptions should be subject to regulatory consideration, rather than being included as part of a statutory standard.

Question 49: If a best interest standard is introduced, should the existing duty on advisers and dealers to deal with their clients fairly, honestly and in good faith continue to apply whenever the best interest standard does not?

Yes.

Consultation Questions on Duty Applying to Advice

Question 50: Should the best interest duty described above apply when any advice is provided to a retail client or only when personalized advice is provided to a retail client?

Although we are not familiar with Canadian regulations in this area, fi360 acknowledges that there are certain situations in the U.S. when investment advisors may give "generalized investment advice" when it is impractical to apply a best interest standard. Such instances might include investment newsletters, articles in newspapers or magazines, and appearances on investment-related radio or television programs. These occasions should clearly be excluded from a best interest standard.

Question 51: If a best interest duty should apply only when personalized advice is provided to a retail client, what should "personalized advice" mean in this context?

In circumstances other than those specifically mentioned above, fi360 believes that the burden should be on the investment advisor to communicate to retail clients when "non-personalized advice" is being given. For example, an investment advisor who communicates that a particular security has just been highly rated by an investment analyst should state at the time such communication is made that the communication is "non-personalized advice" unless the investment advisor has reached the conclusion as a result of a fiduciary process that the particular security would constitute a desirable investment in the client's portfolio.

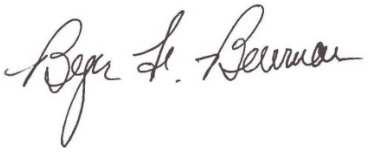
Question 52: Should it be triggered in the same circumstances in which the suitability requirement arises? Does this include advice to *hold* securities (as opposed to buying or selling securities)?

fi360 advocates "monitoring" as an integral step in the fiduciary investment process that fi360 teaches. We strongly believe that the sole interest standard should be applicable not only with respect to the original selection of investments, but also to advice concerning the continued holding or the disposition of securities, all as part of a continuing fiduciary investment process.

fi360 appreciates the opportunity to comment to the CSA with respect to the questions posed in the Consultation Paper. We strongly believe that the adoption of a statutory sole interest standard would be most beneficial for Canadian investors and for the continued development of an effective regime of investor protection.

We would gladly entertain any questions that the CSA or any of its members would have with regard to our responses or with regard to the adoption of a statutory sole interest standard. Furthermore, we would appreciate the opportunity to testify at any hearings or meetings that the CSA may hold with respect to this matter.

Very truly yours,
fi360, Inc.



Byron F. Bowman
Senior Vice President, General Counsel, and Secretary